

# THE FRONTLINES OF DIPLOMACY

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Humanitarian Negotiations with Armed Groups

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National University.

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# DECLARATION

*This thesis is wholly original and created exclusively by Ashley Jonathan Clements except where indicated otherwise. This research has not been conducted jointly with any other person and all sources have been acknowledged.*

A handwritten signature in black ink, appearing to read 'A. Clements'.

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# ABSTRACT

Humanitarian organisations are regularly compelled to negotiate with armed groups over access to and protection for civilians affected by conflict. Yet, they are widely perceived to engage in these negotiations from a position of weakness, leading to poor deals and heavy compromises that undermine the humanitarian principles that underpin their work. This thesis investigates whether humanitarian negotiators can overcome their purportedly weak bargaining position to reach more balanced agreements with armed groups. My empirical research focuses on Yemen's Houthi movement and the Kachin Independence Army in Myanmar, drawing also on a number of case illustrations from across the literature on the field. It argues that although humanitarian negotiators face an initial disadvantage, under certain conditions they can exert more influence over the position of their armed counterparts than their counterparts exert over them. Humanitarian negotiators thus have a range of tactical options or 'humanitarian levers' available to redress the power imbalance and improve negotiated outcomes. These tactics can be deployed both within and beyond the formal negotiation process and operate on power relations in three main ways. They improve the alternatives available to the weaker party and worsen those of their counterparts, they strengthen the commitment of humanitarian negotiators while undermining that of their opponent, and they foster interdependence that induces armed groups to seek agreement. Growing recognition and use of such tactics add support to a relatively small body of literature on an under-theorised form of diplomacy: humanitarian diplomacy. This thesis reconceptualises the phenomenon of humanitarian negotiation as a central practice of the emerging field of humanitarian diplomacy. It presents insights that enable humanitarian negotiators to reach more balanced agreements when negotiating with armed groups and identifies lessons from this distinctive field that contribute to other areas of negotiation and diplomacy scholarship.





# CONTENTS

<i>Illustrations</i>	<i>ix</i>
<i>Abbreviations</i>	<i>xi</i>
<b>Part I: The Theory of Humanitarian Negotiation</b>	<b>13</b>
<hr/>	
<b>Introduction</b>	<b>15</b>
1. The concept of humanitarian negotiation	19
2. Research overview	37
3. Thesis structure	47
<b>1. Theorising Humanitarianism, Power, and Diplomacy</b>	<b>51</b>
1. The imperative to negotiate	52
2. Negotiating from a position of weakness	69
3. Competing conceptions of power	75
4. Diplomacy and humanitarianism	90
Conclusion	101
<b>2. Research Method and Design</b>	<b>103</b>
1. A structural approach to power and negotiation	103
2. Research design	117
3. Research method	128
Conclusion	140
<b>Part II: The Practice of Humanitarian Negotiation</b>	<b>141</b>
<hr/>	
<b>3. The Negotiator's Weak Hand</b>	<b>143</b>
1. Sources of power asymmetry	144
Conclusion	165
<b>4. Yemen: The Houthi Ascendance</b>	<b>169</b>
1. Conflict	170
2. Negotiation structure	185
3. Negotiation process	201
Conclusion	220
<b>5. Myanmar: A Return to Arms in Kachinland</b>	<b>223</b>
1. Conflict	224
2. Negotiation structure	236

3. Negotiation process	250
Conclusion	268
<b>6. Overcoming Power Asymmetry</b>	<b>271</b>
1. Tactical options for the weak	272
2. Deploying humanitarian levers	291
Conclusion	305
<b>Part III: The Future of Humanitarian Negotiation</b>	<b>307</b>
<hr/>	
<b>7. Advancing the Frontlines of Humanitarian Negotiation</b>	<b>309</b>
1. The practice of humanitarian negotiation	310
2. The promise of humanitarian diplomacy	326
3. Paradoxes	336
Conclusion	342
<b>8. Implications for Theory and Practice</b>	<b>345</b>
1. Implications for negotiation analysis	346
2. Implications for humanitarian negotiators	354
3. Implications for diplomacy theory	365
4. Next steps: A research agenda	368
<b>Conclusion</b>	<b>375</b>
<b>References</b>	<b>381</b>
<b>Appendices</b>	<b>413</b>
Appendix I: Glossary of access terms	415
Appendix II: Key case studies of humanitarian negotiations	419
Appendix III: List of participants directly cited	423
Appendix IV: Participant information sheet	425
Appendix V: Participant consent form	429

# ILLUSTRATIONS

## Figures

Figure 1: Key cases of humanitarian negotiations with armed groups	26
Figure 2: Yemen conflict timeline, 2004-2017	172
Figure 3: Kachin conflict timeline, 2010-2017	227
Figure 4: Number of IDPs reached monthly with cross-line missions	255

## Tables

Table 1: Overview of key characteristics by case	133
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## Maps

Map 1: Yemen political map with governorates and key locations	168
Map 2: Myanmar political map with states and key locations	222



# ABBREVIATIONS

<b>ACF</b>	Action contre la Faim
<b>AQ</b>	al-Qaeda
<b>AQAP</b>	al-Qaeda in the Arabian Peninsula
<b>BATNA</b>	Best alternative to a negotiated agreement
<b>BGF</b>	Border Guard Force
<b>CAAC</b>	Children and Armed Conflict
<b>CCHN</b>	Centre of Competence on Humanitarian Negotiation
<b>DRC</b>	Democratic Republic of the Congo
<b>EAO</b>	Ethnic Armed Organisation
<b>GCC</b>	Gulf Cooperation Council
<b>GPC</b>	General People's Congress
<b>HC</b>	Humanitarian Coordinator
<b>HCT</b>	Humanitarian Country Team
<b>HD</b>	Centre for Humanitarian Dialogue
<b>HRW</b>	Human Rights Watch
<b>IASC</b>	Inter-Agency Standing Committee
<b>ICC</b>	International Criminal Court
<b>ICG</b>	International Crisis Group
<b>ICRC</b>	International Committee of the Red Cross and Red Crescent
<b>ICVA</b>	International Council of Voluntary Agencies
<b>IDP</b>	Internally Displaced Person
<b>IED</b>	Improvised Explosive Device
<b>IHL</b>	International Humanitarian Law
<b>IHRL</b>	International Human Rights Law
<b>ILO</b>	International Labour Organisation
<b>INGO</b>	International Non-Governmental Organisation
<b>IOM</b>	International Organisation for Migration
<b>IR</b>	International Relations
<b>IRRC</b>	IDPs and Refugees Relief Committee

<b>IS</b>	Islamic State
<b>KBC</b>	Kachin Baptist Convention
<b>KIA</b>	Kachin Independence Army
<b>KIO</b>	Kachin Independence Organisation
<b>KSG</b>	Kachin State Government
<b>LOAC</b>	Law of Armed Conflict
<b>MSF</b>	Médecins Sans Frontières
<b>NATO</b>	North Atlantic Treaty Organisation
<b>NCA</b>	Nationwide Ceasefire Agreement
<b>NGO</b>	Non-Governmental Organisation
<b>NIAC</b>	Non-international armed conflict
<b>NLD</b>	National League for Democracy
<b>NPFL</b>	National Patriotic Front of Liberia
<b>NRC</b>	Norwegian Refugee Council
<b>OCHA</b>	Office for the Coordination of Humanitarian Affairs
<b>OLS</b>	Operation Lifeline Sudan
<b>OPR</b>	Operational Peer Review
<b>OSESGY</b>	Office of the Special Envoy to the Secretary-General to Yemen
<b>R2P</b>	Responsibility to Protect
<b>SPLM/A</b>	Sudan People's Liberation Movement / Army
<b>UN</b>	United Nations
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UNICEF</b>	United Nations Children's Fund
<b>UNITA</b>	União Nacional para a Independencia Total de Angola
<b>US</b>	United States
<b>USAID</b>	United States Agency for International Development
<b>USG</b>	Under-Secretary-General
<b>WFP</b>	World Food Programme
<b>WHO</b>	World Health Organisation
<b>ZOPA</b>	Zone of possible agreement

# **PART I**

## **THE THEORY OF HUMANITARIAN NEGOTIATION**





# INTRODUCTION

Accessing and protecting civilians affected by armed conflict are among the greatest challenges facing humanitarian organisations today. Negotiating access to secure agreements with armed groups and protect civilians is critical for the effectiveness of humanitarian operations in most contemporary conflicts. Yet the dominant understanding within the literature is that humanitarians enter these negotiations from a position of weakness:<sup>1</sup> they have little of value to trade, they are constrained in that to which they can agree by humanitarian principles, and they frequently rely heavily on international law that may mean little to their negotiation counterparts. Humanitarian organisations also lack weapons and control no territory, putting them at what is perceived to be a distinct disadvantage with respect to the armed groups with whom they seek agreement. As one United Nations (UN) official described the process, these humanitarian negotiations are like being “dealt a weak hand from a stacked deck.”<sup>2</sup>

Due to this perceived power asymmetry (that is, a relationship in which the resources and capabilities of two parties are unequal, see chapter 1),<sup>3</sup> humanitarian negotiators are regularly forced to concede many of their demands. They may agree to support a less-vulnerable community so that

<sup>1</sup> See in particular Mark Cutts, *The Humanitarian Operation in Bosnia, 1992-95: Dilemmas of Negotiating Humanitarian Access*, (UNHCR, May 1999); Max P. Glaser, *Negotiated Access: Humanitarian Engagement with Armed Non-State Actors*, (Carr Center for Human Rights Policy, Kennedy School of Government, Harvard University, 2004).

<sup>2</sup> Cited in Larry Minear, "The Craft of Humanitarian Diplomacy," in *Humanitarian Diplomacy: Practitioners and Their Craft*, ed. Larry Minear and Hazel Smith (Tokyo, Japan: United Nations University Press, 2007), 15.

<sup>3</sup> Louis W. Stern, Richard P. Bagozzi, and Ruby Roy Dholakia, "Mediational Mechanisms in Interorganisational Conflict," in *Negotiations, Social-Psychological Perspectives*, ed. Daniel Druckman (Beverly Hills: USA: Sage Publications, 1977), 369; William Mark Habeeb, *Power and Tactics in International Negotiation: How Weak Nations Bargain with Strong Nations* (Baltimore: Johns Hopkins University Press, 1988), xi.

they are permitted to assist those in greater need elsewhere, or they may forgo access to one group in need in exchange for permission to deliver assistance to another. Armed groups may also demand payment in exchange for access or they may tax humanitarian operations and thereby perpetuate the fighting. Some agencies have also cut poor deals with warlords and armed groups amid stiff competition within the humanitarian sector over funding and operational space, forcing others to either do likewise or disengage (see chapters 1 and 7).<sup>4</sup>

Such poor deals and heavy compromises can undermine the very principles on which humanitarian action is based (see chapter 1). And when humanitarian negotiations break down, conflict-affected civilians face increased hardship, suffering, and even death. Moreover, humanitarians can find themselves in the firing lines. Over a hundred humanitarian personnel have been killed each year since 2013.<sup>5</sup> As international relations (IR) scholar Peter Hoffman and leading international organisation and global governance scholar Thomas Weiss reminded us, “in war zones the price of humanitarian failure has always been paid in blood.”<sup>6</sup>

Humanitarian negotiation (defined fully in the following section) thus represents an important and increasingly indispensable tool for humanitarian actors<sup>7</sup> working to overcome these challenges. A report by

<sup>4</sup> See for example John Prendergast, *Frontline Diplomacy: Humanitarian Aid and Conflict in Africa* (Boulder, CO: Lynne Rienner, 1996); Ken Menkhaus, "Leap of Faith: Negotiating Humanitarian Access in Somalia's 2011 Famine," in *Negotiating Relief: The Politics of Humanitarian Space*, ed. Michele Acuto (London: Hurst & Co, 2014); Kevin Avruch, "Culture as Context, Culture as Communication: Considerations for Humanitarian Negotiators," *Harvard Negotiation Law Review* 9 (2004).

<sup>5</sup> Data covers UN, NGO, and Red Cross Movement personnel, compiled from the Aid Worker Security Database, a system for tracking violence against humanitarian personnel globally. Available at: <https://aidworkersecurity.org/incidents> (accessed 11 September 2018).

<sup>6</sup> Peter J. Hoffman and Thomas G. Weiss, "Humanitarianism and Practitioners: Social Science Matters," in *Humanitarianism in Question: Politics, Power, Ethics*, ed. Michael Barnett and Thomas G. Weiss (Ithaca: Cornell University Press, 2008), 285.

<sup>7</sup> As detailed below, I use 'humanitarian actor' to encompass humanitarian agencies of the UN and non-governmental organisations, and members of the Red Cross and Red Crescent Movement. But I exclude institutional donors and others that may purport to be 'humanitarian.' See also chapter 2.

UN Secretary-General Kofi Annan (1997 to 2006) recognised the practice to be a “humanitarian necessity.”<sup>8</sup> Nevertheless, the field remains under-researched and poorly understood by both practitioners and theorists. In this thesis I draw on negotiation theory to test the validity of the field’s purported power asymmetry and explore the impact of power relations on negotiated outcomes. Underlying this research is the maxim advanced by pioneering negotiation theorists William Zartman and Maureen Berman, “one of the eternal paradoxes of negotiation is that it allows the weak to confront the strong and still come away with something which should not be possible if weakness and strength were all that mattered.”<sup>9</sup>

This thesis therefore investigates the tactics available to humanitarian negotiators to achieve more balanced outcomes from negotiation using structural analysis: an analytical framework in which the distribution of power and shifts in its distribution are the key explanatory variables in the outcome of a negotiation (see chapter 2).<sup>10</sup> The central question that animates this doctoral research is can humanitarian negotiators overcome (or significantly reduce) their weak bargaining position to reach more balanced agreements when negotiating with armed groups? I conclude that humanitarian negotiators do indeed face a weaker relative bargaining position. Yet they have a greater range of tactical options available to them than their negotiation counterparts to redress this imbalance and thereby improve their chances of reaching more favourable agreements (see below for a discussion on tactics and strategy). Moreover, the empirical research presented throughout this thesis also suggests that humanitarian

<sup>8</sup> United Nations General Assembly, *Strengthening of the Coordination of Humanitarian Emergency Assistance of the United Nations*, A/RES/46/182 (1991), para 35(d); United Nations Security Council, *Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict*, S/2001/331 (2001), para 15.

<sup>9</sup> I. William Zartman and Maureen R. Berman, *The Practical Negotiator* (New Haven: Yale University Press, 1982), 204.

<sup>10</sup> See in particular I. William Zartman, “The Structure of Negotiation,” in *International Negotiation: Analysis, Approaches, Issues*, ed. Viktor Aleksandrovich Kremeniuk (San Francisco: Jossey-Bass Publishers, 1991); Fen Osler Hampson, “Negotiation,” in *Conflict Resolution: Encyclopaedia of Life Support Systems*, ed. Keith William Hipel (Oxford: EOLSS Publishers, 2009).

negotiators rarely exploit these opportunities fully, leaving much room for advancing both the practice and theory of humanitarian negotiation.

This introductory chapter comprises three sections. Section 1 defines the phenomenon of humanitarian negotiation, briefly tracing its emergence within the formal international humanitarian system and placing it within its international legal and normative context. Section 2 provides an overview of this thesis. It summarises the main arguments and conclusions advanced throughout this research, it discusses their significance and implications, and it outlines the key assumptions that underpin this work. Section 3 provides an overview of the thesis structure.

This doctoral research has three broad objectives. First, to test the applicability of negotiation theory on power asymmetry to analyse this critically important yet under-researched and under-theorised field. This analysis will help to refine the practice of humanitarian negotiation and thereby improve the protection and assistance available to conflict-affected communities. Second, to draw on this distinctive and untapped field to enhance negotiation theory, thereby contributing to related fields such as conflict resolution or hostage negotiations. Third, to contribute to debates at the centre of diplomacy scholarship concerning the nature of diplomatic actors and the concept of ‘diplomacy’ itself. The humanitarian-negotiation processes detailed in the following chapters involve combatants in the midst of war and revolve around non-state actors (humanitarian organisations as well as armed groups) who leverage diplomatic tools and traditional diplomatic actors in ways that have the potential to shape and reshape international relations, but are largely neglected by diplomacy scholarship. Humanitarian negotiations, I will argue, thus constitute an important frontline of diplomacy – both literally and figuratively.<sup>11</sup>

<sup>11</sup> Diplomacy theorists Andrew Cooper and Jérémie Cornut use ‘frontline diplomacy’ differently to describe the embassies, consulates, and permanent representation overseas in which traditional diplomats work. See Andrew F. Cooper and Jérémie Cornut, "The

## 1. THE CONCEPT OF HUMANITARIAN NEGOTIATION

The concept of ‘humanitarian negotiation’ takes different forms within the literature. It stretches from *ad hoc* field-level bargains to overcome roadblocks (sometimes called ‘frontline negotiations’),<sup>12</sup> through to formal agreements under international humanitarian law (IHL, the body of laws that seeks to regulate the conduct of armed hostilities, referred to by military actors and scholars as the Law of Armed Conflict or LOAC). Some earlier scholars described such negotiations as ‘humanitarian mediation,’ as discussed in chapter 7. Early uses of the term also focused primarily on operational access and treated the protection of civilians as either an implicit component of these negotiations or as a separate and distinct process.<sup>13</sup> More contemporary approaches, however, recognise the central and interconnected role of both operational access and civilian protection. And as with all humanitarian action (that is, the full range of humanitarian activities, including the provision of relief supplies through to protection services and advocacy) humanitarian negotiations are generally understood within the literature to be guided by humanitarian principles and framed by international law.<sup>14</sup>

In this section I first propose a working definition of the practice and highlight some of the limitations of the concept. I then briefly situate the field within the evolution of the formal international humanitarian sector over the past quarter of a century. Third, I explore the central role of both

Changing Practices of Frontline Diplomacy: New Directions for Inquiry," *Review of International Studies*, 45, no. 2 (2019).

- <sup>12</sup> CCHN, *Proceedings from the Second Annual Meeting of Frontline Humanitarian Negotiators*, (Centre of Competence on Humanitarian Negotiation, 5-6 December 2017).
- <sup>13</sup> Cutts, *The Humanitarian Operation in Bosnia*; Anna Richardson, *Negotiating Humanitarian Access in Angola: 1990-2000*, (UNHCR, June 2000); Daniel Toole, *Humanitarian Negotiation: Observations from Recent Experience*, (Harvard University, 22 February 2001).
- <sup>14</sup> Gerard Mc Hugh and Manuel Bessler, *Humanitarian Negotiations with Armed Groups: A Manual for Practitioners*, (Office for the Coordination of Humanitarian Affairs, January 2006), 2; 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).

international law and humanitarian principles in framing the concept and practice of humanitarian negotiation.

## 1.1 DEFINING THE FIELD

Definitions are largely absent from humanitarian negotiation literature. Most studies or policies describe elements of the practice, but stop short of advancing a specific definition. I therefore draw on the influential handbook on humanitarian negotiation by the Centre for Humanitarian Dialogue (HD, a Geneva-based private diplomacy organisation) and OCHA's manual on the field<sup>15</sup> to propose the following definition: 'Humanitarian negotiation is a process through which humanitarian actors seek to secure agreement from parties to a conflict for the safe and principled provision of assistance and protection for civilians facing humanitarian needs.'

Thus conceived, my working definition has three key components. First, the primary objective of these processes must be humanitarian, as specified within international law (see below). This excludes conflict resolution initiatives or formal peace talks from my investigation. Second, humanitarian negotiations are conditioned by concerns for the safety of humanitarian personnel and the sanctity of humanitarian principles, as elaborated below. The third important aspect of this definition is that central to this process are parties to the conflict and humanitarian actors – that is, UN agencies and international non-governmental organisations (international NGOs or INGOs) with a humanitarian mandate, or members of the International Red Cross and Red Crescent Movement. This definition implies that political and diplomatic actors *cannot* lead these negotiations. Nevertheless, the boundaries between humanitarian, political, and development actors are often porous and ill-defined, as discussed in parts II and III of this thesis, meaning this distinction between humanitarian and

<sup>15</sup> Mancini-Griffoli and Picot, *Humanitarian Negotiation*, 19; Mc Hugh and Bessler, *Humanitarian Negotiations with Armed Groups*.

non-humanitarian actors is not always clear in practice. Moreover, as shall become evident throughout this thesis, the grounding of humanitarian negotiations within policy on humanitarian principles is both problematic (see chapter 7) and disconnected from field realities (see section II).

Whilst humanitarian negotiations can take place with any party to the conflict, an underlying assumption of this research is that negotiations held with national authorities or national armed forces differ in significant ways from those with armed non-state actors, as discussed below.<sup>16</sup> Indeed, a recent survey of humanitarian negotiators concluded that non-state armed actors were the most challenging interlocutors.<sup>17</sup> And whilst humanitarian negotiations may potentially involve other groups (such as gangs, criminal organisations, or paramilitary groups) these are beyond the scope of this research. I focus instead on humanitarian negotiations with non-state armed actors (henceforth I will use the term ‘armed groups’ for fluency), meaning groups that resist the state and employ organised violence in pursuit of political goals. Once again, however, this category of actor can be hard to delineate from others. The relationship of armed groups to the state can be ambiguous and fluid, and different armed groups may vary from one another in significant ways that undermine the viability of the term itself.<sup>18</sup> And as detailed in chapter 5 in particular, negotiation processes between humanitarians and armed groups are rarely isolated from parallel negotiations with national authorities. Nevertheless, conceptual boundaries

<sup>16</sup> This is, of course, not to suggest that power asymmetries are absent during humanitarian negotiations with states. Rather, I suggest that research into the dynamics of state-centric humanitarian negotiations cannot be assumed to have direct application to negotiations oriented towards non-state actors, and vice-versa.

<sup>17</sup> CCHN, *2nd Annual Conference Proceedings*, 23.

<sup>18</sup> See Klejda Mulaj, "Violent Non-State Actors: Exploring their State Relations, Legitimation, and Operationality," in *Violent Non-State Actors in World Politics*, ed. Klejda Mulaj (London: Hurst, 2010), 2; Konstantinos Mastorodimos, *Armed Non-State Actors in International Humanitarian and Human Rights Law: Foundations and Framework of Obligations, and Rules on Accountability* (Surrey, UK: Ashgate, 2016); Teresa Whitfield, *Engaging with Armed Groups: Dilemmas & Options for Mediators* (Centre for Humanitarian Dialogue, October 2010).

are necessary to analyse this phenomenon, and I will revisit the utility and limitations of this definition in chapter 7.

## 1.2 AN EMERGENT PRACTICE

The field of humanitarian negotiation is a relatively recent addition to the international humanitarian landscape, having become increasingly prominent over recent decades.<sup>19</sup> One of the earliest and better-documented examples is Operation Lifeline Sudan (OLS) that began in 1989, continuing in some form until the early 2000s. Aid agencies responding to the needs of around two million civilians impacted by Sudan's civil war during the 1980s found themselves caught between Western and Soviet interests.<sup>20</sup> They feared becoming unwitting parties to the conflict and were concerned that their assistance was harming the very people it was intended to help. A coalition of humanitarian organisations led by the United Nations Children's Fund (UNICEF) negotiated the provision of humanitarian assistance to civilians on both sides of the conflict.

The framework of OLS marked the first formal instrument of negotiated access and the earliest example in which the United Nations engaged directly with non-state armed actors who were party to an ongoing conflict.<sup>21</sup> As such, OLS was heralded by humanitarian commentator

<sup>19</sup> Max P. Glaser, *Humanitarian Engagement with Non-State Armed Actors: The Parameters of Negotiated Access*, (Overseas Development Institute, June 2005).

<sup>20</sup> Lam Akol, "Operation Lifeline Sudan: War, Peace and Relief in Southern Sudan," *Accord*, no. 16 (2005).

<sup>21</sup> Eleanor Davey, John Borton, and Matthew Foley, *A History of the Humanitarian System: Western Origins and Foundations*, (Overseas Development Institute, June 2013), 12; Sue Lautze, Jennifer Leaning, Angela Raven-Roberts, Randolph Kent, and Dyan Mazurana, "Assistance, Protection, and Governance Networks in Complex Emergencies," *The Lancet* 364, no. 9451 (2004): 2137; Daniel Maxwell, Martina Santschi, and Rachel Gordon, *Looking Back to Look Ahead? Reviewing Key Lessons from Operation Lifeline Sudan and Past Humanitarian Operations in South Sudan*, (Secure Livelihoods Research Consortium, Overseas Development Institute, October 2014).



Tristan Clements as a “turning point in the humanitarian industry.”<sup>22</sup> Larry Minear, director of the Humanitarianism and War Project (an independent policy research initiative at Tufts University), similarly claimed the initiative “embodied important innovations in the humanitarian enterprise.”<sup>23</sup>

Humanitarian negotiations with armed groups have since become more common, taking place in some form during most contemporary armed conflicts in which civilians are impacted, as detailed in chapters 3 and 5 (see also appendix II for a detailed list of negotiation cases and key sources). Rather than formal instruments under international law, however, many contemporary negotiations consist of ‘letters of agreement’ or ‘operational guidelines’ that detail principle-level agreements to which each party commits, or which are used by humanitarian organisations as a foundation for collective bargaining and echo traditional forms of diplomatic practices.<sup>24</sup> These agreements are either negotiated by individual humanitarian organisations or coalitions of agencies directly with relevant armed groups. Other forms of the practice often consist of verbal agreements negotiated on an *ad hoc* basis over safe passage for a specific operation or seek agreement for humanitarian personnel to pass a checkpoint in real time – what the recently-established practitioner-

<sup>22</sup> Tristan Clements, “9 Events that have Shaped the Humanitarian Industry,” *Morealtitude* (blog), 22 November 2012.

<sup>23</sup> Larry Minear, *The Humanitarian Enterprise: Dilemmas and Discoveries* (Kumarian Press, 2002), 9.

<sup>24</sup> Hazel Smith, *Hungry for Peace: International Security, Humanitarian Assistance and Social Change in North Korea* (Washington, DC: United States Institute of Peace Press, 2005), 128.

oriented Centre of Competence on Humanitarian Negotiation (CCHN)<sup>25</sup> calls ‘frontline’ negotiations.<sup>26</sup>

A series of historical negotiations constitute the antecedents to the field of humanitarian negotiation, although they are largely disconnected from its scholarship or practice. Former humanitarian practitioner and now political scientist David Forsythe, for example, detailed (unsuccessful) efforts to mediate an end to the execution of hostages during the Spanish civil war of the 1930s, initiated by a delegate of the International Committee of the Red Cross (ICRC, founded in the 1860s by Swiss businessman and social activist Henri Dunant, and the most experienced entity in this field).<sup>27</sup> Similarly, Alain Lempereur – a member of Harvard’s Programme on Negotiation (a community of negotiation scholars and practitioners) and negotiation advisor to the ICRC – documented international efforts in 1937 by German businessman John Rabe to establish a ‘safety zone’ around the capital of Nationalist China, Nanking, which was threatened by the Japanese advance. Lempereur described this process as an early example of humanitarian negotiation.<sup>28</sup> Humanitarian practitioners and scholars have also briefly referenced other cases in which humanitarians were forced to negotiate their presence with warring parties, as during civil wars in Nigeria (1967-1970) and Cambodia (1967-1975),

<sup>25</sup> The Centre of Competence on Humanitarian Negotiation (CCHN) was established in late 2016 by the International Committee of the Red Cross (ICRC), the United Nations High Commissioner for Refugees (UNHCR), the World Food Program (WFP), Médecins sans Frontières (MSF- Switzerland) and the Centre for Humanitarian Dialogue (HD). Its stated goal is to research and analyse the phenomenon of humanitarian negotiation from a practitioner perspective. See <https://frontline-negotiations.org>.

<sup>26</sup> CCHN, *Enhancing Professional Exchanges and Peer Learning among Frontline Humanitarian Negotiators*, (The Centre of Competence on Humanitarian Negotiation, January 2017).

<sup>27</sup> David P Forsythe, "Humanitarian Mediation by the International Committee of the Red Cross," in *International Mediation in Theory and Practice*, ed. Saadia Trouval and I. William Zartman (Boulder, CO: Westview Press, 1985). See also Martha Finnemore, "Norms and War: The International Red Cross and the Geneva Conventions," in *National Interests in International Society*, Ithaca, NY: Cornell University Press, 1996, pp.69-88.

<sup>28</sup> Alain Lempereur, "Humanitarian Negotiation to Protect: John Rabe and the Nanking International Safety Zone (1937–1938)," *Group Decision and Negotiation* 25, no. 4 (2016).

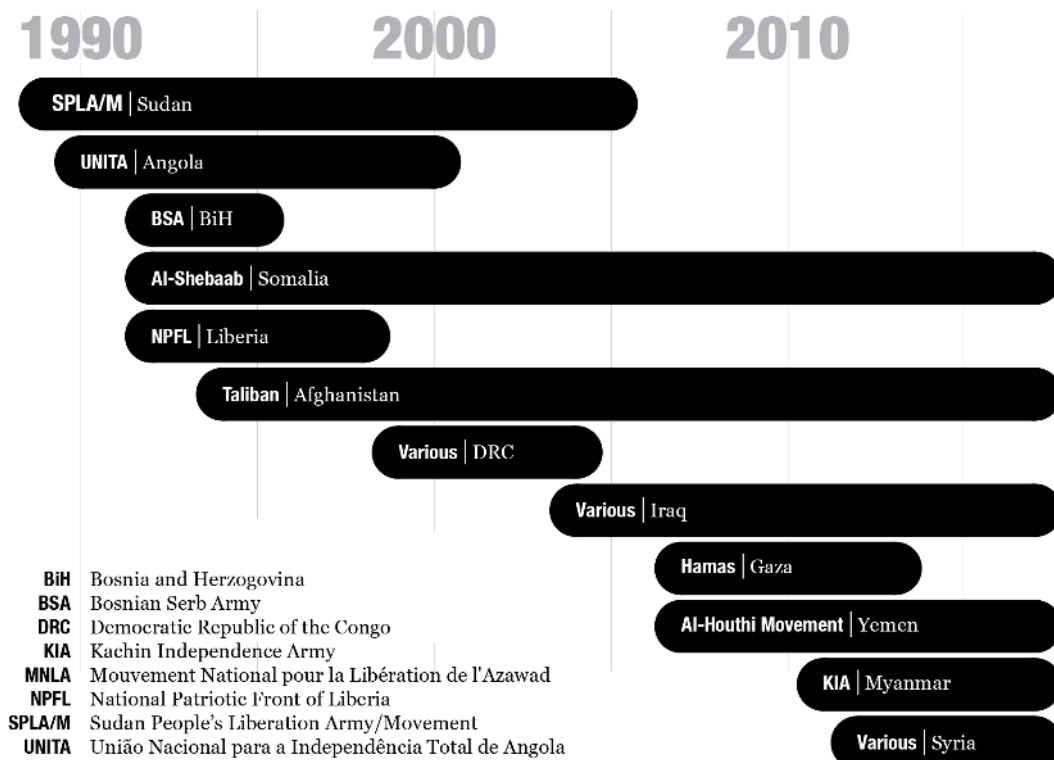
among others.<sup>29</sup> But these studies do not specifically analyse the negotiations themselves and so are of limited use for this research.

Humanitarian negotiation has thus only emerged as a distinct field over the last 30 years. I will argue in chapter 1 that the emergence and growth of humanitarian negotiation can be attributed to two key factors: first, to the growth and expansion of the humanitarian sector into the heart of conflict, and second, to the changing nature of contemporary armed conflict to become predominantly non-international in which the wellbeing of civilians invariably plays a central role. In these highly politicised environments, humanitarian assistance and the protection of civilians are inherently political and are routinely exploited by parties to the conflict. The spaces within which humanitarian organisations operate today are thus increasingly contested and therefore must be negotiated with those under whose control they fall.

<sup>29</sup> See for example Prendergast, *Frontline Diplomacy*; Fiona Terry, *Condemned to Repeat?: The Paradox of Humanitarian Action* (London: Cornell University Press, 2002).

Figure 1, below, shows publicly documented cases of humanitarian negotiations with armed groups from 1989 to the time at which the bulk of research for this project was conducted (2016-2018). It demonstrates both the growing frequency and the protracted nature of many humanitarian-negotiation processes.

**Figure 1: Key cases of humanitarian negotiations with armed groups, 1989-2017**



*Note: dates are approximate, drawn from publicly-available sources and refer to the humanitarian-negotiation process rather the conflict or political negotiations. I presume that there are many other cases of humanitarian negotiations for which data is not publicly available. Figure 1 is therefore indicative only. See appendix II for key sources.*

### ***A neglected field***

Despite the growing prominence of humanitarian negotiation in practice, there has been little analysis of the phenomenon as a subfield of negotiation theory. Most negotiation theorists are yet to draw linkages between their scholarship and the substantial practice in the field of humanitarian negotiation, likely due to the limited body of literature on which to draw or the enormous challenges inherent in its study (such as access to armed

groups, the safety of the researcher, and the confidentiality of the process, as discussed further in chapter 2). As humanitarian-negotiation researcher Rob Grace has noted, “while a wealth of literature exists about negotiations in other contexts... the analytical frameworks elucidated in this rich body of literature have yet to be systematically applied to negotiations that occur in the context of humanitarian operations.”<sup>30</sup>

Harvard’s Lempereur lamented this neglect, suggesting humanitarian negotiation pushes negotiation scholarship to its limits and provides a valuable test for theory. Yet in sharp contrast to the conclusions I reach through this research (see in particular chapters 7 and 8), Lempereur contended in an interview with other researchers that negotiation theories have only limited explanatory potential within this distinctive field, due largely to the lack of enforcement mechanisms and the absence of transactions within humanitarian negotiation.<sup>31</sup>

The phenomenon of humanitarian negotiation is also under-documented within the humanitarian sector itself, largely due to a lack of negotiating culture and the confidentiality required by those involved. This confidentiality is born out of the sensitivities inherent in negotiating during ongoing conflict, reputational risks, and the fear of repercussions by authorities who are often concerned that such negotiations will confer legitimacy on the armed groups with whom humanitarians negotiate (see chapter 6).<sup>32</sup> Confidentiality is often motivated also by concerns over counter-terrorism legislation, which limits or prohibits engagement with

<sup>30</sup> Rob Grace, *Understanding Humanitarian Negotiation: Five Analytical Approaches*, (Harvard University, 30 November 2015), 2.

<sup>31</sup> Claude Bruderlein, Rasmus Egender, Alain Lempereur, and Lucio Melandri, interview with Rob Grace and Anaïde Nahikian, 'Humanitarian Negotiation in Practice', Humanitarian Assistance Podcast, podcast audio, 26 June 2015.

<sup>32</sup> Rob Grace, *Preparatory Review of Literature on Humanitarian Negotiation*, (Humanitarian Academy at Harvard, September 2014); Naz K. Modirzadeh, Dustin Lewis, and Claude Bruderlein, "Humanitarian Engagement Under Counter-Terrorism: A Conflict of Norms and the Emerging Policy Landscape," *International Review of the Red Cross* 93, no. 883 (2011).

many armed groups.<sup>33</sup> Humanitarians can consequently “face fallout from meeting armed groups,” contended Mark Cutts, the Head of Office in Myanmar for the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA or OCHA, the central coordinating body for humanitarian policy and operations within the UN Secretariat).<sup>34</sup> Moreover, humanitarians avoid negotiation due to limited resources and capabilities, out of distrust or fear of armed actors, or due to assumptions about internal no-contact policies.<sup>35</sup> And as one humanitarian interviewed for this research noted, states are becoming effective at constraining negotiations with armed groups.<sup>36</sup> As humanitarian researchers Katherine Haver and Will Carter warned, “fear has silenced discussion within and between agencies about actual practices on the ground.”<sup>37</sup>

The negotiation tactics deployed by aid agencies are consequently often “fragmented and inconsistent,” concluded humanitarian researcher Ashley Jackson. Or they are in competition with one another, as I will discuss further in part II of this thesis.<sup>38</sup> Due to confidentiality and operational sensitivities, negotiators rarely share lessons with a wider community, and most exchanges take place bilaterally or within agencies – if at all.<sup>39</sup> The

- <sup>33</sup> Sara Pantuliano, Kate Mackintosh, Samir Elhawary, and Victoria Metcalfe, *Counter-Terrorism and Humanitarian Action: Tensions, Impact and Ways Forward*, (Overseas Development Institute, October 2011); Modirzadeh et al., “Humanitarian Engagement Under Counter-Terrorism: A Conflict of Norms and the Emerging Policy Landscape.”; Victoria Metcalfe-Hough, Tom Keatinge, and Sara Pantuliano, *UK Humanitarian Aid in the Age of Counter-Terrorism: Perceptions and Reality*, (Humanitarian Policy Group, Overseas Development Institute, 2015).
- <sup>34</sup> Mark Cutts (Head of Office, OCHA Myanmar) in discussion with author, Yangon, August 2017 (#17/059406).
- <sup>35</sup> Victoria Metcalfe, Alison Giffen, and Samir Elhawary, *UN Integration and Humanitarian Space: An Independent Study Commissioned by the UN Integration Steering Group*, (Overseas Development Institute and Stimson, December 2011), 31.
- <sup>36</sup> Name withheld (humanitarian working in the Middle East) in discussion with author, Amman, June 2017 (#17/059209).
- <sup>37</sup> Katherine Haver and Will Carter, *What It Takes: Principled Pragmatism to Enable Access and Quality Humanitarian Aid in Insecure Environments*, (Humanitarian Outcomes, November 2016), 59.
- <sup>38</sup> Ashley Jackson, *Humanitarian Negotiations with Armed Non-State Actors: Key Lessons from Afghanistan, Sudan and Somalia*, (Overseas Development Institute, March 2014), 2.
- <sup>39</sup> CCHN, *2nd Annual Conference Proceedings*.

existing practitioner literature has evolved in near isolation from academic disciplines and has been confined largely to single case studies and practical guidelines.<sup>40</sup> Many are agency-specific rather than representative of the sector more broadly. These therefore describe only a part of the process, I suggest, and have limited applicability for other organisations.<sup>41</sup>

The field of humanitarian negotiation has therefore proven resistant to theorising and academic discussion, and is at risk of being driven by what Hoffman and Weiss described as “anecdote and angst” rather than evidence and strategy.<sup>42</sup> It thus faces what Grace declared to be “a dearth of scholarship and analysis.”<sup>43</sup> Conflict and humanitarian researcher Brigitte Rohwerder similarly pointed to the absence of sufficient “evidence and independent academic research to understand the tensions and strategies used to overcome restrictions to humanitarian access.”<sup>44</sup> There is therefore a pressing need, I argue, to test the applicability of negotiation theory on the practice of humanitarian negotiation and for broader negotiation scholarship to benefit from insights into this distinctive field.

### 1.3 FRAMING HUMANITARIAN NEGOTIATIONS

International law and humanitarian principles frame humanitarian negotiations within both policy and practice. These two elements establish

<sup>40</sup> See for example Gerard Mc Hugh and Manuel Bessler, “Guidelines on Humanitarian Negotiations with Armed Groups,” (New York: Office for the Coordination of Humanitarian Affairs, United Nations, January 2006 2006); Mancini-Griffoli and Picot, *Humanitarian Negotiation*. See also Richardson, *Negotiating Humanitarian Access in Angola*; Johan Pottier, “Roadblock Ethnography: Negotiating Humanitarian Access in Ituri, Eastern DR Congo, 1999-2004,” *Africa* 76, no. 2 (2006).

<sup>41</sup> See for example Cutts, *The Humanitarian Operation in Bosnia*; Marie-Pierre Allié, “Acting at Any Price?,” in *Humanitarian Negotiations Revealed: The MSF Experience*, ed. Claire Magone, Michaël Neuman, and Fabrice Weissman (London: Hurst & Company, 2011); Arafat Jamal, “Access to Safety? Negotiating Protection In a Central Asian Emergency,” *New Issues in Refugee Research*, no. 17 (2000).

<sup>42</sup> Hoffman and Weiss, “Humanitarianism and Practitioners,” 285.

<sup>43</sup> Grace, *Understanding Humanitarian Negotiation*, 2. See also Grace, *Literature Review*; Rob Grace, *Humanitarian Negotiation: Key Challenges and Lessons Learned in an Emerging Field*, (Humanitarian Academy at Harvard, Harvard University, 16 April 2015).

<sup>44</sup> Brigitte Rohwerder, *Restrictions on Humanitarian Access*, (Governance and Social Development Resource Centre, 2015), 1.

the objectives that humanitarian negotiators pursue through negotiation and simultaneously shape the bargaining encounter by limiting the range of options, tactics, and strategies that are available to humanitarian organisations, as detailed below.

### ***International law***

International law establishes the legal basis from which humanitarian organisations operate and negotiate during conflict.<sup>45</sup> IHL plays a particularly significant role within these bodies of law, establishing humanitarian organisations as legitimate, neutral, third parties on the battlefield, according to policy analyst and humanitarian critic David Rieff.<sup>46</sup> IHL provides the legal and ideological underpinnings of the formal international humanitarian system, and defines two specific but interrelated areas of humanitarian action: humanitarian assistance and the protection of civilians. These two components constitute the central focus of humanitarian negotiations, as detailed below.

The first aspect of the field of humanitarian negotiation framed by international law is ‘humanitarian access.’ Whilst this term is not specifically defined under international law, the concept is grounded in various articles of the Geneva Conventions of 1949 and the Additional Protocols of 1977 (see appendix I).<sup>47</sup> OCHA described access as constituted by both the ability of humanitarian actors to reach populations in need as well as the ability of those populations to access critical assistance and

<sup>45</sup> International law includes IHL, customary IHL (the rules of IHL generated by general practice that are accepted as law without formally existing within treaties), international human rights law, international criminal law, refugee law, and the Convention on the Rights of the Child.

<sup>46</sup> David Rieff, *A Bed for the Night: Humanitarianism in Crisis* (New York, USA: Simon & Schuster, 2002), 69.

<sup>47</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War (IV), 8 June 1949: arts 17, 23, 59, and Common Article 13; Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflict (Protocol I), 8 June 1977: art. 70; Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflict (Protocol II), 8 June 1977: art. 18.



services.<sup>48</sup> Thus, when access is constrained, humanitarian organisations may need to negotiate with parties to a conflict to enable them to carry out their work.

The second component of humanitarian negotiation concerns the protection of civilians. ‘Protection’ was defined by an inter-agency working group as “all activities aimed at ensuring full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law.”<sup>49</sup> More simply, protection concerns efforts to assure the safety of civilians from harm, recognising that threats to their safety are often more pressing than their lack of material assistance.<sup>50</sup> This understanding is broadly shared by most humanitarian organisations, although in practice, the approach of each agency can differ markedly.<sup>51</sup> Protection is central to IHL which seeks to limit the suffering caused by armed conflict for those who are *hors de combat* (those who are not or are no longer participating in hostilities). IHL also aims to ensure the basic protection needs of civilians are met.<sup>52</sup> When humanitarian organisations become aware or suspect that parties to a conflict are failing to comply with the provisions of international law, they may seek to negotiate with these parties to secure agreement to modify their behaviour.

Gerald Mc Hugh and Manuel Bessler, authors of a landmark 2006 UN manual on negotiating with armed groups, recognised humanitarian assistance and the protection of civilians as “*the two dimensions of*

<sup>48</sup> OCHA, "Humanitarian Access," *OCHA On Message* (electronic publication), March 2012.

<sup>49</sup> Sylvie Giossi Caverzasio, "Strengthening Protection in War: A Search for Professional Standards," (Geneva, Switzerland: The International Committee of the Red Cross, May 2001), 19.

<sup>50</sup> Sorcha O'Callaghan and Sara Pantuliano, *Protective Action: Incorporating Civilian Protection into Humanitarian Response*, (Overseas Development Institute, December 2007), 3-5.

<sup>51</sup> Elizabeth G. Ferris, *The Politics of Protection: The Limits of Humanitarian Action* (Washington, DC: Brookings Institution Press, 2011), 3; O'Callaghan and Pantuliano, *Protective Action*, 3-5.

<sup>52</sup> Françoise Bouchet-Saulnier, *The Practical Guide to Humanitarian Law* (Boston, USA: Rowman & Littlefield, 2002), 331.

humanitarian action.”<sup>53</sup> Humanitarian negotiations must therefore address both operational issues related to humanitarian assistance as well as protection-related concerns for the rights of individuals. These two dimensions are distinct but complementary.<sup>54</sup> As ICRC president Peter Maurer noted, “humanitarian access is a critical platform to ensure the protection of civilian populations, reaffirming the importance of promoting the respect for international humanitarian law in all its aspects.”<sup>55</sup>

International relations scholar and former humanitarian worker Elizabeth Ferris similarly argued, “it is hard to think of any activity carried out by a humanitarian organisation in the field that could not be considered protection.”<sup>56</sup> The two concepts of protection and access are thus mutually-reinforcing and interlinked. And both, I will argue in chapter 7, are integral to this field.

The problem is that much of the literature on humanitarian negotiation focuses primarily on humanitarian access, leaving the protection component particularly under-theorised.<sup>57</sup> Indeed, protection activities within broader humanitarian operations are often eclipsed by material assistance. An inter-agency review of humanitarian operations in 2005 concluded, “many agencies focused on the provision of material assistance, leaving protection to mandated agencies” (that is, those agencies with a legal protection mandate under international law, including the ICRC and

<sup>53</sup> Mc Hugh and Bessler, *Humanitarian Negotiations with Armed Groups*, 61, emphasis added.

<sup>54</sup> Caverzasio, “Strengthening Protection in War,” 8; Ferris, *The Politics of Protection*, 3.

<sup>55</sup> Peter Maurer, “A Critical Review of the Challenges and Opportunities of Humanitarian Access”, presented at *On the Ethical and Political Dimensions of Humanitarian Action*, Doha, 21 May 2013.

<sup>56</sup> Ferris, *The Politics of Protection*, 17.

<sup>57</sup> Will Carter and Katherine Haver, *Humanitarian Access Negotiations with Non-State Armed Groups: Internal Guidance Gaps and Emerging Good Practice*, (Humanitarian Outcomes, October 2016); FDFA, *Humanitarian Access in Situations of Armed Conflict: Practitioners' Manual*, (Federal Department of Foreign Affairs, Switzerland Confederation, December 2014); Simar Singh and Joe Belliveau, *Negotiating Humanitarian Access: Guidance for Humanitarian Negotiators*, (Conflict Dynamics International, July 2017).

UN High Commissioner for Refugees, UNHCR).<sup>58</sup> And while many organisations have increased their protection-related activities since the 2005 report was released, I will demonstrate in part II of this thesis that operational access continues to be counterproductively prioritised over protection-related negotiations. Some negotiators perceive protection and access to be incompatible and essentially zero-sum (that is, a situation in which a gain in one area corresponds with an equal loss in the other), while others pursue a sequenced approach that rarely eventuates, in which access gains are consolidated prior to addressing protection issues (see in particular chapters 5 and 6).

### ***Humanitarian principles***

The humanitarian principles (or core principles of humanitarianism) complement international law as the second frame within which humanitarian negotiations are conducted. To be protected under IHL, these principles require that all humanitarian action must be of an exclusively humanitarian nature, must be impartial, and conducted without ‘adverse distinction’ (meaning all persons who are *hors de combat* are entitled to the same rights without discrimination on any basis).<sup>59</sup> Humanitarian principles are derived from the core principles of the International Red Cross and Red Crescent Movement, and are codified by the United Nations through two General Assembly resolutions as the principles of ‘humanity’ (human suffering must be addressed wherever it is found), ‘neutrality’ (refraining from taking sides in hostilities), ‘impartiality’ (on the basis of need alone, giving priority to the most urgent cases without distinction), and ‘independence’ (autonomous from political, economic, military, or other objectives).<sup>60</sup>

<sup>58</sup> Hugo Slim and Andrew Bonwick, *Protection: An ALNAP guide for humanitarian agencies* (Overseas Development Institute, August 2005), 33.

<sup>59</sup> Geneva Convention IV: Common Article 3; Additional Protocol II: art. 18(12).

<sup>60</sup> The humanitarian principles were initially endorsed in United Nations General Assembly resolution 2675, *Basic Principles for the Protection of Civilian Populations in Armed*

In addition to UN and Red Cross endorsement, the humanitarian principles have been formally adopted by most mainstream international humanitarian NGOs, in particular through a joint Code of Conduct.<sup>61</sup> The principles were reaffirmed at the first-ever World Humanitarian Summit that was initiated by Secretary-General Ban, and held in Istanbul, Turkey in 2016.<sup>62</sup>

Humanitarian principles have become the norms, values, and language of humanitarianism, and are a fundamental aspect of an identity that is traditionally shared and espoused by proponents of the formal international humanitarian system.<sup>63</sup> These principles have been “at the heart of heart of all major humanitarian operations for over a century,” claimed Maurer.<sup>64</sup> OCHA described them as the “fundamental foundations for humanitarian action,”<sup>65</sup> and the widely respected international NGO Norwegian Refugee Council (NRC) pronounced them to be “the governing

*Conflict*, A/2675/XXV (1970). But they were not formally adopted until twenty-years later in General Assembly, A/RES/46/182. The fourth principle of ‘independence’ was added in 2004 in United Nations General Assembly, *Strengthening of the Coordination of Emergency Humanitarian Assistance of the United Nations*, A/RES/58/114 (2004), para. 5. For a history of the evolution of the fundamental principles of the ICRC see Hans Haug, “The Fundamental Principles of the International Red Cross and Red Crescent Movement,” in *The International Red Cross and Red Crescent Movement* (1993).

- <sup>61</sup> Eight leading humanitarian INGOs developed and endorsed the Code of Conduct in 1994 with the International Federation of the Red Cross (IFRC). Many more signing on over the following years. As of January 2016, over 600 NGOs had become signatories. See IFRC, “Code of Conduct,” (web page), 1994.
- <sup>62</sup> The Summit aimed to reaffirm commitments and realign mechanisms to respond more effectively to humanitarian crises. The second of five core commitment of the Summit was to ‘uphold the norms that safeguard humanity,’ including “ensuring full respect for the guiding principles of humanitarian action, namely, humanity, impartiality, neutrality and independence,” in OCHA, *No Time to Retreat: First Annual Synthesis report on Progress Since the World Humanitarian Summit*, (Office for the Coordination of Humanitarian Affairs, November 2017), 95.
- <sup>63</sup> See for example Jan Egeland, “Forward: Humanitarianism in the Crossfire,” in *Humanitarianism Contested: Where Angels Fear to Tread*, ed. Michael Barnett and Thomas G. Weiss (Routledge, 2011), xviii. See also Abby Stoddard, Adele Harmer, Katherine Haver, Glyn Taylor, and Paul Harvey, *The State of the Humanitarian System: 2015 Edition*, (ALNAP/ODI, 2015), 18.
- <sup>64</sup> Peter Maurer, “Humanitarian Diplomacy and Principled Humanitarian Action,” *International Review of the Red Cross* 97, no. 897/898 (2016): 447.
- <sup>65</sup> OCHA, “Humanitarian Principles,” *OCHA On Message* (electronic publication), April 2010.

rules for humanitarian action.”<sup>66</sup> The Inter-Agency Standing Committee (IASC, the primary forum for UN and NGO humanitarian coordination, policy development, and decision-making) stressed the need for humanitarian principles to be “universally preserved and respected... to maintain the credibility of humanitarian agencies, create a climate of confidence with all parties and secure respect for their action.”<sup>67</sup> French humanitarian NGO Action contre la Faim (ACF) emphasised the importance practitioners afford these principles when they cautioned that the disregard of humanitarian principles “would grant parties to the conflict a legal right to prevent humanitarian NGOs from accessing the victims,” and could reduce the legal protections of humanitarian workers against attack.<sup>68</sup>

Each organisation’s understanding and operationalisation of these principles can vary widely. Moreover, organisations both within and outside the humanitarian sector increasingly challenge the relevance and utility of humanitarian principles (see chapter 7).<sup>69</sup> Nevertheless, these principles have evolved to form an ethical framework that underpins contemporary humanitarian action, including humanitarian negotiation. Special Advisor to the UN Secretary-General and frequent senior UN mediator Lakhdar

<sup>66</sup> Norwegian Refugee Council and Handicap International, *Challenges to Principled Humanitarian Action: Perspectives from Four Countries*, (Norwegian Refugee Council and Handicap International, July 2016), 8.

<sup>67</sup> IASC, *Respect for Humanitarian Mandates in Conflict Situations*, (Inter-Agency Standing Committee, 1996), 4.

<sup>68</sup> Yulia Dyukova and Pauline Chetcuti, *Humanitarian Principles in Conflict: Ensuring Humanitarian Principles are Respected in Armed Conflicts and Other Situations of Violence: ACF’s Experience and Position*, (Action contre la Faim, 2013), 8.

<sup>69</sup> See in particular Nicholas Leader, *The Politics of Principle: The Principles of Humanitarian Action in Practice*, (Overseas Development Institute, March 2000), 18; Hugo Slim, “Doing the Right Thing: Relief Agencies, Moral Dilemmas and Moral Responsibility in Political Emergencies and War,” *Disasters* 21, no. 3 (1997); Stuart Gordon and Antonio Donini, “Romancing Principles and Human Rights: Are Humanitarian Principles Salvageable?,” *International Review of the Red Cross* 97, no. 897-898 (2016).

Brahimi argued that “[humanitarian principles] necessarily set the agenda for the negotiations conducted by humanitarian actors.”<sup>70</sup>

Grace, however, argued that the role of humanitarian principles in much of the literature and practice of humanitarian negotiation is overemphasised, claiming they rarely provide sufficient motivation for armed groups to reach a favourable outcome during negotiation.<sup>71</sup> Yet, as with international law, humanitarian principles frame humanitarian negotiation but do not dictate the content or tactics to be used by negotiators. Indeed, as a recent manual on humanitarian access produced by the Swiss government noted, their use is often non-explicit; “explaining and exemplifying a principled approach is often more effective than simply expounding the principles themselves.”<sup>72</sup> For the principled humanitarian, therefore, principles need not be explicitly discussed over the negotiating table, but they nevertheless condition decisions, strategies, and tactics, according to scholarship.

The role of humane principles within humanitarian negotiation (as distinct from the Harvard approach of ‘principled negotiation’ that focuses on the interests of parties and emphasises integrative bargaining, as detailed in chapter 2)<sup>73</sup> sets the practice apart from many other forms of negotiation.<sup>74</sup> The humanitarian principles provide guidance on how to negotiate, they limit that to which humanitarians can commit themselves, and they provide criteria for developing options to be negotiated.<sup>75</sup> Further, the concepts of humanitarian access and the protection of civilians are founded in international law, which itself forms the basis from which humanitarians

<sup>70</sup> Lackhdar Brahimi, "Forward," in *Humanitarian Diplomacy: Practitioners and Their Craft*, ed. Larry Minear and Hazel Smith (Tokyo, Japan: United Nations University Press, 2007), xv.

<sup>71</sup> Grace, *Literature Review*, 6.

<sup>72</sup> FDFA, *Humanitarian Access in Armed Conflict*, 21, fn 12.

<sup>73</sup> See in particular Fisher and Ury, *Getting to Yes*

<sup>74</sup> Mc Hugh and Bessler, *Humanitarian Negotiations with Armed Groups*; Brahimi, "Forward."; Gerard Mc Hugh and Simar Singh, "Preserving the Integrity of Humanitarian Negotiations," *Humanitarian Exchange Magazine*, no. 58 (2013).

<sup>75</sup> Mc Hugh and Bessler, *Humanitarian Negotiations with Armed Groups*, 26.

negotiate with armed groups. Adherence to humanitarian principles empowers humanitarian organisations to assist those in need, but limits the trade-offs and alternatives available to them. And as I will argue in chapter 1, the central role of these principles introduces a tension (or paradox) in which humanitarian negotiators often negotiate the foundations and norms that underpin their work. These principles, however, are not as unproblematic as their proponents might suggest, as discussed further in chapter 7.

## **2. RESEARCH OVERVIEW**

The premise advanced above and elaborated in chapter 1 is that humanitarians negotiate with armed groups from a position of weakness. Negotiations thus routinely yield poor outcomes for humanitarian organisations and the civilians they seek to assist. The central research question that animates this thesis is can humanitarian negotiators overcome (or significantly reduce) their weak bargaining position to reach more balanced agreements when negotiating with armed groups? In advancing this question, I hypothesise that if humanitarian organisations understand the reasons for their weak bargaining position relative to armed groups then negotiators can deploy strategies and tactics to reduce this power asymmetry and thereby realise more balanced outcomes.

Researching the phenomenon of humanitarian negotiation is hard, I will claim in chapter 2, both in terms of the cases in which humanitarian negotiations take place as well as the subject itself. And as established above, there are few precedents in this under-researched field on which to build my research. Nevertheless, I draw from similar fields of negotiation theory to employ a structural analysis as my analytical framework through which to investigate the role of power within humanitarian negotiation. I will base my empirical research on a combination of secondary sources and elite interviews from a comparative study of two cases of humanitarian negotiations; the Houthi Movement in Yemen and Myanmar's Kachin Independence Army (chapters 4 and 5, respectively). I will also employ case illustrations drawn from existing literature to test and refine these findings in chapters 3 and 6.

This section provides an overview of my research. It first outlines the argument advanced throughout this thesis. Second, it discusses the significance and implications of my research agenda, and third, highlights the key assumptions that underpin this work.

## 2.1 THE ARGUMENT

Based on the empirical evidence presented in chapter 3, I claim that humanitarian organisations do indeed enter these negotiations from a position of weakness. Armed groups frequently perceive little value in negotiating over humanitarian norms and often have strong alternatives that do not require them to reach agreements with humanitarians. Many of these groups also gain from obstructing humanitarian assistance and pursuing their political goals by violating the rights of civilians. For their part, humanitarian organisations are heavily dependent on armed groups to achieve their objectives. But they wield little direct leverage and have exceedingly weak alternatives. Power relations within humanitarian negotiations are thus highly asymmetric, I conclude, strongly favouring armed groups.

Underlying this line of inquiry, however, is the contentious question of how to define and conceive of power itself. In chapter 1 I will argue that power in a negotiation is a function of both an actor's resources and their capability to deploy them on a specific issue. Moreover, relative power is grounded in perception and is inherently mutable, I contend, and therefore subject to the purposive actions of negotiators, third parties, and to contextual change. Negotiating parties aspire to relative strength so as to increase their options and acquire greater leverage over their counterpart. But as my empirical research demonstrates, power alone does not determine outcomes. Negotiation scholarship recognises that the most powerful party does not always emerge with the most favourable outcome (see chapter 2). Strategies and tactics play a vital role in both altering and overcoming power relations. And I will conclude in chapter 7 that relative weakness can at times be used to the advantage of the so-called 'weaker' party to yield a more balanced agreement.



Negotiation scholarship identifies a range of strategies and tactics available to weaker negotiating parties.<sup>76</sup> But as I will detail in chapters 3 and 6, most of these tactics are not viable within humanitarian negotiations where interdependence is low and where humanitarian personnel are dependent on armed groups for their physical safety. Nevertheless, I conclude that humanitarians enjoy a potential ‘asymmetry of influence’ in which they have at their disposal a greater range of effective tactics (or ‘humanitarian levers’) to redress their power deficit. In chapter 6 I will draw on my empirical evidence to emphasise the role of persuasion, strengthening commitment and building coalitions, improving trust and reputation, mobilising third-party support, employing negotiation linkages, and changing alternatives to negotiation. These, I will argue, can be deployed both within and beyond the formal negotiation process as extra-negotiatory tactics. Yet many involve significant risk, I contend, and can place civilians and humanitarian personnel at significant risk.

Moreover, whilst I am primarily concerned with tactics (the specific actions negotiators use), another important means through which negotiating parties attempt to reach more favourable agreements is the strategies they adopt (the longer-term plans through which they pursue their objectives). I will claim in chapters 1 and 7, however, that decentralised decision-making and inter-agency competition undermine the sector’s cohesion and limit opportunities for developing shared negotiation strategies. This dynamic thereby increases the importance of tactics in overcoming power asymmetry within humanitarian negotiation, I contend. This thesis therefore focuses on tactics rather than strategies. Nevertheless, several of the tactical options available to humanitarian negotiators that I will identify

<sup>76</sup> See in particular Fen Osler Hampson, *Multilateral Negotiations: Lessons From Arms Control, Trade, and the Environment* (Baltimore: Johns Hopkins University Press, 1995); W. Howard Wriggins, "Up for Auction: Malta Bargains with Great Britain, 1976," in *The 50% Solution: How to Bargain Successfully with Hijackers, Strikers, Bosses, Oil Magnates, Arabs, Russians, and Other Worthy Opponents in this Modern World*, ed. I. William Zartman (Garden City, NY: Anchor Press, 1976); Zartman and Berman, *The Practical Negotiator*, 205; Morton Deutsch, *The Resolution of Conflict: Constructive and Destructive Processes* (New Haven: Yale University Press, 1973).

in chapter 6 could amount to strategy. Further, I will contend in chapter 8 that future research should focus specifically on effective humanitarian negotiation strategies to complement this tactical investigation.

In chapter 6 I will revisit a much-overlooked thirty-year-old framework on power asymmetry proposed by negotiation theorist and conflict-resolution scholar Mark William Habeeb.<sup>77</sup> I will revive his neglected model to argue that it retains explanatory potential when applied to humanitarian negotiation. Using Habeeb's framework, I contend that the tactics or levers employed by humanitarian negotiators consist of moves that strengthen alternatives to negotiation, increase interdependence, and increase the commitment of each party, thereby altering power relations and changing likely outcomes.

Employing such tactics, however, requires negotiators to become more engaged and conversant in the highly contested political arenas in which they operate. Many of these tactics, I argue, constitute an emerging and distinct form of diplomatic action, namely 'humanitarian diplomacy.' This concept, I will argue in chapters 1 and 7, pushes the boundaries of diplomacy scholarship by investigating how diplomatic actors and tools advance the rights and wellbeing of individuals caught up in conflict, even at the possible expense of national interests. Moreover, I contend that humanitarian diplomacy is often driven by non-state actors (both armed groups and humanitarians) which can significantly shape international relations and the global political landscape in important and fundamental ways. Yet, these dynamics are rarely sufficiently considered or theorised within academic debate, at the expense of greater insight into real world phenomena. The concept of humanitarian diplomacy thus challenges the conventional boundaries of who constitutes a diplomatic actor and what constitutes diplomatic action, and it separates the interests that animate diplomacy from foreign policies.

<sup>77</sup> Habeeb, *Power and Tactics*.

## 2.2 SIGNIFICANCE AND IMPLICATIONS

Swiss diplomat Felix Schwendimann argued in 2012 that access “is viewed by many humanitarian agencies as the most significant current challenge for humanitarian action to overcome.”<sup>78</sup> The following year, ICRC president Peter Maurer argued, “a proper strategy to promote and enable humanitarian access is central to the timely and adequate delivery of humanitarian assistance.”<sup>79</sup> Indeed, United Nations Under-Secretary-General for Humanitarian Affairs Valerie Amos announced in 2014 that in Syria, 4.7 million people were estimated to be running out of food and beyond the reach of aid groups.<sup>80</sup> These dynamics plague many recent conflicts around the globe, highlighting the limits of the humanitarian sector’s ability to effectively negotiate its place. Indeed, UN Secretary-General Ban Ki-moon (2007-2016) reported to the Security Council in 2015 that “regular and sustained humanitarian access remains a *key* challenge in many armed conflicts.”<sup>81</sup> His successor, Antonio Guterres (2017 to present) warned in early 2018 that some 128 million civilians were in need of humanitarian assistance, mostly driven by conflict.<sup>82</sup> Access to these civilians, however, was constrained by armed groups and other parties in around nine out of ten conflicts.<sup>83</sup> Negotiating access and promoting protection thus present some of the greatest challenges facing humanitarian organisations today.

<sup>78</sup> Felix Schwendimann, "The Legal Framework of Humanitarian Access in Armed Conflict," *International Review of the Red Cross* 93, no. 884 (2012): 993-994.

<sup>79</sup> Maurer, "A Critical Review of the Challenges and Opportunities of Humanitarian Access".

<sup>80</sup> Valerie Amos, *Statement to the Security Council on Syria*, (Office for the Coordination of Humanitarian Affairs, 26 June 2014), 2.

<sup>81</sup> United Nations Security Council, *Report of the Secretary-General on the Protection of Civilians in Armed Conflict*, S/2015/453 (2015), 13, emphasis added.

<sup>82</sup> United Nations Security Council, *Protection of Civilians in Armed Conflict*, S/PV.8264 (2018), 2.

<sup>83</sup> Of the US\$ 20 billion requested globally for UN-led humanitarian appeals for 2016, over US\$ 18 billion (89 per cent) was earmarked for countries facing access constraints in conflicts involving armed groups. My own analysis based on each country’s United Nations humanitarian response plan. Financial data for each response is drawn from the OCHA-managed financial tracking system, available at <http://fts.unocha.org>.

Yet most humanitarian agencies fail to consistently and strategically engage with armed groups, concluded the inter-agency study by Haver and Carter.<sup>84</sup> Maurer warned that as a result of the lack of progress in such negotiations, “populations are unattended, suffering or dying.”<sup>85</sup> But strong operational incentives exist to address this gap. Jackson’s comparative research on humanitarian negotiations in Afghanistan, Sudan, and Somalia concluded, “the very few agencies that have developed a coherent strategy for engagement with armed groups, and have invested in the requisite capacity to implement it, have had greater and more sustained access.”<sup>86</sup>

This thesis then, draws on negotiation scholarship and builds on original empirical research to offer a deeper analytical understanding of humanitarian negotiation. As Grace observed, negotiation theories offer a “body of scholarship that has not yet been married to the growing field of humanitarian negotiation.”<sup>87</sup> In addition to its theoretical contribution, this research aspires to strong policy and practice relevance for humanitarian organisations, UN member states, national governments affected by conflict, and intergovernmental organisations involved in humanitarian crises and conflict resolution. Ultimately, this thesis aims to develop a theory of humanitarian negotiation that improves its practice and policies, thereby reducing the number of civilians beyond the reach of humanitarian assistance and protection in future armed conflicts.

But a richer understanding of humanitarian negotiation also contributes to broader negotiation theory in ways that improve other fields. International negotiation scholar Guy Olivier Faure noted with respect to hostage

<sup>84</sup> Haver and Carter, *What It Takes*, 55.

<sup>85</sup> Maurer, "Humanitarian Diplomacy and Principled Humanitarian Action," 450.

<sup>86</sup> Jackson, *Humanitarian Negotiations with ANSAs*, 2. Egeland et al. similarly conclude, “The greater an organisation’s demonstrated capacity to communicate and negotiate with all relevant actors, the better access and security is achieved for humanitarian operations,” in Jan Egeland, Adele Harmer, and Abby Stoddard, *To Stay and Deliver: Good Practice for Humanitarians in Complex Security Environments*, (OCHA, 2011), 3. See also Greg Hansen, *Focus on Operationality*, (NGO Coordination Committee in Iraq, January 2008), 5.

<sup>87</sup> Grace, *Understanding Humanitarian Negotiation*, 16.

negotiations, for example, “issues and problems that do not appear in ordinary negotiations may reveal their importance in hostage-taking negotiations and push the frontiers of negotiation approaches.”<sup>88</sup> The study of this distinctive field therefore offers insights into little-understood areas of negotiation scholarship and contributes to other fields of negotiation, such as negotiating with so-called ‘terrorists,’ conflict resolution, and mediating with armed groups, as detailed in chapter 8.

Finally, as I will argue in chapters 1 and 7, humanitarian negotiation is central to the emerging practice of humanitarian diplomacy (itself an under-researched and under-theorised field). This research therefore pushes the boundaries of diplomacy scholarship by moving beyond an analysis of state-based actors to explore the growing importance of non-state actors – both armed groups and humanitarian organisations.

### 2.3 ASSUMPTIONS

Four key assumptions underpin this research: the concept of humanitarian negotiation is a singular and distinct phenomenon; broader negotiation theory can usefully be applied to this field; different cases are comparable to one another; and humanitarian negotiations involving multiple organisations can be analysed as a single negotiation process. I now elaborate briefly on each assumption and will return to consider these issues in more depth in chapter 7.

First, I assume humanitarian negotiation to be a singular and distinct phenomenon that can be studied and theorised as such. Problematically, the term is used in the literature drawn on above to apply to a broad spectrum of activities that range from *ad hoc* field-level bargains to overcome checkpoints through to formal, protracted negotiations with the leaders of armed groups. Yet, this breadth of application is by no means

<sup>88</sup> Guy Olivier Faure, "Negotiating Hostages with Terrorists: Paradoxes and Dilemmas," *International Negotiation* 20, no. 1 (2015). See also Zartman, I. William. "Negotiating with Terrorists." *International Negotiation* 8, no. 3 (2003): 443-450.

unique to this field. Conflict resolution, for example, may span community-level dialogue through to formal internationally-brokered peace talks.<sup>89</sup> Further, whilst the policies and practice of humanitarian negotiation are still somewhat nascent, the field has nevertheless been recognised as a discrete set of activities by humanitarian practitioners for nearly three decades, as outlined above (see also chapter 1). There is, therefore, ample justification to approach the field as a distinct phenomenon worthy of independent study.

My second assumption is that broader negotiation scholarship can offer insights into the phenomenon of humanitarian negotiation. Sceptics may question whether the grounding of humanitarian negotiation in international law and humanitarian principles sets it apart from other forms of negotiation.<sup>90</sup> Others may argue that the central party within these negotiations are civilians facing humanitarian need rather than humanitarian organisations, suggesting the field may have more in common with mediation than negotiation (see chapter 7). Yet, I argue that this distinction may be somewhat inconsequential given the extensive overlap between negotiation and mediation scholarship. Further, as detailed in part II, humanitarian organisations *do* seek outcomes from negotiation that serve their own interests. There is therefore a sound basis to assume that negotiation theory can be applied to this field (although, as suggested in chapter 8, mediation scholarship may also offer useful insights to this field).

Third, I assume humanitarian-negotiation processes share sufficient characteristics between cases to allow them to be meaningfully compared. The dearth of comparative case studies in this field suggests researchers have either been too cautious about drawing conclusions that apply to

<sup>89</sup> See for example Peter Wallensteen, *Understanding Conflict Resolution: War, Peace and the Global System*, vol. 2nd (Thousand Oaks, CA: SAGE Publications, 2007); Chester A. Crocker, Fen Osler Hampson, and Pamela R. Aall, *Managing Conflict in a World Adrift* (Washington, DC: United States Institute of Peace Press, 2015).

<sup>90</sup> See Lempereur in Bruderlein et al., *Humanitarian Negotiation in Practice*.

multiple cases or have lacked the resources or impetus to do so.<sup>91</sup> In contrast, much of the scholarship on international negotiation and conflict resolution has been built in exactly this way, by studying multiple cases (see chapter 2).<sup>92</sup> I therefore argue that carefully-delineated cases of humanitarian negotiation can be compared to one another to test or develop theory.

The fourth and final key assumption underpinning this research is that humanitarian negotiations involving multiple humanitarian organisations can be analysed as a single negotiation process. As I will detail in chapter 1, the formal international humanitarian system is a symbiotic global network of autonomous organisations that operate within a complex set of coordination structures and shared policies that endure despite a profound tension between collaboration for shared goals and competition over scarce resources.<sup>93</sup> And whilst its individual members often pursue bilateral negotiations with armed groups, each of these negotiation processes are interlinked, and the outcome of each impacts the others, I will argue in chapter 6. Moreover, these negotiations are often highly coordinated or even centralised within a single negotiating entity (such as OCHA or another UN agency), even whilst parallel bilateral negotiations continue. These dynamics suggest that simultaneous humanitarian negotiations cannot adequately be analysed in isolation from one another – as much of

<sup>91</sup> Some notable exceptions include Antonio Galli, "Humanitarian Negotiations: Syria, Sudan, Cross-Border Operations, and Armed Non-State Actors," *Professionals in Humanitarian Assistance and Protection* (blog), 10 December 2013; Jackson, *Humanitarian Negotiations with ANSAs*; Carter and Haver, *Humanitarian Access Negotiations with Armed Groups*.

<sup>92</sup> See in particular Viktor Aleksandrovich Kremeniuk, "The Emerging System of International Negotiation," in *International Negotiation: Analysis, Approaches, Issues*, ed. Viktor Aleksandrovich Kremeniuk (San Francisco: Jossey-Bass Publishers, 1991).

<sup>93</sup> See in particular Thomas G. Weiss, *Humanitarian Business* (Cambridge: Polity Press, 2013), chapter 3; Hoffman and Weiss, "Humanitarianism and Practitioners." This resonates also with regime theory. See for example Stephen D. Krasner, ed. *International Regimes* (Ithaca, NY: Cornell University Press, 1983); Robert O. Keohane, *International Institutions and State Power: Essays in International Relations Theory* (Boulder, CO: Westview Press, 1989). See also [chapters 1](#).

the existing literature attempts.<sup>94</sup> It is therefore not only possible to analyse humanitarian negotiation as a single process, but doing so is likely to yield richer theoretical insights than single-agency studies.

Nevertheless, I concede that humanitarian organisations are far from homogeneous (see chapter 1). The ICRC and MSF (Médecins Sans Frontières) are the two largest single-mandated humanitarian organisations (or ‘Dunantist’ after the ICRC’s founder), and consequently experience humanitarian negotiation differently from other agencies. They operate with a far greater degree of financial independence than most,<sup>95</sup> and are consequently better positioned to adhere to humanitarian principles.<sup>96</sup> Moreover, both the ICRC and MSF have invested far more heavily in their negotiation capacity and routinely engage with all parties to the conflict in contrast to the reserved approach that characterises most mainstream humanitarian actors (see chapter 7).<sup>97</sup> This leads to distinct differences in the character of these entities and the constraints and opportunities they face when negotiating with armed groups.<sup>98</sup> Further, local and regional humanitarian organisations – which play an increasingly prominent role in contemporary humanitarian operations – also face very different constraints and likely have access to substantially different sources of power. The bulk of my empirical research (and consequently my findings) is therefore focused on mainstream humanitarian organisations that operate as part of the formal international humanitarian system, rather

<sup>94</sup> Cutts, *The Humanitarian Operation in Bosnia*; Richardson, *Negotiating Humanitarian Access in Angola*; Pottier, "Roadblock Ethnography."

<sup>95</sup> As an example of the unique position of each, the Red Cross has received three Nobel Peace Prizes (1917, 1944, and 1963) whilst MSF has received one (1999). MSF is funded entirely from private sources. See <https://www.msf.org.au/donate/faqs>.

<sup>96</sup> Rony Brauman, "Médecins Sans Frontières and the ICRC: Matters of Principle," *International Review of the Red Cross* 94, no. 888 (2012); Hugo Slim and Miriam Bradley, *Principled Humanitarian Action & Ethical Tensions in Multi-Mandate Organisations in Armed Conflict*, (World Vision, March 2013); Haver and Carter, *What It Takes*, 36.

<sup>97</sup> Haver and Carter, *What It Takes*, 56.

<sup>98</sup> Rob Grace and Stephen Wilkinson, *Preliminary Report on the Role of Laws and Norms in Humanitarian Negotiations*, (Advanced Training Program on Humanitarian Action, September 2016), 7-8.



than on the unique experiences of the ICRC, MSF, and local or regional humanitarian actors.<sup>99</sup>

### 3. THESIS STRUCTURE

This thesis is divided into three parts. Part I outlines the theory of humanitarian negotiation. Part II constitutes the empirical component of this research. And part III explores the future of humanitarian negotiation, as detailed below.

#### ***Part I: The theory of humanitarian negotiation***

Chapter 1 will trace the evolution of the field of humanitarian negotiation and its inherent power asymmetry. It will also advance a conception of power relevant to this research that consists of both the structure of a negotiation as well as the bargaining process through which power relations are manifested and transformed. Finally, it will detail the changing nature of diplomacy, in which I will argue that humanitarian negotiations are central to the emerging practice of humanitarian diplomacy. Chapter 2 will propose a structural analytic approach to understanding the role of power within humanitarian negotiations and will detail the research design and method.

#### ***Part II: The practice of humanitarian negotiation***

Chapter 3 will draw on the existing literature to identify some of the key sources of weakness for humanitarian negotiators, arguing that humanitarians do indeed face a weak bargaining position when negotiating with armed groups. Chapter 4 will examine the case of humanitarian negotiations held with Yemen's Houthi Movement from 2015 to mid-2017,

<sup>99</sup> On the unique role and status of the ICRC, see in particular Martha Finnemore, "Norms and War: The International Red Cross and the Geneva Conventions," in *National Interests in International Society*, Ithaca, NY: Cornell University Press, 1996, pp.69-88.

focusing particularly on negotiations held over the besieged city of Taizz. It will claim that humanitarian organisations were initially slow to coordinate negotiations and were played off against one another by the Houthis. Humanitarians also enjoyed limited trust with their negotiation counterparts and struggled to identify the core interests and needs of the Houthis throughout the negotiation period, but did eventually deploy certain tactics to improve their bargaining position.

Chapter 5 will examine humanitarian negotiations with the Kachin Independence Army in northern Myanmar from mid-2011 to mid-2017. It will argue that the group was highly amenable to access-related negotiations, but its strong domestic legitimacy insulated it from needing to make significant concessions around the protection of civilians. Humanitarian negotiators improved their negotiating position by effectively building trust with the armed group and by establishing a highly centralised and coordinated negotiation process. But they failed to develop alternatives to negotiation or to meaningfully pursue protection issues. Chapter 6 then combines my empirical research with the existing literature to identify tactics and strategies used by humanitarian negotiators to reduce their power imbalance. It will claim they do so by balancing both formal and extra-negotiatory moves, and by changing the three constituent elements of relative power identified by Habeeb – alternatives, dependency, and commitment.

### ***Part III: The future of humanitarian negotiation***

Chapter 7 will revisit and update the concept of humanitarian negotiation, identifying its constituent elements and exploring its relationship with humanitarian principles. It will argue that the phenomenon should be understood as central to the emerging field of humanitarian diplomacy. Moreover, humanitarian diplomacy, I will contend, helps to shed light on the changing nature of certain aspects of international relations and diplomatic encounters between non-state actors that are largely beyond the purview of mainstream diplomacy and IR scholarship. This chapter will also explore some of the dilemmas and paradoxes that recur throughout this thesis concerning humanitarianism and the concept of power. Chapter

8 will discuss the implications of this research for negotiation analysis, for humanitarian negotiators, and for diplomacy scholarship. It will also propose a research agenda through which to advance some of the key questions and findings of my research.



# CHAPTER 1

## THEORISING HUMANITARIANISM, POWER, AND DIPLOMACY

In the introduction to this dissertation I argued that humanitarian negotiation with armed groups is a vital aspect of contemporary humanitarian action that remains under-researched and under-theorised. I also detailed how much of the literature in this field suggests that humanitarian negotiators routinely reach poor deals and make excessive compromises when negotiating with these groups due to their weak bargaining position.

This chapter grounds the practice of humanitarian negotiation within the fields of humanitarianism and diplomacy, and advances a specific conception of power that underpins my empirical work in part II. Section 1 argues that humanitarian negotiation has become necessary in most contemporary armed conflicts due to the expansion of the humanitarian sector and the changing nature of conflict. This ‘perfect storm,’ I contend, has created an imperative in which humanitarian organisations must routinely negotiate the space within which they operate. Section 2 draws on the limited body of scholarship in this field to suggest that humanitarians undertake these negotiations from a position of weakness, thereby creating an ‘operational paradox’ in which the very act of negotiation represents an existential threat to the humanitarian identity.

To substantiate the assertion that humanitarians negotiate from a position of weakness, however, a clearer understanding of the concept of power is needed to avoid the logical trap of tautologically attributing weakness to the party that receives the smaller share of a negotiated agreement. Section 3

thus draws on a broad range of scholarship to identify the constituent elements of a conception of power with explanatory potential for the purposes of this research. I propose that ‘power’ in the context of humanitarian negotiation describes both the *structure* of the negotiation as well as the bargaining *process* through which power relations are manifested and transformed. Finally, section 4 explores the relationship between humanitarianism and power. I contend that diplomacy (in particular, the emerging concept of humanitarian diplomacy) constitutes a fundamental way in which power operates within these complex negotiations, thereby offering a means through which humanitarian negotiators can overcome their weak bargaining position to realise more balanced outcomes when negotiating with armed groups.

## **1. THE IMPERATIVE TO NEGOTIATE**

This section contends that two interconnected developments over the past three decades have led to a perfect storm that increasingly necessitates negotiation between humanitarian organisations and armed groups. These developments are the expansion of the humanitarian sector and the changing nature of conflict. Below, I detail how each has led to the growth and centrality of the practice of humanitarian negotiation within humanitarian action, thereby fostering an imperative for humanitarian organisations to negotiate their presence and activities in many contemporary crises.

### **1.1 THE EXPANSION OF THE HUMANITARIAN SECTOR**

The first factor driving the growth and importance of humanitarian negotiation is the expansion in size and ambition of the humanitarian sector over recent decades. Humanitarian organisations no longer operate on the periphery of conflict, as they once did, but seek instead to offer succour to the hardest-hit victims of war and to tackle both the symptoms and causes of today’s conflicts. In this section I detail how humanitarianism has been freed from the constraints of Cold War politics, expanding into war zones and actively addressing the formerly taboo area of human rights.

This physical and conceptual expansion has pushed humanitarians into areas that now require them to negotiate.

### ***The emergence of the humanitarian enterprise***

During the superpower stalemate that characterised the Cold War, humanitarianism had been “effectively straightjacketed,” claimed Somali human rights advocate Rakiya Omaar and humanitarian critic Alex de Waal.<sup>1</sup> Humanitarian organisations (with the notable exception of the ICRC and perhaps MSF) had been forced to function as auxiliaries to government, operating only on the margins of conflict, and confined to providing material assistance.<sup>2</sup> But as Cold War tensions diminished amid a broader push for privatisation, much of the bilateral funding that had sustained fragile and disaster-prone countries dried up, offering opportunities for humanitarian organisation to engage in new contexts and operate in new sectors.<sup>3</sup> Humanitarians also inserted their own agendas into the foreign policy vacuum that emerged from the collapse of the Soviet Union in 1991, swelling the sector to adapt to new operational and advocacy roles.<sup>4</sup> And without the paralysis of East-West tensions, there was a liberalising of geopolitical norms and an erosion of the traditional concept of state sovereignty that translated into increased political and military

- <sup>1</sup> Rakiya Omaar and Alex de Waal, "Humanitarianism Unbound? Current Dilemmas Facing Multi-Mandate Relief Operations in Political Emergencies," *African Rights*, no. 5 (1994): 3. See also Lautze et al., "Complex Emergencies," 2137.
- <sup>2</sup> Thomas Weiss, "The Politics of Humanitarian Space," in *Negotiating Relief: The Politics of Humanitarian Space*, ed. Michele Acuto (London: Hurst & Co., 2014), xxii; Mark R. Duffield, *Global Governance and the New Wars: The Merging of Development and Security* (New York: Zed Books, 2001), 79; Jonathan Goodhand, *Aiding Peace?: The Role of NGOs in Armed Conflict* (Boulder, CO: Lynne Rienner, 2006), 88; Kurt Mills, "Neo-Humanitarianism: The Role of International Humanitarian Norms and Organizations in Contemporary Conflict," *Global Governance* 11, no. 2 (2005): 161.
- <sup>3</sup> David Rieff, "The Humanitarian Trap," *World Policy Journal* 12, no. 4 (1995): 3; Randolph C. Kent, "International Humanitarian Crises: Two Decades Before and Two Decades Beyond," *International Affairs* 80, no. 5 (2004).
- <sup>4</sup> Peter Walker and Daniel G. Maxwell, *Shaping the Humanitarian World* (Milton Park: Routledge, 2009), 140 and 143; Michael Barnett and Thomas G. Weiss, *Humanitarianism Contested: Where Angels Fear to Tread* (New York: Routledge, 2011), 69; Sarah Collinson and Samir Elhawary, *Humanitarian Space: A Review of Trends and Issues*, (Overseas Development Institute, April 2012), 2.

commitment to humanitarianism.<sup>5</sup> The humanitarian sector thus saw an unprecedented period of rapid growth in its size and its ambition throughout the 1990s,<sup>6</sup> and a substantively new era of humanitarian action emerged (although, as I note below, many of the changes that followed the end of the Cold War were already in motion well before).<sup>7</sup>

The landmark General Assembly Resolution 46/182 (1991) established the humanitarian system largely as it exists today, creating key coordination structures and mechanisms, and formalising the role of humanitarian principles within the UN system (see introduction). Outside the purview of the General Assembly, NGOs also undertook a range of humanitarian reforms that resulted in a more cohesive sector, spurred on both by their growth and their manifest failures in Somalia, Bosnia, Rwanda, and beyond.<sup>8</sup> These transformations included the first inter-agency evaluation of a humanitarian response (conducted in Rwanda), the drafting of the Sphere Handbook (a set of common principles and response standards), and an institutional commitment to ‘do no harm’ that was advanced by Mary Anderson and inspired by the physician’s Hippocratic Oath,<sup>9</sup> and the

- 5 Lautze et al., "Complex Emergencies," 2136; Leader, *The Politics of Principle*, 34; Duffield, *Global Governance and the New Wars*; Kent, "International Humanitarian Crises," 852; Thomas G. Weiss, David P. Forsythe, Roger A. Coate, and Kelly-Kate Pease, *The United Nations and Changing World Politics*, vol. 7th (Boulder, CO: Westview Press, 2014).
- 6 Barnett and Weiss rightly caution that a lack of longitudinal data on the scale of humanitarian action (for example, on expenditure, income, activities, or beneficiaries numbers) and an absence of common reporting requirements limits the extent to which conclusions can be reached regarding the growth of the humanitarian system over time. See *Humanitarianism Contested*, 26. Acknowledging this limitation, that data which is available suggests overwhelmingly that the number of actors and the size of aid operations have increased exponentially since the ending of the Cold War, as I outline below.
- 7 Walker and Maxwell, *Shaping the Humanitarian World*, 60; Kent, "International Humanitarian Crises."; Mark Duffield, Patricia Gossman, and Nicholas Leader, *Review of the Strategic Framework for Afghanistan*, (Afghanistan Research and Evaluation Unit, 2001).
- 8 Leader, *The Politics of Principle*, 23; Walker and Maxwell, *Shaping the Humanitarian World*, 143.
- 9 Mary B. Anderson, *Do No Harm: How Aid Can Support Peace-Or War* (Boulder, CO: Lynne Rienner, 1999). See also Mary B. Anderson, "You Saved My Life Today, But for What Tomorrow?: Some Moral Dilemmas of Humanitarian Aid," in *Hard Choices: Moral Dilemmas in Humanitarian Intervention*, ed. Jonathan Moore (Lanham, MD: Rowman & Littlefield, 1998).



adoption of the Code of Conduct with the International Red Cross and Red Crescent Movement in 1994, echoing the Movement's own Fundamental Principles. Technological advances brought fundamental changes to the sector, ushering in a 'network age' that facilitated the emergence of interconnected global structures.<sup>10</sup> This newly-formalised and centralised humanitarian system emerged as the informal 'fourth pillar' of the United Nations, claimed Randolph Kent, director of the Humanitarian Futures Programme at Kings College, London (a platform designed to stimulate strategic approaches to contemporary humanitarian challenges).<sup>11</sup>

Kent catalogued a four-fold increase in the number of humanitarian personnel operating globally from the mid-1980s to the early 2000s.<sup>12</sup> Official humanitarian assistance tripled in the 10 years leading up to the turn of the century, reaching US\$ 6 billion in the year 2000.<sup>13</sup> By 2014 that figure had reached US\$ 24.5 billion, which a leading development policy organisation nevertheless reported to be insufficient to "keep pace with growing demand."<sup>14</sup>

Increased resources changed more than the scale of humanitarian operations. They also altered the fundamental nature of humanitarianism itself by opening up new sets of activities and approaches, and blurring the

<sup>10</sup> Elizabeth G. Ferris, "Megatrends and the Future of Humanitarian Action," *International Review of the Red Cross* 93, no. 884 (2011): 920-923; OCHA, *Humanitarianism in the Network Age*, (Office for the Coordination of Humanitarian Affairs, 2012).

<sup>11</sup> Kent, "International Humanitarian Crises," 864.

<sup>12</sup> Kent, "International Humanitarian Crises," 860. Stoddard et al. point to a slower but nevertheless substantial rate of growth from the late 1990s, estimating that the number of aid workers increased from 136,000 in 1997 to 242,000 in 2005, in *Providing Aid in Insecure Environments: Trends in Policy and Operations*, (Overseas Development Institute, 2006), 16.

<sup>13</sup> Ian Smillie and Larry Minear, *The Charity of Nations: Humanitarian Action in a Calculating World* (Bloomfield: Kumarian Press, 2004), 8.

<sup>14</sup> Global Humanitarian Assistance, *Global Humanitarian Assistance Report 2015*, (Development Initiatives, 2015), 21-22. For more on the sector's expansion see Andrew S. Natsios, *US Foreign Policy and the Four Horsemen of the Apocalypse: Humanitarian Relief in Complex Emergencies* (Westport, Connecticut: Praeger, 1997); Thomas G. Weiss and Leon Gordenker, "NGO Participation in the International Policy Process," in *NGOs, the UN, and Global Governance*, ed. Thomas G. Weiss and Leon Gordenker (Boulder, CO: Lynne Rienner, 1996).

lines between humanitarians, development workers, human rights campaigners, and peacebuilders.<sup>15</sup> With the fusion in practice of the traditionally distinct categories of human rights law, refugee law, and international humanitarian law, a rights-based humanitarianism emerged, and humanitarian organisations began to address the underlying causes of crisis and oppression.<sup>16</sup> Short-term aid became an opportunity to promote human rights and humanitarian action began to be seen as part of a continuum with development activities.<sup>17</sup>

This ‘conceptual merging’ of formerly distinct sets of norms widened the scope of humanitarian action, claimed international relations and human rights scholar Kurt Mills, and increasingly positioned the sector at odds with the interests of states.<sup>18</sup> Moreover, as constructivist scholar Michael Barnett has argued, “humanitarian organisations were now venturing into the formerly taboo territory of politics... taking on functions that had once been the exclusive preserve of governments.”<sup>19</sup> Writing on the future of the humanitarian sector in 2004, humanitarian researchers Antonio Donini, Larry Minear, and Peter Walker echoed this perspective: “humanitarian agencies have strayed out of the straight-and-narrow path of traditional humanitarian action into essentially political territory.” (although as I note

<sup>15</sup> Kent, "International Humanitarian Crises," 861; Claudia McGoldrick, "The Future of Humanitarian Action: An ICRC Perspective," *International Review of the Red Cross* 93, no. 884 (2011): 980; Julie A. Mertus and Jeffrey W. Helsing, "Exploring the Intersection between Human Rights and Conflict," in *Human Rights and Conflict: Exploring the Links Between Rights, Law, and Peacebuilding*, ed. Julie A. Mertus and Jeffrey W. Helsing (Washington, DC: United States Institute of Peace Press, 2006), 8.

<sup>16</sup> Lautze et al., "Complex Emergencies," 3137; Mills, "Neo-Humanitarianism," 166-167.

<sup>17</sup> Lautze et al., "Complex Emergencies," 3137.

<sup>18</sup> Mills, "Neo-Humanitarianism," 166-167. Sylvain Beauchamp similarly describes this process as a “conceptual blending,” in Sylvain Beauchamp, "'Humanitarian Space' in Search of a New Home: (Limited) Guidance from International Law," in *Modern Warfare: Armed Groups, Private Militaries, Humanitarian Organizations, and the Law*, ed. Benjamin Perrin (Vancouver: UBC Press, 2014), 203.

<sup>19</sup> Michael Barnett, *Empire of Humanity: A History of Humanitarianism* (New York: Cornell University Press, 2011), 4-5.

in chapter 7, the extent to which humanitarianism was ever apolitical is subject to rigorous debate).<sup>20</sup>

These transformations thrust humanitarian organisations into the centre of armed conflict with a newly-expanded and distinctly political mandate to both protect and assist civilians. But it quickly became apparent that these mandates often existed in tension with one another, challenging the trajectory of the sector and shaking its moral core, as I argue in more detail below.

### ***The new interventionists***

The post-Cold War period also saw humanitarian and human rights issues elevated to the world's stage like never before.<sup>21</sup> The United Nations Security Council's unprecedented 1990 sanctions on member state Iraq for violating international norms represented a shift away from its traditional non-interventionist stance.<sup>22</sup> The Council subsequently demanded Iraq permit and facilitate immediate humanitarian assistance,<sup>23</sup> in what international legal scholar Christiane Bourloyannis claimed was the first application of IHL by the world body to a non-international armed conflict (NIAC, that is, protracted armed confrontations occurring within the

<sup>20</sup> Antonio Donini, Larry Minear, and Peter Walker, "The Future of Humanitarian Action: Mapping the Implications of Iraq and Other Recent Crises," *Disasters* 28, no. 2 (2004): 197.

<sup>21</sup> Walker and Maxwell, *Shaping the Humanitarian World*; Georg Nolte, "The Different Functions of the Security Council with Respect to Humanitarian Law," in *United Nations Security Council and War: The Evolution of Thought and Practice Since 1945*, ed. A. V. Lowe (New York: Oxford University Press, 2008), 520; Christiane Bourloyannis, "The Security Council of the United Nations and the Implementation of International Humanitarian Law," *Denver Journal of International Law and Policy* 20, no. 3 (1993): 335; Jeremy Greenstock, "The Security Council in the Post-Cold War World," in *United Nations Security Council and War: The Evolution of Thought and Practice since 1945*, ed. A. V. Lowe (New York: Oxford University Press, 2008), 253.

<sup>22</sup> United Nations Security Council, *Resolution 661 (1990)*, S/RES/661 (1990), para 3. See also Cortright et al., "The Sanctions Era: Themes and Trends in UN Security Council Sanctions Since 1990," 20

<sup>23</sup> United Nations Security Council, *Resolution 688 (1991)*, S/RES/688 (1991), para 3.

territory of a state between government forces and an organised armed group or between several such groups).<sup>24</sup>

In response to unfolding conflict in the former Yugoslavia the following year, the Security Council articulated widespread violations of IHL themselves as constituting “a threat to international peace and security.”<sup>25</sup> Humanitarian researcher Nicholas Leader described this period as “the heady days of UN interventionism,”<sup>26</sup> during which humanitarian concerns were frequently incorporated into global policy debates and foreign policy agendas.

In parallel, the discourse on sovereignty shifted away from protecting states from foreign interference to one which signified a set of responsibilities by the state towards its constituents. Under the leadership of Secretary-General Boutros Boutros-Ghali (1992-1996), the UN positioned humanitarian actors to have a “central role” in preventing the escalation of violence and supporting the dividends of peacekeeping.<sup>27</sup> This normative shift paved the way for the proliferation of so-called ‘humanitarian interventions’ (the use of military force to end widespread human rights abuses)<sup>28</sup> and eventually the ‘Responsibility to Protect’ doctrine (R2P, a framework obliging states to address mass atrocities through diplomatic or military means).<sup>29</sup> These developments did more than allow the

<sup>24</sup> Bourloyannis, "The Security Council and the Implementaiton of IHL," 352.

<sup>25</sup> United Nations Security Council, *Resolution 808 (1993)*, S/RES/808 (1993), preamble, para 7.

<sup>26</sup> Leader, *The Politics of Principle*, 14.

<sup>27</sup> United Nations General Assembly, *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping*, A/47/277-S/24111 (1992), para 52.

<sup>28</sup> See in particular Sarah Kernot, "Humanitarian Intervention: Human Rights Versus Humanitarian Assistance," *Global Change, Peace & Security* 18, no. 1 (2006); Didier Fassin and Mariella Pandolfi, "Military and Humanitarian Government in the Age of Intervention," in *Contemporary States of Emergency: The Politics of Military and Humanitarian Interventions*, ed. Didier Fassin and Mariella Pandolfi (New York: Zone Books, 2010).

<sup>29</sup> See in particular William Maley, "Theorising Global Responsibilities," in *Theorising the Responsibility to Protect*, ed. Ramesh Thakur and William Maley (Cambridge: Cambridge University Press, 2015); Alex Bellamy, "The Responsibility to Protect: Opening Humanitarian Spaces?," in *Negotiating Relief: The Politics of Humanitarian Space*, ed. Michele Acuto (London: Hurst & Co., 2014).

international community to engage in conflict; it now became untenable for it not to do so, claimed Walker and Maxwell.<sup>30</sup> And as Omaar and de Waal argued, there emerged a “political imperative for humanitarian action.”<sup>31</sup>

Humanitarian operations in conflict zones thus grew during the first half of the 1990s as a primary modality through which the international community responded to conflict.<sup>32</sup> In addition to Operation Lifeline Sudan (see chapter 1), humanitarians became involved in the Gulf War, operations in the former Yugoslavia, Somalia, and Rwanda, among others. “A New World Order that included a right to humanitarian assistance... appeared to be in the realm of the possible,” claimed former humanitarian worker and academic Mark Duffield.<sup>33</sup> These responses largely took place in what came to be known as ‘complex emergencies’ (contexts that face a combination of political instability, armed conflict, social inequalities, and underlying poverty, and thus require large-scale integrated humanitarian and political interventions).<sup>34</sup> The sector also began to see a new wave of actors purporting to be ‘humanitarian’ – both civilian and military – whose identities and adherence to fundamental principles varied widely from one another.<sup>35</sup>

The newfound enthusiasm for proactive peacekeeping (or *peacemaking* rather than *peacekeeping*) running through the Security Council in the early 1990s was short-lived, however, and faded in the wake of perceived

<sup>30</sup> Walker and Maxwell, *Shaping the Humanitarian World*, 142-143.

<sup>31</sup> Omaar and de Waal, "Humanitarianism Unbound?," 8; Walker and Maxwell, *Shaping the Humanitarian World*, 142-143.

<sup>32</sup> Duffield, *Global Governance and the New Wars*, 11.

<sup>33</sup> Duffield, *Global Governance and the New Wars*, 78.

<sup>34</sup> Davey et al., *A History of the Humanitarian System: Western Origins and Foundations*, 13; Vincent Bernard, "Editorial: The Future of Humanitarian Action," *International Review of the Red Cross* 93, no. 884 (2011): 892. Terry, however, is critical of the term ‘complex emergencies.’ She claims it implicitly excuses aid operations from scrutiny and accountability, erroneously separating such contexts from previous emergencies, and masking the historical similarities that she insists are present, in "The Paradoxes of Humanitarian Aid," *Agenda: A Journal of Policy Analysis and Reform* 5, no. 2 (1998): 144.

<sup>35</sup> See in particular McGoldrick, "The Future of Humanitarian Action," 984; Bernard, "The Future of Humanitarian Action," 895; Terry, *Condemned to repeat?*

failures in Somalia, Bosnia, and Haiti.<sup>36</sup> “Disillusion began to replace euphoria,” argued Kent, leading to a tendency for major powers to disengage, as was seen in Liberia, Sierra Leone, the former Yugoslavia, and Rwanda.<sup>37</sup> By the mid-1990s the appetite of key members of the Council to intervene in armed conflict had dissipated to such an extent that humanitarian assistance became *the* default modality through which it responded to conflict and mass atrocities. As Leader has argued, this reticence of global powers (in particular the United States, US) to involve themselves in conflict elevated the humanitarian sector to the role of “major players on the international scene.”<sup>38</sup>

With the ascent of humanitarianism, however, came a recognition that humanitarian action could advance the foreign policy interests of states.<sup>39</sup> Humanitarianism, argued Kent, thus became “an inadvertent instrument of post-Cold War politics.”<sup>40</sup> Weiss similarly cautioned that these interventions often became “a transparent pretext” for the promotion of national interests at the expense of the altruistic humanitarianism they purported to advance.<sup>41</sup> This dynamic was exacerbated by the attacks of 11 September 2001 (‘9/11’), after which states “openly treated humanitarianism as an instrument of war,” concluded Barnett, co-opting humanitarian action as a weapon in the arsenal of militaries waging counterinsurgency campaigns.<sup>42</sup> French anthropologist and sociologist

<sup>36</sup> Lautze et al., “Complex Emergencies,” 2137; Duffield, *Global Governance and the New Wars*, 11 and 78; Martin Barber, *Blinded by Humanity: Inside the UN's Humanitarian Operations* (New York: IB Tauris, 2015), 4; Walker and Maxwell, *Shaping the Humanitarian World*.

<sup>37</sup> Kent, “International Humanitarian Crises,” 853-854.

<sup>38</sup> Leader, *The Politics of Principle*, 15.

<sup>39</sup> Barnett, *Empire of Humanity*, 4; Mills, “Neo-Humanitarianism.”

<sup>40</sup> Kent, “International Humanitarian Crises,” 854.

<sup>41</sup> Thomas G. Weiss, “Humanitarian Intervention,” in *An Introduction to International Relations: Australian Perspectives*, ed. Richard Devetak, Anthony Burke, and Jim George (Cambridge: Cambridge University Press, 2012), 433. See also Rieff, *A Bed for the Night*, 39.

<sup>42</sup> Barnett, *Empire of Humanity*, 5. See also Kent, “International Humanitarian Crises,” 856-857; McGoldrick, “The Future of Humanitarian Action,” 974; Walker and Maxwell, *Shaping the Humanitarian World*.

Didier Fassin lamented humanitarianism's subsequent relegation to a "smokescreen for the conduct of what is no more than brutal realpolitik and classical liberalism."<sup>43</sup>

The Security Council has become more confident in its engagement with international humanitarian law over recent years, even if it does so selectively, as I argue in chapter 6. Humanitarian issues and humanitarian action have become staples to which the world body regularly attends and are increasingly inseparable from global peace and security.<sup>44</sup> But the newfound prominence and political significance of humanitarian action presents enormous challenges for principled humanitarian organisations, jeopardising their ability to reach or protect civilians.

The formal humanitarian system that emerged after the Cold War is network-based, largely unregulated, and consensus-driven. Minear labelled it the 'humanitarian enterprise'; a complex and decentralised network of multilateral and non-governmental organisations that share values and tools in pursuit of humanitarian goals, but experience both cooperative and competitive pressures.<sup>45</sup> It developed more by accident than design, and its structure and governance systems are consequently inherently weak.<sup>46</sup> Humanitarian researcher Sarah Collinson described it as plagued by "highly complex institutional dynamics and relationships" that often hamper its collective capacity to function strategically in areas of contested

<sup>43</sup> Didier Fassin, "Heart of Humaneness: The Moral Economy of Humanitarian Intervention," in *Contemporary States of Emergency: The Politics of Military and Humanitarian Interventions*, ed. Didier Fassin and Mariella Pandolfi (New York: Zone Books, 2010), 270. Rieff similarly described these developments as "humanitarianism's amalgamation with state power and the UN's peace-and-alleviation agenda," in *A Bed for the Night*, 289.

<sup>44</sup> Barnett and Weiss, *Humanitarianism Contested*, 79. See also Ferris, *The Politics of Protection*, 5; Omaar and de Waal, "Humanitarianism Unbound?," 8.

<sup>45</sup> Minear, *The Humanitarian Enterprise*.

<sup>46</sup> Walker and Maxwell, *Shaping the Humanitarian World*; Andrew S. Natsios, "NGOs and the UN System in Complex Humanitarian Emergencies: Conflict or Cooperation?," *Third World Quarterly* 16, no. 3 (1995): 406.

humanitarian space.<sup>47</sup> A former Administrator of the United States Agency for International Development (USAID) and senior NGO official Andrew Natsios described it as a complex feudal system in which its members coexist in a marriage of convenience rather than genuine alignment.<sup>48</sup>

These trends established the contemporary humanitarian system and facilitated the development of shared policies and mechanisms that in turn enable coordinated humanitarian negotiations to take place. An inherent tension nevertheless persists, in which the system experiences simultaneous and contradictory imperatives to cooperate and compete over access.<sup>49</sup> And these pressures may well be growing (see below).<sup>50</sup> Moreover, the complex, informal, and evolving nature of the humanitarian system undermines our ability to prescribe its nature, its members, or their interest, complicating research of this nature, as discussed further in chapter 7.

## 1.2 THE CHANGING NATURE OF CONFLICT

The second key factor driving the growth and importance of humanitarian negotiation is the changing nature of contemporary conflict. With the end of the Cold War, the presence of humanitarian personnel from the UN and INGOs became common-place in most major war zones. But the conflicts from the 1990s to the present diverge in significant ways from the wars that preceded them, testing the limits of humanitarianism and reinforcing the

<sup>47</sup> Sarah Collinson, "The Humanitarian System: How Does it Affect Humanitarian Space?," in *Negotiating Relief: The Politics of Humanitarian Space*, ed. Michele Acuto (London: Hurst & Co., 2014), 25. See also Weiss, *Humanitarian Business*, chapter 3. See also [chapters 1](#).

<sup>48</sup> Natsios, "Conflict or Cooperation," 413 and 416. See also John Shaw, *The World's Largest Humanitarian Agency: The Transformation of the UN World Food Programme and of Food Aid* (New York: Palgrave Macmillan, 2011), 318-319.

<sup>49</sup> Collinson, "The Humanitarian System," 25; Rieff, "The Humanitarian Trap."; Weiss, *Humanitarian Business*, chapter 3; Shaw, *The World's Largest Humanitarian Agency*, 322-323.

<sup>50</sup> McGoldrick, "The Future of Humanitarian Action," 989; Glyn Taylor et al., *The State of the Humanitarian System*, (ALNAP, 2012).



need for humanitarian organisations to negotiate their presence with parties to the conflict.

British academic Mary Kaldor famously dubbed the conflicts of the post-Cold War era ‘new wars.’ These non-international armed struggles were highly internationalised and characterised by networks of state and non-state actors in which violence was predominantly directed against civilians.<sup>51</sup> Kaldor further insisted that the distinction became blurred between war, crime, and large-scale human rights violations.<sup>52</sup> As American legal scholar David Kennedy observed; “it is ever less clear where the war begins and ends – or which activities are combat, which ‘peacebuilding.’”<sup>53</sup>

By the turn of the century, nine out of ten armed conflicts were taking place *within* rather than *between* states.<sup>54</sup> Three quarters of casualties were civilian – a “dramatic leap” from previous decades, noted Secretary-General Annan.<sup>55</sup> These trends continued into the 2000s. A 2014 UN study found the prevalence of major civil wars had tripled from 2007, following a decline during much of the 1990s.<sup>56</sup>

Today’s wars are more protracted and more entrenched than those of previous decades, and tend to involve an asymmetric relationship between combatants.<sup>57</sup> This asymmetry gives rise to battlefields in which war economies are critical to sustaining conflict, observed Walker and Maxwell,

<sup>51</sup> Mary Kaldor, *New and Old Wars: Organised Violence in a Global Era*, 3rd ed. (Cambridge: Polity Press, 2012). See also McGoldrick, “The Future of Humanitarian Action.”; Barnett and Weiss, *Humanitarianism Contested*, 75.

<sup>52</sup> Kaldor, *New and Old Wars*. See also McGoldrick, “The Future of Humanitarian Action.”; Lautze et al., “Complex Emergencies.”; John Braithwaite and Bina D’Costa, *Cascades of Violence: War, Crime and Peacebuilding Across South Asia* (ANU Press, 2018).

<sup>53</sup> David Kennedy, *Of War and Law* (Princeton, NJ: Princeton University Press, 2006), 11.

<sup>54</sup> United Nations General Assembly, *Report of the Secretary-General on the Work of the Organisation*, A/54/1 (1999), para 62.

<sup>55</sup> Security Council, S/2001/331, para 3.

<sup>56</sup> Sebastian von Einsiedel, *Major Recent Trends in Violent Conflict*, (United Nations University, November 2014).

<sup>57</sup> Einsiedel, *Major Recent Trends in Violent Conflict*.

creating a self-perpetuating logic of violence.<sup>58</sup> Combatants adopt strategies to sustain their interests and often prey on local communities and exploit local economic resources.<sup>59</sup> And economic and criminal interests often fuse with political agendas, shifting the incentive structures for combatants in ways that leave civilians highly vulnerable to the effects of war. Moreover, the protracted nature of these conflicts exacerbates humanitarian needs whilst fuelling grievances between parties that further undermines humanitarian norms around civilian protection and humanitarian access.

Kaldor persuasively argued that these new wars are fought largely over identity politics, in contrast to geopolitical or ideological goals of earlier eras. Parties to the conflict consequently struggle for control over civilian populations rather than territory, and frequently leverage extremist politics and fear.<sup>60</sup> Civilians thus become both targets and tools in modern conflict, whose domination is central to the interests of warring parties. The line between civilian and combatant has also become increasingly blurred through the prevalence of identity-based conflict and the reliance of militia groups on civilian support structures.<sup>61</sup> Moreover, the distinction between combatant and responder is not always clear as the logic of counterinsurgency campaigns increasingly justifies the use of humanitarian assistance for political and military ends,<sup>62</sup> and reorganises international responders into 'integrated missions' (a UN mission structure in which

<sup>58</sup> Walker and Maxwell, *Shaping the Humanitarian World*, 137-138.

<sup>59</sup> Terry, "The Paradoxes of Humanitarian Aid," 138.

<sup>60</sup> Kaldor, *New and Old Wars*, 7.

<sup>61</sup> UN, "In Current Security Situation, Distinctions Between Combatants, Non-Combatants Blurred, Germany Tells Security Council," United Nations, news release, 22 February 1999; ICRC, "Direct Participation in Hostilities: Questions & Answers," *ICRC* (blog), 2 June 2009.

<sup>62</sup> McGoldrick, "The Future of Humanitarian Action," 975; Kaldor, *New and Old Wars*, 7. Jonathan Goodhand and Mark Sedra, "Who Owns the Peace? Aid, Reconstruction, and Peacebuilding in Afghanistan," *Disasters* 34, no. 1 (2010); Gerard Mc Hugh and Lola Gostelow, *Provincial Reconstruction Teams and Humanitarian-Military Relations in Afghanistan*, (Save the Children UK, 2004); Antonio Donini, "Humanitarian Action in Afghanistan: An Uphill Battle," *Humanitarian Exchange Magazine*, no. 49 (2011). See also Katherine Morton and Jacinta O'Hagan, "Humanitarianism Then and Now: Exploring the Boundaries of Civil-Military Relations in a Post-9/11 World", presented at *Humanitarianism and Civil-Military Relations in a Post-9/11 World*, 2009.

humanitarian, military, and political elements fall under political leadership) that erode the distinction between humanitarian personnel and peacekeeping forces.<sup>63</sup>

Further, contemporary armed conflict usually occurs in the context of state collapse or exceedingly weak governance. It is thus characterised by an absence of rules that govern the conduct of conflicting parties,<sup>64</sup> and violence consequently becomes more systemic, intrusive, and uncontrolled.<sup>65</sup>

The “inherent complexity and ambiguity” of these conflicts create new legal challenges for international law, claimed senior legal advisor to the North Atlantic Treaty Organisation (NATO) Andres Muñoz Mosquera and international legal scholar Sascha Bachmann, and thereby for humanitarian responders.<sup>66</sup> IHL is not simply disregarded by combatants, it is actively manipulated as a weapon of war (or ‘lawfare,’ see also chapter 3). It is “hijacked into just another way of fighting... to the detriment of humanitarian values as well as the law itself,” claimed former US Air Force lawyer Charles Dunlap.<sup>67</sup>

<sup>63</sup> Erin A. Weir, *Conflict and Compromise: UN Integrated Missions and the Humanitarian Imperative* (Kofi Annan International Peace Keeping Training Centre, June 2006), chapter 5; Donini, "An Uphill Battle."; Metcalfe et al., *UN Integration and Humanitarian Space*.

<sup>64</sup> William C. Banks, "Toward an Adaptive International Humanitarian Law: New Norms for New Battlefields," in *New Battlefields Old Laws: Critical Debates on Asymmetric Warfare*, ed. William C. Banks (New York: Columbia University Press, 2011), 8. See also Corri Zoli, "Humanizing Irregular Warfare: Framing Compliance for Nonstate Armed Groups at the Intersection of Security and Legal Analysis," in *New Battlefields Old Laws: Critical Debates on Asymmetric Warfare*, ed. William C. Banks (New York: Columbia University Press, 2011).

<sup>65</sup> Duffield, *Global Governance and the New Wars*, 257.

<sup>66</sup> Andres B. Munoz Mosquera and Sascha-Dominik Oliver Vladimir Bachmann, "Lawfare in Hybrid Wars: The 21st Century Warfare," *Journal of International Humanitarian Legal Studies* 7, no. 1 (2016): 86.

<sup>67</sup> Charles J. Jr Dunlap, "Law and Military Interventions: Preserving Humanitarian Values in 21st Conflicts", presented at *Humanitarian Challenges in Military Intervention Conference*, Washington DC, 29 November 2001. See also Zoli, "Humanizing Irregular Warfare," 193; Munoz Mosquera and Bachmann, "Lawfare in Hybrid Wars."; Christopher A. Ford, "Living in the 'New Normal': Modern War, Non-State Actors, and the Future of Law," in *Rethinking the Law of Armed Conflict in an Age of Terrorism*, ed. Christopher A. Ford and Amichai Cohen (Lanham, MD: Lexington Books, 2012).

This deliberate manipulation of international law for Ford is both “a potent Lilliputian weapon of the weak,” as well as an alibi for unlawful conduct by stronger powers.<sup>68</sup> White House Counsel Alberto Gonzales (2001-2005), for example, insisted that the nature of new wars renders some of the provisions of IHL “obsolete” and “quaint,” controversially justifying US divergence from certain international norms.<sup>69</sup> Indeed, this manoeuvre is commonly employed by power brokers who want to violate ‘inconvenient’ laws. Amid these new challenges, Kennedy argued that international law is under stress and is unravelling. International law, he suggested, has consequently “become a tool of strategy for soldiers, statesmen, and humanitarians alike.”<sup>70</sup>

The dynamics that developed in the post-Cold War era were reinforced by the fallout from the events of 9/11 – what diplomacy scholar Michele Acuto described as “socio-political earthquakes.”<sup>71</sup> Former British diplomat and political scientist Alyson Bailes and peace researcher Daniel Nord attributed the newfound prominence of non-state armed groups at the centre of international policy debate to the aftermath of 9/11, after which their potential to influence and impact the world’s stage was beyond question.<sup>72</sup> Further, over the past 25 years, armed groups have become increasingly responsible for violence perpetrated against civilians, accounting for more than two-thirds of civilian fatalities in contemporary conflict.<sup>73</sup> These trends, I contend, have been cemented in much of North Africa and the Middle East by the ‘Arab Spring’ uprisings of 2011 that

<sup>68</sup> Ford, "Living in the 'New Normal'," 262.

<sup>69</sup> The New York Times, "Excerpts from Gonzales's Legal Writings," *The New York Times*, 11 November 2004.

<sup>70</sup> Kennedy, *Of War and Law*, 12 and 167.

<sup>71</sup> Michele Acuto, "On 'Opening' Humanitarian Diplomacy: A Dialectic Space," in *Negotiating Relief: The Politics of Humanitarian Space*, ed. Michele Acuto (London: Hurst & Co., 2014), 266.

<sup>72</sup> Alyson J.K. Bailes and Daniel Nord, "Non-State Actors in Conflict: A Challenge for Policy and for Law," in *Violent Non-State Actors in World Politics*, ed. Klejda Mulaj (London: Hurst, 2010), 441.

<sup>73</sup> Einsiedel, *Major Recent Trends in Violent Conflict*, 8.

reignited and deepened existing ideational fault lines, thereby presenting exceptional challenges for humanitarian responders (see in particular chapter 4).

### 1.3 A PERFECT STORM

I argued above that the humanitarian enterprise has increasingly encroached into war zones over the past three decades. In parallel, the very nature of contemporary conflict has changed, placing civilians at the centre in direct challenge of humanitarian norms. A perfect storm has thus emerged in which humanitarian negotiation can no longer be avoided by principled humanitarian actors who seek to operate at the frontlines of humanitarian crises.

But whilst the end of the Cold War fostered conditions that gave rise to the rapid expansion and cohesion of the humanitarian sector, as I argued above, the extent to which this marks a break with the past is contested. Scholars of humanitarianism increasingly question the assertion that the end of the Cold War brought about a radical shift in the nature of challenges to humanitarianism. Several sceptics claim that the sector instead follows well-established historical patterns that are consistent throughout its history. Fiona Terry, for example, firmly rejected the idea that post-Cold War emergencies are fundamentally different from those that preceded them. Such claims, she argued, obscure the lessons of the past.<sup>74</sup>

Humanitarian practitioner Eric Abild similarly concluded in his study of humanitarian space (a contentious term with competing uses that generally describes the complex arena within which humanitarians operate),<sup>75</sup> “history clearly indicates that the challenge of creating an operating environment for humanitarian agencies is far from new.”<sup>76</sup> Indeed, as I

<sup>74</sup> Terry, "The Paradoxes of Humanitarian Aid," 137-138.

<sup>75</sup> Collinson and Elhawary, *Humanitarian Space*, 1. See also appendix II.

<sup>76</sup> Erik Abild, "Creating Humanitarian Space: A Case Study of Somalia," *Refugee Survey Quarterly* 29, no. 3 (2010): 71. See also Raymond Apthorpe, "Humanitarian Rescue and

argue in chapter 7, many of the tensions and challenges facing humanitarian negotiators identified in part II of this thesis are evident throughout the history of humanitarianism.

Similarly, a broader analysis of the nature of conflict suggests that the collapse of the Soviet Union did not give birth to asymmetric wars, and nor did it place civilians at the centre of conflict. Zoli points out that the asymmetric nature of warfare is as old as war itself.<sup>77</sup> And Weiss consequently cautioned that the label of ‘new wars’ is “overused and misleading in some ways.”<sup>78</sup> Consensus nevertheless suggests that political stimulus rooted in the end of the Cold War and increased resources for humanitarian operations have facilitated the expansion of the humanitarian system into new areas, marking a turning point in the sector’s engagement with conflict.<sup>79</sup> And whilst elements of the ‘new wars’ described by Kaldor may not be unique to this era of history, I argue that their prevalence and geopolitical significance, combined with the determination of humanitarian actors to operate within them, represents a fundamental change from previous periods of humanitarianism. This in turn impacts the nature and importance of humanitarian negotiation, as I elaborate in chapter 7.

In their newfound role in the centre of conflict, humanitarians have been met with suspicion and outright hostility, resulting in severe access and security constraints that in turn necessitate negotiation.<sup>80</sup> UN Under-Secretary-General for Humanitarian Affairs and Emergency Relief

Relief: Towards a Different Future”, presented at *Humanitarianism and Civil-Military Relations in a Post-9/11 World*, 2009.

<sup>77</sup> Zoli, "Humanizing Irregular Warfare," 193.

<sup>78</sup> Weiss, "The Politics of Humanitarian Space," xxvi.

<sup>79</sup> See in particular Goodhand, *Aiding Peace?*, 1; Cynthia Brassard-Boudreau and Don Hubert, "Shrinking Humanitarian Space? Trends and Prospects on Security and Access," *The Journal of Humanitarian Assistance* (2010); Barnett, *Empire of Humanity*; Mills, "Neo-Humanitarianism," 161-166; Duffield, *Global Governance and the New Wars*, 2-3; Leader, *The Politics of Principle*, 14.

<sup>80</sup> See in particular Egeland, "Forward: Humanitarianism in the Crossfire," xvii; Taylor et al., *The State of the Humanitarian System*, 23; Donini et al., "The Future of Humanitarian Action: Mapping the Implications of Iraq and Other Recent Crises," 198.

Coordinator Jan Egeland (2003-2006) argued that relief operations have become “globalized, politicised, exposed, and vulnerable.”<sup>81</sup> Indeed, recent decades have seen a marked upturn in violence perpetrated against aid workers, purportedly due to the rejection of humanitarianism itself.<sup>82</sup> Humanitarian worker Jonathan Whittall argued the sector faces a “crisis of legitimacy” as a result of its close relationship with Western power that leads to its failure and rejection (a conclusion I challenge in chapter 7).<sup>83</sup> Between 2009 and 2010, approximately 540 humanitarian aid workers were killed, kidnapped, or seriously wounded – a trend which largely continued over subsequent years (see introduction).<sup>84</sup> Barnett and Weiss similarly concluded that humanitarian personnel “can no longer assume (if they ever could) that their good intentions give them immunity.”<sup>85</sup> Humanitarians, I argue, must therefore negotiate with those in control of territory if they are to continue to promote the protection of civilians and operate on the frontlines of contemporary conflict.

## 2. NEGOTIATING FROM A POSITION OF WEAKNESS

I argued above that humanitarian negotiation has emerged as a critical aspect of contemporary humanitarian action due to the expansion of humanitarianism and the changing nature of conflict. As flagged in the

<sup>81</sup> Egeland, "Forward: Humanitarianism in the Crossfire," xiv.

<sup>82</sup> Bernard, "The Future of Humanitarian Action."; McGoldrick, "The Future of Humanitarian Action," 972; Walker and Maxwell, *Shaping the Humanitarian World*, 137; Larissa A. Fast, "Mind the Gap: Documenting and Explaining Violence Against Aid Workers," *European Journal of International Relations* 16, no. 3 (2010): 366.

<sup>83</sup> Jonathan Whittall, "A Crisis of Legitimacy for Humanitarianism: In Conflict Situations How Does the Close Relationship Between Western Power and Humanitarian Aid Affect Emergency Response Capacity and Access for Aid Organisations?" (PhD dissertation, University of Liverpool, 2015), ii. See also Clifford Bob, *The Marketing of Rebellion: Insurgents, Media, and International Activism* (Cambridge: Cambridge University Press, 2005).

<sup>84</sup> Taylor et al., *The State of the Humanitarian System*, 24.

<sup>85</sup> Barnett and Weiss, *Humanitarianism Contested*, 34. See also Laura Hammond, "The Power of Holding Humanitarianism Hostage and the Myth of Protective Principles," in *Humanitarianism in Question: Politics, Power, Ethics*, ed. Michael N. Barnett and Thomas George Weiss (Ithaca: Cornell University Press, 2008).

introduction, the outcome of these negotiations is purported to favour armed groups. This section first explores the basis for the weak bargaining position from which humanitarians supposedly negotiate. Second, it discusses the implications of this power asymmetry for humanitarians, in which they allegedly make heavy concessions and negotiate over the very principles on which their identity is founded.

## 2.1 THE ASYMMETRY OF HUMANITARIAN NEGOTIATION

Parties in a negotiation are formally equal. Each side may veto a proposed agreement and continue negotiating or they may withdraw from the process and pursue their best alternative to a negotiated agreement (BATNA, that is, the results attainable without negotiating, also referred to as a ‘fallback position,’ reservation price,’ or ‘security point’).<sup>86</sup> Yet, two parties entering a negotiation may also face enormous differences in the skills and resources they wield, meaning one party is often perceived to be more powerful and in a stronger bargaining position than the other. Indeed, as outlined in the introduction, this is frequently assumed to be the case with respect to humanitarian negotiations.

Humanitarian worker Soledad Herrero argued that humanitarian actors negotiate from a position of weakness because they have no enforcement mechanisms; “they lack weapons, they do not control the territory, and they cannot impose sanctions.”<sup>87</sup> Cutts similarly noted during negotiations that took place in Bosnia, “[humanitarian] 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.”<sup>88</sup>

<sup>86</sup> See in particular Roger Fisher and William Ury, *Getting to Yes*, Second ed. (London: Random House, 1999), chapter 6.

<sup>87</sup> Soledad Herrero, "Negotiating Humanitarian Access: Between a Rock and a Hard Place," *Professionals in Humanitarian Assistance and Protection* (blog), 11 February 2014.

<sup>88</sup> Cutts, *The Humanitarian Operation in Bosnia*, 10 and 13.



Ken Menkhaus, a political scientist with a focus on the Horn of Africa, documented similar dynamics in Somalia, in which the hostile political environment “placed humanitarian aid agencies in an exceptionally weak bargaining position as they sought to maintain neutrality, protect their staff, and gain or maintain access to famine victims.”<sup>89</sup> Some humanitarians in Somalia reluctantly consented to ‘buy’ access from armed groups through unofficial taxes. Some used armed escorts from militia to provide their security in contravention of humanitarian principles. Whilst others withdrew from frontline operations entirely, working only in more stable regions.<sup>90</sup> But even once agreed, there is little to bind parties to an agreement (see chapter 3). As Lempereur suggested, humanitarians are thus highly dependent on the continued goodwill of parties.<sup>91</sup>

Humanitarian consultant and early humanitarian-negotiation researcher Max Glaser described such limitations as an “inherent weakness” that precludes humanitarian organisations from changing the conditions within which they operate and negotiate.<sup>92</sup> Moreover, in the influential handbook on humanitarian negotiation by the Centre for Humanitarian Dialogue, Deborah Mancini-Griffoli and André Picot identified this weak negotiating position as a key dilemma that characterises the practice. Humanitarian negotiation, they conclude, “typically takes place from a position of relative weakness.”<sup>93</sup>

The 2004 handbook by the Centre for Humanitarian Dialogue nevertheless introduces the concept of ‘humanitarian levers.’ These are tactics through which one negotiating party is able to influence the position of their counterpart, including persuasion through quiet advocacy, denunciation

<sup>89</sup> Menkhaus, "Leap of Faith," 114.

<sup>90</sup> Prendergast, *Frontline Diplomacy*; Menkhaus, "Leap of Faith."

<sup>91</sup> Bruderlein et al., *Humanitarian Negotiation in Practice*.

<sup>92</sup> Glaser, *Negotiated Access*, 47.

<sup>93</sup> Mancini-Griffoli and Picot, *Humanitarian Negotiation*, 11-12. Their other ‘laws’ are negotiating the non-negotiable and usually being able to reach only a second best outcome.

through public advocacy, substitution through the provision of material assistance, support in the form of professional expertise, the mobilisation of allies in support of a negotiation target, and the threat of withdrawal.<sup>94</sup> But while humanitarian levers can arguably be seen in the practice of humanitarian negotiation (see chapters 4, 5, and 6), little work has been done to theorise which levers are effective, or indeed, which may undermine access or place humanitarian personnel at greater risk. Further, HD's handbook offers no empirical support for the concept of humanitarian levers, nor have other scholars or practitioners refined or tested this work since its release well over a decade ago.

Chapter 3 returns more comprehensively to this question of power asymmetry within humanitarian negotiation. It argues that humanitarians do indeed negotiate from a position of weakness with armed groups, and identifies some of the key reasons for this power imbalance.

## 2.2 NEGOTIATING THE NON-NEGOTIABLE

As I argued in the introduction, a distinctive aspect of humanitarian negotiation is the central role of humanitarian principles and international law. These principles dictate the objectives sought from negotiation whilst constraining that to which humanitarian negotiators can agree. But the role of these non-negotiable elements poses a dilemma for humanitarians – particularly when combined with their purportedly weak bargaining position, outlined above, and the near-uniform rejection of these norms by armed groups. In an early analysis of the field, UN official Daniel Toole recognised this challenge for the negotiator as, “how to negotiate from this clear universally accepted ‘legal and moral high ground’ when it is blatantly rejected, ignored or simply misused.”<sup>95</sup>

<sup>94</sup> Mancini-Griffoli and Picot, *Humanitarian Negotiation*, chapter 7.

<sup>95</sup> Toole, *Humanitarian Negotiation*.

In response, humanitarians sometimes feel they must adopt a hard-line approach so as not to concede that which they feel cannot be conceded – negotiating the ‘non-negotiable’.<sup>96</sup> But, as HD’s handbook noted, “humanitarians do not usually have the requisite power to adopt such an aggressive stance.”<sup>97</sup> Moreover, Toole observed that when humanitarians took a moral high ground when negotiating with the Taliban in Afghanistan, it led to entrenched positions and blockages, and was therefore ineffective.<sup>98</sup> Further, negotiation scholarship recognises that the process of negotiation necessarily entails movement from the original positions held by each party.<sup>99</sup> After all, were humanitarians able to avoid any form of compromise or concession and insist that armed groups adhere to international law, they would not need to resort to negotiation in the first place.

Other humanitarians avoid negotiating with armed groups entirely or may withdraw from negotiations when concessions become too great. But in so doing they forgo opportunities to protect and assist civilians, thereby compromising the principle of humanity and calling into question their reason for being (see chapter 3). Indeed, conflict analyst Kevin Avruch warned (in what I believe to be the first peer reviewed article on humanitarian negotiation from 2004) that the field is characterised by the “ethically precarious choices” confronting its practitioners.<sup>100</sup> One humanitarian facing the choice between closing operations in the Democratic People’s Republic of Korea or accepting severe access restrictions, noted, “the provision of assistance is [a] messy business which

<sup>96</sup> Mancini-Griffoli and Picot, *Humanitarian Negotiation*; Julia Brooks, "For Humanitarians, Negotiating the Non-Negotiable," *The Advanced Training Program on Humanitarian Action* (blog), 24 June 2015; Herrero, "Between a Rock and a Hard Place".

<sup>97</sup> Mancini-Griffoli and Picot, *Humanitarian Negotiation*, 26.

<sup>98</sup> Toole, *Humanitarian Negotiation*.

<sup>99</sup> I. William Zartman, "Introduction," in *The 50% Solution: How to Bargain Successfully with Hijackers, Strikers, Bosses, Oil Magnates, Arabs, Russians, and Other Worthy Opponents in this Modern World*, ed. I. William Zartman (Garden City, NY: Anchor Press, 1976); Zartman, "The Structure of Negotiation."

<sup>100</sup> Avruch, "Culture as Context," 397.

requires the weighing of options between ‘less than ideal’ approaches.”<sup>101</sup> Or as a policy paper on access challenges similarly concluded, humanitarian negotiators routinely “choose between several bad options to get the job done.”<sup>102</sup>

But when positions within a negotiation are dictated by principle or law, as with humanitarian negotiation, any movement constitutes an ethical compromise. By entering into the process of negotiation, humanitarians must, it would seem, be prepared to make principle-level compromises. This introduces a dilemma that is unique to humanitarian negotiators, I contend. The very foundations of the humanitarian system are built on adherence to humanitarian principles and international law. By conceding these elements, humanitarian negotiators negotiate the non-negotiable and expose themselves to what HD's handbook terms an ‘operational paradox’ – that is, they undermine the very foundations on which their right to protect and access conflict-affected civilians is predicated:

International law imposes obligations on states, non-state parties and individuals alike, which they cannot bargain over. In reality, however, power enables parties to a conflict to violate people’s rights, avoid their obligations or pick and choose when and where they decide to meet them... This creates a difficult operational paradox for humanitarian workers, as they find themselves inevitably negotiating in practice that which is non-negotiable in principle.<sup>103</sup>

Julia Brooks, a researcher in international law and humanitarianism at the Harvard Humanitarian Initiative (a programme dedicated to advancing research, practice, and policy in the field of humanitarian assistance at Harvard University), recognised this paradox as “a core tension” in which “humanitarian actors need to promote respect for fundamental international norms while negotiating nearly every aspect of these norms’

<sup>101</sup> Marv Frev, director of Program Service at the Canadian Foodgrains Bank, 2001 email correspondence cited in Smith, *Hungry for Peace*, 127.

<sup>102</sup> Haver and Carter, *What It Takes*, 37.

<sup>103</sup> Mancini-Griffoli and Picot, *Humanitarian Negotiation*, 11.

implementation.”<sup>104</sup> Leading humanitarian-negotiation researcher Claude Bruderlein described this phenomenon as a “pragmatic tension” between international norms and operational considerations.<sup>105</sup> This dilemma, I argue, reflects a broader tension in the humanitarian sector between principles and pragmatism, and introduces a core theme running through my research of the paradoxes of humanitarian action (see chapter 7).

Humanitarian negotiators are thus compelled to negotiate that which they consider to be non-negotiable, thereby compromising their self-described identity. This tension is purportedly exacerbated by the weak bargaining position of humanitarians relative to armed groups. But a key question remains concerning the role of power in this distinctive field; specifically, how we are to conceive of the concept of power within the context of a humanitarian negotiation. It is to this question that I now turn.

### 3. COMPETING CONCEPTIONS OF POWER

Power is at the heart of much sociological, political, and international relations theory. Among scholars to explore the topic are influential IR theorists Robert Keohane and Joseph Nye, who proposed that power “remains fundamental to the analysis of world politics.”<sup>106</sup> Renowned political theorist Robert Dahl similarly argued that “the concept of power is as ancient and ubiquitous as any that social theory can boast... [and] a large number of seminal social theorists have devoted a good deal of attention to power and the phenomena associated with it.”<sup>107</sup> But in spite of the

<sup>104</sup> Brooks, “Negotiating the Non-Negotiable”.

<sup>105</sup> Bruderlein et al., *Humanitarian Negotiation in Practice*.

<sup>106</sup> Robert O. Keohane and Joseph S. Nye, *Power and Interdependence*, vol. 4 (Boston: Longman, 2012), 5.

<sup>107</sup> Robert A Dahl, “The Concept of Power,” *Behavioral Science* 2, no. 3 (1957): 201. See also Felix Rosch, “Pouvoir, Puissance, and Politics: Hans Morgenthau’s Dualistic Concept of Power?,” *Review of International Studies* 40, no. 2 (2014): 349; Risto Heiskala, “Theorizing power: Weber, Parsons, Foucault and Neostructuralism,” *Social Science Information* 40, no. 2 (2001): 246.

multitude of attempts to define the concept, power is conceived and employed very differently throughout, and within, different bodies of scholarship. One of sociology's founding figures Max Weber consequently described power as "amorphous."<sup>108</sup> IR scholar Hedley Bull warned that the term was "notorious" for its numerous meanings.<sup>109</sup> And Hans Morgenthau, a key proponent of the classical realist school of IR, acknowledged that the definition of power "poses one of the most difficult and controversial problems of political science."<sup>110</sup> Nevertheless, an understanding of power is needed to explore the question at the centre of this research concerning how humanitarians can reduce their weak bargaining position (see introduction).

Nobel laureate and "errant economist," Thomas Schelling,<sup>111</sup> dismissed many applications of power within political interactions and bargaining encounters as tautological. He claimed the qualities of power "are defined to mean only that negotiations are won by those who win."<sup>112</sup> Indeed, the concept of power remains ambiguous or tautological throughout many of its scholarly applications, I argue, and frequently offers little analytical utility within negotiation literature. Nevertheless, the widespread application of the term indicates the importance of the ideas it is intended to convey.<sup>113</sup> And the frequent use and prominence of power within humanitarian-

<sup>108</sup> Max Weber, *Economy and Society: An Outline of Interpretive Sociology*, ed. Guenther Roth and Claus Wittich (New York: Bedminster Press, 1968), 53.

<sup>109</sup> Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (London: Macmillan, 1977), 109.

<sup>110</sup> Hans J. Morgenthau, *Politics Among Nations: The Struggle for Power and Peace* (New York: Knopf, 1978), 27. See also Peter Bachrach and Morton S. Baratz, "Two Faces of Power," *The American Political Science Review* 56, no. 4 (1962): 947; Keohane and Nye, *Power and Interdependence*.

<sup>111</sup> Thomas Harford, "Thomas Schelling, Economist, 1921-2016," *Financial Times*, 17 December 2016.

<sup>112</sup> Thomas Crombie Schelling, *The Strategy of Conflict* (Cambridge, MA: Harvard University Press, 1970), 22.

<sup>113</sup> Bull, *Anarchical Society*.

negotiation literature (detailed above), compels researchers to take seriously its role and explanatory potential.

Theorists and scholars concerned with power emphasise its nature as either a relation or a possession.<sup>114</sup> I explore each below. But within negotiation analysis, I contend that neither approach provides a sufficient basis for making causal claims. Rather, both aspects of power – relation and possession – are necessary constituents of a theory with explanatory and prescriptive potential for the purposes of this research. Critically, however, in the criticisms and comments below, I do not seek to dismiss the overall value of each conception of power within their respective fields. As Dahl proposed,

Operational equivalents of the formal definition [of power], designed to meet the needs of a particular research problem, are likely to diverge from one another in important ways. Thus we are not likely to produce... anything like a single, consistent, coherent “Theory of Power.” We are much more likely to produce a variety of theories of limited scope, each of which employs some definition of power that is useful in the context of the particular piece of research or theory but different in important respects from the definitions of other studies.<sup>115</sup>

International theorist Stefano Guzzini similarly noted, “needless argument could be avoided if the plurality of contexts were recognised in which ‘power’ operates.”<sup>116</sup> I therefore seek only to demonstrate the limited analytical utility of the following conceptions of power when applied to humanitarian negotiation, and to identify the key features that hold greater explanatory potential for my purposes.

<sup>114</sup> Stefano Guzzini, "Power Analysis as a Critique of Power Politics: Understanding Power and Governance in the Second Gulf War" (PhD dissertation, European University Institute, 1994), chapter 3.

<sup>115</sup> Dahl, "The Concept of Power," 202.

<sup>116</sup> Guzzini, "Power Analysis," 40.

### 3.1 POWER AS A RELATION

The concept of power as a relation is perhaps most famously advanced by Dahl, who claimed power is visible when one actor wins over another: “A has power over B to the extent that he can get B to do something that B would not otherwise do.”<sup>117</sup> Keohane and Nye built on Dahl’s approach to offer a definition that is intuitively appealing to negotiation scholars: “[power is] the ability of an actor to get others to do something they otherwise would not do.”<sup>118</sup> Power thus relates to an actor’s control over the outcomes of a social or political interaction, and bargaining (or negotiation) is thereby seen as a process through which power resources are translated into outcomes.<sup>119</sup> Power is thus conceived as ‘a relation among people’ in a way that is deeply appealing to negotiation scholars, such as Diplomacy theorist James Der Derian, who claimed, “power is, above all else, a relationship.”<sup>120</sup>

Relational power also implicitly recognises ‘interdependence’ (that is, that each party has the ability to influence the other and each depends on the other to realise gains that would otherwise not be possible) as an important aspect of negotiation.<sup>121</sup> Keohane and Nye emphasised the mutually-reinforcing and integrated nature of both power and interdependence, contending that the manipulation of interdependence by each party can be an “instrument of power.”<sup>122</sup> Negotiation researchers Rebecca Wolfe and Kathleen McGinn argued that power within a negotiation is partially determined by the level of interdependence of two parties, where

<sup>117</sup> Dahl, "The Concept of Power," 202-203.

<sup>118</sup> Keohane and Nye, *Power and Interdependence*, 10.

<sup>119</sup> Keohane and Nye, *Power and Interdependence*, 16.

<sup>120</sup> James Der Derian, *On Diplomacy: A Genealogy of Western Estrangement* (New York: Blackwell, 1987), 117. See also

<sup>121</sup> David A. Baldwin, *Paradoxes of Power* (New York: Basil Blackwell, 1989), 149; Saadia Touval, "The Impact of Multiple Asymmetries on Arab-Israeli Negotiations," in *Power and Negotiation*, ed. I. William Zartman and Jeffrey Z. Rubin (Ann Arbor: University of Michigan Press, 2000).

<sup>122</sup> Keohane and Nye, *Power and Interdependence*, 15.



‘asymmetrical dependence’ (where one party relies more on their opponent to realise their goals than the other) can lead to an ‘asymmetry in influence’ (in which one party is better able to influence their opponent than their opponent is able to influence them).<sup>123</sup> And as political scientist David Baldwin suggested, higher levels of interdependence increase both opportunities and the costs of exercising power.<sup>124</sup>

In Dahl’s conceptualisation, power is defined by its effect (A gets B to do something he would not otherwise do). Historian, philosopher, and social theorist Michel Foucault similarly argued that “power exists only when it is put into action.”<sup>125</sup> And for political philosopher Hannah Arendt, power exists in its actualisation.<sup>126</sup> But by defining power by its effect, the concept becomes circular, I argue, defined only by its result. It thereby loses its explanatory value as the most powerful party in a negotiation is necessarily defined as the one that realises the greatest value from the encounter. Zartman and Rubin cautioned that this leads to “serious tautological difficulties in that the operative element of the defining phrase is the very term being defined.”<sup>127</sup> Baldwin also warned, “most statements that ‘explain’ variations in the distribution of power resources are tautological.” And Guzzini contended, “often, power is deduced from its effects, and the same effects are ‘explained’ by reference to the same powers.”<sup>128</sup> Moreover, when understood only by its outcome, power becomes measurable only

<sup>123</sup> Rebecca J. Wolfe and Kathleen L. McGinn, "Perceived Relative Power and its Influence on Negotiations," *Group Decision and Negotiation* 14, no. 1 (2005): 3. See also chapters 3 and 6.

<sup>124</sup> Baldwin, *Paradoxes of Power*, 148.

<sup>125</sup> Michel Foucault, "The Subject and Power," *Critical Inquiry* 8, no. 4 (1982): 219.

<sup>126</sup> Hannah Arendt, *The Human Condition*, 2nd ed. (Chicago: University of Chicago Press, 1998), 200.

<sup>127</sup> I. William Zartman and Jeffrey Z. Rubin, "The Study of Power and the Practice of Negotiation," in *Power and Negotiation*, ed. I. William Zartman and Jeffrey Z. Rubin (Ann Arbor: University of Michigan Press, 2000), 8.

<sup>128</sup> Guzzini, "Power Analysis," 44.

once it has been exercised, further undermining its predictive and prescriptive potential within negotiation analysis.

Weberian power (*macht*) builds on Dahl's approach to conceive of power as "the probability that one actor within a social relationship will be in a position to carry out his own will despite resistance."<sup>129</sup> This definition retains the relational dimension of power whilst refusing to define power only by its outcomes. IR and diplomacy theorist Rebecca Adler-Nissen noted, a relational approach treats power as "productive energy,"<sup>130</sup> reminiscent of Arendt, who traced the origins of power to the Greek term *dynamis*, suggesting a potential nature rather than an unchangeable quality.<sup>131</sup> But to define power as the 'ability' of one party to move their opponent towards a more favourable position, power and ability become synonymous, and the concept of power becomes circular and tautological once again. And without an objective measure, power-as-probability or power-as-productive-energy are nebulous and amorphous concepts that provide limited opportunity for empirical study.

Political scientists Peter Bachrach and Morton Baratz presented a neo-Marxist critique of Dahl's relational expression of power as domination of one party over another, arguing for a second dimension or 'face.' They proposed a dyadic conceptualisation of power that consists of both domination and agenda-setting (or power as 'non-decisions').<sup>132</sup>

Political and social theorist Stephen Lukes went even further, advancing a triadic model. His third face of power consists of preference manipulation, through which one party's desires, beliefs, and perceptions are shaped in less visible ways. He again invoked Dahl when describing how power is

<sup>129</sup> Weber, *Economy and Society*, 55.

<sup>130</sup> Rebecca Adler-Nissen, "Relationalism or Why Diplomats Find International Relations Theory Strange," in *Diplomacy and the Making of World Politics*, ed. Ole Jacob Sending, Vincent Pouliot, and Iver B. Neumann (Cambridge: Cambridge University Press, 2015).

<sup>131</sup> Arendt, *The Human Condition*, 200.

<sup>132</sup> Bachrach and Baratz, "Two Faces of Power," 952.

expressed: “A exercises power over B when A affects B in a manner contrary to B’s interests.”<sup>133</sup> Power for Lukes is therefore explicitly relational and asymmetric; “to have power is to have power over another.”<sup>134</sup> This conceptualisation of power is evoked through IR theorist Evelyn Goh’s notion of ‘preference multiplication’ (indirect influence exerted over structurally weaker and more dependent partners to induce behavioural changes) as well as ‘attitudinal structuring’ (efforts to influence the relationships among parties to alter likely outcomes) advanced by organisational management researchers Richard Walton and Robert McKersie (see also chapter 6).<sup>135</sup> Both also have strong parallels with Nye’s concept of ‘soft power’ (influence derived from the attraction and appeal of one’s culture, political ideals, and policies).<sup>136</sup>

When considered within the context of a negotiation, Lukes’s ‘three faces of power’ take on new meaning. Not only does power constitute the relational component of promises and threats employed by one party to compel their opponent to adopt a more favourable position (domination), but observers must also consider the extent to which each party controls what issues are included within the negotiation (the agenda), as well as how each party influences their opponent’s valuation of their interests, needs, and alternatives (preference manipulation, or perceptions, as discussed below). For the purposes of this research, power is therefore understood as essentially relational, consisting of actions by one party intended to induce change in the position of their opponent (or ‘purposive action’). Power is also understood as an expression of the interdependence of each party. Nevertheless, I contend that a relational conception of power is tautological if defined only by its expression (as a force) and remains inherently limited

<sup>133</sup> Steven Lukes, *Power: A Radical View*, 2nd ed. (New York: Palgrave Macmillan, 2005), 37.

<sup>134</sup> Lukes, *Power: A Radical View*, 73.

<sup>135</sup> Evelyn Goh, “The Modes of China’s Influence: Cases from Southeast Asia,” *Asian Survey* 54, no. 5 (2014); Richard E. Walton and Robert B. McKersie, *A Behavioral Theory of Labor Negotiations: An Analysis of a Social Interaction System* (New York: McGraw-Hill, 1965).

<sup>136</sup> Nye’s concept of ‘soft power’ in Joseph S. Nye, *Bound to Lead: The Changing Nature of American Power* (New York: Basic Books, 1990).

when it is defined *ex post* – that is, when one looks for power only after it has been exercised (as an effect).<sup>137</sup> For a more complete understanding of power within negotiation, I draw also from the concept of power as a possession.

### 3.2 POWER AS A POSSESSION

Ancient Greek historian Thucydides's posited that justice is only a question between those with equal power; "the strong do what they can and the weak suffer what they must."<sup>138</sup> A thousand years later, renaissance Italian diplomat-philosopher Niccolò Machiavelli advanced an understanding of power that separated its exercise from morality. He advocated a politics of necessity in contrast to the humanist tradition, thereby establishing the foundations of modern power politics that presaged the realist world view.<sup>139</sup> For Machiavelli, negotiations are thus simply a means through which a state secures its interests without resorting to force.<sup>140</sup> Seventeenth Century philosopher Thomas Hobbes advanced a comparable understanding of power as a means to obtain a future good for oneself. Thus conceived, power is relative to other actors, and power begets more power in a perpetual struggle as each party tries to acquire power from the other in a zero-sum game.<sup>141</sup>

In his influential realist text *Politics Among Nations*, Morgenthau invokes a Hobbesian world view, describing all international politics as a struggle for power.<sup>142</sup> IR theorist and diplomat E H Carr similarly placed power at the

<sup>137</sup> I. William Zartman, "The Quest for Order in World Politics," in *Imbalance of Power: US Hegemony and International Order*, ed. I. William Zartman (Boulder, CO: Lynne Rienner Publishers, 2009), 4.

<sup>138</sup> Thucydides, *The History of the Peloponnesian War* (431 BC), chapter XVII, V.89.

<sup>139</sup> Costas M. Constantinou and Paul Sharp, "Theoretical Perspectives in Diplomacy," in *The SAGE Handbook of Diplomacy*, ed. Pauline Kerr, Costas M. Constantinou, and Paul Sharp (London: SAGE Publications Ltd, 2016).

<sup>140</sup> Niccolò Machiavelli, *The Prince*, ed. Quentin Skinner and Russell Price (Cambridge: Cambridge University Press, 1988).

<sup>141</sup> Thomas Hobbes, *Leviathan* (London: J. M. Dent & Sons, 1947), chapter 10.

<sup>142</sup> Morgenthau, *Politics Among Nations*, 27.

centre of international relations.<sup>143</sup> And as Bull observed, realism “presents the pursuit of power as the common and overriding concern of all states in pursuing foreign policy.”<sup>144</sup>

Neorealist pioneer Kenneth Waltz described power as “the capacity to produce an intended effect,” approximating Arendt and Weber (above). But for Morgenthau, power is also conceived as “control over the minds and actions of other men”<sup>145</sup> – invoking a psychogenic dimension that is absent in Hobbes and Machiavelli, but analogous to Lukes’s triadic model. Power is thereby seen as the capabilities or resources an actor uses to pursue their goals: as a ‘possession.’<sup>146</sup>

Realist and neorealist scholars understand power to be the sum of a given set of resources available to a political actor, emphasising the role of military and economic strength.<sup>147</sup> Some negotiation theorists adopt a similar conceptualisation of power. L N Rangarajan, for example, argued that a country’s power is determined by its political influence, its economic power, and military might.<sup>148</sup> But most negotiation scholars recognise that power conceived as a possession provides limited analytical value within their field for three reasons. First, as negotiation theorist Terrence Hopmann observed, as power for the realist can be derived from any resource that affects the behaviour of one’s opponent, the concept is so broad “that its usefulness in explaining international negotiations is limited.”<sup>149</sup>

<sup>143</sup> Edward Hallett Carr, *The Twenty Years' Crisis, 1919-1939: An Introduction to the Study of International Relations*, 2nd ed. (London: Macmillan, 1946).

<sup>144</sup> Bull, *Anarchical Society*, 111.

<sup>145</sup> Morgenthau, *Politics Among Nations*, 28.

<sup>146</sup> Kenneth N. Waltz, *Man, the State and War: A Theoretical Analysis* (New York: Columbia University Press, 1959), 205.

<sup>147</sup> Waltz, *Man, the State and War*, 92.

<sup>148</sup> L. N. Rangarajan, *The Limitation of Conflict: A Theory of Bargaining and Negotiation* (New York: St. Martin's Press, 1985), 185.

<sup>149</sup> P. Terrence Hopmann, *The Negotiation Process and the Resolution of International Conflicts* (Columbia, SC: University of South Carolina Press, 1996), 102.

Second, the realist conception of power is defined *ex ante*, and therefore fails to take into account which resources are capable of having an effect on a given interaction. This ‘power-as-resource fallacy’ leads realists to describe only the possession of resources, and not the causal interaction that leads to a given outcome (the conversion of resources into actual power).<sup>150</sup> IR has consequently tended to relegate diplomacy and negotiation to a limited and theoretically insignificant role. Diplomatic functions are seen at best as mechanisms through which power is manifested on the international stage, and at worst they are merely processes through which international relations are conducted.<sup>151</sup> Realism and neorealism are thereby disposed to treat successful political interactions by weaker actors as divergent cases and anomalies that merit little theoretical attention.<sup>152</sup> This approach to power therefore fails to account for the skill and will required to wield it, and is consequently deeply unappealing to diplomacy or negotiation theorists whose fields are rendered marginal.<sup>153</sup>

A third concern with approaching power as a possession is that real world cases repeatedly demonstrate that the outcomes of political interactions (and negotiation processes) do not always reflect the relative powers of the actors involved. Arendt recognised this paradox; “it is not infrequent in history that small and poor countries get the better of great and rich nations.”<sup>154</sup> Indeed, many political outcomes diverge from the relative

<sup>150</sup> Guzzini, "Power Analysis," 42; Baldwin, *Paradoxes of Power*.

<sup>151</sup> Adler-Nissen, "Relationalism," 286.

<sup>152</sup> Paul Sharp, *Diplomatic Theory of International Relations* (Cambridge: Cambridge University Press, 2009), chapter 3; Constantinou and Sharp, "Theoretical Perspectives in Diplomacy."

<sup>153</sup> Zartman and Rubin, "The Study of Power," 10; Adler-Nissen, "Relationalism."

<sup>154</sup> Arendt, *The Human Condition*, 200. See also Annette Baker Fox, *The Power of Small States: Diplomacy in World War II* (Chicago: Chicago University Press, 1959), vii; Coral Bell, *Negotiation from Strength: A Study in the Politics of Power* (London: Chatto & Windus, 1962).

distributions of power, concluded Adler-Nissen and Pouliot.<sup>155</sup> We are thus faced with what Zartman and Rubin described as the ‘structuralists’s dilemma’ – that is, that the most powerful party in a negotiation, as measured by resources or force, often does not end the negotiation on the most favourable terms.<sup>156</sup> I therefore argue that conceiving of power as a possession is inadequate for the purposes of this research.

### 3.3 OVERCOMING THE STRUCTURALISTS’S DILEMMA

Above I argue that relational power is inherently limited and circular, and power as a possession falls foul of the structuralists’s dilemma and does not reliably determine or predict negotiated outcomes. Zartman attempted to overcome the inadequacies of each of these conceptions, proposing an alternative definition of power as “an action by one party intended to produce movement by another.”<sup>157</sup> This approach resonates with Foucault, who believed power to be a strategy; a series of manoeuvres and tactics embedded in a network of relations.<sup>158</sup> Moreover, it offers greater opportunities for investigating causal relations within a negotiation; actions can be observed, measured, and their impact therefore theorised.

But Zartman’s definition here equates power with tactics, I contend, saying little about the effectiveness or impact of these actions that intuitively must be accounted for in the exercise of power. It also offers limited potential for analysts to predict outcomes or proscribe the tactical choices available to each party based on their relative power positions. Abandoning all

<sup>155</sup> Rebecca Adler-Nissen and Vincent Pouliot, "Power in Practice: Negotiating the International Intervention in Libya," *European Journal of International Relations* 20, no. 4 (2014).

<sup>156</sup> Zartman and Rubin, "The Study of Power," 12; I. William Zartman, *The Structuralist Dilemma in Negotiation*, (Groupe d'étude et de Recherche sur la Sécurité Internationale, 1997). Nye articulates a similar paradox related to possessional definitions of power (see chapter 1) in Joseph S. Nye, "Hard, Soft, and Smart Power," in *The Oxford Handbook of Modern Diplomacy*, ed. Andrew F. Cooper, Jorge Heine, and Ramesh Thakur (Oxford: Oxford University Press, 2013).

<sup>157</sup> Zartman, *The Structuralist Dilemma*, 3; I. William Zartman and Jeffrey Z. Rubin, *Power and Negotiation* (Ann Arbor: University of Michigan Press, 2000), 8.

<sup>158</sup> Foucault, "The Subject and Power," 793-795.

reference to resources therefore risks ‘throwing the baby out with the bathwater,’ as Adler-Nissen and Pouliot cautioned.<sup>159</sup>

Many of the limitations of the conceptions outlined above stem from their focus on a single dimension of power. I suggest, however, that power within the context of a negotiation applies to two distinct aspects; it describes the relation between parties (the relative resources and capabilities of each – or the structure) as well the actions of each party as they bargain with one other (bargaining tactics and the exercise of power – or the process). Keohane and Nye similarly described the existence of both structure and process within social interactions, likening them to a game of poker in which the structure is the cards and chips and the process is how each player plays the game.<sup>160</sup> This returns us to the analogy of the UN official from the introduction, who likened the power asymmetry of humanitarian negotiation to being dealt a weak hand from a stacked deck. Crucially, however, I argue in chapter 2 that not all resources determine the outcome of a negotiation.<sup>161</sup> Power resources therefore have to be specified for a given issue at a specific moment, relative to another actor.

One final element of power that is important to consider within humanitarian negotiation is that of perception. A negotiation does not operate on the basis of “reality” alone, but consists of an iterative process in which each party makes suppositions or deductions regarding their opponent’s position and strategy. Typical bargaining moves within a negotiation that constitute the exercise of power (offers, counter-offers, concessions, commitments, threats, or promises) are based on one party’s perceptions of their own position and capabilities, and those of their opponent. As Hampson and Zartman pronounced, “the world is what is

<sup>159</sup> Adler-Nissen and Pouliot, "Power in Practice," 893.

<sup>160</sup> Keohane and Nye, *Power and Interdependence*, 17-18.

<sup>161</sup> Robert O. Keohane and Joseph S. Nye, "Power and Interdependence in the Information Age," *Foreign Affairs* 77, no. 5 (1998); Habeeb, *Power and Tactics*.



seems, not what it is.”<sup>162</sup> Or for Zartman and Rubin, “perception mediates objective reality” and “much of power is a matter of perception.”<sup>163</sup>

Nevertheless, Zartman and Rubin recognised that perceived power is rarely divorced from reality.<sup>164</sup> Political scientists Glenn Snyder and Paul Diesing similarly contended that perceived power usually approximates inherent power through the bargaining process.<sup>165</sup> Power is therefore more than mere theatre; it is related to real world attributes and possessions but is not defined by these resources alone. Sociologist-cum-defence strategist Charles Iklé also implicitly recognised the importance of perception within social encounters, noting, “bargaining strength depends not so much on what [each party’s] attributes really are as on what others believe them to be.”<sup>166</sup> Power relations within a negotiation are thus not grounded in an objective measure of reality, but are determined by the party’s perceptions of reality.<sup>167</sup>

These perceptions, I contend, affect the likelihood of reaching an agreement as well as its durability. Peace and conflict researcher Cecilia Albin established the critical role perception plays when negotiating parties evaluate whether a proposed agreement is ‘just’ or ‘fair’ (see also chapter 3).<sup>168</sup> Perception thus affects how parties understand their own position and

<sup>162</sup> Fen Osler Hampson and I. William Zartman, “The Tools of Negotiation,” in *Managing Conflict in a World Adrift*, ed. Chester A. Crocker, Fen Osler Hampson, and Pamela R. Aall (Washington, D.C: United States Institute of Peace Press, 2015), 377.

<sup>163</sup> Zartman and Rubin, “The Study of Power,” 13.

<sup>164</sup> Zartman and Rubin, “The Study of Power,” 14.

<sup>165</sup> Glenn Herald Snyder and Paul Diesing, *Conflict Among Nations: Bargaining, Decision Making, and System Structure in International Crises* (Princeton, New Jersey: Princeton University Press, 1977), 191.

<sup>166</sup> Fred Charles Ikle, *How Nations Negotiate* (New York: Praeger, 1967), 76. See also Deutsch, *The Resolution of Conflict: Constructive and Destructive Processes*, 7.

<sup>167</sup> Jeswald W. Salacuse, “Lessons for Practice,” in *Power and Negotiation*, ed. I. William Zartman and Jeffrey Z. Rubin (Ann Arbor: University of Michigan Press, 2000); Hampson and Zartman, “The Tools of Negotiation,” 377; Cecilia Albin, *Justice and Fairness in International Negotiation* (New York: Cambridge University Press, 2001), 143; Rangarajan, *The Limitation of Conflict*, 187.

<sup>168</sup> Albin, *Justice and Fairness in International Negotiation*, chapter 7.

that of their opponent, it influences how each party interprets the moves of their counterparts, and it is critical in determining whether a proposed agreement is considered acceptable and whether it is upheld.

The strategies of negotiators, mediators, or third parties may consequently work *primarily* on the level of perception. As Zartman has claimed, perception is not immutable. Each party in a negotiation may be able to influence the perceptions of their opponent.<sup>169</sup> ‘Ripeness’ (the existence of both a mutually-hurting stalemate and a way-out), he argued, is contingent on it being perceived as such. If parties do not perceive there to be sufficient damage to their own interests from stalemate that drives them to negotiate, peacemakers should foster the perception of an impasse: "success in mediation is tied to the perception and creation of a ripe moment."<sup>170</sup>

Moreover, negotiation tactics need not be overt. While bargaining may involve explicit moves, Schelling insisted that it can equally consist of ‘tacit moves’ – that is, bargaining in which communication is incomplete or impossible.<sup>171</sup> In such situations, negotiating parties watch and interpret their opponent’s behaviour in the knowledge that they too are being watched and their moves anticipated.<sup>172</sup> And as game theoretic approaches to negotiation analysis recognise through the concept of the ‘shadow of the future,’ the interests and behaviour of negotiating parties are influenced by their expectations and perceptions about future bargaining rounds.<sup>173</sup>

<sup>169</sup> I. William Zartman, "A Skeptic's View," in *Culture and Negotiation: The Resolution of Water Disputes*, ed. Guy Olivier Faure and Jeffrey Z. Rubin (London: SAGE Publications, 1993), 6.

<sup>170</sup> I. William Zartman, *Ripe for Resolution: Conflict and Intervention in Africa* (New York: Oxford University Press, 1985), 236. See also Mohammed Omar Maundi, I. William Zartman, Gilbert Khadiagala, and Kwaku Nuamah, *Getting In: Mediators' Entry into the Settlement of African Conflicts* (Washington, D.C: United States Institute of Peace Press, 2006), 194, 198.

<sup>171</sup> Schelling, *The Strategy of Conflict*, 53.

<sup>172</sup> Schelling, *The Strategy of Conflict*, 21. For the importance of informal or tacit understandings between the US and Soviet Union during the Cold War, see Paul Keal, *Unspoken Rules and Superpower Dominance* (London: Macmillan, 1983).

<sup>173</sup> James D. Fearon, "Bargaining, Enforcement, and International Cooperation," *International Organization* 52, no. 2 (1998).

Negotiators thus behave differently when they anticipate repeated encounters, elevating the importance of reputation, trust, durability, and precedents (each of which are critical to humanitarian negotiation, I will demonstrate in chapter 6).

I therefore argue that power within humanitarian negotiation is both relational *and* resource-based. It is constituted by both structure and process, each of which shapes the other. Moreover, power is grounded in perceptions that only approximate reality, suggesting that effective negotiators can alter power relations by changing their counterpart's perceptions. Crucially, this conceptualisation of power allows international humanitarian organisations to be imbued with agency. Constructivist scholars Michael Barnett and Martha Finnemore asserted that while states may at times drive the behaviour of international organisations, these organisations are nevertheless largely independent by virtue of their legal authority and control over their own resources, expertise, and information. Such institutions are consequently "autonomous sites of authority, independent from the state 'principals' that may have created them," they concluded.<sup>174</sup> While some traditional approaches to power treat such organisations as structure and not agents (just as diplomats are treated by mainstream IR as the mechanics of states), I argue that humanitarian actors are capable of independent moves within humanitarian negotiations (though the influence that states wield over them is also evident in the following chapters). Further, power within humanitarian negotiation is deployed both by and through states, in what I argue constitutes humanitarian diplomacy, to which I now turn.

<sup>174</sup> Michael N. Barnett and Martha Finnemore, "The Politics, Power, and Pathologies of International Organizations," *International Organization* 53, no. 4 (1999): 707.

## 4. DIPLOMACY AND HUMANITARIANISM

In this section I contend that just as negotiation is central to diplomacy,<sup>175</sup> so too is humanitarian negotiation central to *humanitarian* diplomacy. First, I explore the changing nature of contemporary diplomacy that has become simultaneously more relevant and more fragmented over recent decades. Second, I argue that this evolution facilitates the emergence of humanitarian diplomacy, in which both states and humanitarian actors seek to advance humanitarian interests over foreign policies. In this way, humanitarian diplomacy has become an important mechanism through which power is deployed during humanitarian negotiations.

### 4.1 THE CHANGING MODES OF DIPLOMACY

Just as the nature of humanitarianism and the environment in which humanitarians operate have evolved, so too has diplomacy. The practice of diplomacy was reinvigorated after the stifling effects of the Cold War dissipated during the early 1990s, claimed diplomacy scholar Halvard Leira,<sup>176</sup> An “uneasy partnership” subsequently emerged between humanitarians, diplomats, and military actors, observed Kennedy.<sup>177</sup> But the field of diplomacy has grown increasingly fragmented, with new actors, new structures, and new issues to which it has become attentive.

Diplomacy scholars Geoffrey Wiseman and Pauline Kerr claimed, “diplomacy has taken on a complexity never before seen.”<sup>178</sup> Constantinou, Kerr, and Sharp described the emergence of a “myriad of new diplomats”

<sup>175</sup> I. William Zartman, "Diplomacy and Negotiation," in *The SAGE Handbook of Diplomacy*, ed. Pauline Kerr, Costas M. Constantinou, and Paul Sharp (London: SAGE Publications, 2016), xiv.

<sup>176</sup> Halvard Leira, "A Conceptual History of Diplomacy," in *The SAGE Handbook of Diplomacy*, ed. Pauline Kerr, Costas M. Constantinou, and Paul Sharp (London: SAGE Publications, 2016), 35-36. See also Geoffrey Wiseman, *'Polylateralism' and New Modes of Global Dialogue*, 59 (Centre for the Study of Diplomacy, 1999), 40-41.

<sup>177</sup> Kennedy, *Of War and Law*, 10-11.

<sup>178</sup> Pauline Kerr and Geoffrey Wiseman, *Diplomacy in a Globalizing World: Theories and Practices* (New York: Oxford University Press, 2013), 343.

(private corporations, humanitarian organisations, and transnational political actors, among others), which operate above, below, and parallel to the state.<sup>179</sup> Raymond Saner – whose research spans the fields of development, diplomacy, negotiation, and international relations – emphasised the recent emergence of “alternative diplomatic actors.” These new actors are often outside the state and act independently from state interests, he insisted, but “impact directly on international relations, and consequently, on the conduct of diplomacy.”<sup>180</sup> But as with much of the new cohort of diplomatic actors, humanitarians have tended to be viewed among diplomacy scholarship as lobbyists and pressure groups with narrowly-defined objectives.<sup>181</sup> And diplomacy scholars are divided on the extent to which their actions truly constitute diplomacy.

Early Twentieth Century diplomacy theorist and diplomat Harold Nicolson alternately defined the field of diplomacy as the execution of foreign policy and as the management of the relations between independent states through negotiation, irrevocably tying the practice to the state.<sup>182</sup> For Bull, diplomacy is “the conduct of relations between states and other entities with standing in world politics.” This definition allows for a role for non-state actors, but still places the state at the field’s core.<sup>183</sup> Indeed, much contemporary diplomacy scholarship concedes that non-state actors can engage in diplomacy and perhaps even constitute diplomatic actors, but they do so only in relation to the state. Indeed, it is this point that led

<sup>179</sup> Costas M. Constantinou, Pauline Kerr, and Paul Sharp, “Understanding Diplomatic Practice,” in *The SAGE Handbook of Diplomacy*, ed. Pauline Kerr, Costas M. Constantinou, and Paul Sharp (London: SAGE Publications Ltd, 2016), 6. See also Leira, “A Conceptual History of Diplomacy,” 35.

<sup>180</sup> Raymond Saner, “The Expert Negotiator: Strategy, Tactics, Motivation, Behaviour, Leadership,” (Leiden: Martinus Nijhoff Publishers, 2005), 226-227.

<sup>181</sup> Constantinou et al., “Understanding Diplomatic Practice,” 6.

<sup>182</sup> Harold Nicolson, *Diplomacy* (London: Oxford University Press, 1950), 12 and 80.

<sup>183</sup> Bull, *Anarchical Society*, 162.

diplomacy and IR scholar Josh Gartland to conclude that humanitarian negotiation does not constitute a diplomatic activity.<sup>184</sup>

A broader historical reading of diplomacy, however, untethers the field from the state. Wiseman and Sharp, for example, highlighted the existence of pre-Westphalian diplomacy that challenges the state-diplomacy link assumed by many theorists.<sup>185</sup> Moreover, as Constantinou and Sharp noted, diplomacy in former eras was embedded in the church and then the sovereign, before being supplanted by the secular state.<sup>186</sup> Indeed, Constantinou has been critical of the “fixed ontology” in which scholars typically equate diplomacy with statecraft.<sup>187</sup> Further, Nicolson himself conceded a less-state-centric understanding of the term as “the ordered conduct of relations between one group of human beings and another.”<sup>188</sup> Finally, for diplomacy scholars Keith Hamilton and Richard Langhorne, the field is simply “the peaceful conduct of relations among political entities, their principals and accredited agents.”<sup>189</sup>

There is therefore little to stand in the way of conceiving of humanitarian actors and negotiators as conducting diplomacy and as constituting diplomatic actors. Indeed, one important dimension of this broader conceptualisation of diplomacy emphasised by Wiseman and IR scholar Soumita Basu is the growing significance of UN officials and NGOs in

<sup>184</sup> Josh Gartland, "Negotiating Access: A Diplomatic Activity?" (masters thesis, College of Europe, 2014).

<sup>185</sup> Geoffrey Wiseman and Paul Sharp, "Diplomacy," in *An Introduction to International Relations*, ed. Richard Devetak, Anthony Burke, and Jim George (Cambridge: Cambridge University Press, 2012).

<sup>186</sup> Constantinou and Sharp, "Theoretical Perspectives in Diplomacy."

<sup>187</sup> Costas M. Constantinou, "Between Statecraft and Humanism: Diplomacy and its Forms of Knowledge," *International Studies Review* 15, no. 2 (2013): 144.

<sup>188</sup> Nicolson, *Diplomacy*, 17.

<sup>189</sup> Keith Hamilton and Richard Langhorne, *The Practice of Diplomacy: Its Evolution, Theory, and Administration* (London: Routledge, 1995), 1. See also Leira, "A Conceptual History of Diplomacy," 28; Norman J. Padelford and George A. Lincoln, *The Dynamics of International Politics* (New York: Macmillan, 1962).

diplomacy.<sup>190</sup> They described a “complex diplomatic community of diplomats and non-state actors” that constitute a UN diplomatic community.<sup>191</sup> Moreover, Weiss, Forsythe, Coate, and Pease similarly acknowledged, “international relations, as it relates to human rights, is shifting away from a system in which states make the rules to a more cosmopolitan order in which [intergovernmental organisations] and NGOs play central roles.”<sup>192</sup>

Moreover, Wiseman earlier reconceptualised state-non-state relations beyond the traditional state-centric forms of bilateral and multilateral diplomacy. He described systematic interactions between official diplomatic entities and non-state representatives as constitutive of a third dimension of diplomacy that he termed ‘polylateralism.’<sup>193</sup>

The concept of polylateral diplomacy provides a framework through which one can analyse the conduct of humanitarians relative to the state as constitutive of a new form of diplomacy. As detailed in part II of this thesis, humanitarian negotiators closely replicate the modes through which traditional diplomats operate. They represent themselves and their constituents to others; they gather information on the issues and contexts that concern them; they conduct advocacy in pursuit of humanitarian goals; and they employ sophisticated communication techniques to advance their interests with other constituencies. And of course, they negotiate, thereby replicating the primary ways through which states conduct diplomacy.<sup>194</sup>

<sup>190</sup> Geoffrey Wiseman and Soumita Basu, "The United Nations," in *Diplomacy in a Globalizing World*, ed. Pauline Kerr and Geoffrey Wiseman (New York: Oxford University Press, 2013), 334.

<sup>191</sup> Wiseman and Basu, "The United Nations," 331. See also Wiseman and Sharp who conclude, “there is clear evidence of an emerging non-state diplomatic conception in which well-organised groups are now acting, or claiming to act, diplomatically, at least in a minimal sense,” in Wiseman and Sharp, "Diplomacy," 269.

<sup>192</sup> Weiss et al., *The United Nations and Changing World Politics*, 243.

<sup>193</sup> Wiseman, *'Polylateralism' and New Modes of Global Dialogue*.

<sup>194</sup> Leira, "A Conceptual History of Diplomacy," 35.

But they also supplement these traditional forms of diplomatic action with more modern methods such as social media and public diplomacy.<sup>195</sup>

Moreover, representatives of the principal and subsidiary organs of the United Nations are afforded diplomatic privileges and immunities that mirror (but are not identical to) representatives of member states under the Vienna Convention.<sup>196</sup> Further, the most senior humanitarian official, the Emergency Relief Coordinator, is a political appointee whose primary function is essentially diplomatic.<sup>197</sup>

But as with most diplomacy literature, polyilateralism insists on retaining a central link to the state. Wiseman explicitly precluded interactions between non-state actors as constitutive of polyilateral diplomacy – or indeed, diplomacy at all.<sup>198</sup> Cooper and Cornut leveraged the practice turn in IR (that is, the study of practitioners who constitute the social world) to expand the concept of polyilateralism. But whilst Cooper and Cornut argue that frontline diplomatic interactions involving non-state actors (including ‘relief agents’) are constitutive of international politics and increasingly vital to international relations, they too place the diplomats of sovereign polities at the centre of their examination.<sup>199</sup> Thus, while both armed groups and humanitarian organisations may perform diplomatic functions and may constitute diplomatic actors, they do so only by virtue of their orientation towards states, rather than to each other.

Where my argument diverges from Wiseman and mainstream diplomacy scholarship is exactly this point. I contend that the evidence presented in the following chapters suggests that both humanitarians and armed groups

<sup>195</sup> Jan Melissen, "Public Diplomacy," in *Diplomacy in a Globalizing World*, ed. Pauline Kerr and Geoffrey Wiseman (New York: Oxford University Press, 2018).

<sup>196</sup> United Nations General Assembly, *Convention on the Privileges and Immunities of the United Nations*, (1946), article IV, section 11.

<sup>197</sup> Jacinta O'Hagan, "Australia and the Promise and the Perils of Humanitarian Diplomacy," *Australian Journal of International Affairs* 70, no. 6 (2016): 660.

<sup>198</sup> Wiseman, *'Polyilateralism' and New Modes of Global Dialogue*, 39.

<sup>199</sup> Cooper and Cornut, "The Changing Practices of Frontline Diplomacy."



may at times engage with each other in ways that constitute diplomacy (at least in a minimal sense). Egeland suggested these actions represent “a minimum default version of diplomatic activity and international relations when everything else fails.”<sup>200</sup> Indeed, I contend that in some contexts such as Yemen, engagements between non-state actors may well hold more relevance for the conduct of international relations than those of states (see chapter 4).

Further, the distinction in diplomacy scholarship between states and armed groups is problematic. I argue there is often little to distinguish these two categories from one another. Both armed groups on which my empirical research focuses functioned as a *de facto* state. In Myanmar, the KIA long provided state-like services throughout areas under its territorial control, and it aspired to regional governance, if not outright autonomy (see chapter 5). Similarly, during the period of research, the formally-recognised government in Yemen existed largely in exile and exerted little influence over much of the country, in stark contrast to Houthi authorities who controlled many of the structures of the state, as I describe in chapter 4. Moreover, talks between the Taliban and the US during the late 1990s and early 2000s “did not differ from regular diplomatic talks,” contended former German diplomat and IR scholar Juergen Kleiner.<sup>201</sup> The prominent role played by armed groups – who at times enjoy greater political influence and play a greater role in shaping international politics than states, I contend – further undermines the state-diplomacy link assumed throughout the field.

This is not to argue, however, that humanitarian negotiation and the diplomatic actions of humanitarians take place in isolation from the international state-centric diplomatic system. These actions are not

<sup>200</sup> Jan Egeland, "Humanitarian Diplomacy," in *The Oxford Handbook of Modern Diplomacy*, ed. Andrew Fenton Cooper, Jorge Heine, and Ramesh Chandra Thakur (Oxford, UK: Oxford University Press, 2013), 352).

<sup>201</sup> Juergen Kleiner, "Diplomacy with Fundamentalists: The United States and the Taliban," *The Hague Journal of Diplomacy* 1, no. 3 (2006): 225.

inherently post-Westphalian, nor do they necessarily represent a distinct ‘fourth dimension’ of diplomacy (although this question may be worthy of further study). On the contrary, I argue that humanitarian diplomacy is regularly oriented *towards* states and it is naturally inclined towards existing multilateral diplomatic structures – particularly the Security Council. Humanitarians continue to operate alongside states, both *influencing* and *influenced* by state interests, but animated by independent goals that are grounded in an ethic of humanity. And as detailed in chapter 6, they frequently leverage the power of third-party states to overcome the power asymmetry that is inherent in humanitarian negotiation. As former Norwegian diplomat and international organisations researcher Ole Jacob Sending noted, “diplomatic practices reproduce the system within which humanitarian action operates and therefore structure world politics in fundamental yet often unacknowledged ways.”<sup>202</sup> Diplomacy theory is nevertheless challenged by its traditional reluctance to account for the potentially-transformative nature of interactions between two (or more) non-state actors<sup>203</sup> – even when they conform to traditional modes of diplomacy, as I argue they often do.

#### 4.2 ON HUMANITARIAN DIPLOMACY

With the changing nature of diplomacy and the evolving modes through which it is practiced, the concept has been “stretched to cover ever-more phenomena,” claimed Leira.<sup>204</sup> He described the prevalence of hyphenated forms of the practice, or ‘composite diplomacy,’ that link the practice with specific subsets of actors and interests. Humanitarian diplomacy is one such field, I argue. It is distinct from traditional diplomacy in its focus on

<sup>202</sup> Ole Jacob Sending, “Diplomats and Humanitarians in Crisis Governance,” in *Diplomacy and the Making of World Politics*, ed. Ole Jacob Sending, Vincent Pouliot, and Iver B. Neumann (Cambridge: Cambridge University Press, 2015), 357.

<sup>203</sup> A notable exception is Constantinou, who advances a humanist conception of diplomacy in which any social intercourse has the potential to constitute a diplomatic act, and in which contemporary diplomacy is characterised by the statecraft-humanism dialectic. See Constantinou, “Between Statecraft and Humanism.”

<sup>204</sup> Leira, “A Conceptual History of Diplomacy,” 28.

issues of humanity, as articulated in international humanitarian law, and it is not confined to state representatives. When interviewed for this research, HD Director of Global Projects Tom Gregg suggested humanitarian diplomacy has become necessary due to the failure of traditional diplomats to adequately address humanitarian issues; “classic diplomacy does not have the capacity to deal with these challenges.”<sup>205</sup>

A useful entry-point to demarcate the practice is the distinction made by humanitarianism scholar and former Irish diplomat Jacinta O’Hagan between humanitarian diplomacy and humanitarianism *as* diplomacy – that is, the use of humanitarianism to protect and promote state interests. The two may be complementary and difficult to distinguish from one another. Yet conceptually, she argued, they are animated by substantially different concerns.<sup>206</sup> Humanitarian diplomacy is thus not the advancement of foreign policy and state interests through the language of humanitarianism. Rather, its central focus is on individual rights and wellbeing in crisis, even if they come at the expense of the national interest (as they often do).

Another useful distinction is between humanitarian diplomacy and the nascent fields of ‘disaster diplomacy’ and ‘human rights diplomacy.’ Disaster diplomacy is largely concerned with the impact of disasters on more traditional forms of diplomacy, in particular, how disasters introduce opportunities for diplomatic engagement, as in the case of Aceh after the Indian Ocean Tsunami (2004) or in Myanmar after Cyclone Nargis (2008).<sup>207</sup>

Human rights diplomacy, however, has more in common with humanitarian diplomacy. It focuses on the use of diplomacy and foreign

<sup>205</sup> Tom Gregg (Director, Humanitarian Programmes, Centre for Humanitarian Dialogue) in discussion with author, Geneva, June 2017 (#17/059104).

<sup>206</sup> O’Hagan, “Australia and the Promise and the Perils of Humanitarian Diplomacy,” 664.

<sup>207</sup> See in particular Ilan Kelman, *Disaster Diplomacy: How Disasters Affect Peace and Conflict* (Abingdon: Routledge, 2012).

policy instruments in the service of human rights. And as with humanitarian negotiation and humanitarian diplomacy, a tension exists between the normative and pragmatic aspects of the field, where the requirement for negotiation inherent within diplomacy is at odds with the principled nature of international human rights law (IHRL).<sup>208</sup> This parallels the humanitarian's dilemma of negotiating the non-negotiable, detailed above. And as with humanitarian practitioners, human rights workers are often reluctant to acknowledge what they do as 'diplomacy.'<sup>209</sup> Indeed, Estonian international legal scholar and former diplomat Rein Müllerson acknowledged that the two fields of humanitarian diplomacy and human rights diplomacy are closely related and are at times hard to distinguish from one another. The key difference, he suggested, lies in the focus of humanitarian diplomacy on emergencies as opposed to the emphasis placed within human rights diplomacy on changing laws and practices.<sup>210</sup>

As Turkish international relations scholar Akif Kirecci has claimed, however, there has been a negligence of IR theory towards the field of humanitarian diplomacy.<sup>211</sup> And practitioners themselves have been slow to recognise the field or articulate its boundaries. Consequently, international development scholar Philippe Régnier contended, "the definitions and perceived content of humanitarian diplomacy vary as widely as the number

<sup>208</sup> Michael O'Flaherty, Zdzislaw Kedzia, Amrei Müller, and George Ulrich, "Human Rights Diplomacy: Contemporary Perspectives," in *Human Rights Diplomacy: Contemporary Perspectives*, ed. Michael O'Flaherty, Zdzislaw Kedzia, Amrei Müller, and George Ulrich (Leiden: Martinus Nijhoff, 2011), 7. See also Rein A. Mullerson, *Human Rights Diplomacy* (London: Routledge, 1997); Kyung-Wha Kang, "Foreword," in *Human Rights Diplomacy: Contemporary Perspectives*, ed. Michael O'Flaherty, Zdzislaw Kedzia, Amrei Müller, and George Ulrich (Leiden: Martinus Nijhoff, 2011), vii; David P Forsythe, "Human Rights," in *The Oxford Handbook of Modern Diplomacy*, ed. Andrew Fenton Cooper, Jorge Heine, and Ramesh Chandra Thakur (Oxford, UK: Oxford University Press, 2013).

<sup>209</sup> Kyung-Wha Kang, "Foreword," vii; Peggy Hicks, "Human Rights Diplomacy," in *Human Rights Diplomacy: Contemporary Perspectives*, ed. Michael O'Flaherty, Zdzislaw Kedzia, Amrei Müller, and George Ulrich (Leiden: Martinus Nijhoff, 2011), 217.

<sup>210</sup> Mullerson, *Human Rights Diplomacy*, 2.

<sup>211</sup> M. Akif Kirecci, "Humanitarian Diplomacy in Theory and Practice," *Perceptions* 20, no. 1 (2015): 2.

of organisations using the term and the humanitarian operations that they carry out.”<sup>212</sup>

For the ICRC, the field consists of persuading decision-makers to act “in the interests of the vulnerable people and with full respect for fundamental humanitarian principles.”<sup>213</sup> But this broad description, I argue, offers little distinction between advocacy or communication and diplomacy itself. Whittall defined the concept with more specificity, suggesting it is “the use of international law and the humanitarian imperative... to facilitate the delivery of assistance or to promote the protection of civilians.”<sup>214</sup> Or similarly for Régnier, the phenomenon focuses on support for humanitarian operations and building partnerships to realise humanitarian objectives.<sup>215</sup>

Articulated in this way, the objectives of humanitarian negotiation and humanitarian diplomacy align. Both fields seek to advance humanitarian access and to promote the protection of civilians. Moreover, the evidence presented in part II of this thesis suggests that both fields are integral to one another. Indeed, I argue in chapter 6 that effective tactics within humanitarian negotiations often constitute diplomatic action. As O’Hagan claimed, “humanitarian diplomacy is fundamental to the provision of assistance and protection on the ground in humanitarian emergencies.”<sup>216</sup> Equally, humanitarian diplomacy in isolation from humanitarian negotiation is disconnected from field realities and unlikely to translate into substantive changes in the lives of those it purports to serve. Thus, as Acuto

<sup>212</sup> Philippe Régnier, "The Emerging Concept of Humanitarian Diplomacy: Identification of a Community of Practice and Prospects for International Recognition," *International Review of the Red Cross* 93, no. 884 (2011): 1213.

<sup>213</sup> IFRC, *Strategy 2020: Saving Lives Changing Minds*, (International Federation of the Red Cross and Red Crescent Societies, 2010), 25.

<sup>214</sup> Jonathan Whittall, "'It's Like Talking to a Brick Wall': Humanitarian Diplomacy in the Occupied Palestinian Territory," *Progress in Development Studies* 9, no. 1 (2009): 38.

<sup>215</sup> Régnier, "The Emerging Concept of Humanitarian Diplomacy," 1212.

<sup>216</sup> O’Hagan 2016, 659

contended, “humanitarian diplomacy [is] a prime instrument to navigate the intricacies of humanitarian spaces worldwide.”<sup>217</sup>

Unlike humanitarian negotiation, however, that I have defined as being the purview of humanitarians alone by virtue of their adherence to humanitarian principles (see introduction), humanitarian diplomacy is practiced by a broader range of actors. Larry Minear and Hazel Smith – editors of perhaps the most influential book in the field<sup>218</sup> – argue that humanitarian diplomacy is practiced by humanitarian institutions and personnel, in contrast to traditional forms of diplomacy conducted by national diplomats.<sup>219</sup> Yet the empirical cases in part II of this thesis suggest that traditional diplomatic actors operate through bilateral and multilateral instruments to intentionally shape the environments within which humanitarians negotiate. They do not do so merely by accident, but frequently engage in deliberate and purposive action to advance (or undermine) humanitarian interests – even when not obviously aligned to their own national interests. And other non-traditional actors engage in humanitarian diplomacy, such as HD and Geneva Call. Gregg claimed such organisations step into the space opened up by the structural difficulty of the UN to “play both political and humanitarian roles.”<sup>220</sup>

Humanitarian diplomacy thus differs from traditional diplomacy in its core subjects and objects, I contend, but nevertheless strongly replicates traditional diplomatic practices, employs many traditional modes of diplomacy, and is advanced by both traditional and new diplomatic actors.

<sup>217</sup> Acuto, "On 'Opening' Humanitarian Diplomacy," 268.

<sup>218</sup> Although this is an edited volume of practitioner experiences. And as Régnier noted, there is “no body of literature or specific manual dedicated to humanitarian diplomacy.” See “The Emerging Concept of Humanitarian Diplomacy,” 1215.

<sup>219</sup> Larry Minear and Hazel Smith, "Introduction," in *Humanitarian Diplomacy: Practitioners and Their Craft*, ed. Larry Minear and Hazel Smith (Tokyo, Japan: United Nations University Press, 2007).

<sup>220</sup> Gregg in discussion with author (#17/059104).

## CONCLUSION

Humanitarian negotiation has thus become a central component of humanitarian action due to an expanding humanitarian system and the changing nature of conflict. And humanitarian negotiators are purportedly less powerful than their counterparts, presenting them with a dilemma in which they inevitably must compromise on the principles that define them as humanitarian (chapter 3 tests and affirms this assumption). I have argued that power asymmetry can be analysed through both the negotiation process and its structure, the realities of which are mediated by the perceptions of each party. Finally, an important way in which power within humanitarian negotiation is manifested and transformed is through humanitarian diplomacy, as I demonstrate in part II, and to which I will return in chapter 7.





# CHAPTER 2

## RESEARCH METHOD AND DESIGN

In the previous chapters I focused my research on whether humanitarians can overcome their weak bargaining position to attain more balanced outcomes when negotiating with armed groups. Chapter 1 grounded this research in theory, looking specifically at humanitarianism, power, and diplomacy. This chapter now turns to the question of how to empirically investigate this phenomenon; my research method and design. Section 1 draws on negotiation theory to propose a structural analytic approach to explore the role of power within humanitarian negotiation. Section 2 outlines my overall research strategy, the key design challenges, and details my use of comparative case studies and case illustrations. I also draw on the field of negotiation analysis to narrow the focus of my empirical research. Section 3 presents my research method, focusing on case selection, my use of process tracing and elite interviews, and ethical considerations.

### **1. A STRUCTURAL APPROACH TO POWER AND NEGOTIATION**

I argue in chapter 1 that power within humanitarian negotiation concerns both its structure and process. Unaddressed, however, is the question of *how* to analyse its role within negotiation processes. This section first explores the strengths and weaknesses of a number of analytical approaches employed throughout humanitarian-negotiation literature. I argue that whilst behavioural approaches hold great promise, my focus on power asymmetry is best addressed through a structural analytic framework. Second, I outline the structural analytic approach, describing

its focus on power and the importance of extra-negotiatory tactics that impact the structure of a negotiation and thereby its likely outcomes. Third, I explore some of the strengths and weaknesses of this analytical approach, proposing ways to overcome its limitations.

## 1.1 ANALYTICAL APPROACHES TO HUMANITARIAN NEGOTIATION

Given the nascent body of literature concerned with humanitarian negotiation (see introduction), there are few sources on which to model my research. Humanitarian-negotiation researcher Rob Grace, nevertheless provided a solid foundation with his survey of approaches to the field that attempted to “[marry] the small but growing body of literature on humanitarian negotiation with broader negotiation theory.”<sup>1</sup> He identified a number of analytical approaches, including: integrative (or interest-based); cultural; behavioural; and distributive (or power-based). Below I briefly consider the suitability of each framework in answering my research question.

Policy and practice concerned with humanitarian negotiation has traditionally favoured an integrative or principled model.<sup>2</sup> Negotiation is understood through such an approach as a process of persuasive debate or joint problem-solving that invokes legal, cultural, ethical, or religious norms through which both parties attempt to realise joint gains. Proponents of integrative bargaining argue that it results in wiser, more efficient, and more amicable agreements more often than other forms of negotiation.<sup>3</sup> Grace, however, questioned whether interest-based bargaining is well-suited to identify and resolve the non-material needs that

<sup>1</sup> Grace, *Understanding Humanitarian Negotiation*, 3. Grace also proposes a fifth approach, basic human needs theory that has little practitioner or scholarly support, and so I will not explore its potential here.

<sup>2</sup> Mancini-Griffoli and Picot, *Humanitarian Negotiation*; ALNAP, *Myanmar: Cyclone Nargis: Lessons for Operational Agencies*, (Academic and Research Institution, 19 May 2008); Grace and Wilkinson, *The Role of Laws and Norms in Humanitarian Negotiations*, 16.

<sup>3</sup> Fisher and Ury, *Getting to Yes*, chapter 1.

underpin contemporary armed conflicts (such as protection).<sup>4</sup> He also suggested that each party's needs may be opaque and inaccessible to their opponent (at least at the outset of negotiations) thereby undermining the viability of an integrative approach.<sup>5</sup>

Avruch also challenged the relevance of integrative approaches for disregarding the cross-cultural dimension of humanitarian negotiation.<sup>6</sup> Indeed, a fundamental challenge for humanitarian negotiators is the potential for there to be little overlap between the interests and values of humanitarians and armed groups.<sup>7</sup> Moreover, as even Roger Fisher and William Ury concede (the most renowned proponents of principled negotiation), integrative bargaining offers little guidance for the 'weak' negotiator without leverage over their counterpart, as I contend is usually the case within humanitarian negotiation.<sup>8</sup> Further, under conditions of low trust and limited or contested information (as I will argue in chapter 3 tends to characterise humanitarian negotiations), parties are more likely to adopt distributive strategies.<sup>9</sup> Finally, Wolfe and McGinn's experimental research on bargaining tactics found parties that perceive a high degree of power asymmetry are more likely to engage in distributive behaviour, largely because high-power parties lack the motivation to understand their opponents needs and interests, thereby undermining opportunities for

<sup>4</sup> Grace, *Understanding Humanitarian Negotiation*, 8-9.

<sup>5</sup> Grace, *Understanding Humanitarian Negotiation*, 7.

<sup>6</sup> Avruch, "Culture as Context," 407. See also Raymond Cohen, "An Advocate's View," in *Culture and Negotiation: The Resolution of Water Disputes*, ed. Guy Olivier Faure and Jeffrey Z. Rubin (London: SAGE Publications, 1993), 37; Raymond Cohen, *Negotiating Across Cultures: International Communication in an Interdependent World* (Washington, DC: United States Institute of Peace Press, 1997).

<sup>7</sup> Minear, "The Craft of Humanitarian Diplomacy," 14; Hazel Smith, "Humanitarian Diplomacy: Theory and Practice," in *Humanitarian Diplomacy: Practitioners and Their Craft*, ed. Larry Minear and Hazel Smith (Tokyo, Japan: United Nations University Press, 2007), 37. See also chapter 3.

<sup>8</sup> Fisher and Ury, *Getting to Yes*, chapter 6.

<sup>9</sup> Dean G. Pruitt and Steven A. Lewis, "The Psychology of Integrative Bargaining," in *Negotiations, Social-Psychological Perspectives*, ed. Daniel Druckman (Beverly Hills: USA: Sage Publications, 1977); Walton and McKersie, *A Behavioral Theory of Labor Negotiations*.

creating value through integrative strategies.<sup>10</sup> One can therefore expect a higher propensity for distributive bargaining during humanitarian negotiations, further undermining the reliance of policy and practice on integrative strategies.

The utility of the cultural approach to humanitarian negotiation advanced by Avruch is also limited, however. Zartman dismissed the importance of culture within negotiation analysis as tautological and vague, arguing that cultural issues within negotiation present nothing more than “practical impediments that need to be taken into account (and avoided).”<sup>11</sup> Culture, claimed Zartman and Berman, is peripheral to understanding basic negotiation processes.<sup>12</sup> Indeed, whilst culture may undermine negotiations, its contribution to negotiation analysis is largely couched negatively; it is used to explain why negotiators fail, but rarely provides useful prescriptions for how they can succeed.<sup>13</sup> And while culture undeniably plays a critical role in determining the ways in which bargaining moves are made and received,<sup>14</sup> it has limited utility as a frame for analysing the entire negotiation process, I contend. Moreover, negotiation and inter-cultural theorists Anne Marie Bürlow and Rajesh Kumar acknowledged that cross-cultural research into negotiation is plagued by ‘essentialism’ – that is, a tendency to erroneously attribute certain shared norms or values to a group or organisation. Further, as I conclude in chapter 6, empirical evidence strongly affirms the consistency of dynamics and characteristics of humanitarian negotiation across different cultures and contexts, undermining its utility in framing this research.

<sup>10</sup> Wolfe and McGinn, "Perceived Relative Power."

<sup>11</sup> Zartman, "A Skeptic's View," 19.

<sup>12</sup> Zartman and Berman, *The Practical Negotiator*, 226.

<sup>13</sup> Zartman, "A Skeptic's View."

<sup>14</sup> Cohen, "An Advocate's View."; Salacuse, "Lessons for Practice," 261; Zartman and Berman, *The Practical Negotiator*, 226.

Behavioural analysis, Grace's third approach, holds greater promise. Indeed, one humanitarian-negotiation researcher interviewed for this project rejected the notion that humanitarian negotiation was transactional or a form of bargaining at all, insisting it is inherently relational and built on trust and empathy<sup>15</sup> – a position echoed by Lempereur.<sup>16</sup> Similarly, CCHN emphasised the relational aspects of frontline negotiations, inclining towards a behavioural analytical approach.<sup>17</sup>

A behavioural investigation of negotiation, however, lends itself to analysing processes in which parties are accessible and for whom confidentiality is *not* of paramount concern. Given the secrecy that surrounds humanitarian negotiations, however (see below), I argue that behavioural analysis is not viable for this research. Further, the body of literature on humanitarian negotiation rarely promotes behavioural or relational dimensions, despite their emphasis in policy circles. Moreover, a behavioural focus may be counterproductive. As security consultant Oliver Baconnet cautioned, many humanitarian negotiations are not institutionalised and rely too heavily on personal relations to the detriment of long-term outcomes (see also chapters 4 and 5).<sup>18</sup> Finally, as I argue in chapter 6, an analytical focus on relationships and behaviour provides at best only a partial explanation of the multi-faced nature of humanitarian negotiation processes. Nevertheless, the behaviour of each party, as with culture, undoubtedly influences negotiation processes and outcomes. I shall therefore also consider the impact of any behavioural and cultural dimensions exposed through my empirical research.

<sup>15</sup> Name withheld (humanitarian-negotiation researcher) in discussion with author, Geneva, June 2017 (#17/059103).

<sup>16</sup> Bruderlein et al., *Humanitarian Negotiation in Practice*.

<sup>17</sup> See <https://frontline-negotiations.org>.

<sup>18</sup> Olivier Baconnet, *Humanitarian Negotiation in International NGOs: What are the Limitations of Humanitarian Negotiation for International NGOs? What can they do to Become More Effective?*, (Institut de Relations Internationales et Stratégiques, April 2017), 6.

Grace's final approach is distributive or power-based approaches that consist of incremental concessions as each party attempts to converge towards a shared position (an agreement). Distributive bargaining treats the encounter as inherently zero-sum, leading to inefficient agreements that leave potential value unclaimed when both parties could jointly benefit through less competitive approaches – what Max Bazerman and Margaret Neale, proponents of behavioural and psychological approaches to negotiation analysis, described as a 'fixed-pie bias' that causes negotiators to assume they are in direct competition with their counterparts, leading to inefficient outcomes.<sup>19</sup>

Yet Grace erroneously fused distributive and power-based approaches, I argue, concluding, "the distributive model of negotiation is drastically limited by its rigid, singular focus on power and positions, as well as its limited room for compromise."<sup>20</sup> While power-oriented approaches to negotiation analysis necessarily consider power to be distributive in the sense that improvements in the position of one party entail a deterioration in the relative position of their opponent, they say nothing about the way in which moves are made and value is allocated between parties in the final agreement. Parties may therefore attempt to maximise their power relative to their opponent whilst also pursuing integrative (or mixed) strategies that seek to create value for both. Moreover, Harvard-based negotiation theorist James Sebenius rejected the binary of integrative versus distributive negotiation approaches (or value-creating versus value-claiming), noting "win-win' situations have inseparable 'win-lose' aspects and that 'integrative' bargains also embody 'distributive' aspects."<sup>21</sup> Indeed,

<sup>19</sup> Max H. Bazerman and Margaret A. Neale, "Negotiator Rationality and Negotiator Cognition: The Interactive Roles of Prescriptive and Descriptive Research," in *Negotiation Analysis*, ed. H. Peyton Young (Ann Arbor: University of Michigan Press, 1991), 116.

<sup>20</sup> Grace, *Understanding Humanitarian Negotiation*, 5.

<sup>21</sup> James K. Sebenius, "Challenging Conventional Explanations of International Cooperation: Negotiation Analysis and the Case of Epistemic Communities," *International Organization* 46, no. 1 (1992): 336.

negotiation scholarship recognises that negotiations generally comprise mixed bargaining approaches.<sup>22</sup>

Analysing the role of power within negotiation does not, therefore, necessitate a distributive model. Further, cultural, behavioural, and integrative models of negotiation analysis are deficient for the purposes of this research, I contend. In the following section I advance structural analysis as a viable alternative framework that places power at the centre of negotiation analysis.

## 1.2 STRUCTURAL ANALYSIS AND THE ROLE OF POWER

Structural analysis understands the distribution of power and shifts in its distribution to be *the* key explanatory variables of the outcome of a negotiation.<sup>23</sup> Both the process and the outcome are thus causally linked to a negotiations' structural characteristics.<sup>24</sup> These characteristics might include, *inter alia*, the parties involved, the issues addressed, the language, the rules, the venue, or the timing of a negotiation. But as Sebenius noted, "there is a virtually endless number of plausible contenders for inclusion on the list of factors affecting bargaining power."<sup>25</sup>

But Keohane and Nye cautioned that a structural approach "can lead to facile descriptions of change" if the power resources and structural elements that affect the process are not specified.<sup>26</sup> Indeed, as with

<sup>22</sup> See in particular John S. Odell, "Negotiating from Weakness in International Trade Relations," *Journal of World Trade* 44, no. 3 (2010): 555; Pruitt and Lewis, "The Psychology of Integrative Bargaining."; Walton and McKersie, *A Behavioral Theory of Labor Negotiations*; Charles P. Walcott, Terrence P. Hopmann, and Timothy D. King, "The Role of Debate in Negotiation," in *Negotiations, Social-Psychological Perspectives*, ed. Daniel Druckman (Beverly Hills: USA: Sage Publications, 1977); Schelling, *The Strategy of Conflict*.

<sup>23</sup> Hampson, *Multilateral Negotiations*; Carlos Fernando Diaz-Paniagua, "Negotiating Terrorism: The Negotiation Dynamics of Four UN Counter-Terrorism Treaties, 1997-2005" (PhD dissertation, The City University of New York, 2008), 86.

<sup>24</sup> Kathryn M. Lambert, "Revealing the Process and Outcome of Hostage Negotiations: The Utility of Structural Analysis," *The Social Science Journal* 34, no. 1 (1997): 12.

<sup>25</sup> Sebenius, "Challenging Conventional Explanations," 341.

<sup>26</sup> Keohane and Nye, *Power and Interdependence*, 39.

resource-based conceptions of power (see chapter 1), structural analysts are at risk of focusing on structural characteristics that have no bearing on the impact of a negotiation. Baldwin therefore emphasised the context-specific nature of power resources. He has argued that what constitutes power in one context may be irrelevant (or even a liability) in another.<sup>27</sup> Schelling similarly noted, “some of those cases in which bargaining ‘strength’ inheres in what is weakness by other standards” – a paradox to which I return in chapter 7.<sup>28</sup>

To overcome this obstacle, Habeeb explicitly rejected the realist notion of power as *all* available resources and advanced a multidimensional view of power in which he distinguished between ‘aggregate structural power’ (the composition of an actor’s total resources) and ‘issue-specific structural power’ (an actor’s capabilities relative to another actor on a specific issue or set of issues) – with the latter being most relevant determinant of a negotiated outcome. Habeeb thus treated power resources as relevant only in so far as they are able to impact the negotiation itself, allowing for both the structural and behavioural role of power in which the abilities, skills, and tactics of negotiators matter.<sup>29</sup>

These more refined applications of structural analysis emphasise the dynamic nature of power, where the structure is understood to be fluid rather than fixed.<sup>30</sup> Parties manipulate the bargaining environment (the structure) through, for example, promises, commitments, and threats; by adding, removing, or linking issues; or by adding or removing negotiating parties. These actions change the value negotiating parties attribute to their alternatives, expected benefits, and anticipated costs, thereby altering likely

<sup>27</sup> Baldwin, *Paradoxes of Power*.

<sup>28</sup> Schelling, *The Strategy of Conflict*, 37.

<sup>29</sup> Habeeb, *Power and Tactics*. For a similar distinction between ‘resource power’ (the possessions and resources of an actor) and ‘behavioural power’ (the means through which an actor obtains their desired outcomes), see Keohane and Nye, “Power and Interdependence in the Information Age.”

<sup>30</sup> Habeeb, *Power and Tactics*; Zartman, “The Structure of Negotiation.”; Lambert, “Hostage Negotiations,” 12; Hampson, “Negotiation.”



outcomes.<sup>31</sup> Parties should therefore seek to influence the value of agreements by changing the structure in their favour. As Sebenius insisted, “the parties need not limit themselves to creating and claiming within this fixed configuration; they often move to change perceptions of the game itself.”<sup>32</sup>

Sebenius described these as moves that take place ‘away from the table.’<sup>33</sup> And in a later work with business and negotiation scholar David Lax, he advanced the concept of ‘three-dimensional negotiation’ analysis. This considers first, the bargaining process that takes place at the negotiation table that involves interpersonal dynamics and strategies; second, efforts to create joint value; and third, moves away from the table through which negotiators can change the game to their advantage.<sup>34</sup> These moves away from the table or ‘extra-negotiatory moves’ (the term which I employ) feature also in the concept of ‘co-opetition’ advanced by business strategists Adam Brandenburger and Barry Nalebuff. Brandenburger and Nalebuff advocate for changing the bargaining game itself: “real success comes from actively shaping the game you play,” they argue; “from making the game you want, not taking the game you find.”<sup>35</sup> An early formulation of the concept of extra-negotiatory moves within negotiation scholarship also exists in influential Harvard-based decision theorist Howard Raiffa’s notion of ‘broadening the domain of negotiation’ to generate more profitable solutions when agreement cannot be reached.<sup>36</sup>

<sup>31</sup> Hampson, *Multilateral Negotiations*.

<sup>32</sup> Sebenius, "Challenging Conventional Explanations," 339.

<sup>33</sup> Sebenius, "Challenging Conventional Explanations," 334.

<sup>34</sup> David A. Lax and James K. Sebenius, "Dealcrafting: The Substance of Three-Dimensional Negotiations," *Negotiation Journal* 18, no. 1 (2002).

<sup>35</sup> Adam Brandenburger and Barry J. Nalebuff, *Co-opetition* (New York: Doubleday, 1996), 10.

<sup>36</sup> Howard Raiffa, *The Art and Science of Negotiation* (Cambridge: Harvard University Press, 1982), 130; Howard Raiffa, *The Art and Science of Negotiation* (Cambridge: Harvard University Press, 1982), 130.

These extra-negotiatory tactics are particularly pertinent in the case of asymmetric negotiations. Negotiation and conflict resolution scholar John Odell argued that weak states are able to achieve some degree of success “using astute combinations of negotiation moves at the table and away from the table.”<sup>37</sup> Indeed, much of the game has already been played by the time formal negotiations begin, contended Odell.<sup>38</sup> And structural analysis posits that weak actors should react to their structural disadvantages by adopting bargaining tactics to change the status quo – they should seek to alter the game.<sup>39</sup>

Changes to the structure thus become important determinants of negotiated outcomes. Consequently, international negotiation and conflict resolution analyst Fen Osler Hampson observed, “structural analysts have come over the years to recognise that the strong do not necessarily hold an absolute advantage over the weak, who have at their disposal a number of methods to gain leverage from their inferior power position.”<sup>40</sup> In this way, a structural analytic approach to negotiation considers the resources available to each party that affect the outcome (the structure) and is concerned with the exercise of power (the process), complementing the conceptualisation of power I advanced in chapter 1. Moreover, this structural manipulation of the negotiation game closely resembles the concept of ‘humanitarian levers’ employed in HD's handbook on humanitarian negotiation (see introduction).

Finally, I contend Habeeb’s structural analytic model in which power relations are constituted by alternatives, commitment, and control has been overlooked by negotiation theorists and holds explanatory potential when applied to humanitarian negotiation. Chapter 6 revisits and adapts this

<sup>37</sup> Odell, "Negotiating from Weakness," 545.

<sup>38</sup> Odell, "Negotiating from Weakness," 552.

<sup>39</sup> Hampson, "Negotiation," 18-19.

<sup>40</sup> Hampson, "Negotiation," 15. See also chapter 6.

model to provide greater insight into how parties within humanitarian negotiation change their relative power to reach more favourable outcomes.

### 1.3 THE STRENGTH AND LIMITS OF STRUCTURAL ANALYSIS

Two key attributes have traditionally animated proponents of structural analysis. First, the framework appeals to students of asymmetric negotiations who are frequently preoccupied with the question of why negotiated outcomes do not reflect the power imbalance of the parties involved – the ‘structuralists’s dilemma’ (see chapter 1). Former US diplomat William Howard Wriggins for example, used a structural approach to explain Malta’s hugely successful negotiation with Great Britain over a mutual defence treaty during the 1970s, in which power was heavily weighted in favour of the latter.<sup>41</sup> Habeeb similarly applied a structural analysis to Anglo-Icelandic negotiations over fishing rights, the outcome of which was skewed in Iceland’s favour despite the Nordic country being structurally weaker on most objective counts.<sup>42</sup> Terrorism and security researcher Karthryn Lambert uses a structural approach to hostage negotiation analysis – a field with distinct similarities to humanitarian negotiation<sup>43</sup> – to explore the asymmetric distribution of power between negotiating parties, as with Habeeb and with Wriggins. But Lambert also employs structural analysis to overcome a second limitation of her field of research; the secrecy that is inherent in the process and outcomes of hostage negotiation.<sup>44</sup>

Structural analysis thus offers insight into negotiation processes even within information-poor environments, such as when one or both negotiating parties are inaccessible to the researcher or are unwilling to divulge the terms of trade (the agreement). By focusing on more

<sup>41</sup> Wriggins, "Up for Auction."

<sup>42</sup> Habeeb, *Power and Tactics*, chapter 6.

<sup>43</sup> As noted also in Avruch, "Culture as Context," 40-41. See also chapter 8.

<sup>44</sup> Lambert, "Hostage Negotiations," 14.

empirically-observable structural characteristics – supplemented by behavioural, cultural, and tactical insights, where available – I contend that structural analysis makes the study of humanitarian negotiation viable, where other approaches are not (see chapter 1).

Employing a structural analysis to theorise humanitarian negotiation is thus attractive for two reasons. First, it allows us to research the implications of power and test the presumption of a weak bargaining position from which humanitarians negotiate (see chapter 3). In particular, it offers a framework to understand the potential levers available to humanitarians to influence the structure and thus the likely outcome of a negotiation (see chapter 6). Second, given that structural analysis is concerned with the power dynamics of a negotiation and the factors that affect structure, this allows us to analyse the secretive field of humanitarian negotiation in which limited information is typically available to the researcher.

Structural analysis, however, is not without its critics. Notably, Bazerman and Neale dismiss this approach to negotiation analysis, claiming structural elements are largely fixed and therefore provide limited insight for negotiators looking to realise better outcomes. They further claim that because structural elements are beyond the control of negotiating parties, structural analysis offers only *description* without a basis for *prescription*.<sup>45</sup> Leading humanitarian-negotiation researcher Claude Bruderlein similarly declared structure and power asymmetry within humanitarian negotiations to be immutable:

There is of course a host of other factors that further add to the difficulty of humanitarian negotiations: the fragmentation of counterparts, the radicalisation of groups, political fractures, power imbalances, among many

<sup>45</sup> Bazerman and Neale, "Negotiator Rationality and Cognition."

others. But these factors are a given. There is little humanitarian negotiators can do about them.<sup>46</sup>

Whilst this criticism holds for early structural approaches to negotiation analysis, most contemporary proponents recognise that power is relational and subject to change, as detailed above, and rarely suggest that the structure of a negotiation *determines* the outcome in isolation from other factors. Instead, negotiation theorists who employ structural analytic approaches also recognise the role of skill, tactics, culture, and behaviour.<sup>47</sup> As Zartman noted, “structural elements provide the framework for analysis, from which other elements, such as processes, behaviours, and tactics, follow.”<sup>48</sup> Or in Lambert’s words, it is “the structure that determines the effectiveness of these individual characteristics.”<sup>49</sup> Similarly, game theorist and economist Peyton Young asserted that relative power within a negotiation does not determine a unique outcome; “it merely delimits the range of reasonable outcomes,” within which tactics and behaviour influence the final agreement.<sup>50</sup> Moreover, a key implication of structural analytic approaches, I contend, is that the negotiation game can itself be changed by skilled negotiators, thereby altering the structure in their favour and improving their likely outcome.

A further criticism of the structural approach by Bazerman and Neale is harder to dismiss, however. They claimed that structural analysis is able to empirically explain very little of the actual variation that occurs in a negotiation, such as the offers, concessions, and counter-offers on which

<sup>46</sup> Claude Bruderlein, "Challenges & Dilemmas in Frontline Negotiations: Interview with Claude Bruderlein," *Humanitarian Law & Policy* (blog), 4 January 2018.

<sup>47</sup> Hampson, "Negotiation," 19; Lambert, "Hostage Negotiations," 12; Shlomi Dinar, "Power Asymmetry and Negotiations in International River Basins," *International Negotiation* 14, no. 2 (2009); Marwa Daoudy, "Asymmetric Power: Negotiating Water in the Euphrates and Tigris," *International Negotiation* 14, no. 2 (2009).

<sup>48</sup> Zartman, "The Structure of Negotiation," 76.

<sup>49</sup> Lambert, "Hostage Negotiations."

<sup>50</sup> H. Peyton Young, "Introduction," in *Negotiation Analysis*, ed. H. Peyton Young (Ann Arbor: University of Michigan Press, 1991), 4.

many other forms of analysis rely.<sup>51</sup> Indeed, the focus on structure over substance within negotiation enables this analytical approach to analyse processes in which there is limited information, but this comes at the cost of providing greater insight into negotiator behaviour or bargaining dynamics. Nevertheless, I have argued that structural analysis can recognise the importance of behaviour, tactics, and other factors within the negotiation. A structural analytic approach can therefore benefit by including non-structural elements to corroborate or challenge the analysis, as I demonstrate in the following empirical chapters.

Hampson also raised a number of concerns with structural analysis, dismissing the approach as “an overly reified and simplistic image of international bargaining and negotiation processes, especially in complex, international settings.” First, as I address in chapter 1, he cautioned that the concept of power is “notoriously ambiguous,” thereby undermining the ability of the researcher to infer causal relationships within empirical cases. Second, Hampson claimed structural analysis is poorly-suited to multilateral settings, where the negotiation encounter is often more oriented around rules than power.<sup>52</sup> Again, his point holds. In the following empirical cases, however, I manage the complexity of humanitarian negotiations by treating the process as essentially dyadic (bilateral), thereby sidestepping this issue (I return to consider the validity of this approach in chapter 7). Moreover, Zartman argues there has been little theoretical insight into complex multilateral negotiations in non-rule-based environments.<sup>53</sup> This concern with structural analysis therefore applies equally to most other approaches to negotiation. Hampson’s third critique is that structural analysis neglects the impact of extra-negotiatory dynamics on negotiated outcomes, such as the importance of the two-level game (see

<sup>51</sup> Bazerman and Neale, "Negotiator Rationality and Cognition."

<sup>52</sup> Hampson, "Negotiation," 20.

<sup>53</sup> I. William Zartman, "Multilateral Negotiation," in *Conflict Resolution: Encyclopaedia of Life Support Systems*, ed. Keith William Hipel (Oxford: EOLSS Publishers, 2009).

chapter 3).<sup>54</sup> To the contrary, however, as I argue above, structural analysis has repeatedly demonstrated the importance of extra-negotiatory tactics that change the structure in one party's favour, demonstrating a need to investigate that which affects structure, not simply the structure itself.

Perhaps a greater problem with structural analysis is the multitude of variables that constitute structure, as recognised above. Researchers risk either having an unwieldy number of variables that obscure insight and inhibit cross-case comparison, or they may choose to focus their research on a sub-set of variables at the risk of excluding critical elements of the negotiation. I employ the latter approach, using negotiation analysis and a broad survey of existing literature on humanitarian negotiations to prioritise a range of structural elements to explore within my empirical cases.

Whilst there are several approaches to negotiation analysis that promise significant insight into the field of humanitarian negotiation, few are able to adequately address the role of power within the encounter. Structural analysis, however, places power at the centre of our investigation, focusing on structural components of the negotiation – and efforts by each party to alter them – that are more readily observable to researchers. Structural analysis thus offers enormous potential for research into humanitarian negotiation processes, I contend, and is therefore the framework through which I analyse my empirical cases.

## **2. RESEARCH DESIGN**

Given the paucity of academic attention devoted to the field of humanitarian negotiation, there are few precedents on which to draw to design this research. Nevertheless, research designs and methods employed in other fields of negotiation do provide examples that inform the direction

<sup>54</sup> Hampson, "Negotiation," 19-20.

of this project, as I detail below. In following section, I first outline four key challenges inherent in the study of humanitarian negotiation and propose design choices to mitigate these obstacles. Second, I outline my decision to employ two case studies comparatively, supplemented by a range of case illustrations (or vignettes) drawn from existing literature in the field.<sup>55</sup> Finally, I detail the relevance of a negotiation analytic approach for structuring each case study and identify the key dynamics within each negotiation process on which to focus my empirical research.

## 2.1 OVERCOMING KEY RESEARCH DESIGN CHALLENGES

The design for the empirical component of this project aims to overcome three distinct challenges associated with scholarly investigation of the process of humanitarian negotiation. These include: the lack of a methodological template on which to draw; the dilemma of whether to conduct research during ongoing conflict or after the conclusion of negotiations in an even more information-poor environment; the secrecy and confidentiality that surrounds the process and obscures academic insight into the phenomenon; and the difficulties associated with gathering quantitative data on humanitarian negotiations. These challenges are detailed below.

One key design challenge when researching humanitarian negotiations is their concomitance with armed conflict. Those researching the phenomenon must therefore decide whether to undertake its study alongside active fighting or only after hostilities have subsided. Whilst the latter choice may seem more feasible, relevant data may also be inaccessible once conflict (and negotiations) end. When a given conflict is resolved, humanitarian programming transitions to development activities and peacebuilding work. Those involved in the negotiation process typically

<sup>55</sup> These include, *inter alia*; the Taliban (Afghanistan), UNITA (Angola), Bosnian Serb Army (BiH), Various militia in the DRC, Hamas (Gaza, occupied Palestinian Territories), al-Shebaab (Somalia), SPLM/A (Sudan), and various militia in Syria.



disburse, moving to other crises or taking up new roles in other sectors. And leaders within armed groups may well be in hiding, in exile, they may have been incarcerated, or even killed. There is, therefore, likely to be little institutional memory and limited access to participants and observers from which scholars can collect relevant data. Further, information around specific humanitarian negotiations is rarely made public or even documented by humanitarian organisations (see introduction) – at least not to the level of detail required for this type of analysis. Alternatively, researchers may choose to study current humanitarian-negotiation processes, as I have chosen to do. Yet such studies face their own challenges that are inherent with conducting research during ongoing conflict (see ‘ethical considerations’ below).

A second challenge to humanitarian-negotiation research is the secrecy and confidentiality of the process. Negotiating with armed groups poses significant operational, legal, and reputational risks for humanitarian organisations (see introduction). Humanitarian negotiators are often reticent to publicly reveal the details of negotiated agreements for fear that other groups will use this information against them in future negotiations. These fears “fuel a sense of secrecy,” found Haver and Carter in their multi-country study of access negotiations.<sup>56</sup> Forsythe warned that much of the evidence concerning humanitarian negotiation processes is consequently “locked within the archives” of humanitarian organisations.<sup>57</sup> And for their part, armed groups may not welcome the attention brought by academic investigation or outside interest of any kind. Moreover, those groups with whom humanitarians negotiate access are, almost by definition, in areas that are hard (and likely dangerous) to reach. Secrecy therefore shrouds much of the process of humanitarian negotiation, hindering would-be researchers from analysing the phenomenon.<sup>58</sup> Further, there is a degree of

<sup>56</sup> Haver and Carter, *What It Takes*, 57.

<sup>57</sup> Forsythe, "Humanitarian Mediation by the ICRC," 245.

<sup>58</sup> For parallels with hostage negotiations, see Lambert, "Hostage Negotiations."

secrecy required during ongoing negotiations of any kind. Negotiating parties that reveal too much information about their needs, interests, or security point will likely prejudice the negotiating environment to their detriment. Finally, the cases in which humanitarian negotiations have taken place with armed groups are poorly documented, meaning information within each case is limited and may not be comparable to others. These challenges also undermine the validity of *large-n* studies.

A third challenge is the nature of data on humanitarian negotiations. Quantitative data on this phenomenon are elusive for two key reasons. First, the complex nature of humanitarian negotiation does not easily lend itself to quantification and numerical values. As I demonstrate in the following cases, key variables in determining negotiated outcomes – such as the level of coordination or commitment, group fragmentation, media attention, or the use of third-party power – are difficult to quantify and can fluctuate significantly throughout the duration of each case. Indeed, this is the case within diplomatic scholarship more generally, in which historian Melvin Small cautioned that a “good deal of the richness and subtlety of specific events will be lost as they are categorised and aggregated by unromantic and insensitive coders” (although he conceded that longitudinal and policy-oriented studies can be effectively quantified).<sup>59</sup> Some variables within humanitarian negotiations may also differ between organisations and between programmatic sectors (see chapter 6). Moreover, negotiated outcomes are often ill-defined and fluid, meaning even the independent variable (gains resulting from negotiation) is rarely fixed for long.

The second issue with a quantitative analysis is data collection during ongoing conflict. Data will likely be difficult to standardise either *within* or

<sup>59</sup> Melvin Small, "The Quantification of Diplomatic History," in *Diplomacy: New Approaches in History, Theory, and Policy*, ed. Paul Gordon Lauren (New York: Free Press, 1979), 74-75. See also Zartman, "Multilateral Negotiation," 34.

*between* contexts when employing the comparative method (see below).<sup>60</sup> I therefore contend that whilst these concerns remain with quantitative data, researchers are likely to generate theoretical insights into humanitarian negotiation processes more readily from qualitative research methods.

As a first step to mitigating the impact of these challenges, this study borrows from research conducted in other fields of negotiation. In particular, the use of structural analysis as the analytical framework for this project mirrors its effective use analysing hostage negotiations and conflict resolution processes by researchers facing similar design challenges, as outlined above. Structural analysis thus provides a framework through which publicly-available data can be used to analyse humanitarian negotiations, whilst also allowing for findings to be tested against additional primary data – in this case through elite interviews, as detailed in below.

The second design approach that I use to mitigate the impact of these challenges is to test my findings against the existing body of literature on humanitarian negotiations through case illustrations. These are distinct from case studies in that they rely – for the most part – on single sources and make little attempt to independently verify the observations or lessons contained within (see below). The broad range of case illustrations nevertheless provide a useful sounding board for the observations and lessons gleaned from the two in-depth case studies of Yemen and Myanmar. And as I demonstrate in chapter 6, they present a highly consistent picture of the phenomenon over a wide spectrum of negotiation cases throughout the last quarter of a century.

<sup>60</sup> See for example Rasha Khatib, Rita Giacaman, Umaiye Khammash, and Salim Yusuf, "Challenges to Conducting Epidemiology Research in Chronic Conflict Areas: Examples from PURE- Palestine," *Conflict and Health* 10, no. 1 (2017).

## 2.2 COMPARATIVE CASE STUDIES

The principal empirical component of this research is a comparative study of two cases of humanitarian-negotiation processes with armed groups. By studying multiple instances of the same class of events over a specific period of time, the use of comparative cases allows me to make generalisations between diverse contexts. I supplement this research through case illustrations, as detailed below.

Effective case study research enables theory to be developed that addresses similarities or differences that occur between instances of the same class of events – in this case, humanitarian negotiations with armed groups, as defined in the introduction. For political scientists Alexander George and Andrew Bennett, cases are a “detailed examination of an aspect of historical episode to develop or test historical explanations that may be generalisable to other events.”<sup>61</sup> More simply, ‘cases’ for Zartman are a story of a negotiation as a series of successive encounters.<sup>62</sup>

A particular strength of the case study method is its ability to explore causal mechanisms – that is, to identify the conditions present in a given case that lead to a certain outcome.<sup>63</sup> Well-constructed cases, in the words of political scientist John Gerring, allow the researcher to “peer into the box of causality to locate the intermediate factors lying between some structural cause and its purported effect.”<sup>64</sup> This approach also allows scholars to model and assess complex causal relations and causal chains in a way that may not be possible with other approaches – particularly in an information-poor environment, as in each of my cases. As Gerring noted, for practical

<sup>61</sup> Alexander L. George and Andrew Bennett, *Case Studies and Theory Development in the Social Sciences* (Cambridge, Mass: MIT Press, 2005), 5.

<sup>62</sup> I. William Zartman, "Comparative Case Studies," in *Methods of Negotiation Research*, ed. Peter J Carnevale and Carsten K. W. de Dreu (Martinus Nijhoff Publishers, 2006), 165.

<sup>63</sup> George and Bennett, *Case Studies in the Social Sciences*, 21.

<sup>64</sup> John Gerring, *Case Study Research: Principles and Practices* (New York: Cambridge University Press, 2007), 45.

reasons, case studies are sometimes the most defensible alternative when the researcher is faced with an information-poor environment.”<sup>65</sup>

Yet case study research is plagued by a number of limitations. George and Bennett warned of the dangers of ‘selection bias,’ where the cases chosen prejudice the results of the study. They also cautioned against expectations that case studies can identify *necessary* conditions. Instead, such research reaches only general conclusions that point to factors that are favourable to a given outcome or contribute to a specific result. It is therefore problematic to make definitive assertions regarding causality in any single case. Moreover, determining ‘relative’ causality can be difficult – that is, identifying whether factor A or B is a more significant determinant of the outcome. This is particularly problematic with small-*n* studies – what political scientist Arend Lijphart described as the problem of ‘many variables, small number of cases.’<sup>66</sup> A further limitation of case study research is ‘degrees of freedom,’ in which such studies are unable to discriminate between competing explanations of the same outcome, thereby undermining their ability to generate causal inference.<sup>67</sup> Finally, case study research is vulnerable to questions of representativeness. The theoretical implications generated by researching a case are only valid if the case itself represents other instances of the same class of events.<sup>68</sup>

Despite these limitations, much of negotiation scholarship is built on case study research.<sup>69</sup> But single cases, warned Zartman, tell us little about whether or not a particular process is representative of other cases, and are consequently “of inherently limited utility in producing knowledge about

<sup>65</sup> Gerring, *Case Study Research*, 60.

<sup>66</sup> Arend Lijphart, "Comparative Politics and the Comparative Method," *The American Political Science Review* 65, no. 3 (1971): 685.

<sup>67</sup> George and Bennett, *Case Studies in the Social Sciences*; Donald T. Campbell, "'Degrees of Freedom' and the Case Study," *Comparative Political Studies* 8, no. 2 (1975).

<sup>68</sup> George and Bennett, *Case Studies in the Social Sciences*; Daniel Druckman and Cecilia Albin, "Distributive Justice and the Durability of Peace Agreements," *Review of International Studies* 37, no. 3 (2011).

<sup>69</sup> Zartman, "Comparative Case Studies," 174.

negotiation,” he claimed.<sup>70</sup> While I am more sympathetic to the contribution that can be made by well-designed single case research than Zartman (particularly through careful use of *within-case* comparison or for ‘typical’ and ‘deviant’ cases),<sup>71</sup> the challenges inherent in studying humanitarian negotiation, detailed above, suggest that a single case is unlikely to yield the level of detail and clarity required to develop or test theory. Two (or more cases) are generally considered preferable to demonstrate a broader range of dynamics.<sup>72</sup> The following chapters are therefore built on the comparative method using two cases.

Comparative case studies – that is, the comparison of a small number of cases with the goal of causal analysis<sup>73</sup> – mitigate many of the limitations of single case analysis.<sup>74</sup> The comparative method facilitates comparison both *within* and *between* contexts, allowing for rich theoretical findings. But Gerring and Sartori both warned of the risk of ‘conceptual stretching,’ where cross-unit comparability is lacking, meaning, cases that appear to concern the same class of events may differ in some fundamental aspect that makes them unique.<sup>75</sup> This risk should be reduced, however, if my case selection is tightly confined to my definition of humanitarian negotiation advanced in the introduction.

Due to financial, logistical, ethical, and security challenges inherent in the study of this phenomenon (see below), and mindful of George and Bennett’s maxim that “intensive analysis of a few cases may be more

<sup>70</sup> Zartman, "Comparative Case Studies," 168. See also Lijphart, "The Comparative Method," 691; Campbell, "Degrees of Freedom."

<sup>71</sup> Jason Seawright and John Gerring, "Case Selection Techniques in Case Study Research," *Political Research Quarterly* 61, no. 2 (2008).

<sup>72</sup> Gerring, *Case Study Research*.

<sup>73</sup> David Collier, "The Comparative Method," in *Political Science: The State of the Discipline II*, ed. Ada W. Finifter (Washington DC: American Political Science Association, 1993), 116.

<sup>74</sup> Zartman, "Comparative Case Studies," 169.

<sup>75</sup> Gerring, *Case Study Research*, 50; Giovanni Sartori, "Concept Misformation in Comparative Politics," *The American Political Science Review* 64, no. 4 (1970).

rewarding than a more superficial statistical analysis of many,"<sup>76</sup> I compare only two cases in this dissertation. I draw on negotiation analysis to identify key variables on which to focus my research and to overcome the issue of 'many variables, small number of cases.' To increase the strength of causal claims, however, I use both within-case and cross-case comparisons, and I employ case illustrations to test and refine these findings.

My case illustrations are drawn from the breadth of humanitarian-negotiation literature, from Angola to the former Yugoslavia. It should be acknowledged, however, that the use of case illustrations in chapters 3 and 6 risks falling foul of what diplomatic historian Paul Gordon Lauren describes as "indiscriminately jerk[ing] variables out of their historical or human context."<sup>77</sup> These case illustrations are, for the most part, written by practitioners who document their own negotiation experiences. Most of this literature lacks academic rigour or the perspective brought by external investigation. Yet the paucity and elemental nature of the body of literature in this field leaves early scholarly explorations, such as this, few alternatives but to mine that which has gone before it. And as I conclude in chapter 6, the literature concerned with the practice of humanitarian negotiation is reassuringly consistent. Themes and challenges recur between negotiations held in dissimilar contexts and held with radically different groups. Finally, I believe many of the risks associated with this 'indiscriminate jerking of variables' from their historical context are offset by the in-depth studies and rigorous process tracing I employ in my case research.

<sup>76</sup> Alexander L. George, "Case Studies and Theory Development: The Method of Structured, Focused Comparison," in *Diplomacy: New Approaches in History, Theory, and Policy*, ed. Paul Gordon Lauren (New York: Free Press, 1979), 50. For a contrary position, see Lijphart, "The Comparative Method," 686.

<sup>77</sup> Paul Gordon Lauren, "Diplomacy: History, Theory, and Policy," in *Diplomacy: New Approaches in History, Theory, and Policy*, ed. Paul Gordon Lauren (New York: Free Press, 1979), 4.

As a final note, my work<sup>78</sup> has been criticised for drawing on “outdated cases” that neglect the radical transformation of the humanitarian sector during the 21<sup>st</sup> Century – particularly following the events of 9/11 and the Arab Spring.<sup>79</sup> But despite the radical transformation of the humanitarian sector detailed in chapter 1, I argue that these changes are perhaps not nearly as fundamental as many practitioners believe them to be. On the contrary, many of the challenges and paradoxes faced by the humanitarian sector today are not new, but have been experienced through successive generations and incarnations throughout the 150-year history of the formal international humanitarian system (see chapter 7). And whilst the phenomenon of humanitarian negotiation has grown in importance, I contend that many of the constituent elements and challenges of humanitarian negotiation are constant throughout the quarter of a century of cases drawn on in chapters 3 and 6.

### 2.3 NEGOTIATION ANALYSIS

The concept of humanitarian negotiation, as defined in the introduction, is broad and necessarily imprecise. Consensus has yet to emerge regarding its key subjects and objects, or its core forms and features (see chapter 7). The phenomenon is employed to include frontline negotiations between humanitarian personnel and combatants staffing a checkpoint through to national-level dialogue with the leaders of armed groups. And as I argue in chapter 6, extra-negotiatory moves – including humanitarian diplomacy – are often conducted in New York and Geneva, and can significantly alter the structure and power relations of humanitarian-negotiation processes. To accommodate these varied forms and levels of negotiation, I employ negotiation analysis to focus my research on key structural variables.

<sup>78</sup> Ashley Jonathan Clements, "Overcoming Power Asymmetry in Humanitarian Negotiations with Armed Groups," *International Negotiation* 23, no. 3 (2018).

<sup>79</sup> UN official in discussion with author, Geneva, June 2017 (#17-059107).



Negotiation analysis, as pioneered in by Raiffa, has its roots in mathematics, game theory, and decision analysis.<sup>80</sup> This broad analytical approach studies how negotiators *should* and *could* make joint decisions. It considers issues such as the number of parties and issues at play, variations within parties, linkages with other negotiations, the impact of repeat encounters, and group norms.<sup>81</sup> The field received formal treatment from Young a decade later. Young's collection of essays inspired by Raiffa's work attempted to make the study of negotiation more systematic, unifying its different strands of experimental psychology, game theory, decision theory, economics, and international relations. In the latter half of the book, Young largely abandoned Raiffa's mathematical predisposition.<sup>82</sup> Sebenius evolved the field of negotiation analysis to relax the assumption of a fixed 'game' (what he defines as the setup, structure, or architecture of the negotiation) to allow for negotiators to vary the constituent elements of the negotiation process itself<sup>83</sup> (extra-negotiatory moves). Negotiation theorist Larry Crump extended the field by highlighting the relationship between 'environmental factors' (the context) and the outcome of complex negotiations, arguing that contextual changes affect structure.<sup>84</sup>

In the following empirical chapters, I will build on this body of scholarship and employ a broad negotiation analysis that is structured around three elements: the conflict, the negotiation structure, and the negotiation process. In the first section I identify the key dynamics of the crisis, the drivers of conflict, and the humanitarian impact of the conflict. Second, I will consider the negotiation structure in which I identify key parties, their interests, and detail the evolution of each throughout the period under

<sup>80</sup> For a precursor to negotiation analysis, see Schelling, *The Strategy of Conflict*.

<sup>81</sup> Raiffa, *The Art and Science of Negotiation*, 81.

<sup>82</sup> H. Peyton (ed.) Young, *Negotiation Analysis* (Ann Arbor: University of Michigan Press, 1991).

<sup>83</sup> James K. Sebenius, "Negotiation Analysis: From Games to Inferences to Decisions to Deals," *Negotiation Journal* 25, no. 4 (2009): 462.

<sup>84</sup> Crump in Larry Crump, "Negotiation Process and Negotiation Context," *International Negotiation* 16, no. 2 (2011): 198.

consideration. As humanitarian-negotiation researcher Max Glaser noted, an analysis of the negotiation process “requires a thorough understanding of [armed groups], their underlying interest in engagement, and the manner by which humanitarian actors can influence these interests.”<sup>85</sup> In the third section will I analyse the negotiation process itself, detailing key events, the tactics employed by each party, the outcomes of the negotiation, and the impact of contextual changes. Some of the variables emphasised through negotiation analysis that I explore in the following cases include; the impact of coalitions and coordination; alternatives to negotiation; channels of communication; the use of mediators, third parties, and interlocutors; group coherence and fragmentation; negotiation linkages; and the commitment of negotiating parties. I conclude each case by summarising how power was manifested, perceived, and manipulated throughout the research period to alter negotiated outcomes.

### 3. RESEARCH METHOD

I argued above that a structural analysis of two case studies and a range of case illustrations offers a sound basis from which to generate causal claims on how humanitarian negotiators can reduce their weak bargaining position. In the following section I detail the research method employed in my empirical chapters, including case selection, the use of process tracing, elite interviews, and I conclude with a discussion of key ethical considerations.

#### 3.1 CASE SELECTION

The study of humanitarian-negotiation processes is inherently *hard* by academic standards. The contexts in which these phenomena are situated

<sup>85</sup> Max P. Glaser, *Negotiated Access: Humanitarian Engagement with Armed Non State Actors* (2003), Presentation.

present significant logistical,<sup>86</sup> security,<sup>87</sup> and financial challenges. Ethical considerations are particularly pronounced – both for the researcher and for participants, I argue below.<sup>88</sup> And the environments within which these phenomena occur are invariably fluid and subject to rapid and dramatic change. These cases are also typically information-poor environments, with limited data available of any kind from which to build a case.<sup>89</sup> Further, the field of humanitarian negotiation is itself *hard* to study. It is ill-defined, poorly understood – even by its practitioners – and the phenomenon is shrouded in secrecy and confidentiality that obscures scholarly interrogation. Moreover, the humanitarian sector itself is highly complex and its workings frequently opaque (see chapter 1), further complicating academic insight into the phenomenon in question. Perhaps most significantly, these negotiations directly concern access obstructions that are likely to plague would-be researchers as much (or more) than those

<sup>86</sup> See in particular Julie Norman, "Got Trust? The Challenge of Gaining Access in Conflict Zones," in *Surviving Field Research: Working in Violent and Difficult Situations*, ed. Chandra Lekha Sriram, John C. King, Julie A. Mertus, Olga Martin-Ortega, and Johanna Herman (London & New York: Routledge, 2009); Courtney Radsch, "From Cell Phones to Coffee: Issues of Access in Egypt and Lebanon," in *Surviving Field Research: Working in Violent and Difficult Situations*, ed. Chandra Lekha Sriram, John C. King, Julie A. Mertus, Olga Martin-Ortega, and Johanna Herman (London & New York: Routledge, 2009); Susan M. Thomson, "'That is Not What We Authorised You to Do ...': Access and Government Interference in Highly Politicised Research Environments," in *Surviving Field Research: Working in Violent and Difficult Situations*, ed. Chandra Lekha Sriram, John C. King, Julie A. Mertus, Olga Martin-Ortega, and Johanna Herman (London & New York: Routledge, 2009).

<sup>87</sup> See in particular Julie Mertus, "Maintenance of Personal Security: Ethical and Operational Issues," in *Surviving Field Research: Working in Violent and Difficult Situations*, ed. Chandra Lekha Sriram, John C. King, Julie A. Mertus, Olga Martin-Ortega, and Johanna Herman (London & New York: Routledge, 2009); Dyan Mazurana and Lacey Andrews Gale, "Preparing for Research in Active Conflict Zones: Practical Considerations for Personal Safety," in *Research Methods in Conflict Settings: A View from Below*, ed. Dyan E. Mazurana, Karen Jacobsen, and Lacey Andrews Gale (New York: Cambridge University Press, 2013).

<sup>88</sup> See in particular Carolyn Gallaher, "Researching Repellent Groups: Some Methodological Considerations on How to Represent Militants, Radicals, and Other Belligerents," in *Surviving Field Research: Working in Violent and Difficult Situations*, ed. Chandra Lekha Sriram, John C. King, Julie A. Mertus, Olga Martin-Ortega, and Johanna Herman (London & New York: Routledge, 2009).

<sup>89</sup> See in particular Gallaher, "Researching Repellent Groups."; Lee Ann Fujii, "Interpreting Truth and Lies in Stories of Conflict and Violence," in *Surviving Field Research: Working in Violent and Difficult Situations*, ed. Chandra Lekha Sriram, John C. King, Julie A. Mertus, Olga Martin-Ortega, and Johanna Herman (London & New York: Routledge, 2009).

seeking to provide humanitarian assistance. Cases of humanitarian negotiation are thus hard to study, I argue, as is the phenomenon itself.

To manage these challenges, my comparative study is built on two cases. First, chapter 4 examines the humanitarian negotiation process with the Houthi Movement in Yemen from mid-2015 to mid-2017. I focus particularly on access to and protection for the residents of the strategically important city of Taizz – the county’s third largest city that saw some of the most intense and prolonged violence of the conflict. Second, chapter 5 explores negotiations held with the Kachin Independence Army (KIA) in Myanmar’s northern Kachin State. The study spans five years from the beginning of the latest round of fighting in mid-2011 to mid-2016, when progress stalled. I selected these cases primarily on their viability and representativeness, as detailed below.

Case selection during research of this nature is influenced by opportunity just as it is by methodological considerations. Indeed, conflict and development researcher Jonathan Goodhand acknowledged that case study selection in conflict zones is “largely an inductive, iterative and to an extent opportunistic process.”<sup>90</sup> Behavioural scientists John Carroll and Eric Johnson similarly conceded, the “choice of cases depends critically upon access” when conducting research in active conflict zones.<sup>91</sup> Further, I argue that a valid stimulus for research is personal experience. Indeed, it is my professional experience that gave rise to the very research question that underpins this project. I therefore prioritised cases in which I had first-hand experience, as with both Yemen and Myanmar.<sup>92</sup> This proved invaluable in managing the complexity of my research. It also allowed me to

<sup>90</sup> Goodhand, *Aiding Peace?*, 17.

<sup>91</sup> John S. Carroll and Eric J. Johnson, *Decision Research: A Field Guide* (Newbury Park: Sage Publications, 1990), 39.

<sup>92</sup> I worked with an international humanitarian NGO and the UN for nearly two years in Yemen from 2010 to 2012. I also worked on humanitarian responses in Myanmar on three separate occasions for an international NGO and the United Nations (2004, 2008, and 2013), including six months posted to Kachin State, the focus of my second case.

more easily identify and access key participants and to foster a degree of trust with interviewees that might otherwise have been impossible. My own experience working in each case therefore made necessarily-hard cases more feasible.<sup>93</sup>

For my cases to be considered viable, they also had to be ongoing at the time of research to ensure sufficient data was available to build a case. Even recently-concluded cases would likely no longer be viable, I argue above. This significantly limited the pool of researchable cases (see appendix II). Further, each case had to involve a relatively consistent armed group with whom humanitarian negotiators had engaged regularly over time. Such consistency was necessary to control the number of variables and to allow me to investigate the tactics employed by each negotiating party over time as well as their impact on negotiated outcomes. Attempts to trace and analyse any particular negotiation process would have been undermined by any group whose territorial control and composition changed regularly throughout the research period. This ruled out groups operating in the Syria conflict, for example, in which, by one estimate, there were over 1,000 armed groups operating in the country in late 2013, the composition of which shifted frequently, as did their allegiances and territorial control.<sup>94</sup>

Case selection must nevertheless be rigorous and defensible, and should ensure the findings are not prejudiced in such a way as to invalidate their theoretical implications. My cases have therefore been chosen as representative of the broader class of events that exhibit variations that make them worth studying. Further, each case is independent of the other to allow for valid cross-case comparisons.<sup>95</sup> Moreover, in the interests of

<sup>93</sup> David Richards, "Elite Interviewing: Approaches and Pitfalls," *Politics* 16, no. 3 (1996); Robert Mikecz, "Interviewing Elites: Addressing Methodological Issues," *Qualitative Inquiry* 18, no. 6 (2012); Radsch, "From Cell Phones to Coffee."; Norman, "Got Trust?."

<sup>94</sup> "Guide to the Syrian Rebels," *BBC News*, 13 December 2013. See also ICG, *Rigged Cars and Barrel Bombs: Aleppo and the State of the Syrian War*, (International Crisis Group, 9 September 2014), 18.

<sup>95</sup> See in particular Gerring, *Case Study Research*.

reaching broader theoretical conclusions, I have chosen cases in which outcomes on the dependent variable are alike (that is, significant gains result from negotiation), while they also exhibit important differences in independent variables (see table 1 below).<sup>96</sup> Additionally, the dependent variable fluctuates over time in each case, allowing for *within-case* comparisons.

<sup>96</sup> For a critique of this approach see Barbara Geddes, "How the Cases You Choose Affect the Answers You Get: Selection Bias in Comparative Politics," *Political Analysis* 2 (1990): 148-149.

**Table 1: Overview of key characteristics by case**

	<b>Al-Houthi Movement (Yemen)</b>	<b>Kachin Impedence Army (Myanmar)</b>
<b>Region</b>	Arabian Peninsula	Southeast Asia
<b>Identity</b>	Muslim (Zaydi/Shia)	Christian (Baptist)
<b>Key drivers of conflict</b>	Sectarian; elite power struggle	Identity; ethnic; religious; historical
<b>Scale of humanitarian needs</b>	18.8m in need of assistance; <sup>97</sup> 200,000 in Taizz enclave <sup>98</sup>	127,000 in need of assistance; 92,000 displaced <sup>99</sup>
<b>Duration of conflict (as of mid-2017)</b>	2 years	55 years
<b>Scale of response (2017)</b>	\$2.3bn <sup>100</sup>	\$150m (country-wide) <sup>101</sup>
<b>Relationship with civilians</b>	Hostile	Interdependent
<b>Access constraints</b>	High	Moderate
<b>Protection violations</b>	High	Moderate
<b>Geopolitical interest</b>	Moderate/high	Low
<b>International engagement</b>	High	Low
<b>Negotiated outcomes</b>	Mixed; improving	Initial successes; worsening
<b>Nature of conflict</b>	High-intensity; largely urban; stagnant	Low-intensity; rural; sporadic
<b>Level of humanitarian coordination</b>	Low, increasing	High, reducing
<b>Attitude to international humanitarian norms</b>	Inconsistent; worsening	Supportive rhetoric; mixed in practice

<sup>97</sup> OCHA, *Yemen 2017 Humanitarian Response Plan*, (Yemen Humanitarian Country Team, January 2017), 4.

<sup>98</sup> Al Jazeera, "UN Accuses Houthis of Blocking Aid into Yemen's Taiz," *Al Jazeera*, 26 November 2015.

<sup>99</sup> OCHA, *Myanmar 2018 Humanitarian Needs Overview*, (Myanmar Humanitarian Country Team, November 2017), 13 and 13.

<sup>100</sup> See <https://fts.unocha.org> (last accessed 1 August 2018).

<sup>101</sup> Country-wide request includes areas beyond Kachin, see <https://fts.unocha.org> (last accessed 1 August 2018).

Finally, I selected cases that allow for significant empirical contributions. Although a central contention of this thesis is that the process of humanitarian negotiation is under-researched by both practitioners and academics (see introduction), certain cases have received greater attention than others. Both cases chosen here are under-represented within the literature (see appendix II).

### 3.2 PROCESS TRACING

This research relies on ‘process tracing’ to suggest plausible causal pathways based on a detailed analysis of each case. Process tracing was defined by its most influential proponents, Bennett and George, as “attempts to trace the links between possible causes and observed outcomes.”<sup>102</sup> It aims to describe – or at least, to suggest – the existence of causal pathways; that is, to propose how certain variables combine to create a given outcome. For political scientist David Collier, process tracing consists of a detailed processual analysis of the events of a particular case over time to evaluate whether the dynamics of that case are plausibly reflected in other cases. Collier also suggested that it can consist of a series of *within-case* observations.<sup>103</sup> When analysing the phenomenon of humanitarian negotiation, this technique allows me to construct the series of events and encounters that constitute the negotiation process to enable analysis and generate insight into the perceptions and actions of negotiating parties. I use process tracing both comparatively – between the case of Yemen and Myanmar – and within each case, as tactics, interests, and outcomes vary over time.

I use both primary and secondary data to substantiate my process tracing in the following case studies. My primary data consists of elite interviews (see below), supplemented by secondary data that includes an analysis of the political context, the conflict dynamics, the humanitarian needs, and the

<sup>102</sup> George and Bennett, *Case Studies in the Social Sciences*, 13.

<sup>103</sup> Collier, "The Comparative Method."



core interests of each armed group. As Gerring stressed, process tracing must be situated in a detailed analysis of the case itself.<sup>104</sup> This secondary data is derived from a combination of media reporting, public statements by negotiating parties and observers or commentators, reports by humanitarian and political organisations, and some limited academic research on each case. Yet process tracing in the context of *hard* cases and a *hard* research topic, such as this, does not lend itself to the development of a scientific causal model. I instead propose a *possible* causal pathway, but cannot entirely exclude competing explanations of the same phenomena. Further, the outcomes of the negotiations in each case vary over time, and both of the processes I investigate continue beyond the research period. These dynamics further complicate the analysis and the theoretical insights I draw.

### 3.3 ELITE INTERVIEWS

Elite interviews are well-suited to process tracing. They are particularly relevant to the study of high-level political processes for which other forms of data collection may be of limited value.<sup>105</sup> Elite actors are often critical and unique sources of information, and are by definition, “major player[s] in an event.”<sup>106</sup> Elite interviews are exceptionally well-suited to academic study of this phenomenon, I argue, given the closed, secretive, and confidential nature of key elements of many humanitarian negotiations.

I held interviews with participants from two main groups: key humanitarian personnel (negotiators, advisors, or managers) and ‘observers’ (well-placed individuals with insight into the negotiation process, such as senior members of the diplomatic corps in each country,

<sup>104</sup> Gerring, *Case Study Research*, 48.

<sup>105</sup> See in particular Jeffrey M. Berry, "Validity and Reliability Issues in Elite Interviewing," *PS: Political Science and Politics* 35, no. 4 (2002).

<sup>106</sup> Oisín Tansey, "Process Tracing and Elite Interviewing: A Case for Non-probability Sampling," *PS: Political Science & Politics* 40, no. 4 (2007): 766; Richards, "Interview Approaches and Pitfalls."

conflict and political analysts, country experts, or non-humanitarian UN staff, see appendix III). I conducted the bulk of research on Yemen during a research trip to Amman, Jordan in June 2017, where a UN-led humanitarian coordination hub for Yemen was established in early 2015 and where most of the diplomatic corps covering the country was also based. I conducted most research on Kachin during a research trip to Yangon in August 2017, where most senior staff from international humanitarian organisations were based. I conducted further interviews with humanitarian personnel and policy experts in Geneva, Switzerland in June and July 2017, and held a number of additional interviews remotely with participants in other locations.

Interviews generally lasted at least 45 minutes, consisting of largely open-ended questions,<sup>107</sup> and were semi-structured to allow for consistent data without prematurely narrowing the discussion (see appendix IV for the information sheet provided to participants).<sup>108</sup> I transcribed conversations at the time of interview, consisting of both summary notes and verbatim quotes. I then analysed interviews manually and tested the claims of participants with extensive secondary data to produce what social scientist David Richards describes as “a powerful research package.”<sup>109</sup>

I initially planned to interview members or representatives of armed groups to gain a more comprehensive picture of the negotiation process and to test each negotiating party’s assumptions about their counterparts.<sup>110</sup> This option ultimately proved unworkable, however, following travel restrictions

<sup>107</sup> Joel D. Aberbach and Bert A. Rockman, "Conducting and Coding Elite Interviews," *PS: Political Science and Politics* 35, no. 4 (2002).

<sup>108</sup> Beth L. Leech, "Asking Questions: Techniques for Semistructured Interviews," *PS: Political Science & Politics* 35, no. 4 (2003).

<sup>109</sup> Richards, "Interview Approaches and Pitfalls," 204.

<sup>110</sup> For an example of this approach see Jackson, *Humanitarian Negotiations with ANSAs*.

to Yemen imposed by the Saudi military coalition<sup>111</sup> and escalating hostilities in KIA-territory.<sup>112</sup>

My reliance on elite interviews does, however, present a number of limitations. First, by definition they are unrepresentative.<sup>113</sup> Thus, if the selection process is flawed, the findings may also be skewed or limited. Further, given resource constraints, access and identification issues, and regular refusals by prospective participants, I was unable to interview all relevant subjects. A third challenge is the potential for interviewees to misremember or misrepresent events or respond in ways that deceive the interviewer. Participants may also be inconsistent in their positions and responses, potentially undermining their contribution. Finally, power relations are well-recognised to be unequal between elites and the researcher.<sup>114</sup> Power can affect not only access to participants, but the interview itself as well as the analysis and use of the data it generates.

To mitigate these limitations, I attempted to build trust with participants to improve the quality of responses, to reduce the power imbalance, and to increase the number of participants. Richards emphasised the importance of building trust and leveraging personal or professional networks to overcome some of the limitations of elite interviews.<sup>115</sup> Similarly, management researcher William Harvey noted that access to participants is highly dependent on serendipity and social networks; “researchers should

<sup>111</sup> Sana’a airport was closed by the Coalition in August 2016 to all flights except those carrying UN-approved humanitarian personnel. See Karen McVeigh, “Yemen’s Health Ministry says Airport Closure has Cost Nearly 10,000 Lives,” *The Guardian* (2017). As of mid-2018 the airport remained closed. There were no other legal routes into Houthi-controlled areas, and there was no official Houthi representation abroad through which to apply for permission to travel.

<sup>112</sup> RFA, “New Clash Between Ethnic Militia and Myanmar Troops Begins in Kachin State,” *Radio Free Asia*, 5 July 2017.

<sup>113</sup> Richards, “Interview Approaches and Pitfalls.”

<sup>114</sup> Gareth Rice, “Reflections on Interviewing Elites,” *Area* 42, no. 1 (2010); Steinar Kvale and Svend Brinkmann, *InterViews: Learning the Craft of Qualitative Research Interviewing* (Los Angeles: SAGE, 2008).

<sup>115</sup> William S. Harvey, “Strategies for Conducting Elite Interviews,” *Qualitative Research* 11, no. 4 (2011); Mikecz, “Interviewing Elites.”; Leech, “Techniques for Semistructured Interviews.”

try and pursue as many avenues as possible, including using their own social networks.”<sup>116</sup> I therefore drew on my professional experience in the sector and in each context to build trust, and leveraged my own professional network to identify and access prospective interviewees. Further, I based interview sampling for this research on reputational criteria (or ‘purposive sampling’) and chain-referral (or ‘snowball sampling’). I used reputational criteria to identify the most appropriate participants based on their knowledge and insight into the negotiation process and the extent of their involvement in each case.<sup>117</sup> I then relied on chain-referral to gain access to key participants that were previously inaccessible or unknown to me.<sup>118</sup>

### 3.4 ETHICAL CONSIDERATIONS

“Ethical issues permeate interview research,” insisted psychologists Steinar Kvale and Svend Brinkmann, due to an inherent tension between the pursuit of knowledge and ethics.<sup>119</sup> This tension is even more pronounced when conducting research *in* and *on* conflict, I suggest. One key ethical issue touched on above is the asymmetric power relationship between researcher and participant that tends to favour the latter. Knowledge generated from each encounter is dependent on that relationship, and is therefore “co-constructed,” claimed Kvale and Brinkman.<sup>120</sup> But the researcher also exercises power over the participant in so far as they are requested to respect confidentiality, and the interviewer must make deliberate choices regarding what to include or exclude when presenting the findings. Whilst there is perhaps no panacea to the asymmetric relationship between researcher and participant, recognising this dynamic

<sup>116</sup> Harvey, "Conducting Elite Interviews," 203.

<sup>117</sup> Berry, "Elite Interviewing."

<sup>118</sup> Tansey, "Process Tracing and Elite Interviewing."; Kenneth Goldstein, "Getting in the Door: Sampling and Completing Elite Interviews," *PS: Political Science & Politics* 35, no. 4 (2002).

<sup>119</sup> Kvale and Brinkmann, *InterViews*, 16.

<sup>120</sup> Kvale and Brinkmann, *InterViews*, 18.

is an important step to maintaining the integrity of the research process. Moreover, given the centrality of perceived power and power asymmetry throughout this research, it is incumbent upon me to make explicit the central role of power within the data collection and analysis process as well.

A second key ethical concern relates to confidentiality. At their request, I refrain from identifying most participants in the following chapters. Many chose to withhold even the name of their organisation for fear of jeopardising the institutional relationship with the armed group in question or damaging their organisation's reputation with the public or their funders. Some were concerned to avoid incurring legal sanction through anti-terror legislation, or compromising field operations and negotiation processes of which their headquarters had little knowledge. The majority of participants from the humanitarian sector also declined to be identified as either UN or NGO personnel, preferring the more generic label of 'humanitarian worker' or similar. Some participants chose not to be attributed at all, speaking only on background. These are not listed in appendix II. I also took care to ensure interviews were held in locations that did not place participants at risk. I took further efforts to store transcripts securely and to code interviews to guard against revealing the identify of participants.

Third, my need for informed consent from participants was integral to approach this research ethically. I provided each participant with an information sheet in advance of the interview that offered an overview of the research project, affording them also the opportunity to raise questions or concerns (see appendix IV). Participants then provided either written or oral consent and chose how (or if) they wished to be identified (see appendix V). I made no audio recordings of any interview due to confidentiality concerns.

Unforeseen security developments derailed plans to conduct research inside Yemen and in rebel-held areas of Kachin State, as detailed above, thereby lessening some of the ethical challenges I faced.

## CONCLUSION

Due to limitations inherent in this field of study, I have argued in this chapter that the strength of causal inference in the following cases is weaker than some other areas of scholarly investigation allow. A particular challenge is the absence of data from within armed groups themselves. As I established above, however, cases of humanitarian negotiation are hard to study, as is the process itself. The field of humanitarian negotiation will therefore benefit greatly from further academic attention to refine and revise some of what follows. Nevertheless, the subsequent chapters contribute to the field by analysing the negotiation process in two contexts that have received insufficient academic or practitioner attention. Moreover, despite the methodological challenges outlined above, the empirical analysis of the phenomenon in question remains highly consistent between this comparative case study and the existing academic and practitioner literature, as I will demonstrate in chapter 6, lending weight to my findings.

# **PART II**

## **THE PRACTICE OF HUMANITARIAN NEGOTIATION**





# CHAPTER 3

## THE NEGOTIATOR'S WEAK HAND

This thesis has repeatedly drawn an analogy between humanitarian negotiation and a game of poker. Chapter 2 equated the cards and chips of poker to the structure of a negotiation and likened a player's moves to the bargaining process – although unlike the fixed rules of a card game, I claim that negotiators can (and should) work to change the game itself. In the introduction I also quoted a UN official who likened humanitarian negotiation to being dealt a weak hand from a stacked deck. Moreover, chapter 2 detailed how much of the literature in the field assumes that humanitarians negotiate from a position of weakness (either implicitly or explicitly), leading to unbalanced agreements that favour armed groups. This chapter tests this hypothesis. I employ case illustrations drawn from existing case studies over the last three decades (see appendix II) and argue that humanitarian negotiators do indeed face a disadvantage when negotiating with armed groups.

As I acknowledged in chapter 2, however, the use of case illustrations in this chapter is at risk of developing theory from the weak empirical foundations of methodologically-questionable single sources. Nevertheless, I will conclude in chapter 6 that these case illustrations are highly consistent with one another, as they are with negotiation theory more broadly. These findings therefore create a strong basis from which to infer causal relationships, particularly when combined with my in-depth case studies in chapters 4 and 5.

## 1. SOURCES OF POWER ASYMMETRY

In the following section I draw on existing literature on humanitarian negotiations to contend that humanitarian negotiators do indeed face a structural disadvantage when negotiating with armed groups. This weak bargaining position, I argue, can be attributed to six key factors: competing interests; the limits of international law; competing notions of fairness; asymmetric dependence; weak alternatives to negotiation; and the negotiation process itself. I supplement these findings with my empirical cases from Yemen (chapter 4) and Myanmar (chapter 5).

### 1.1 COMPETING INTERESTS

Competition between parties is inherent in all forms of negotiation. As I argued in chapter 2, however, a key challenge for the humanitarian negotiator is the tendency for there to be little overlap between their interests and those of the armed groups with whom they seek agreement. As Barnett and Weiss recognised, armed groups “often care more about their immediate political objectives than they do about the lives of innocents.”<sup>1</sup> This dynamic often undermines agreements, encourages armed groups to negotiate in bad faith, and increases pressure on humanitarians to make heavy concessions that result in highly unbalanced agreements. But competition during humanitarian negotiation also occurs *between* and *within* humanitarian organisations (ingroup competition), further weakening their negotiating position. Moreover, competition also arises between humanitarians and international political or security actors (outgroup competition) to the detriment of negotiated agreements, as I detail below.

<sup>1</sup> Barnett and Weiss, *Humanitarianism Contested*, 17.

### ***Ingroup competition***

First, humanitarian organisations seeking access and promoting the protection of civilians often compete with one another. The humanitarian system is characterised by independent actors and a diffusion of power (see chapters 1 and 7). Achieving coherence – let alone coordination – in humanitarian negotiation is consequently a frequent challenge for negotiators. A 2001 UN report on the protection of civilians recognised this challenge:

Driven by differing mandates and interests, international agencies often negotiate access independently, thereby diminishing the effectiveness of their own and other agencies' response. Duplication of effort, and the manipulative behaviour of warring parties, can jeopardise fragile access agreements.<sup>2</sup>

Weiss also recognised the impact of this internal competition: “individual agencies that cut their own deals with those who are gatekeepers to victims essentially up the ante for other agencies.”<sup>3</sup>

In triadic negotiations between the UN, the Sudanese government, and the armed opposition movement (the SPLM/A) during the 1990s, the lack of coordination among humanitarian actors significantly weakened the humanitarian negotiating position, concluded humanitarian practitioner and academic Masood Hyder. Driving competition between humanitarians, he asserted, was the clash between humanitarian and human rights approaches, and the lack of support or clarity from headquarters.<sup>4</sup> Humanitarian analyst Antonio Galli similarly contended that despite the recognition among humanitarian actors of the need for a common policy covering negotiations with Hamas over access to Gaza, “the varying

<sup>2</sup> Security Council, S/2001/331, para 25.

<sup>3</sup> Weiss, *Humanitarian Business*, 116.

<sup>4</sup> Masood Hyder, “Nurturing Humanitarian Space in Sudan,” in *Humanitarian Diplomacy: Practitioners and Their Craft*, ed. Larry Minear and Hazel Smith (Tokyo, Japan: United Nations University Press, 2007), 245.

positions of different organisations" proved too significant for agreement to be reached.<sup>5</sup>

This dynamic builds on political scientist Robert Putnam's concept of a two-level game – that is, the notion that international negotiations take place both domestically to generate support and internationally in search of agreement.<sup>6</sup> In Yemen too, competition among agencies undermined coordination and allowed them to be played off against one another, negatively affecting humanitarian access. The overcrowded negotiation space allowed their counterparts in the Houthi movement to effectively 'shop around' for more malleable or weaker partners (see chapter 4). Hoffman and Weiss cautioned that in many war zones such competition risks exposing the sector to rampant manipulation and weakens the humanitarian bargaining position.<sup>7</sup>

Yet even highly centralised negotiations led by a single UN agency can face a conflict of interest that undermines negotiated outcomes. In Bosnia, the United Nations High Commissioner for Refugees (UNHCR) was the lead agency and therefore responsible for collective humanitarian negotiations. Even with this centralised system, however, competing priorities became apparent and internal divisions undermined the humanitarian negotiating position. As Cutts recalled, "those responsible for negotiating humanitarian access with the warring parties often contradicted and undermined each other."<sup>8</sup>

A similar dynamic emerged in Yemen during the Saada Wars, where OCHA's negotiators experienced a tension between their responsibility to negotiate access and the terms that their constituents (other humanitarian

<sup>5</sup> Antonio Galli, "Negotiating Humanitarian Access with Hamas in Gaza," *Humanitarian Exchange Magazine* 58 (2013): 18.

<sup>6</sup> Robert D. Putnam, "Diplomacy and Domestic Politics: The Logic of Two-Level Games," *International Organization* 42, no. 3 (1988).

<sup>7</sup> Hoffman and Weiss, "Humanitarianism and Practitioners," 270.

<sup>8</sup> Cutts, *The Humanitarian Operation in Bosnia*, 23.

agencies) were willing to accept (see chapter 4). Walton and McKersie recognised this as the tension a negotiator faces between their role as 'bargainer' and that of 'representative' – what they term the 'boundary role conflict'.<sup>9</sup> This tension is perhaps more pronounced during humanitarian negotiation than many other forms of negotiation (such as trade negotiations or arbitration) because concessions are seen as a refutation of ingroup standards – specifically, of humanitarian principles (see introduction).<sup>10</sup>

Divisions are also seen *within* humanitarian organisations themselves. Agencies can be internally divided when staff have differing political allegiances or are from different ethnic groups, leading to inconsistency and confusion during negotiations.<sup>11</sup> Large agencies can also have multiple mandates, meaning they may have responsibilities for development and peacebuilding work as well as running humanitarian operations. These different mandates often compete with one another (see chapter 7).<sup>12</sup> In Angola, UN official Anna Richardson observed that 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 peace talks, and the two became blurred in the eyes of combatants. As prospects for peace broke down, the linkages between humanitarian assistance and

<sup>9</sup> Walton and McKersie, *A Behavioral Theory of Labor Negotiations*, 283. See also I. William Zartman, "Two's Company and More's a Crowd: The Complexities of Multilateral Negotiation," in *International Multilateral Negotiation: Approaches to the Management of Complexity*, ed. I. William Zartman (San Francisco: Jossey-Bass Publishers, 1994); Daniel Druckman, "Boundary Role Conflict: Negotiation as Dual Responsiveness," *Négociations* 10, no. 2 (2008): 147.

<sup>10</sup> Daniel Druckman, *Human Factors in International Negotiations: Social-Psychological Aspects of International Conflict* (Beverly Hills: Sage Publications, 1973), 44-47.

<sup>11</sup> Mark Cutts, "Negotiating with Warring Parties," *Refugee Survey Quarterly* 18, no. 3 (1999): 44.

<sup>12</sup> See also Duffield, *Global Governance and the New Wars*.

the peace process ultimately undermined humanitarian negotiations, she concluded.<sup>13</sup>

### ***Outgroup competition***

The second element of competition that leads to power asymmetry arises between humanitarians and political or security actors. Whilst the rhetoric and language of humanitarianism is employed by a range of actors during armed conflict, its central interests are frequently subsumed by other concerns, I argue in chapter 1. Cutts, for example, claimed 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.”<sup>14</sup> Nicholas Morris, UNHCR Special Envoy to the former Yugoslavia (1993-1994, 1998-1999), similarly lamented the perversion of humanitarian interests for military and political ends, insisting, “the humanitarian operation was at times simultaneously a vehicle for and subordinated to the political concerns of [involved] governments.”<sup>15</sup> The negotiating position of humanitarian organisations was therefore, “extremely weak,” he concluded,<sup>16</sup> and humanitarian assistance was consequently provided largely along population lines rather with little regard for needs.<sup>17</sup>

This tension is evident also in my case study on Myanmar, where the UN’s national political agenda took precedence over humanitarian concerns in

<sup>13</sup> Richardson, *Negotiating Humanitarian Access in Angola*.

<sup>14</sup> Cutts, *The Humanitarian Operation in Bosnia*, 25.

<sup>15</sup> Nicholas Morris, “The Balkans: The Limits of Humanitarian Action,” in *Humanitarian Diplomacy: Practitioners and Their Craft*, ed. Larry Minear and Hazel Smith (Tokyo, Japan: United Nations University Press, 2007), 267.

<sup>16</sup> Morris, “The Limits of Humanitarian Action,” 267.

<sup>17</sup> Thirty per cent 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. See Cutts, “Negotiating with Warring Parties,” 44. It should be noted, however, that Morris maintained that assistance throughout the Bosnian operation was calculated predominantly on the basis of needs. See Morris, “The Limits of Humanitarian Action,” 364-365.

Kachin State (see chapter 5). Minear also recognised this tension, insisting “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.”<sup>18</sup> Morton and O’Hagan likewise cautioned that the alleviation of suffering typically remains “subordinate” to broader political aims.<sup>19</sup>

Further, the post-9/11 US-led military operation in Afghanistan saw humanitarian action co-opted by political and security interests. The United Nations Assistance Mission in Afghanistan was the test case for a new strategic model that integrated politics and aid structures, “with politics firmly in the driving seat,” claimed humanitarian researcher Xavier Crombé and humanitarian practitioner Michiel Hofman.<sup>20</sup> And, as Hyder noted with respect to negotiations in Sudan “there exists... a hierarchy of intent, and humanitarian concerns are seldom at the top.”<sup>21</sup> This tension between humanitarian and political concerns can also be seen in Angola where former British diplomat and UN Special Representative Margaret Anstee was tasked with conducting both political and humanitarian negotiations, “but in practice, was completely occupied with trying to mediate an end to the fighting,” observed Richardson.<sup>22</sup>

These linkages between humanitarian negotiations and other negotiation processes often go deeper and play a more significant role than they do in many other forms of negotiation, I suggest. Bosnian Serb forces, for example, tied humanitarian issues to their political agenda, claimed Morris,

<sup>18</sup> Minear, "The Craft of Humanitarian Diplomacy," 14.

<sup>19</sup> Morton and O’Hagan, "Humanitarianism Then and Now: Exploring the Boundaries of Civil-Military Relations in a Post-9/11 World".

<sup>20</sup> Xavier Crombé and Michiel Hofman, "Afghanistan: Regaining Leverage," in *Humanitarian Negotiations Revealed: The MSF Experience*, ed. Claire Magone, Michaël Neuman, and Fabrice Weissman (London: Hurst & Company, 2011), 52.

<sup>21</sup> Hyder, "Nurturing Humanitarian Space in Sudan," 243.

<sup>22</sup> Richardson, *Negotiating Humanitarian Access in Angola*, 9.

"offering or agreeing to local concessions that in effect conditioned assistance to one side on meeting the political demands of the other."<sup>23</sup>

Further, humanitarians often come under pressure *not* to engage on humanitarian issues with certain groups for fear of conferring legitimacy or undermining political processes, as occurred with the KIA (see chapter 5) and al-Shebaab in Somalia (see also introduction and chapter 7).<sup>24</sup>

Competition thus undermines the prospects of collective bargaining among humanitarian organisations and may lead to humanitarian issues being instrumentalised in service of political or security agendas.

## 1.2 THE LIMITS OF INTERNATIONAL LAW

The UN handbook on negotiating with armed groups recognised that many humanitarian negotiators “feel” their negotiating position to be weak, but questioned this assumption: “the provisions of international law and the demonstrated willingness of the UN Security Council, international legal courts and tribunals to hold armed groups accountable for their actions can strengthen the position of humanitarian actors during negotiations.”<sup>25</sup>

Indeed, IHL establishes the right of civilians in need to receive humanitarian assistance and for humanitarian organisations to engage conflict parties to this end (subject to certain conditions detailed in appendix II). Secretary-General Ban therefore suggested, “lives can be saved by engaging armed groups in order to seek compliance with international humanitarian law.”<sup>26</sup> But humanitarian negotiators routinely experience the limits of international law first-hand, as detailed throughout this thesis. This leads to failed negotiations, unbalanced agreements, and

<sup>23</sup> Morris, "The Limits of Humanitarian Action," 256-257.

<sup>24</sup> Metcalfe et al., *UN Integration and Humanitarian Space*, 31.

<sup>25</sup> Mc Hugh and Bessler, *Humanitarian Negotiations with Armed Groups*, 39.

<sup>26</sup> United Nations Security Council, *Report of the Secretary-General on the Protection of Civilians in Armed Conflict, S/2010/579* (2010).



violence against civilians and humanitarian personnel alike. These limits, I argue, result from three distinct failings in the application or applicability of international law itself.

First, the tenets of international law itself are underdeveloped with respect to armed groups.<sup>27</sup> And whilst regulation of armed groups has progressed over recent years – particularly through Customary IHL (the rules of IHL generated by general practice that are accepted as law without formally existing within treaties), accountability for breaches of IHL has not kept pace with these developments.<sup>28</sup>

Indeed, there are few effective compliance mechanisms with which to pressure armed groups to live up to their obligations or adhere to past commitments. For example, no prosecution on the grounds of constraining or obstructing humanitarian access has yet been attempted by the International Criminal Court (ICC, the intergovernmental organisation with jurisdiction to prosecute grave violations of international law, established by the Rome Statute of 1998). Further, the prohibitions within the Rome Statute regarding arbitrary access denial do not apply to NIAC.<sup>29</sup> As contemporary conflicts are predominantly non-international (see chapter 1), the Court's limited legal powers do little to deter those who illegally constrain humanitarian access in the cases considered throughout these chapters.<sup>30</sup>

Second, many armed groups have little exposure to international norms or see little value in adhering to them. Some constrain access and threaten humanitarian personnel as a deliberate strategy and may even benefit from

<sup>27</sup> Bailes and Nord, "Non-State Actors in Conflict: A Challenge for Policy and for Law," 449.

<sup>28</sup> Mastorodimos, *Armed Actors in IHL and IHRL*, 116.

<sup>29</sup> United Nations, *Rome Statute of the International Criminal Court*, 17 July 1988), arts 8(c) and 8(e). See also appendix I.

<sup>30</sup> Phoebe Wynn-Pope, "Humanitarian Access in International Humanitarian Law: The Case of Syria and Security Council Resolution 2139 (2014)," in *Accountability for Violations of International Humanitarian Law*, ed. Jadranka Petrovic (Cornwall: Routledge, 2016).

intentionally targeting civilians (see chapter 1).<sup>31</sup> Morris noted during the Bosnia conflict, “suffering was deliberately inflicted on civilians as a means to achieve political ends.”<sup>32</sup> Either out of ignorance or choice, a number of armed groups do not feel bound by the tenets of IHL, claimed Pascal Bongard when interviewed for this project, Programme Director and Policy Advisor at Geneva Call (an NGO that promotes respect for international humanitarian norms among armed groups).<sup>33</sup> In the case of the KIA, the group had limited awareness of international norms related to civilian protection. But its civilian constituents had even less exposure to IHL and thus did not hold the group to account, I argue in chapter 4. Moreover, Grace and Wilkinson contended that receptivity to IHL among armed groups is partially determined by the group’s strategic interests and proximity to frontlines, where exposure to greater levels of violence and animosity undermine the value of legal argumentation.<sup>34</sup>

Third, 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.<sup>35</sup> Kachin rebels, for example, paid only lip-service to international humanitarian norms, taking few active measures to protect civilians in accordance with IHL (see chapter 4). Moreover, overt references to IHL can undermine negotiated outcomes by alienating armed groups, concluded Grace and Wilkinson.<sup>36</sup> And international law can also be exploited to deny access by invoking a party’s right of consent or by a bad-faith rejection of the applicability of IHL to the given context, they

<sup>31</sup> Glaser, *The Parameters of Negotiated Access*.

<sup>32</sup> Morris, "The Limits of Humanitarian Action," 357.

<sup>33</sup> Pascal Bongard (Programme Director and Policy Advisor, Geneva Call) in discussion with author, Geneva, June 2017 (#17/059105).

<sup>34</sup> Grace and Wilkinson, *The Role of Laws and Norms in Humanitarian Negotiations*.

<sup>35</sup> Glaser, *The Parameters of Negotiated Access*, 10.

<sup>36</sup> Grace and Wilkinson, *The Role of Laws and Norms in Humanitarian Negotiations*.

cautioned (see also chapter 1).<sup>37</sup> Ongoing violations of international humanitarian law by states also significantly undermine respect for international norms by armed groups. The brutality of the Arab Coalition in Yemen reduced pressure on the Houthis to comply with IHL, I argue in chapter 3, just as routine human rights abuses by Myanmar's military reduced the leverage of humanitarian negotiators over rebel forces (see chapter 4).

There are distinct limits on the power of legal argumentation in humanitarian negotiation. The legal basis from which humanitarians negotiate carries little weight in most contemporary armed conflicts, despite its centrality within theory and policy.<sup>38</sup> Indeed, seventeenth century French diplomacy theorist François de Callières concluded as much with regard to negotiations more broadly: "the art of negotiating... has a greater power over the conduct of men than all the laws that have been invented."<sup>39</sup> Field-tested organisations consequently know from experience, claimed Maurer, that both legal and ethical arguments are of "limited use in the midst of battlefields."<sup>40</sup> Further, most negotiators concede that in practice, international law is rarely invoked and is likely to have little effect on the power relations that disadvantage humanitarian negotiators.

### 1.3 COMPETING NOTIONS OF FAIRNESS

Another aspect of humanitarian negotiation that disadvantages humanitarians relates to competing notions of fairness (or justice) between humanitarian actors and armed groups. The concept of justice in a negotiation can be understood as procedural or distributive – that is, in

<sup>37</sup> Grace and Wilkinson, *The Role of Laws and Norms in Humanitarian Negotiations*. See also chapter 6 for a discussion of 'lawfare' and the manipulation of international law by parties to a conflict.

<sup>38</sup> Steven R. Ratner, "Law Promotion Beyond Law Talk: The Red Cross, Persuasion, and the Laws of War," *European Journal of International Law* 22, no. 2 (2011).

<sup>39</sup> François de Callières, *The Art of Diplomacy*, ed. H. M. A. Keens-Soper and Karl W. Schweizer (New York: Leicester University Press, 1983), 73.

<sup>40</sup> Maurer, "A Critical Review of the Challenges and Opportunities of Humanitarian Access".

terms of the process or end-state.<sup>41</sup> 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 or those of its constituents. Humanitarians, however, are wedded to a procedural concept of justice grounded in IHL and humanitarian principles (see introduction). Armed groups and humanitarian negotiators thus approach issues through their own distinct (and often contradictory) normative lenses, and the values and interests of each are often profoundly incompatible (see chapter 2).<sup>42</sup> A ‘normative dissonance’ therefore often exists, in which each party is motivated by conflicting principles and values that undermine prospects for reaching agreement.<sup>43</sup>

This tension introduces problems for negotiators, particularly when humanitarian needs are more pronounced among the constituents of one party to the conflict than another. 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, suggested Cutts, as it was “in keeping with the socialist traditions to which people were accustomed.”<sup>44</sup> Or it may have been both tactical as well as an authentic position.<sup>45</sup> Negotiations in Angola with rebel movement União Nacional para a Independencia Total de Angola (UNITA) took a similar turn when the group demanded an even share of relief between

<sup>41</sup> Young, "Negotiator Rationality and Negotiator Cognition."; Cecilia Albin, "The Many Faces of Justice in International Negotiations," *International Negotiation* 20, no. 1 (2015).

<sup>42</sup> Mancini-Griffoli and Picot, *Humanitarian Negotiation*, 25.

<sup>43</sup> Bruderlein, "Frontline Negotiations". See also Druckman et al. on ‘cognitive conflicts’ that consists of conflicts of ideas, values, ideologies, and policies, in Daniel Druckman, Richard Roselle, and Kathleen Zechmeister, "Conflict of Interest and Value Dissensus: Two Perspectives," in *Negotiations: Social-Psychological Perspectives*, ed. Daniel Druckman (Beverly Hills: Sage Publications, 1977).

<sup>44</sup> Cutts, *The Humanitarian Operation in Bosnia*, 15.

<sup>45</sup> Albin suggests that arguments grounded in concepts of justice are likely to be partly tactical and partly authentic, in Albin, "The Many Faces of Justice in International Negotiations," 52. See also Druckman et al. who investigate ‘mixed’ situations in which there is an interplay between values and interests, in Druckman et al., "Conflict of Interest."

their own territory and that held by government forces, despite humanitarian needs being more pronounced in the latter. Negotiators were unable to reconcile these competing notions of fairness and talks eventually broke down.<sup>46</sup>

The impact of this normative dissonance within humanitarian negotiation should not be overstated, however. With respect to Islamic groups in particular, humanitarian researcher Nouria Briki insisted there is a “clear compatibility between the legal framework upon which Western humanitarianism is based, and Muslim legal tradition.”<sup>47</sup> She claimed that opposition to western humanitarian organisations is “a political problem, not a religious one.”<sup>48</sup> Indeed, limited successes negotiating access with militant Islamic groups in Yemen, Syria, and elsewhere add weight to such claims (see chapters 4, 6, and 7).<sup>49</sup>

But unlike other types of negotiation that can entail a discrete conclusion in the form of an immediately-implementable agreement (such as hostage negotiations or a business transaction) the outcome of humanitarian negotiations must be maintained over time – often over many years. Richardson documented 10 years of negotiations between humanitarian actors and government and rebel forces in Angola.<sup>50</sup> And Crombé and Hofman’s account of the negotiations of one aid group in Afghanistan spans over thirty years.<sup>51</sup> As negotiated outcomes must be durable, trust and fairness become fundamental components of the negotiation. This also limits the tactics and options available to humanitarian negotiators. Undue

<sup>46</sup> Richardson, *Negotiating Humanitarian Access in Angola*.

<sup>47</sup> Nouria Briki, "Is Cultural Proximity the Answer to Gaining Access in Muslim Contexts?," *Humanitarian Exchange Magazine* 29 (2005): 45.

<sup>48</sup> Briki, "Cultural Proximity," 44.

<sup>49</sup> See also Jean-Hervé Bradol, "Comment les Humanitaires Travaillent Face à Al-Qaïda et l'Etat Islamique [How Humanitarians Work in the Face of al-Qaeda and the Islamic State]," *Médiapart* (2015).

<sup>50</sup> Richardson, *Negotiating Humanitarian Access in Angola*.

<sup>51</sup> Crombé and Hofman, "Regaining Leverage."

pressure or strategies that result in outcomes perceived to be too heavily weighted in favour of humanitarian interests are unlikely to be upheld over time.

#### 1.4 ASYMMETRIC DEPENDENCY

Successful negotiation requires ‘interdependence’ between prospective parties – that is, the belief that each can benefit from reaching a negotiated agreement. This approximates one of the most fundamental concepts within negotiation theory, that of a zone of possible agreement (ZOPA, the theoretical range within which a deal can satisfy both parties, also referred to as ‘common ground’ or the ‘bargaining range’).<sup>52</sup> A ZOPA only exists within a negotiation if there is the potential for an agreement that improves upon each party’s BATNA (see chapter 1). But more than the *theoretical* existence of a ZOPA, parties must *perceive* there to be the potential for an agreement that offers more value than their alternatives to negotiation (see chapter 2); that is, they must perceive there to be interdependence.

Yet interdependence within a negotiation is not binary. One party may be more dependent on reaching agreement to satisfy their interests than their counterpart, creating an ‘asymmetry of dependence.’<sup>53</sup> This is frequently the case for humanitarian negotiations, I contend, in which humanitarians often perceive themselves to be heavily reliant on their counterpart to realise their interests. In contrast, armed groups may believe that they stand to gain more from violating international norms than from negotiating adherence to these norms.

In Angola, for example, UNITA were initially receptive to negotiation during the early 1990s. Richardson attributed early success to the group’s desire to support its constituents and enhance its international standing. But amid intensified hostilities, strategic losses, and international

<sup>52</sup> See in particular Fisher and Ury, *Getting to Yes*.

<sup>53</sup> Baldwin, *Paradoxes of Power*; Wolfe and McGinn, "Perceived Relative Power."

condemnation, the rebels became increasingly unconcerned by either their public image or the welfare of Angolan civilians. Interdependence thus waned over time at the cost of negotiated outcomes.<sup>54</sup> Negotiations in Yemen took a similar turn, I argue in chapter 4. The Houthis initially sought international legitimacy during the Saada Wars and were consequently receptive to humanitarian negotiation. By mid-2015, however, international condemnation had alienated the rebel movement, which then perceived there to be few reasons to negotiate amid escalating hostilities.

In contrast, access negotiations in Myanmar were seen by Kachin rebels to be of value to the group by enhancing their legitimacy and reducing the burden of caring for displaced civilians (what I describe as 'substitution' in chapter 6). The KIA were therefore highly receptive to international demands related to the delivery of humanitarian assistance. Yet interdependence appears to have been far lower for protection-related negotiations, likely due to limited awareness of international norms among Kachin civilians and their strong support for maintaining combat effectiveness – even at the cost of compliance with international norms (see chapter 5).

Humanitarian negotiations are therefore frequently characterised by unequal levels of dependency. Humanitarians generally perceive themselves to be more dependent on armed groups for realising their objectives than armed groups perceive that they need humanitarians to achieve their goals. Armed groups often perceive that they have little to gain from negotiating. Or they enter into negotiations in bad faith. This asymmetry places humanitarian negotiators in a particularly weak position and may mean negotiations do not take place at all until interdependence grows.

<sup>54</sup> Richardson, *Negotiating Humanitarian Access in Angola*.

## 1.5 WEAK ALTERNATIVES

Alternatives are an important source of power within negotiation. A party with stronger alternatives is more likely to be in a position to press their counterpart into making concessions.<sup>55</sup> Hopmann consequently noted, “those states with more attractive alternatives... are more likely to [claim] a larger share of the value being distributed within negotiations.”<sup>56</sup>

Humanitarians face two principal alternatives to negotiating with armed groups; developing alternative access modalities or withdrawal. But both alternatives are exceptionally weak, I contend, often compelling humanitarian negotiators to accept unbalanced agreements.

The first alternative to negotiation for humanitarians is to employ alternative modalities for accessing and protecting affected populations that are not predicated the consent of armed groups. These may include *inter alia*, remote management (using local partners on the ground to implement humanitarian activities), 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. In both of my case studies in chapters 4 and 5, humanitarian organisations used local partners and cash-based or voucher assistance to reach civilians.

Each of these approaches, however, faced serious limitations and was only viable under strict conditions that are often absent during ongoing conflict. Air drops, for example, still require staff on the ground to ensure they reach the right people and are not misappropriated.<sup>57</sup> Moreover, humanitarian practitioner Joe Belliveau cautioned that remote management can undermine programme quality, accountability, and can transfer risk to national staff.<sup>58</sup> Local partners may also be bound up in the dynamics of the

<sup>55</sup> Fisher and Ury, *Getting to Yes*.

<sup>56</sup> Hopmann, *The Negotiation Process and the Resolution of International Conflicts*, 119.

<sup>57</sup> Peter Giugni, "What You Need to Know about Humanitarian Airdrops," *Intercross Blog* (blog), 13 April 2016.

<sup>58</sup> Joe Belliveau, *Red Lines and Al-Shabaab: Negotiating Humanitarian Access in Somalia*, (Norwegian Peacebuilding Resource Centre, NOREF, March 2015). See also Michaël



conflict and pose ethical concerns for humanitarians (see chapter 5). Or they may simply lack the capacity to operate at the scale needed to reach all conflict-affected communities. In certain contexts, one or more of these alternatives may be viable. But the experience of humanitarian negotiators drawn on throughout this thesis suggests these alternatives rarely overcome the need to negotiate, nor do they fundamentally transform the power relations that disadvantage humanitarians.

The second alternative that is (theoretically) available during any type of negotiation is withdrawal. Indeed, a distinguishing characteristic of negotiations recognised in scholarship is the formal equality of parties — the right of veto. Either party can withdraw from a negotiation when their BATNA is preferable to the proposed agreement.<sup>59</sup> Thus, if humanitarians believe the cost of negotiation is too high, they may withdraw and wait for contextual changes that introduce new opportunities for engagement. But ethical constraints often bind humanitarian actors to unpalatable agreements. A medical humanitarian NGO operating in Myanmar, for example, was forced to accept increasingly arduous restrictions on their operations for fear that withdrawal would lead to the deaths of hundreds of existing patients reliant on treatment.<sup>60</sup> As Minear wrote, “the withdrawal of humanitarian operations can represent a victory for principle or a defeat for the agencies and their needy clientele.”<sup>61</sup>

Alternatively, humanitarian negotiators may threaten to suspend operations if certain conditions are not met (‘conditionality’), as attempted

Neuman and Benoît Leduc, "Somalia: Everything is Open to Negotiation," in *Humanitarian Negotiations Revealed: The MSF Experience*, ed. Claire Magone, Michaël Neuman, and Fabrice Weissman (London: Hurst & Company, 2011).

<sup>59</sup> Zartman, "Diplomacy and Negotiation."

<sup>60</sup> Fiona Terry, "Myanmar: 'Golfing with the Generals'," in *Humanitarian Negotiations Revealed: The MSF Experience*, ed. Claire Magone, Michaël Neuman, and Fabrice Weissman (London: Hurst & Company, 2011), 120.

<sup>61</sup> Minear, "The Craft of Humanitarian Diplomacy," 18.

in Liberia.<sup>62</sup> But withdrawal and conditionality run counter to the underlying principles on which humanitarian action is predicated (see introduction). Toole therefore cautioned that these are inherently weak alternatives in which “those with the greatest need often suffer disproportionately.”<sup>63</sup>

Further, the competitive nature of the sector (see chapter 1) means that if one agency withdraws, another is likely to take its place. Rieff detailed how the tight control by militia groups of aid to Rwandan Hutu refugees in 1994 led to almost a dozen NGOs withdrawing. But other NGOs quickly stepped in to take over their operations, rendering the move somewhat symbolic, he suggested.<sup>64</sup> For Weiss, withdrawal therefore constitutes “a fairly hollow threat in a marketplace brimming with competitors.”<sup>65</sup>

Yet, withdrawal may not even be an option in some contexts. Humanitarian agencies in Bosnia were denied their fallback position when their decision to suspend operations was overridden by Secretary-General Boutros-Ghali. UNHCR suspended operations in Bosnia in early 1993 amid failing negotiations with the Bosnian Serb Army. But the decision was immediately overturned by Boutros-Ghali, and operations reluctantly resumed within days.<sup>66</sup> Withdrawal is thus a poor last resort – if indeed it is an option at all – and is consequently a source of significant weakness for humanitarian negotiators. Indeed, Avruch concluded that there is no real BATNA during humanitarian negotiation; “all the alternatives are bad ones, and inaction becomes unthinkable.”<sup>67</sup>

<sup>62</sup> Philippa Atkinson and Nicholas Leader, *The 'Joint Policy of Operation' and the 'Principles and Protocols of Humanitarian Operation' in Liberia*, (Overseas Development Institute, March 2000), 7.

<sup>63</sup> Toole, *Humanitarian Negotiation*, 10.

<sup>64</sup> Rieff, "The Humanitarian Trap," 10.

<sup>65</sup> Weiss, *Humanitarian Business*, 118.

<sup>66</sup> Cutts, *The Humanitarian Operation in Bosnia*, 5.

<sup>67</sup> Avruch, "Culture as Context."

## 1.6 THE PROCESS: THE STACKED DECK

Finally, the process of negotiating access and protection is itself weighted against humanitarian interests in five main ways, I argue: the reliance of humanitarian personnel on armed groups for their safety, time pressures, humanitarian staff turnover, negotiation precedents, and armed group fragmentation.

First, the safety of humanitarian negotiators and the communities they seek to assist is usually in the hands of their negotiation counterparts.<sup>68</sup>

Humanitarian organisations require security guarantees from the very parties to the conflict with whom they are negotiating, placing them at a distinct disadvantage. This dynamic constrains the strategies available to humanitarians as escalation tactics, aggressive behaviour, or withdrawal from the negotiation may place humanitarian personnel in jeopardy.

Second, time often works against humanitarian actors. Humanitarian negotiators frequently have limited time within 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.<sup>69</sup>

Even when armed groups do perceive there to be value from negotiating, time pressures are likely to be more pronounced for humanitarians. Amid the half-century-old Kachin conflict detailed in chapter 5, for example, the KIA pursued long-term strategic goals and was therefore under little pressure to reach an immediate agreement. Moreover, the perceived value of the alternatives available to humanitarian organisations declines rapidly in an ongoing conflict, thereby strengthening the relative power position of armed groups and placing humanitarian negotiators at a distinct structural disadvantage. Raiffa identified this dynamic within other fields of

<sup>68</sup> Cutts, "Negotiating with Warring Parties," 43.

<sup>69</sup> Toole, *Humanitarian Negotiation*.

negotiation, concluding, “the bargainer who is willing to wait longer, to probe more patiently, to appear less eager for a settlement will be more successful.”<sup>70</sup> Thus, as the scale of needs grow, humanitarian organisations come under increasing pressure (from their headquarters, the media, as well as driven by their own desire to assist civilians) to make concessions and yield to demands that may not otherwise seem tenable.<sup>71</sup>

A third element of the negotiation process that weakens the position of humanitarians is the rapid turnover of staff. Humanitarian operations are regularly high-stress, take place in insecure environments. Consequently, they often involve a rapid build-up of capacity and a reliance on skilled international personnel whose involvement may be short-lived. This dynamic undermines negotiations in two main ways. First, staff turnover limits the development of trust between negotiators, thereby undermining prospects for reaching an agreement, as occurred in both Yemen (see chapter 4) and Bosnia.<sup>72</sup> Bruderlein identified this lack of trust as “one of the greatest hurdles to [humanitarian] negotiations.”<sup>73</sup>

It is important not to over-emphasise trust, however, which appears necessary but not sufficient to reach agreement. Prior relationships and trust built over years of humanitarian operations in rebel-held northern Yemen proved to be of limited value, I contend in chapter 4, when the Houthis seized control of the capital and reneged on previous access arrangements.

The second impact of staff turnover is the loss of institutional memory among humanitarian actors. Humanitarian negotiations in Yemen were effectively reset with new waves of humanitarian personnel who failed to build on previous agreements with Houthi rebels, I argue (see chapter 4).

<sup>70</sup> Raiffa, *The Art and Science of Negotiation*, 78.

<sup>71</sup> Grace, *Understanding Humanitarian Negotiation*, 5.

<sup>72</sup> Cutts, "Negotiating with Warring Parties," 44; Morris, "The Limits of Humanitarian Action," 359.

<sup>73</sup> Bruderlein, "Frontline Negotiations".

Moreover, staff rotation limits the extent to which humanitarian negotiators become culturally competent, adapting to the tactics and accommodating the interests of their counterparts, argued Avruch.<sup>74</sup> When negotiators or managers change frequently, armed groups may seize the opportunity to renegotiate points on which agreement had previously been reached, as also occurred in Bosnia, Angola, and Yemen.<sup>75</sup> Finally, humanitarians may also be inconsistent in their positions and messaging, further undermining negotiated agreements.<sup>76</sup>

A fourth issue related to process is precedent. Humanitarians repeatedly negotiate access and protection both within a single context over time, as well as in other contexts with other groups. Humanitarian negotiators fear that concessions made to one armed group may well be used to force a similar concession elsewhere. They are thus never negotiating a single set of issues in a single context. Rather, concessions and agreements must be evaluated in light of their impact on future agreements here and elsewhere (see chapter 2). Forsythe noted that humanitarians are thereby limited in any negotiation by their concern for the outcome of future negotiations, meaning agreements must adhere to principles whilst also considering the impact of precedent.<sup>77</sup>

A fifth 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.<sup>78</sup> Even identifying the relevant negotiating

<sup>74</sup> Avruch, "Culture as Context."

<sup>75</sup> Cutts, *The Humanitarian Operation in Bosnia*; Richardson, *Negotiating Humanitarian Access in Angola*.

<sup>76</sup> Jackson, *Humanitarian Negotiations with ANSAs*.

<sup>77</sup> Forsythe, "Humanitarian Mediation by the ICRC," 244.

<sup>78</sup> Antonio Donini, "Negotiating with the Taliban," in *Humanitarian Diplomacy: Practitioners and Their Craft*, ed. Larry Minear and Hazel Smith (Tokyo, Japan: United Nations University Press, 2007), 156.

party can prove challenging. As political scientists Norman Padelford and George Lincoln noted, “merely establishing communication as a preliminary to possible negotiation can be a delicate operation fraught with hazards.”<sup>79</sup> In Sierra Leone, aid agencies were unable to make contact with the Revolutionary United Front.<sup>80</sup> And in Afghanistan, regime collapse in 1992 led to shifting alliances and confusion that undermined negotiations.<sup>81</sup>

There may also be a disconnect between different factions within an armed group, between political and military leaders, or between senior leadership and field commanders. In Bosnia, for example, a formal agreement committing to facilitate humanitarian access was signed by the leadership of key armed groups in 1993, but “had little effect on the local military and civilian leadership and even less on those at the check-points,” noted Morris.<sup>82</sup> This ‘fragmentation’ between leadership and field commanders was evident also in Yemen, I contend in chapter 4. Moreover, Jackson and Giustozzi described the Taliban in Afghanistan as a having a weak centre in which a directive from the group’s leadership was “subject to varying interpretations.”<sup>83</sup> Finally, humanitarian researcher and practitioner Antonio Galli noted that the political leadership within Hamas had little influence over the group’s paramilitaries, thereby undermining prospects of negotiating access and the protection of civilians.<sup>84</sup>

<sup>79</sup> Padelford and Lincoln, *The Dynamics of International Politics*, 325.

<sup>80</sup> Security Council, S/2001/331, para 16.

<sup>81</sup> Donini, "Negotiating with the Taliban," 155-156; Crombé and Hofman, "Regaining Leverage."

<sup>82</sup> Morris, "The Limits of Humanitarian Action," 362.

<sup>83</sup> Ashley Jackson and Antonio Giustozzi, *Talking to the Other Side: Humanitarian Engagement with the Taliban in Afghanistan*, (Overseas Development Institute, December 2012), 16.

<sup>84</sup> Galli, "Negotiating Humanitarian Access with Hamas in Gaza."

## CONCLUSION

Drawing on my case studies and case illustrations, I conclude that humanitarian negotiations are indeed characterised by power asymmetry. Humanitarians routinely negotiate from a position of weakness relative to armed groups, as suggested throughout much of the literature. This frequently leads to excessive compromises and unbalanced agreements that disadvantage humanitarian interests. It is important to note, however, that armed groups also face structural weaknesses when negotiating with humanitarians. Many of these groups enjoy only limited capacity to negotiate. Others are not familiar or conversant in the modes and methods through which multilateral institutions and the diplomatic systems operate. Armed groups may also have limited platforms and allies through which to mobilise support during a negotiation. Nevertheless, I argued above that humanitarians are more dependent on armed groups to realise their own interests than armed groups are dependent on humanitarians. The weaknesses facing armed groups will therefore usually serve to deter negotiation at the expense of humanitarian norms, I suggest, rather than prejudice negotiated agreements against the interests of armed groups.

But perhaps the greatest weakness faced by humanitarian organisations is their reticence to negotiate with armed groups at all. When interviewed for this research, Bongard described the “chilling effect” of self-censorship on humanitarian negotiations – particularly for groups designated as ‘terrorist.’<sup>85</sup> Raphael Gorgeau, Policy Director at the International Council of Voluntary Agencies (ICVA, an alliance of humanitarian NGOs), similarly insisted many INGOs are not comfortable or well-placed to play the role of negotiator, and are consequently dependent on the UN for access negotiations.<sup>86</sup> Indeed, many humanitarian organisations do not have a communication channel to armed groups, claimed Gregg from the Centre

<sup>85</sup> Bongard in discussion with author (#17/059105).

<sup>86</sup> Raphael Gorgeau (Policy Director, International Council of Voluntary Agencies) in discussion with author, Geneva, June 2017 (#17/059109).

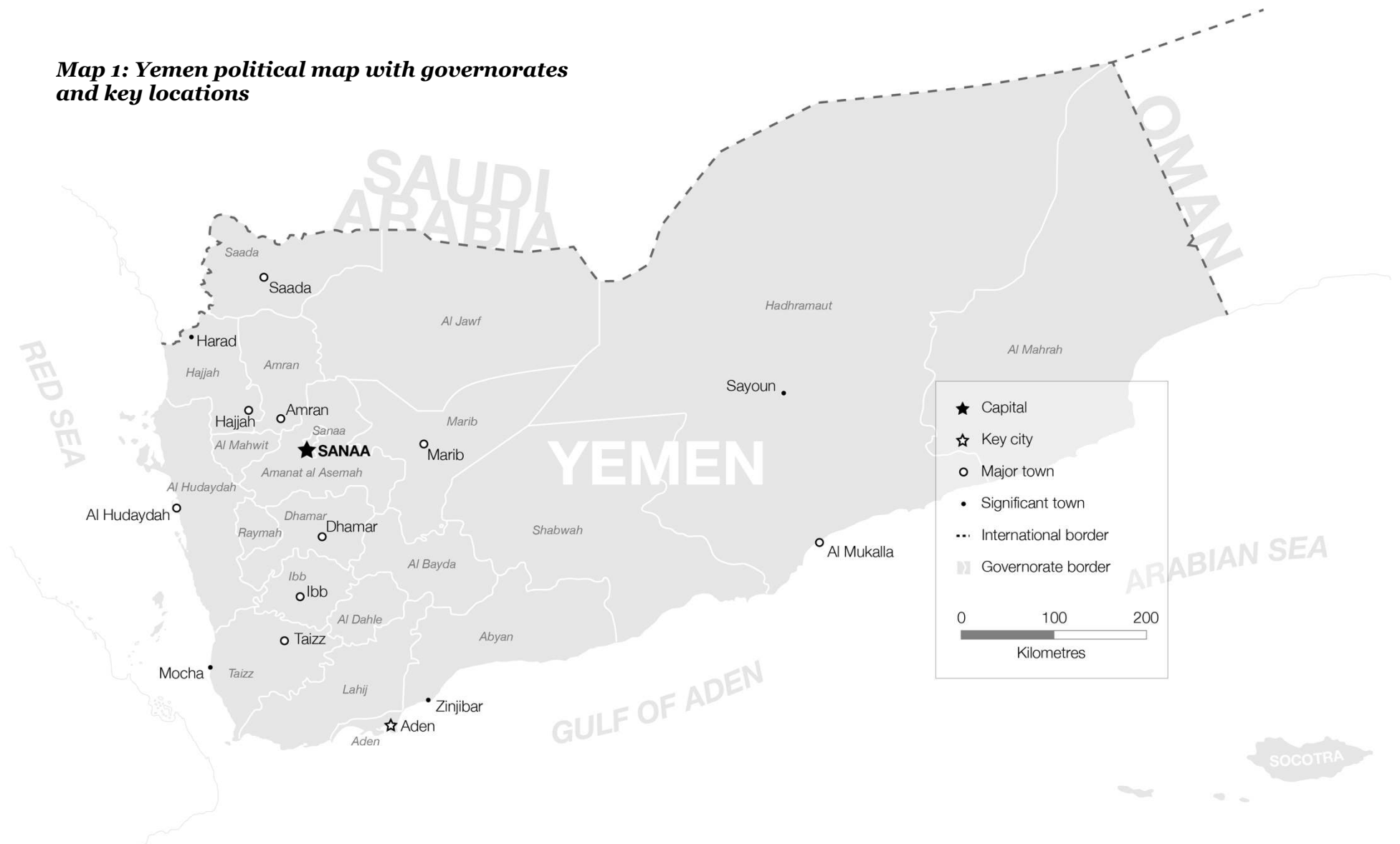
for Humanitarian Dialogue, yet are increasingly reluctant to be coordinated by the UN due to its dual political and humanitarian mandates.<sup>87</sup> Moreover, I will argue in chapter 7 that the United Nations faces structural difficulties undertaking humanitarian negotiations due to its (often) conflicting political and humanitarian roles and its institutional reticence to engage non-state actors. As a consequence, engagement with armed groups is frequently limited, I contend, to the detriment of efforts to secure humanitarian access and promote the protection of civilians.

<sup>87</sup> Gregg in discussion with author (#17/059104).





**Map 1: Yemen political map with governorates and key locations**



# CHAPTER 4

## YEMEN: THE HOUTHI ASCENDANCE

In the preceding chapter I drew on the limited body of literature to argue that humanitarians negotiate with armed groups from a position of weakness. In the introduction I hypothesised that if humanitarian negotiators understand the reasons for their weak bargaining position then they can employ tactics to overcome this power asymmetry and thereby realise more balanced outcomes. And in chapter 2 I proposed a structural analysis through which to investigate power relations within humanitarian negotiations, using process tracing based on elite interviews and secondary data. This chapter tests my hypothesis by analysing negotiations between international humanitarian responders and the Houthi Movement in Yemen – a conservative religious armed group from the northern governorate of Saada. It focuses primarily on negotiations over the city of Tiazz following a series of military offensives led by Saudi Arabia from the start of hostilities mid-2015 to mid-2017, when I conducted the bulk of my field research.

Section 1 outlines the underlying causes, drivers, and dynamics of the conflict in Yemen. Section 2 uses structural analysis and process tracing based largely on elite interviews to investigate the structure of negotiations with the Houthis. I contend that the bargaining position of humanitarian negotiators was weakened by distrust, fragmentation within Houthi forces, the opaque decision-making structures within the armed ground, its changing core interests, and the dividends the rebel group derived from obstructing access and violating the rights of civilians. Section 3 describes the negotiation process between international humanitarians and the Houthi Movement. I argue that humanitarians were able to significantly

improve their negotiating position by bargaining collectively, engaging with the group at multiple levels, building trust by demonstrating their impartiality, integrating humanitarian negotiations with political negotiation processes, and developing their alternatives to negotiation. I conclude in section 4 that although negotiated outcomes were mixed and well below what humanitarians aspired to, they nevertheless point to effective tactics that structurally weak negotiating parties can deploy to attain more balanced agreements.

## 1. CONFLICT

The UN declared Yemen the world's worst humanitarian crisis in 2018 following years of escalating hostilities.<sup>1</sup> Fighting was driven by layers of political, tribal, and religious animosity between various factions, described by McKersie and Walton as "expanding systems of conflict" that progressively drew a multitude of parties into the conflict.<sup>2</sup> The mounting turmoil spawned an unprecedented food crisis that by 2017 had impacted over 17 million of the country's 27 million residents.<sup>3</sup> And nearly 1 million Yemenis were affected in the largest cholera epidemic in modern history.<sup>4</sup> Below, figure 2 provides an overview of Yemen's overlapping conflicts from 2004 to 2017 and the growing humanitarian fallout.

A range of international humanitarian organisations had established themselves in the country around a decade earlier, responding to localised conflict in northern Yemen and intermittently negotiating over access and civilian protection with armed groups. Conflict in the governorate of Saada

<sup>1</sup> Daniel Nikbakht and Sheena McKenzie, "The Yemen War is the World's Worst Humanitarian Crisis, UN says," *CNN*, 3 April 2018.

<sup>2</sup> Robert B McKersie and Richard E. Walton, "Reflections on Negotiation Theory, Practice, and Education: A Robust Record and New Opportunities," *Negotiation Journal* 31, no. 4 (2015): 495.

<sup>3</sup> OCHA, *Yemen 2017 Humanitarian Response Plan*, 6.

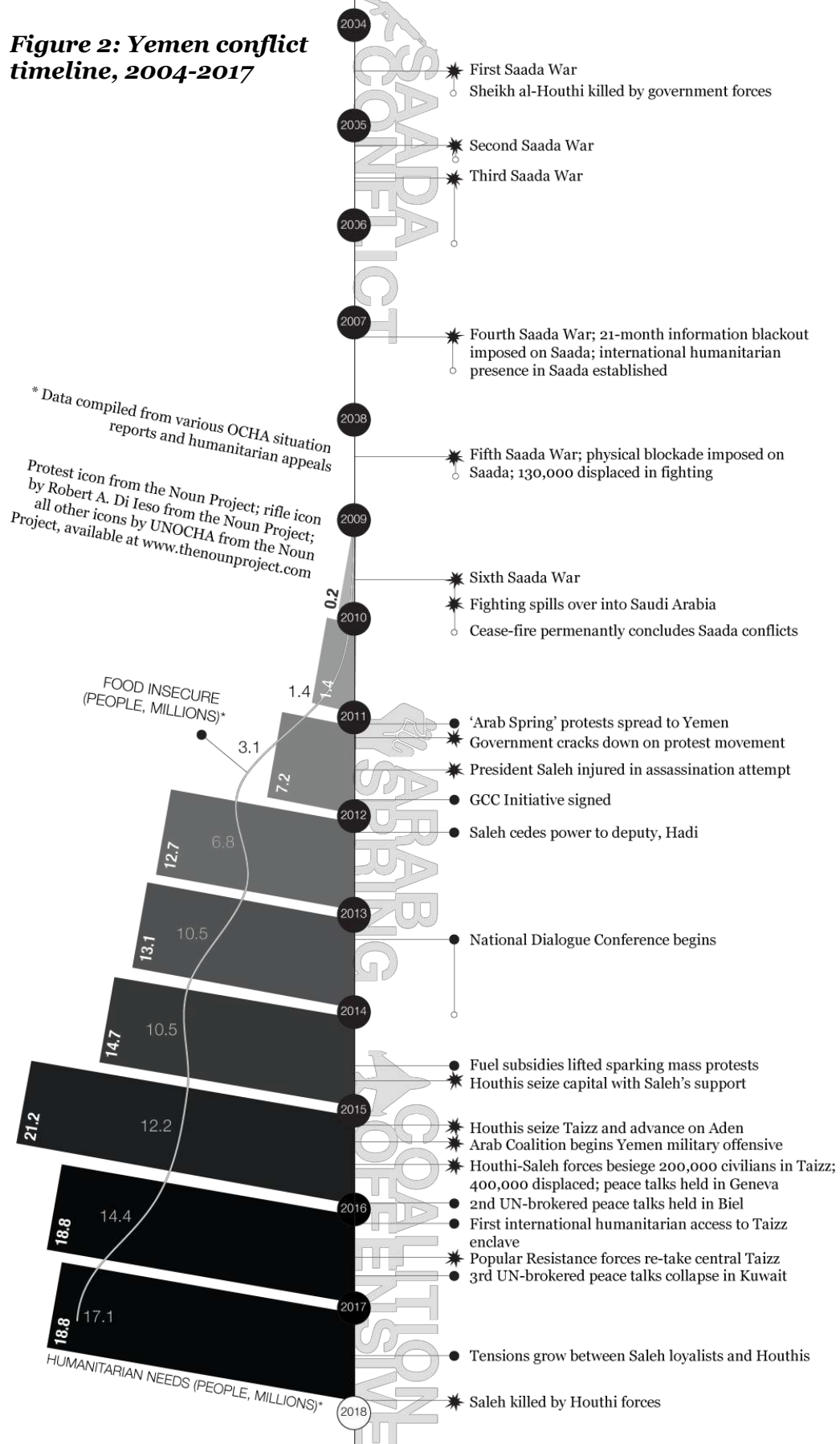
<sup>4</sup> Reuters, "Interview: Cholera Could Resurge in Yemen Due to Lack of Aid, Fuel: WHO," *Reuters*, 4 December 2017.

began in the early 2000s as a seemingly-routine uprising in Yemen's restive north between the Houthi Movement and the central government. But the fighting steadily gained momentum throughout the decade, rupturing nascent political fault lines to irrevocably alter the country's political landscape in the early 2010s. Unrest fuelled the democratic aspirations of the country's disenchanting youth and the rivalries of regime-insiders. Ensuing political turmoil facilitated the growth of jihadist and secessionist movements, destabilising the long-standing regime.

The Houthis exploited on these developments in 2014 to seize the capital, Sanaa, drawing in a regional coalition of Yemen's western-backed neighbours the following year, and fundamentally changing the context within which humanitarian actors were operating. By mid-2017, the Houthis and their allies presided over much of a country that was on the brink of famine and economic collapse. Humanitarian actors thus became central players in the conflict, and complex multi-level humanitarian negotiations with multiple parties evolved into an essential element of the international response, as detailed below.

This section first outlines the political, economic, and social instability that underpinned the crisis. It then describes the conflict in the northern governorate of Saada from 2004 to 2010 that gave rise the Houthi Movement and marked the beginning of mainstream international humanitarian involvement in the country. Third, I demonstrate how conflict in Yemen's northern periphery fused with broader social and political movements to destabilise the political status quo, sparking a civil war in 2015 that drew Yemen's neighbours into the fray. Finally, I explore the convergence of battle lines on the country's third largest town, Taizz – an economic and cultural hub that was once home to 600,000 Yemenis. Taizz was beset by continuous fighting from 2015 to 2017 and its residents subjected to a brutal siege, facing some of the worst conditions in the country. Humanitarian actors subsequently engaged in continuous negotiations with the Houthis over access to and protection for the city's residents, with mixed results, I detail in section 2.

**Figure 2: Yemen conflict timeline, 2004-2017**



## 1.1 GROWING INSTABILITY

Three key elements were instrumental in ushering in the perfect storm of Yemen's contemporary humanitarian crisis: poverty, poor governance, and fragmenting identities. First, much of the population faced widespread and growing levels of poverty that the country's abundance of oil and natural gas did little to alleviate. Yemen also faced a raft of economic and social challenges; from minimal arable land and water scarcity, to rapid population growth, crippling unemployment rates, a dependency on public sector incomes, a near-total reliance on imported food staples, and widespread use of the drug, *qat* (a water-intensive crop that acts as mild-stimulant when chewed).<sup>5</sup> The country has consequently been the Arabian region's poorest country since unification in 1990,<sup>6</sup> and by the 2010s was facing severe levels of food insecurity and malnutrition.<sup>7</sup>

A second key cause underlying the country's vulnerability was the elite-controlled political system of patronage and corruption that had long persisted under a thin façade of democracy. The bulk of government revenue was derived from the tightly-controlled oil sector, overseen by President Ali Abdullah Saleh (1978-2012) and his inner circle through an entrenched system of patronage.<sup>8</sup> Saleh proved uniquely adept at juggling cooperative and coercive strategies to maintain his hold on power. Over thirty years he perpetuated an atmosphere of permanent crisis that he

- <sup>5</sup> WFP, *Market Study: Yemen*, (World Food Programme, 2010); WFP, *Impact of Rising Food Prices on Household Food Security in Yemen*, (World Food Programme, August 2008); Clements Breisinger, Marie-Helen Collion, Xinshen Diao, and Pierre Rondot, *Impacts of the Triple Global Crisis on Growth and Poverty in Yemen*, (International Food Policy Research Institute, February 2010); Ashley Jonathan Clements, *Yemen: Fragile Lives Hungry Times*, (Oxfam, 19 September 2011); Ginny Hill, "Comic Answer to Yemen Water Crisis," *BBC News*, 4 September 2008; World Bank, *The Republic of Yemen: Unlocking the Potential for Economic Growth: A Country Economic Memorandum*, October 2015); Sarah Phillips, *Yemen and the Politics of Permanent Crisis* (London: Routledge, 2011).
- <sup>6</sup> UNDP, *Human Development Report 2016*, (United Nations Development Programme, 2016); UNDP, *Human Development Report 1991*, (Oxford University Press, 1991).
- <sup>7</sup> Ashley Jonathan Clements, "Lives at Risk," *The World Today* 66, no. 11 (2010).
- <sup>8</sup> Breisinger et al., *Growth and Poverty in Yemen*; World Bank, *Yemen: Unlocking the Potential*, ix.

infamously described as “dancing on the heads of snakes.”<sup>9</sup> A patchwork of influence emerged in which Saleh adopted an array of constantly-shifting strategies of co-opting, bribing, blackmailing, and punishing tribes, and playing them off against one another to maintain control.<sup>10</sup> But by the late 2000s, the system began to show its cracks. A dramatic reduction in oil revenues, combined with corruption, costly fuel subsidies, and the growing burden of expanding patronage networks, severely undermined the ability of the regime to keep tribes and soldiers loyal, thereby weakening Saleh’s grip on power.<sup>11</sup>

A third area of the country’s vulnerability lay in the fragmentation of social and political identities along tribal, political, and religious fault lines. Tribal identity has long been the dominant force within Yemeni society and politics – often proving older and more deeply-entrenched than Islam.<sup>12</sup> But Saleh’s incessant manipulation and co-optation of tribal elites eroded the cohesion between tribes and their ruling sheikhs, undermining the stabilising influence of tribal law.<sup>13</sup> Centuries of tribal identity were also concerted and deliberately eroded under southern Marxist rule, further weakening the potentially-stabilising influence of tribal norms during crisis.<sup>14</sup> Moreover, sectarian tensions grew throughout the 2000s, despite the country’s history of religious tolerance. Returnees from jihadist conflicts in Afghanistan, Chechnya, and Iraq fostered growing anti-Shia sentiment in the majority Sunni country. In parallel, localised conflicts

<sup>9</sup> Victoria Clark, *Yemen: Dancing on the Heads of Snakes* (New Haven: Yale University Press, 2010).

<sup>10</sup> Lucas Winter, "Yemen’s Huthi Movement in the Wake of the Arab Spring," *CTC Sentinel* 5, no. 8 (2012): 14; Phillips, *The Politics of Permanent Crisis*, 52; Laura Kasinof, "Sanaa’s Survivor: How Saleh is Still Calling the Shots in Yemen," *World Politics Review* (blog), 13 June 2017.

<sup>11</sup> World Bank, *Yemen: Unlocking the Potential*, 23-28; Phillips, *The Politics of Permanent Crisis*, 33-35; Clark, *Dancing on the Heads of Snakes*, chapter 9.

<sup>12</sup> Clark, *Dancing on the Heads of Snakes*, 199.

<sup>13</sup> Phillips, *The Politics of Permanent Crisis*, 51-52.

<sup>14</sup> Phillips, *The Politics of Permanent Crisis*, 26.



began taking on an increasingly sectarian tone that proved hard to roll-back.<sup>15</sup>

The long-term economic and political issues outlined above remained largely unresolved by mid-2017 when the bulk of research was conducted for this case study. These dynamics – described by the World Bank as “festering problems of governance and political economy” – underpinned the complex intersecting systems of conflict that spanned the country, that I detail in the following section.<sup>16</sup>

## 1.2 THE SAADA WARS: 2004-2010

Yemen’s remote mountainous north on the Saudi border has formed the military backbone of the country for centuries, fending off a succession of foreign armies. The region is predominantly *Zaydi* (a moderate Shia sect that shares much with Sunni Islam) and home to the ancestors of the religious elite who ruled Yemen as a theocratic imamate for over a thousand years until their overthrow in 1962. Many among the Zaydi felt a growing sense of cultural and religious marginalisation since their fall from power more than half a century ago.<sup>17</sup>

A religious-political movement of Zaydis emerged in Saada in the 1990s known as *Shabaab al Mumanin* (‘Believing Youth’). The movement began by running summer educational programmes to promote Zaydi beliefs and culture, steadily growing into a revivalist paramilitary group that opposed the perceived threat of *Salafism* (an ultra-conservative form of Sunni Islam) and the spread of Saudi-backed *Wahhabism* (a conservative form of religious jurisprudence in Sunni Islam).<sup>18</sup> The movement gained further

<sup>15</sup> Bushra al-Maqtari, "The Evolution of Militant Salafism in Taiz," (blog), 29 September 2017.

<sup>16</sup> World Bank, *Yemen: Unlocking the Potential*, vii.

<sup>17</sup> Clark, *Dancing on the Heads of Snakes*, 138 and 45.

<sup>18</sup> Iris Glosemeyer, *Local Conflict, Global Spin: An Uprising in the Yemeni Highlands*, (Middle East Research and Information Project, Autumn 2004); Abdullah Hamidaddin, "Yemen: Negotiations with Tribes, States, and Memories," in *Arab Spring: Negotiating in the Shadow of the Intifadat*, ed. I. William Zartman (Athens, GA: University of Georgia Press,

support as it gave voice to the growing economic and social frustrations that northern Yemenis increasingly blamed on the Saleh regime.<sup>19</sup>

*Shabaab al Mumanin* had lost momentum by the early 2000s. But the grievances that had mobilised its members found a more radical voice in the fiery speeches of Sheikh Hussein Badr al din al-Houthi, a *sayyid* (one who is descended from the Prophet Muhammad, who under Zaydism enjoys social privilege and is eligible to rule as imam).<sup>20</sup> Al-Houthi and his supporters denounced the Yemeni regime and the US-led invasions of Iraq and Afghanistan in the early 2000s, sparking violent protests in Saada and the Yemeni capital, Sanaa. The central government responded by cracking down on the movement – which had commonly become known simply as the ‘Houthis’ after its leader, or *Ansarallah* (‘Supporters of God’) after its political wing.

The group was seen by Saleh as a growing threat to state control in the country’s remote tribal north.<sup>21</sup> Al-Houthi’s ancestry also posed an existential threat to the president, who remained fearful of revolution and a return to the Zaydi imamate.<sup>22</sup> Further, the Yemeni regime had grown increasingly dependent on US military and financial support that was provided in exchange for backing the ‘War on Terror.’ Saleh feared the Houthi’s anti-US rhetoric would jeopardise this lifeline.<sup>23</sup>

2015), 121; J. E. Peterson, "Yemen on the Precipice: Governing the Ungovernable," in *Governance in the Middle East and North Africa: A Handbook*, ed. Abbas Kadhim (New York: Routledge, 2013), 311-313; Clark, *Dancing on the Heads of Snakes*; Shelagh Weir, *A Clash of Fundamentalisms: Wahhabism in Yemen*, (Middle East Research and Information Project, 2004).

<sup>19</sup> Hamidaddin, "Negotiations with Tribes," 125.

<sup>20</sup> Glosemeyer, *Uprising in the Yemeni Highlands*.

<sup>21</sup> Glosemeyer, *Uprising in the Yemeni Highlands*.

<sup>22</sup> Phillips, *The Politics of Permanent Crisis*; Clark, *Dancing on the Heads of Snakes*.

<sup>23</sup> Clark, *Dancing on the Heads of Snakes*.

In mid-2004 Saleh launched an operation to arrest al-Houthi, shirking centuries of tribal norms around nonviolent conflict resolution.<sup>24</sup> The operation led to the Sheikh's death three months later at the hands of government forces, kicking off the first of six rounds of fighting that continued until 2010 in what Yemen historian Victoria Clark described as "Saleh's Vietnam."<sup>25</sup>

The first Saada wars made few waves beyond northern Yemen, passing largely unnoticed in the world's press.<sup>26</sup> The guerrilla campaign waged by the Houthis proved effective, even as hardened tribesmen with small arms were pitted against the tanks and fighter jets of the well-equipped regime. Indiscriminate attacks and siege tactics adopted by government forces took their toll on Saada's civilians,<sup>27</sup> displacing tens of thousands of people (although exact numbers are uncertain given a media blackout and absence of international observers).<sup>28</sup> The violence added legitimacy to the Houthi cause, fuelling further discontent and swelling its ranks.<sup>29</sup> What began as a movement estimated to have a few hundred fighters at its beginning grew to become thousands-strong as it incorporated tribal militias sympathetic to its cause.<sup>30</sup>

Troubled by the humanitarian fallout, international aid agencies stepped up efforts to reach Saada's conflict-affected civilians from early 2007 as the

<sup>24</sup> Barak A. Salmoni, Bryce Loidolt, and Madeleine Wells, *Regime and Periphery in Northern Yemen: The Huthi Phenomenon* (Santa Monica, CA: RAND Corporation, 2010); Sarah Phillips, *What Comes Next in Yemen? Al-Qaeda, the Tribes, and State-Building*, (Carnegie Endowment, March 2010), 9.

<sup>25</sup> Clark, *Dancing on the Heads of Snakes*, 250.

<sup>26</sup> Hamidaddin, "Negotiations with Tribes," 128.

<sup>27</sup> J. E. Peterson, "The al-Huthi Conflict in Yemen," (electronic article), August 2008; Jane Novak, "The Blockade of South Yemen Follows Tactics of Saada War," *Jane Novak's Yemen Articles* (blog), 3 June 2010.

<sup>28</sup> Salmoni et al., *The Huthi Phenomenon*, 2; Glosemeyer, *Uprising in the Yemeni Highlands*; OCHA, *Yemen 2009 Flash Appeal*, (United Nations, 2009).

<sup>29</sup> Peterson, "Yemen on the Precipice," 3.

<sup>30</sup> US Embassy Sanaa, *Al-Houthi Rebellion: No End in Sight*, (WikiLeaks cable O8SANAA1165\_a, July 2008).

fourth round of fighting broke out. After six months of negotiations with the Government, UN agencies were permitted in June 2007 to begin operating through local partners in camps for internally displaced persons (IDPs) in Saada town.<sup>31</sup> But national authorities continued to deny international access to more remote areas of the governorate, purportedly out of concern for the safety of aid agencies and their staff.<sup>32</sup>

The fifth and sixth rounds of fighting were the most intense and brought the total number of IDPs to around 250,000 – many of whom remained inaccessible to humanitarians.<sup>33</sup> The conflict began to take on an increasingly sectarian tone and spilt over into neighbouring governorates.<sup>34</sup> And in August 2009 it spread also to Saudi Arabia, bringing an international element to what had hitherto been decidedly localised. The conflict also began to feature in Iranian rhetoric (although their involvement remained limited).<sup>35</sup> INGOs and UN agencies were eventually forced to suspend their operations in Saada.<sup>36</sup> And even after a ceasefire was signed in early 2010, sporadic clashes continued to undermine humanitarian operations in the governorate.<sup>37</sup>

Following months of negotiation, a letter of intent was signed in early 2011 by Houthi leadership and the Humanitarian Country Team (HCT, a strategic and operational country-level humanitarian forum for UN agencies and NGOs) that established ‘ground rules’ for operating in Houthi-

<sup>31</sup> HRW, *Invisible Civilians: The Challenges of Humanitarian Access in Yemen's Forgotten War*, (Human Rights Watch, November 2008), 40.

<sup>32</sup> HRW, *Invisible Civilians*; US Embassy Sanaa, *Al-Houthi Rebellion*.

<sup>33</sup> MSF, *MSF Activity Report 2009*, (Médecins Sans Frontières, 2009), 76; MSF, *MSF Activity Report 2010*, (Médecins Sans Frontières, 2010); HRW, *Invisible Civilians*.

<sup>34</sup> US Embassy Sanaa, *Al-Houthi Rebellion*; Hamidaddin, "Negotiations with Tribes."

<sup>35</sup> Phillips, *The Politics of Permanent Crisis*, 28; Clark, *Dancing on the Heads of Snakes*, 256n; Salmoni et al., *The Huthi Phenomenon*, 268-275.

<sup>36</sup> Middle East Online, "Displaced Yemenis Struggle to Recover from North War," *Middle East Online*, 4 April 2010.

<sup>37</sup> MSF, *Activity Report 2010*, 98.

controlled areas.<sup>38</sup> Houthi representatives subsequently participated in regular humanitarian coordination meetings throughout 2011, reportedly leading to greater collaboration and improved levels of trust.<sup>39</sup> But the rebel group continued to exert pressure on humanitarian agencies in violation of the ground rules.<sup>40</sup> And humanitarian activities in Saada were gradually abandoned amid growing nationwide political unrest.<sup>41</sup>

### 1.3 FROM POPULAR UPRISING TO CIVIL WAR: 2011-2015

When a twenty-six-year-old street vendor set himself alight protesting his mistreatment at the hands of Tunisian authorities in late 2010, popular unrest spread across North Africa, the Arabian Gulf, and the Middle East. Beginning as an expression of frustration and the manifestation of long-standing grievances by the young and the poor, these uprisings quickly evolved into concerted pro-democracy movements that aspired to overthrow authoritarian rulers and create new liberal societies founded on human rights and justice. They became known as the Arab Spring.

In Yemen these events unleashed decades of repressed political dissent. Tens of thousands took to the streets in early 2011 in a series of popular protests centred on Sanaa, Aden, and Taizz – the country's three largest cities. During the first weeks, protests consisted predominantly of disenfranchised and educated youth who called for political and social reform. But weeks of growing unrest exhausted the regime's tolerance for dissent. On 18 March, President Saleh authorised a violent crackdown on the protest movement in Sanaa that left dozens dead. The move – seen by many as an affront to the tribal code – triggered mass defections from the regime and prompted key opposition figures to openly side with the 'street.'

<sup>38</sup> Tareq Talahma (Senior Humanitarian Affairs Officer, UN) in discussion with author, remotely, June 2017 (#17/059206).

<sup>39</sup> OCHA, "Humanitarian Access".

<sup>40</sup> Talahma in discussion with author (#17/059206).

<sup>41</sup> MSF, *Activity Report 2010*, 98.

Disparate factions from across Yemen also joined the revolutionary youth, unified in their opposition to Ali Abdullah Saleh's dynastic (and increasingly tyrannical) rule. The Houthis were among them.<sup>42</sup>

Violence in Sanaa spread to other cities. In late May, clashes between protestors and soldiers in Taizz sparked more than 6-months of violence. A centuries-old hub of commerce and industry, the city is located on key trade routes between the ancient port city of Aden and Sanaa, bridging north and south Yemen. Its educated, liberal, middle-class residents enjoyed only loose ties to the tribes and were quick to join the calls for political reform. Many considered Taizz to be the heart of the Yemeni uprising (a perception that likely conditioned the attitudes of Houthi-Saleh forces, as discussed below).<sup>43</sup>

But in Yemen, as with many of its regional neighbours, the lofty goals of would-be revolutionaries were quickly co-opted by the rivalries of the country's political elite.<sup>44</sup> A year of turmoil and violence ensued that weakened already-ailing state structures and exposed massive instability in the country's frail economy. A protracted political deadlock prompted a fuel crisis that brought the economy to the verge of collapse and drove food prices and hunger to crisis-levels.<sup>45</sup>

By the end of 2011 a regionally-brokered political transition process was agreed in which the president's 33-year reign came to an end. Saleh was forced to cede power to his deputy, Abd Rabbuh Mansur Hadi, under an initiative backed by the UN and Gulf Cooperation Council (GCC, the regional political and economic union of Arab states). But little progress was made in resolving the disparate and long-standing grievances of the

<sup>42</sup> Kasinof, "Sanaa's Survivor".

<sup>43</sup> Sasha Gordon, *Taiz: The Heart of Yemen's Revolution*, (Critical Threats, 12 January 2012); al-Maqtari, "The Evolution of Militant Salafism in Taiz".

<sup>44</sup> Hamidaddin, "Negotiations with Tribes," 132; Laura Kasinof, "Requiem for Yemen's Revolution," *The Atlantic*, 25 January 2015.

<sup>45</sup> Clements, *Yemen: Fragile Lives Hungry Times*, 2.

country's many factions. Hadi failed to command sufficient popular support and made little headway implementing the social and political changes required to satisfy the demands of his rivals. Nor was the new government able to stem Yemen's deepening social and economic crises.<sup>46</sup>

The country's internationally-lauded political transition ended without agreement in early 2014.<sup>47</sup> Over the previous six months, the Houthis had consolidated their power in the north and had rooted out any opponents between their stronghold in Saada and the capital.<sup>48</sup> By the middle of 2014, Houthi leaders had entered into a covert alliance with the former president. Saleh had remained in Sanaa as part of an amnesty agreement under the GCC Initiative and continued to exert significant control over the country's political and military systems. In an interview for this research, Yemen analyst Sarah Phillips described the arrangement as a "marriage of convenience."<sup>49</sup>

Faced with a mounting budget shortfall and international pressure to reform the economy, President Hadi lifted fuel subsidies in July 2014. The move proved deeply unpopular. Fuel and food prices soared over night, sparking outrage and mass protests across the country and providing an opportunity that the Houthi-Saleh alliance was quick to seize. The Houthis marched on the capital two months later, largely unopposed, and incrementally wrested control from President Hadi and his cabinet. The

<sup>46</sup> Hamidaddin, "Negotiations with Tribes," 132; Kasinof, "Requiem for Yemen's Revolution.," ICG, *Discord in Yemen's North Could be a Chance for Peace*, (International Crisis Group, 11 October 2017).

<sup>47</sup> UN, "Yemen's Political Transition at 'Critical Juncture', Secretary-General's Aide Tells Security Council in Briefing," United Nations, news release, 27 September 2013; Erica Gaston, *Process Lessons Learned in Yemen's National Dialogue*, (United States Institute of Peace, February 2014).

<sup>48</sup> Charles Schmitz, "The Rise of Yemen's Houthi Rebels," *BBC News*, 28 February 2015; al-Maqtari, "The Evolution of Militant Salafism in Taiz"; Kasinof, "Requiem for Yemen's Revolution."

<sup>49</sup> Sarah Phillips (Senior Lecturer, Centre for International Security Studies, University of Sydney) in discussion with author, remote, May 2017 (#17/059204). See also United Nations Panel of Experts, *Final Report of the Panel of Experts on Yemen, S/2017/81 (2017)*, 20, para. 47; April Longley Alley, "The Counter-productive Isolation of Proud and Hungry Sanaa," *International Crisis Group* (blog), 15 May 2017.

president fled south to Aden in February 2015 and on to Saudi Arabia the following month to solicit international backing for his rule.<sup>50</sup>

Amid the political turmoil, most humanitarian organisations began to reduce their presence in-country but remained largely operational. In February 2015, Yemen Humanitarian Coordinator (HC) Johannes van der Klaauw shared a letter with Houthi authorities in Sanaa on behalf of the HCT. The letter laid out the parameters (again described as ‘ground rules’) within which UN agencies and international NGOs had been operating under the former regime, presumably in the hope that Houthi leadership would respect these prior arrangements.<sup>51</sup> Indications were initially promising that humanitarian operations would continue as before. But these hopes did not last.

#### 1.4 THE SIEGE OF TAIZZ

After the collapse of the Hadi government, the combined forces of the new Houthi-Saleh alliance moved south. They took control of the city of Taizz on 22 March and seized parts of the southern port city of Aden early the next month. But Saudi Arabia proved unwilling to tolerate the return to power of the former Yemeni president or the emergence on their doorstep of a Shia-controlled state with ties to its regional rival, Iran. The conservative Sunni monarchy in Riyadh assembled a regional military coalition to back Hadi and oppose the Houthi-Saleh alliance.<sup>52</sup> With regional conflict brewing, virtually all international humanitarian personnel evacuated the country,<sup>53</sup> establishing a coordination hub in Amman, Jordan, from which

<sup>50</sup> BBC, "Yemen Conflict: Pakistan Rebuffs Saudi Coalition Call," *BBC News*, 10 April 2015.

<sup>51</sup> Letter on file with author.

<sup>52</sup> The Saudi-led Coalition initially consisted of Bahrain, Egypt, Jordan, Kuwait, Morocco, Pakistan, Qatar, Saudi Arabia, Sudan, and the United Arab Emirates. Pakistan later opted out of the coalition after its parliament unanimously voted to remain neutral in the conflict. The United States and European Union provided intelligence and logistical support.

<sup>53</sup> The notable exceptions were MSF and the ICRC, both of which maintained operations and an international presence throughout the research period. See IASC, *Operational Peer Review: Response to the Yemen Crisis*, (Inter-Agency Standing Committee, 26 January 2016).



humanitarian agencies managed operations through local staff and local partners who remained in-country.<sup>54</sup> On 26 March the Coalition launched a series of offensives intended to slow the rebel advance, restore Hadi's control of the country, and to ward off Iranian influence.<sup>55</sup>

Houthi-Saleh forces were driven back to Taizz over subsequent months. The ancient city again found itself on the frontline of the battle for control of Yemen, and was the site of some of most intense and sustained fighting of the conflict.<sup>56</sup> In April 2015, Popular Resistance forces (nominally pro-Hadi fighters backed by the Saudi-led coalition who were dominated by Salafi tribal militia and operated largely independently of government and coalition forces) stepped up opposition to the Houthi-Saleh forces around Taizz.<sup>57</sup> The Houthis responded by besieging central Taizz in August, blocking food, fuel, and medical supplies from entering the enclave. Pro-Hadi fighters reclaimed control of the city's central districts early the following year, partially breaking the siege, but leaving the city divided. Frontlines gradually hardened,<sup>58</sup> and fighting continued on a near-daily-basis over the following year.<sup>59</sup>

An estimated 400,000 residents were forced to flee Taizz during the fighting.<sup>60</sup> The 200,000 civilians who remained faced severe movement

<sup>54</sup> IASC, *Yemen OPR*, 9.

<sup>55</sup> Reuters, "Saudi Arabia Carries out Air Strikes in Yemen," *The Telegraph*, 26 March 2015; Chatham House, *Middle East and North Africa Programme Workshop Summary: Yemen: Key Players and Prospects for Peace*, (Chatham House, 17-18 November 2015), 4.

<sup>56</sup> Sophie Désoulières, "Healthcare Under Siege in Taiz," *LSE Middle East Centre* (blog), 13 July 2017; Joel Gunter and Sunmaya Bakhsh, "Yemen Conflict: Terror of Life Under Siege in Taiz," *BBC News*, 1 December 2016.

<sup>57</sup> Nadwa al-Dawsari, *Breaking the Cycle of Failed Negotiations in Yemen*, (Project on Middle East Democracy, May 2017), 8.

<sup>58</sup> al-Dawsari, *Breaking the Cycle of Failed Negotiations in Yemen*, 4; ICRC, *I Saw My City Die': Voices from the Front Lines of Urban Conflict in Iraq, Syria and Yemen*, (International Committee of the Red Cross, 2017).

<sup>59</sup> Panel of Experts, S/2017/81, para 57; MSF, "In the Two Months of 'Ceasefire', at Least 700 Civilians Injured by Heavy Fighting in Taiz," Médecins Sans Frontières, news release, 14 June 2016.

<sup>60</sup> Désoulières, "Healthcare Under Siege in Taiz".

restrictions at the hands of militants who routinely denied access to humanitarian personnel and relief supplies.<sup>61</sup> The city's residents suffered some of the greatest hardships of the war. As the ICRC cautioned in late 2015, "the situation in Taizz is particularly dire, even by the standards of the appalling conditions all over Yemen."<sup>62</sup> Indiscriminate attacks and the deliberate targeting of civilians and civilian infrastructure had killed more than 4,000 civilians in the city by late 2017.<sup>63</sup> Taizz also saw the highest numbers of child casualties at the hands of combatants of anywhere in the country, with nearly three quarters (72 per cent) attributed to Houthi forces.<sup>64</sup> Intense fighting devastated the city's healthcare system, overwhelming or forcing the closure of most facilities, and rendering others inaccessible.<sup>65</sup> Armed groups also reportedly confiscated medical supplies and prohibited civilians from accessing health services, resulting in deaths documented by rights groups.<sup>66</sup>

In parallel, local markets collapsed in the midst of the siege and ongoing hostilities. Food prices soared beyond the reach of many families, and basic

<sup>61</sup> Al Jazeera, "UN Accuses Houthis of Blocking Aid into Yemen's Taiz."

<sup>62</sup> ICRC, "Yemen: ICRC Deeply Concerned by the Impact of Fighting in Taiz," International Committee of the Red Cross, news release, 22 October 2015.

<sup>63</sup> OCHA, *Yemen 2017 Humanitarian Needs Overview*, (Yemen Humanitarian Country Team, November 2016), 12; United Nations Panel of Experts, *Letter Dated 22 January 2016 from the Panel of Experts on Yemen Established Pursuant to Security Council Resolution 2140 (2014) Addressed to the President of the Security Council*, S/2016/73 (2016), 132; Désoulières, "Healthcare Under Siege in Taiz"; MSF, "Two Months of Ceasefire."; UN, "Deplorable, Man-made Catastrophe Escalating in Yemen, Humanitarian Chief Tells Security Council, Urging Immediate Funding of Cash-Strapped Relief Plan," UN News Centre, news release, 18 August 2017.

<sup>64</sup> United Nations General Assembly, *Children and Armed Conflict: Report of the Secretary-General*, A/72/361-S/2017/821 (2017), para 191.

<sup>65</sup> Al Jazeera, "Over 3,000 Saudi Strikes on Yemen 'Hit Civilian Areas'," *Al Jazeera*, 17 September 2016; ICRC, *I Saw My City Die*; UN, "Yemen: UN Warns of 'Untenable' Humanitarian Situation and Steep Increase in Civilian Casualties," UN News Centre, news release, 1 September 2015. See also Kareem Fahim, "As War Strangles Yemen, Many Fear the Grip Will Never Break," *The New York Times*, 10 May 2016; ICRC, "ICRC Concerned by Impact of Fighting on Taiz."

<sup>66</sup> Désoulières, "Healthcare Under Siege in Taiz"; Nadwa al-Dawsari, *'We Lived Days in Hell': Civilian Perspective on the Conflict in Yemen*, (Center for Civilians in Conflict, 2016), 25; MSF, *Yemen: Healthcare Under Siege in Taiz*, (Médecins Sans Frontières, 2017); HRW, "Yemen: Houthis Block Vital Goods into Taizz," *Human Rights Watch* (blog), 31 January 2016; Al Jazeera, "UN Accuses Houthis of Blocking Aid into Yemen's Taiz."

goods became scarce in the city.<sup>67</sup> Malnutrition consequently rose sharply (especially among children), with residents reportedly forced to eat rubbish and boil leaves for soup to survive.<sup>68</sup> Combined with the hunger and nutrition crisis, these conditions left the residents of Taizz highly vulnerable to the spread of diseases, such as cholera.<sup>69</sup> “The once-vibrant city streets have become places of fear,” warned the ICRC.<sup>70</sup>

## 2. NEGOTIATION STRUCTURE

By mid-2015, Taizz had become central to the conflict in Yemen – both figuratively and literally. Beyond the primary political objectives of parties to the conflict, the fight over the ancient city also comprised sectarian tensions, southern resistance to northern rule, and the re-emergence of elite political rivalries.<sup>71</sup> It thus became a chaotic intersection of the disparate actors engaged in Yemen’s regionalised civil war.<sup>72</sup> In parallel, hundreds of thousands of the city’s residents faced a protracted siege at the hands of Houthi-Saleh forces. By mid-2017 these civilians had been effectively cut-off from outside assistance for much of the two-year war.

Reaching an agreement with Houthi forces was seen as key to accessing the city, forcing international humanitarians into protracted negotiations with the armed group. Negotiations over humanitarian access and the protection of civilians were also bound up in the broader conflict dynamics and the key strategic interests of the major parties to the conflict. In the following

<sup>67</sup> OCHA, *Yemen Humanitarian Bulletin*, Issue 13 (Office for the Coordination of Humanitarian Affairs, 30 June 2016), 3.

<sup>68</sup> OCHA, *Yemen Humanitarian Bulletin*, Issue 24 (Office for the Coordination of Humanitarian Affairs, 7 June 2017), 4; ICRC, *I Saw My City Die*, 40.

<sup>69</sup> Kate Lyons, “Yemen’s Cholera Outbreak Now the Worst in History as Millionth Case Looms,” *The Guardian*, 13 October 2017; McVeigh, “Airport Closure Cost Lives.”

<sup>70</sup> ICRC, *I Saw My City Die*, 26.

<sup>71</sup> al-Maqtari, “The Evolution of Militant Salafism in Taiz”; Panel of Experts, S/2017/81.

<sup>72</sup> Adam Baron, “Not Only a Pawn in Their Game,” *European Council on Foreign Relations* (commentary), 16 November 2017.

section, I argue that negotiated outcomes were subject to the internal dynamics of the Houthi Movement and their allies, were heavily conditioned by distrust, but also strongly reflected the specific interests driving the Houthi's strategy. Further, I suggest that humanitarian negotiators failed to recognise or account for significant changes in the strategic interests of the Houthis.

## 2.1 POWER AND DECISION-MAKING

The Houthi-Saleh alliance was constituted by two main factions under the respective leadership of Abdulmalik al-Houthi and Ali Abdullah Saleh. The Houthi network consisted of the political wing of the movement and its military branch, which itself was comprised of a network of tribal militias and regular military units that had broken with the internationally-recognised government. For its part, the Saleh network comprised an extensive web of tribal, military, and political allies of the former president, built largely on long-standing personal loyalties.<sup>73</sup> At its core was the General People's Congress (GPC, the ruling party that Saleh established in 1982, over which he continued to wield unchecked power until his death at the hands of the Houthis in December 2017).<sup>74</sup>

When the capital came under the control of the Houthi-Saleh alliance in late 2014, line ministries were divvied up between Houthi leaders and the GPC. This fragmented the security apparatus,<sup>75</sup> rendered the decision-making process opaque, and left senior leaders largely inaccessible to humanitarians (particularly to INGOs).<sup>76</sup> These dynamics complicated

<sup>73</sup> Panel of Experts, S/2017/81.

<sup>74</sup> BBC, "Ali Abdullah Saleh, Yemen's Former Leader, Killed in Sanaa," *BBC News*, 4 December 2017.

<sup>75</sup> Soman Moodley (former Yemen policy lead, Oxfam) in discussion with author, Amman, June 2017 (#17/059208).

<sup>76</sup> Name withheld, a UN official working in Yemen in discussion with author, remote, June 2017, #17/059205); name withheld, in discussion with author, remote, June 2017, #17/059214).

access negotiations, leading to significant delays and access obstructions throughout 2015 and early 2016.<sup>77</sup>

Throughout this research period, key decisions within the Houthi movement were reportedly in the hands of a small, dominant faction of hardliners from the northern tribal elite.<sup>78</sup> International humanitarians operating in Yemen nevertheless observed that power over daily operations within the Houthi movement was diffused and decentralised, as it had been during earlier engagements with the group.<sup>79</sup> A leaked diplomatic cable from 2008 detailed negotiations over the provision of food aid to conflict-affected civilians during the Saada Wars. According to the cable – the authenticity of which was confirmed by an informed UN source<sup>80</sup> – World Food Programme (WFP) Representative in Yemen Gian Carlo Cirri described the armed group as lacking a centralised command structure; “there is no such thing as a united Houthi command. The field commanders have a great deal of authority,” he claimed. Humanitarian access was consequently determined largely by field commanders in charge of each district, Cirri contended, meaning agencies were able to negotiate access to some areas whilst being denied access to other areas under the control of different tribal leaders.<sup>81</sup>

In contrast to the Houthis, the Saleh network demonstrated a high degree of centralisation around the former president and his inner circle. His key supporters were trained bureaucrats and technocrats with long experience

<sup>77</sup> Philippe Clerc (Regional Humanitarian Coordinator, Oxfam) in discussion with author, Amman, June 2017 (#17/059216); name withheld (a humanitarian with experience working in Yemen) in discussion with author, Amman, June 2017 (#17/059226); diplomatic source working on Yemen (#17/059218).

<sup>78</sup> Name withheld (a diplomatic source working on Yemen) in discussion with author, Amman, June 2017 (#17/059218).

<sup>79</sup> UN official working in Yemen in discussion with author (#17/059205).

<sup>80</sup> Name withheld (a senior UN official) in discussion with author, June 2017, Geneva (#17/059201).

<sup>81</sup> US Embassy Sanaa, *Al-Houthi Rebellion*. See also Salmoni et al., *The Houthi Phenomenon*, 235-236.

running the country.<sup>82</sup> But the Houthis – who were widely perceived to be militarily dominant within the alliance<sup>83</sup> – lacked the capacity or the interest to govern the country and were poorly-suited to governance and diplomacy. Houthi leaders had little experience and demonstrated scant understanding of administration or foreign affairs.<sup>84</sup> They were stretched beyond their capacity, claimed a UN staff member,<sup>85</sup> and proved to be less rational than many expected.<sup>86</sup>

The Houthis also struggled to translate military gains into political influence, claimed Phillips, demonstrating that their “political skills clearly do not match their military skills.”<sup>87</sup> As such, the Houthis had become heavily reliant on the GPC and the Saleh network to administer areas under alliance control from the time they seized power in 2014.<sup>88</sup> A “precarious and mutually dependent balance of power” emerged between the two, claimed former Sanaa-based journalist Laura Kasinof.<sup>89</sup>

Whilst fractures within the alliance became evident from mid-2017,<sup>90</sup> the different factions appeared to operate with relative unity around Taizz along traditional military lines with a clear command-and-control

<sup>82</sup> Name withheld (an aid worker familiar with Yemen) in discussion with author, remote, May 2017 (#17/059203).

<sup>83</sup> Diplomatic source working on Yemen (#17/059218); Phillips in discussion with author (#17/059204).

<sup>84</sup> Clerc in discussion with author (#17/059216).

<sup>85</sup> Name withheld (UN staff member working on Yemen) in discussion with author, Amman, June 2017 (#17/059204b).

<sup>86</sup> Name withheld (member of the Yemen donor community) in discussion with author, Amman, June 2017 (#17/059224).

<sup>87</sup> Phillips in discussion with author (#17/059204).

<sup>88</sup> Longley Alley, "Counter-productive Isolation".

<sup>89</sup> Kasinof, "Sanaa's Survivor".

<sup>90</sup> UN staff member working on Yemen (#17/059204b); member of the Yemen donor community (#17/059224). See also Waleed Alhariri et al., "Yemen at the UN: September 2017 Review," *Sanaa Centre for Strategic Studies* (electronic article), 3 October 2017; Panel of Experts, S/2017/81; ICG, *Discord in Yemen*.

structure.<sup>91</sup> Alliance forces exercised strict control over access to the city.<sup>92</sup> But the complexity of humanitarian negotiations in Taizz was compounded by the presence of other armed groups and armed forces around the city.

Taizz had seen a proliferation of armed groups associated with the Popular Resistance – including al-Qaeda in the Arabian Peninsula (AQAP), their affiliate, *Ansar al-Sharia*, and groups linked to the Islamic State (IS).<sup>93</sup> The radical Islamist orientation of these groups made international humanitarians wary of field-level engagements. But international agencies were nevertheless able to negotiate effectively with AQAP elsewhere in the country, by building on the group's need for acceptance by local communities.<sup>94</sup> One INGO, however, was reportedly directed by headquarters to break off negotiations with Islamist groups out of fear of retaliation by national authorities.<sup>95</sup>

Moreover, even local residents in Taizz reportedly struggled to identify resistance groups, undermining the ability of international humanitarians to identify relevant counterparts.<sup>96</sup> Further, tensions among factions in control of central Taizz led to infighting within the Popular Resistance and open conflict with representatives of the internationally-recognised

<sup>91</sup> Panel of Experts, S/2017/81, para 48.

<sup>92</sup> Désoulières, "Healthcare Under Siege in Taiz". See also Rupert Colville, "OHCHR Press Briefing Notes on Yemen," Office for the High Commissioner for Human Rights, news release, 5 January 2016.

<sup>93</sup> BBC, "Yemen Conflict: Al-Qaeda Seen at Coalition Battle for Taiz," *BBC News*, 22 February 2016; Nasser al-Sakkaf, "Taiz Siege Broken, But New Threats Appear," *Middle East Eye*, 20 March 2016; Fahim, "War Strangles Yemen."; MEE Correspondent, "Yemen's Salafi Warlord: Armed by Riyadh, Branded a terrorist by Riyadh," *Middle East Eye*, 27 October 2017.

<sup>94</sup> Aid worker familiar with Yemen in discussion with author (#17/059203).

<sup>95</sup> Humanitarian with experience working in Yemen in discussion with author (#17/059226).

<sup>96</sup> al-Dawsari, *Civilian Perspective on Conflict in Yemen*, 32.

government.<sup>97</sup> Some militias threatened to splinter into independent third parties, further complicating prospects for negotiation.<sup>98</sup>

The Aden-based internationally-recognised government wielded little influence over Taizz and was therefore not a meaningful counterpart for international humanitarian negotiators in Taizz. Similarly, coalition forces had limited direct involvement in the city and were not in a position to guarantee or facilitate humanitarian access by international actors. Deconfliction measures (see appendix I) with the coalition were nevertheless essential for humanitarians moving anywhere in the country, adding a further layer of negotiation and coordination.<sup>99</sup>

Traditional diplomatic actors also played a minor role in shaping the negotiating environment Taizz, as with the country more broadly.<sup>100</sup> Embassies in Sanaa maintained only a skeleton staff following the unrest of 2011 and had evacuated entirely by mid-2017. With the notable exception of Iran and Russia, the entire diplomatic corps working on Yemen was based in Jordan, the Arabian Gulf, or their respective capitals. Diplomats working on Yemen were also wary or ill-equipped to engage with representatives of armed groups.<sup>101</sup>

Russia claimed to oversee a coordination mechanism to facilitate humanitarian access in Yemen.<sup>102</sup> Indeed, a diplomatic source reported that the Russian chargé d'affaires played a "helpful role on the ground," facilitating visas and documentation with *de facto* authorities on

<sup>97</sup> al-Dawsari, *Civilian Perspective on Conflict in Yemen*; al-Maqtari, "The Evolution of Militant Salafism in Taiz".

<sup>98</sup> MEE Correspondent, "Yemen's Salafi Warlord."

<sup>99</sup> UN official working in Yemen in discussion with author (#17/059205).

<sup>100</sup> Phillips in discussion with author (#17/059204).

<sup>101</sup> Member of the Yemen donor community, #17/059224).

<sup>102</sup> Intervention by the Permanent Representative of the Russian Federation at the United Nations, Vladimir Safronkov, United Nations Security Council, *Briefing by the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator*, S/PV.7897 (2017), 5 (official translation from Russian).



occasion.<sup>103</sup> But participants in this research were largely dismissive of the impact of Russian involvement, insisting they wielded limited influence over the Houthis and had not demonstrated an ability to moderate the group's behaviour.<sup>104</sup>

Throughout my research, Houthi leadership remained isolated and had few representatives abroad. Formal diplomatic engagement with *de facto* authorities over Yemen was therefore minimal. There were consequently "few bridges between the effective rulers of north Yemen and the outside world," observed April Longley Alley of the International Crisis Group (ICG, an independent research and policy organisation working to prevent and resolve armed conflict). "This isolation is clearly militating against negotiation and compromise" she concluded.<sup>105</sup> Some dialogue continued through limited back-channels and interlocutors in third countries, although this was primarily with Yemenis connected to the GPC and former regime rather than with Houthi representatives themselves.<sup>106</sup>

## 2.2 TRUST

The level of suspicion and distrust that surrounded international personnel and humanitarian action also significantly undermined humanitarian negotiations in Taizz. "Parties to the conflict have started to see the UN-led humanitarian response as disorganised, at best, and at worst subsumed by a political agenda," concluded the Operational Peer Review (OPR, an inter-agency evaluation of the international humanitarian response in Yemen).<sup>107</sup>

<sup>103</sup> Diplomatic source working on Yemen (#17/059218).

<sup>104</sup> Aid worker familiar with Yemen in discussion with author (#17/059203); UN official working in Yemen in discussion with author (#17/059205); member of the Yemen donor community (#17/059224).

<sup>105</sup> Longley Alley, "Counter-productive Isolation".

<sup>106</sup> Diplomatic source working on Yemen (#17/059218).

<sup>107</sup> IASC, *Yemen OPR*, 7.

One major factor that damaged the Houthi perception of international actors was the stance taken by the UN Security Council following the group's seizure of Sanaa in late 2014. Resolution 2216 (2015) demanded a unilateral withdrawal and disarmament of Houthi forces from the capital.<sup>108</sup> It was drafted by the GCC – all of whose members joined the military coalition in Yemen, with the exception of Oman – and submitted to the Council by Jordan.<sup>109</sup> Not only did resolution 2216 fuel tensions between warring parties, but it drove a wedge between the international community and the Houthis over the partisan nature of the resolution, impacting the group's attitude towards humanitarian action.<sup>110</sup>

A series of failed UN-brokered peace talks throughout 2015 and 2016 added to Houthi distrust of international actors. And extensive Saudi funding of humanitarian operations in Yemen, coupled with Secretary-General Ban's de-listing of the Saudi-led coalition for grave violations of children's rights (see below),<sup>111</sup> fuelled the narrative that the Saudis had 'bought' the UN. This created resentment that "inevitably trickles down to humanitarians on the ground," insisted a UN official, who described the impact of distrust on negotiations as, "a constant issue that we have to manage."<sup>112</sup> Other

<sup>108</sup> United Nations Security Council, *Resolution 2216 (2015)*, S/RES/2216 (2015).

<sup>109</sup> Afrah Nasser, "The Unfolding UN Failure in the Yemen War," *Atlantic Council* (blog), 21 September 2017; Raghida Dergham, "Challenges Facing the Implementation of UNSC Resolution 2216 on Yemen," *HuffPost* (blog post), 17 April 2015. See also UN, "Security Council Demands End to Yemen Violence, Adopting Resolution 2216 (2015), with Russian Federation Abstaining," United Nations, news release, 14 April 2015.

<sup>110</sup> Robert Forster, "Toward a Comprehensive Solution? Yemen's Two-Year Peace Process," *The Middle East Journal* 71, no. 3 (2017): 480.

<sup>111</sup> In 2016, funding by the United Arab Emirates and Saudi Arabia constituted 43 per cent (\$768,199,211) of the total UN humanitarian appeal for Yemen. Donations from the two countries the previous year amounted to 54.9 per cent (\$990,080, 771) of the appeal. see <http://fts.unocha.org>.

<sup>112</sup> UN official working in Yemen in discussion with author (#17/059205).

participants described the Houthis as perpetually suspicious, “paranoid,”<sup>113</sup> and fearful that all international personnel were spies.<sup>114</sup>

Some INGOs fared somewhat better. Oxfam's former Yemen policy lead Soman Moodley suggested that decades of operations in Yemen and the charity's public advocacy against arms shipments from the United Kingdom (UK) to Saudi Arabia gave the organisation “reputational currency” and collateral to negotiate.<sup>115</sup> Humanitarian researcher and analyst Andrew Cunningham, however, was more sceptical, concluding that staff turnover and lost relationships during the evacuations of March 2015 erased most of these relationship gains.<sup>116</sup> Indeed, the experience of most agencies suggests that prior relationships and trust built in rebel-held northern Yemen proved to be of limited value when the Houthis seized control of the capital and reneged on previous access arrangements. The isolation of Houthi leadership also made it hard for international humanitarians to re-establish relationships with key interlocutors. Moreover, chronically-low funding levels (see below) undermined the humanitarian position, fuelling concerns over their ability to meet the scale of needs in the war-torn country.

Similar dynamics also plagued earlier negotiations with the group. Little was known about the isolated movement when humanitarians first engaged with the Houthis. International actors had minimal understanding of the interests of this “shadowy organisation,” and even fewer contacts within.<sup>117</sup> Houthi leadership and decision-makers proved difficult to identify and largely inaccessible to humanitarian negotiators, who were also hampered by ongoing conflict and government-imposed access restrictions that

<sup>113</sup> Clerc in discussion with author (#17/059216).

<sup>114</sup> Aid worker familiar with Yemen in discussion with author (#17/059203). See also Andrew Cunningham, *Enablers and Obstacles to Aid Delivery: Yemen Crisis 2015*, (Médecins Sans Frontières, 2016), 15; Cunningham, *Enablers and Obstacles to Aid Delivery*.

<sup>115</sup> Moodley in discussion with author (#17/059208); Clerc in discussion with author (#17/059216).

<sup>116</sup> Cunningham, *Enablers and Obstacles to Aid Delivery*, 25.

<sup>117</sup> Peterson, "Yemen on the Precipice," 311.

limited contact with their prospective interlocutors.<sup>118</sup> Mutual distrust and suspicion thus remained high between international humanitarians and the armed group despite successive rounds of negotiation.

## 2.3 GREED AND GRIEVANCE

Houthi-Saleh forces besieged the ancient city of Taizz for ostensibly military reasons. The siege was intended to weaken opposition fighters who were gaining ground in the fight over the city and was likely designed to also pressure residents to turn on Popular Resistance factions.<sup>119</sup> But the city's residents spearheaded the 2011 uprisings that unseated Saleh from power.<sup>120</sup> Ongoing resentment by pro-Saleh forces may well have added to the ferocity with which the alliance imposed the siege.<sup>121</sup>

The battle for Taizz also became tainted with sectarianism. Yemen has traditionally seen little of the sectarian tensions of the wider region and the broader civil war had remained fundamentally a political struggle.<sup>122</sup> But conservative Salafi Islam grew in the city throughout the 2000s, becoming embroiled in national politics during the 2011 uprisings.<sup>123</sup> Many of the Salafist Popular Resistance fighters in control of the centre of Taizz were linked to the religiously conservative *al-Islah* party – the quiescent Saudi-backed adversary to Saleh's GPC,<sup>124</sup> described by counter-terrorism and

<sup>118</sup> See HRW, *Invisible Civilians*, 2 and 3. and Clark, *Dancing on the Heads of Snakes*, 250. See also OCHA, *Yemen 2009 Flash Appeal*.

<sup>119</sup> Saeed al-Batati, "Triumphant Rallies Sweep Liberated Regions in Taiz," *Gulf News*, 13 March 2016.

<sup>120</sup> al-Dawsari, *Breaking the Cycle of Failed Negotiations in Yemen*, 4.

<sup>121</sup> See for example Ali al-Mamari, "'There are Many Devils': A Conversation with Governor of Taiz Ali al-Mamari," interview by Farea al-Muslimi, *Sana'a Center for Strategic Studies* (4 November 2017).

<sup>122</sup> Adam Baron and Farea al-Muslimi, *The Politics Driving Yemen's Rising Sectarianism*, (Sanaa Center for Strategic Studies, 30 May 2016). See also al-Dawsari, *Breaking the Cycle of Failed Negotiations in Yemen*, 8.

<sup>123</sup> al-Maqtari, "The Evolution of Militant Salafism in Taiz".

<sup>124</sup> Ahmed A. Hezam al-Yemeni, *The Dynamic of Democratization: Political Parties in Yemen* (Bonn: Friedrich-Ebert-Stiftung, 2003), 43-44.

security expert Martin Reardon as the Houthi's biggest rival.<sup>125</sup> The battle over Taizz thus became embroiled in a sectarian narrative that fuelled the grievances driving each party, exacerbating levels of violence directed towards combatants and civilians alike.

Further, despite continuing to espouse religious and political ideals, the Houthis began to exhibit the same rent-seeking corrupt tendencies of the predecessors they so publicly scorned. A hard-line faction within the movement appeared content to thrive politically and economically off perpetual conflict and an entrenched war economy. Leaders within the Houthi-Saleh alliance used the conflict to develop an extensive network of diverse income streams – including smuggling and other illicit activities, taxing humanitarian assistance and businesses, the black market, and drugs. War profiteering emerged within Houthi ranks after the first year of the war, claimed a diplomatic source working on Yemen.<sup>126</sup>

Moreover, when interviewed for this research, the UN Special Envoy of the Secretary-General for Yemen described how aid crossing frontlines was often taxed by both the Houthis and the government, resulting in aid supplies being double-taxed.<sup>127</sup> Houthi-Saleh forces also imposed a heavy tax on industrial areas around Taizz as a key source of revenue, underscoring the strategic importance of the commercial hub.<sup>128</sup> “All parties are profiting from their networks,” claimed a diplomatic source.<sup>129</sup> A UN staff member consequently argued that their interests were consequently “bound up in the war economy.”<sup>130</sup> Further, revenues were not only

<sup>125</sup> Martin Reardon, "The Rise of the Houthis," *Al Jazeera*, 18 November 2014. See also al-Maqtari, "The Evolution of Militant Salafism in Taiz"; Baron and al-Muslimi, *The Politics Driving Yemen's Rising Sectarianism*.

<sup>126</sup> Diplomatic source working on Yemen (#17/059218).

<sup>127</sup> Ismail Ould Cheikh Ahmed (Special Envoy of the Secretary-General for Yemen) in discussion with author, Amman, June 2017 (#17/059225).

<sup>128</sup> al-Mamari, "There are Many Devils."

<sup>129</sup> Diplomatic source working on Yemen (#17/059218).

<sup>130</sup> Name withheld (UN staff member working on Yemen) in discussion with author, Amman, June 2017 (#17/059212). See also Baron, "Not Only a Pawn in Their Game".

ploughed into the conflict, but were diverted to individual commanders, concluded a report by the Yemen Panel of Experts (a group of country specialists that support the UN Sanctions Committee on Yemen).<sup>131</sup>

In September 2016, President Hadi relocated the central bank from Sanaa to Aden, drying up a major source of financial support for the Houthis. But regional media speculated that the group stepped up taxes on aid and strengthened alternative means of revenue generation to compensate.<sup>132</sup> Moreover, despite this setback, Yemeni economist Amal Nasser estimated that Houthi-dominance over the country's shadow economy continued, solidifying their status as the wealthiest group in the country. The war was thus "a luxury the Houthis *can* afford," she concluded.<sup>133</sup> Long-time Yemen analyst Peter Salisbury similarly contended, "the war economy has evolved into a system that, for those with guns, is sustainable as long as the status quo is maintained."<sup>134</sup>

The brutality of the conflict also fuelled the grievances felt by the Houthis and their supporters.<sup>135</sup> At least 10,000 people were reportedly killed in the first 18-months of fighting according to the United Nations – most by coalition forces.<sup>136</sup> Under the cover of Security Council resolution 2216 (2015), the Saudi-led coalition imposed a blockade on Yemen's air and sea ports that "arbitrarily diverted or delayed" aid shipments in violation of international humanitarian law, alleged Human Rights Watch (HRW).<sup>137</sup> MSF claimed the blockade placed "hundreds of thousands of lives at

<sup>131</sup> United Nations Security Council, *Resolution 2140 (2014)*, S/RES/2140 (2014).

<sup>132</sup> Staff writer, "Yemen: Houthi Militia Holding Dozens of Trucks Filled with Food," *Al Arabiya*, 1 April 2017.

<sup>133</sup> Amal Nasser, "How Long Can the Houthis Hold on to Yemen?," *Al-Monitor*, 13 September 2016, emphasis added.

<sup>134</sup> Peter Salisbury, "Yemen and the Business of War," *The World Today* 73, no. 4 (2017): 30.

<sup>135</sup> Member of the Yemen donor community (#17/059224).

<sup>136</sup> Kareen Shaheen, "Yemen Death Toll has Reached 10,000, UN Says," *The Guardian*, 17 January 2017.

<sup>137</sup> HRW, *Yemen: Coalition's Blocking Aid, Fuel Endangers Civilians*, (Human Rights Watch, 27 September 2017).

risk.”<sup>138</sup> Consequently, Longley Alley has argued that “the war is strengthening the Houthis and extending their political life... no one can challenge them as long as they are leading the fight against the ‘external aggression.’”<sup>139</sup>

## 2.4 EVOLVING INTERESTS

The receptivity of alliance forces towards humanitarian negotiation was grounded in the broader strategic interests of the Houthi movement, I argue above. But these interests appear to have been little understood by humanitarian organisations themselves. Many participants in this research from humanitarian organisations conceded they did not understand the interests and motivation of the Houthi representatives with whom they negotiated.<sup>140</sup>

This limitation, however, was likely due to more than a disregard for the interests of the armed group. Phillips believed the Houthi Movement lacked a grand strategy and suggested many of the actions of alliance forces were actually driven by efforts by the Saleh network to re-exert control over the country, rather than the Houthis themselves.<sup>141</sup> Further, in what is perhaps the most comprehensive study of the Houthi movement to-date, Salmoni, Bryce, and Madeleine concluded in 2010 that “an official Houthi ideology has yet to formally crystallize.”<sup>142</sup> Several participants working on Yemen similarly observed during interviews in mid-2017 that the Houthis had yet to articulate their political objectives or specific demands. This made it

<sup>138</sup> MSF, “Yemen: Saudi Coalition Urged to Immediately Allow Humanitarian Access During Blockade,” Médecins Sans Frontières, news release, 8 November 2017. Sanaa airport was closed by the Arab Coalition in August 2016, leading to the deaths of 10,000 people seeking medical assistance abroad, according to the Houthi-controlled, Sanaa-based Ministry of Health. See Al Jazeera, “Thousands Die Due to Yemen Airport Closure: NRC,” *Al Jazeera*, 9 August 2017.

<sup>139</sup> Longley Alley, “Counter-productive Isolation”.

<sup>140</sup> Aid worker familiar with Yemen in discussion with author (#17/059203); UN staff member working on Yemen (#17/059204b); UN staff member working on Yemen (#17/059212).

<sup>141</sup> Phillips in discussion with author (#17/059204).

<sup>142</sup> Salmoni et al., *The Huthi Phenomenon*, 191.

difficult for humanitarians to devise negotiation strategies or make compelling offers to the group.<sup>143</sup>

From its emergence, the Houthi movement was widely understood to have highly parochial ambitions, as detailed above. Gregory Johnsen, a Yemen scholar appointed as regional expert on the Yemen Panel of Experts in 2017, argued that the group was driven largely by “the local politics of Saada.”<sup>144</sup> But the movement underwent a massive shift in its aspirations with 2011’s political uprising – the impact of which Phillips claimed cannot be underestimated. Phillips described 2011 as a “rupture point” through which the group’s parochial interests gave way to a determination to establish a power base beyond Saada.<sup>145</sup> From 2011, the Houthis positioned themselves to better exert influence over national governance to safeguard their long-term interests.<sup>146</sup>

Houthi representatives were quick to side with the street in opposition to Saleh in 2011.<sup>147</sup> Their rhetoric subsequently shifted from its Zaydi-orientation to take on a national agenda, claimed Fernando Carvajal, the Houthi-specialist appointed to the Panel of Experts.<sup>148</sup> The movement actively supported national dialogue over subsequent years and gave voice to the grievances of ordinary Yemenis across much of the country. They “shrewdly positioned themselves as an opposition faction,” asserted Yemen-watcher Adam Baron, “standing out for their sharp criticisms of Yemen’s transitional government.”<sup>149</sup> As reforms stalled under President Hadi,

<sup>143</sup> Member of the Yemen donor community (#17/059224); UN staff member working on Yemen (#17/059212).

<sup>144</sup> Gregory D. Johnsen, “The Sixth War,” *The National*, 12 November 2009. See also Phillips in discussion with author (#17/059204).

<sup>145</sup> Phillips in discussion with author (#17/059204).

<sup>146</sup> Aid worker familiar with Yemen in discussion with author (#17/059203); Member of the Yemen donor community (#17/059224). See also Reardon, “The Rise of the Houthis.”

<sup>147</sup> Hamidaddin, “Negotiations with Tribes,” 130 and 132.

<sup>148</sup> Cited in Tom Finn, “Abdel-Malek al-Houthi: From Shadow Rebel Leader to Kingmaker,” *Middle East Eye*, 26 September 2014.

<sup>149</sup> Adam Baron, “What We Get Wrong About Yemen,” *Politico Magazine*, 25 March 2015.



however, they began to seek a military solution that would guarantee their interests where politics was failing. When Hadi lifted fuel subsidies and drove up fuel prices in mid- 2014, massive anti-government protests erupted across the country, and the Houthis seized the opportunity to rally supporters beyond their traditional base.<sup>150</sup>

Historical negotiations with the Houthis also shed light on the interests of the movement. Gorgeau (who was previously posted to Yemen) described the group from 2009 as “open to dialogue.”<sup>151</sup> Early Houthi engagement with international humanitarians appears to have been grounded in the fledgling group’s aspiration for legitimacy. Tareq Talahma, a humanitarian negotiator with the UN who frequently met with Houthi leaders during 2010 and 2011, believed the primary objective of the group was to gain “political legitimacy” by negotiating with international actors. Negotiations were routinely recorded and broadcast through Houthi-controlled media in an attempt, suggested Talahma, to demonstrate its legitimacy to its constituents.

The Houthi’s desire for both domestic and international legitimacy initially opened opportunities for negotiating an agreement around humanitarian norms.<sup>152</sup> But following the failure of the internationally-backed political transition and the passing of resolution 2216, the movement’s aspirations for legitimacy appear to have waned.<sup>153</sup> Phillips suggested the Houthis continued to seek a degree of international legitimacy during the recent conflict, but conceded they were increasingly turning to Iran for support.<sup>154</sup> For its part, Iranian influence over the Houthi movement had long been

<sup>150</sup> Mohammed Ghobari, "Tens of Thousands of Yemeni Houthis Protest Against Fuel Reform, Government," *Reuters*, 19 August 2014.

<sup>151</sup> Gorgeau in discussion with author (#17/059109).

<sup>152</sup> Talahma in discussion with author (#17/059206).

<sup>153</sup> Aid worker familiar with Yemen in discussion with author (#17/059203).

<sup>154</sup> Phillips in discussion with author (#17/059204).

overstated by opponents of the group.<sup>155</sup> As claimed by the UN envoy during an interview for this research, Iranian engagement was a *consequence* rather than a *cause* of the war.<sup>156</sup> Moreover, despite offering increasing levels of military support to the rebel group, Longley Alley argued that Iran exerted minimal influence over the group's policies and conduct. Iran consequently did not play a significant role with regard to the outcome of humanitarian negotiations in the country, I contend.<sup>157</sup>

The pursuit of domestic and international legitimacy by the Houthi Movement influenced humanitarian negotiations in a number of somewhat contradictory ways. First, the brutality of the Saudi-led coalition reduced pressure on the Houthis to comply with international norms. Second, the suffering of Yemeni civilians lent weight to the narrative of the Houthis as defenders of the oppressed, thus reducing incentives for the group to acquiesce to humanitarian demands.<sup>158</sup> They are "propped up by the cruelty of the coalition," claimed a diplomatic source.<sup>159</sup>

Nevertheless, the group had become dependent on international observers (of whom only humanitarian personnel remained during the research period) to bear witness to the atrocities committed by their opponents.<sup>160</sup> Moreover, the scale of humanitarian suffering reflected poorly on the ability of the Houthis to govern the country, thereby undermining the domestic legitimacy on which their long-term ability to shape Yemen's political future was reliant. Participants in this research suggested the Houthis had

<sup>155</sup> Katherine L. Zimmerman, "Warning to the Trump Administration: Be Careful About Yemen," *FoxNews.com*, 28 February 2017; Reardon, "The Rise of the Houthis."; Hamidaddin, "Negotiations with Tribes," 126; Thom Poole, "Iran and Saudi Arabia's Great Rivalry Explained," *BBC News*, 4 January 2016.

<sup>156</sup> Yemen Special Envoy (#17/059225).

<sup>157</sup> Longley Alley, "Counter-productive Isolation".

<sup>158</sup> Humanitarian Affairs Officer, UN (#17/059211a); Longley Alley, "Counter-productive Isolation".

<sup>159</sup> Diplomatic source working on Yemen (#17/059218).

<sup>160</sup> Phillips in discussion with author (#17/059204); Talahma in discussion with author (#17/059206).

come to recognise they were dependent on international humanitarians to build popular trust and confidence by addressing humanitarian needs in the country, with the Yemen envoy insisting they were “starting to realise they need international aid.”<sup>161</sup>

### 3. NEGOTIATION PROCESS

Taizz became a critical focus for humanitarian negotiators from late 2015 and remained so until my case research in mid-2017. Humanitarian agencies stepped up pressure on the Houthis to facilitate access to the besieged city in late August 2015, calling on the armed group to adhere to international norms regarding the protection of civilians.<sup>162</sup> The UN reported that only limited health and water supplies had reached the city in late 2015, despite repeated attempts to negotiate access with *de facto* authorities.<sup>163</sup> MSF publicly acknowledged that they too were being blocked from delivering essential medicines to hospitals, “despite weeks of intense negotiations with [Houthi] officials.”<sup>164</sup> This experience was mirrored by the International Committee of the Red Cross which similarly stated, “we have been asking the parties concerned to authorise the delivery of urgent medicines... for the last five weeks, to no avail.”<sup>165</sup> Towards the end of the

<sup>161</sup> Yemen Special Envoy (#17/059225). Also Clerc in discussion with author (#17/059216).

<sup>162</sup> WHO, “Safe Corridor Needed to Deliver Health Care to Over 3 Million People in Taiz, Yemen,” World Health Organisation, news release, 27 August; OCHA, “Humanitarian Coordinator for Yemen, Johannes Van Der Klaauw, Calls for Safe Passage and Predictable Access to Taizz and Humanitarian Windows for Delivery of Assistance,” Office for the Coordination of Humanitarian Affairs, news release, 31 August 2015; ICRC, “Yemen: Situation Deteriorating in Taiz,” International Committee of the Red Cross, news release, 28 August 2015.

<sup>163</sup> Al Jazeera, “UN Accuses Houthis of Blocking Aid into Yemen's Taiz.”; Stephen O'Brien, *Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Stephen O'Brien: Statement on Yemen*, (Office for the Coordination of Humanitarian Affairs, 24 November 2015).

<sup>164</sup> MSF, “Medical Aid Blocked from Entering Besieged Area in Taiz,” Médecins Sans Frontières, news release, 25 October 2015.

<sup>165</sup> ICRC, “ICRC Concerned by Impact of Fighting on Taiz.”

year, WFP reported that it had been able to deliver food for only 10,000 people in Taizz; “a fraction of the total number in need.”<sup>166</sup>

After five months of negotiation, and amid ongoing advocacy and international peace talks, international humanitarians successfully negotiated access to parts of central Taizz in early 2016. Medical supplies were trucked into besieged areas by MSF on 16 January.<sup>167</sup> Days later, a convoy from WFP also delivered supplies to central Taizz, following months of “extensive negotiations.”<sup>168</sup> An inter-agency UN-led mission reached the enclave on 21 and 22 January.<sup>169</sup> Other agencies built on these successes over subsequent months, including the World Health Organisation (WHO),<sup>170</sup> the International Organisation for Migration (IOM),<sup>171</sup> and the ICRC.<sup>172</sup> UN Under-Secretary-General (USG) for Humanitarian Affairs Stephen O’Brien attributed the progress to a high level humanitarian mission.<sup>173</sup> And humanitarian negotiators used the limited access to establish contacts with local officials to continue negotiations.<sup>174</sup>

The Popular Resistance wrested control of the enclave from Houthi forces on 11 March 2016, purporting to have ended the year-long siege.<sup>175</sup> But

<sup>166</sup> WFP, “WFP Sends Convoys into Yemen City of Taiz to Avert Looming Humanitarian Crisis,” World Food Programme, news release, 10 December 2015.

<sup>167</sup> MSF, “Yemen: Medical Supplies Reach Hospitals in Besieged Taiz,” Médecins Sans Frontières International, news release, 19 January 2016.

<sup>168</sup> UN, “Urging ‘Bold Decisions’ to End Yemen Conflict, UN Envoy Says Viable Peace Plan Within Reach,” UN News Centre, news release, 26 January 2017.

<sup>169</sup> OCHA, *Yemen Humanitarian Bulletin*, 5; Stephen O’Brien, *Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Stephen O’Brien: Statement to the Security Council on Yemen*, (Office for the Coordination of Humanitarian Affairs, 16 February 2016).

<sup>170</sup> WHO, “Following Months of Blocked Access, WHO Medical Supplies Reach Taiz City,” World Health Organisation, news release, 10 February 2016.

<sup>171</sup> IOM, *Yemen Crisis Regional Response: Situation Report*, (International Organization for Migration, 4 February 2016), 2.

<sup>172</sup> ICRC, “Yemen: Desperately Needed Medical Supplies Reach Taiz,” International Committee of the Red Cross, news release, 13 February 2016.

<sup>173</sup> O’Brien, *USG Statement to Council, February 2016*.

<sup>174</sup> OCHA, *Yemen Humanitarian Bulletin*, 5.

<sup>175</sup> al-Batati, “Rallies Sweep Taiz.”

landmines laid by retreating alliance forces, coupled with infighting between anti-Houthi militia, restricted the movement of civilians in war-torn districts of the city and added to the challenge of delivering humanitarian supplies to the enclave.<sup>176</sup> The Houthis subsequently tightened their siege on central Taizz,<sup>177</sup> and over the following eighteen months, aid was repeatedly blocked, delayed, interfered with, and diverted by Houthi-Saleh forces around the besieged city.<sup>178</sup> International humanitarian agencies were consequently forced to continually negotiate with armed groups in a process that one UN official described as “pretty much constant.”<sup>179</sup> WHO similarly described having to negotiate “on a continuous basis” for access to the Taizz enclave.<sup>180</sup> And those involved in the negotiations were well aware of their relatively weak negotiating position. One UN official acknowledged, “we are not in a position of power in Yemen.”<sup>181</sup> Another participant insisted, “we don’t have leverage over Houthi-Saleh militants.”<sup>182</sup>

In the following section I argue that international humanitarians were slow to coordinate their negotiations. Weak UN leadership and competition among agencies undermined cooperation and coordination, leaving humanitarians vulnerable to being played off against one another. Humanitarian organisations also faced limited funding, were slow to expand their humanitarian operations beyond Sanaa, and faced significant access constraints from other parties to the conflict that weakened the value they brought to negotiations. These shortfalls had a significant impact on

<sup>176</sup> Arab News, “KSRelief Sends Aid Convoy to Taiz,” *Arab News*, 22 August 2016; al-Sakkaf, “Taiz Siege Broken.”

<sup>177</sup> Saeed al-Batati, “Humanitarian Aid Arrives in Liberated Taiz,” *Gulf News*, 16 March 2016; Panel of Experts, S/2016/73.

<sup>178</sup> United Nations Security Council, *The Situation in the Middle East*, S/PV.8027 (2017), 4.

<sup>179</sup> UN official working in Yemen in discussion with author (#17/059205).

<sup>180</sup> WHO, “WHO Conducts Cross Line Delivery of Essential Medicines and Medical Supplies to Taizz Enclave, Yemen,” World Health Organisation, news release, 2 March 2017.

<sup>181</sup> Humanitarian Affairs Officer, UN (#17/059211a).

<sup>182</sup> Member of the Yemen donor community in discussion with author(#17/059224).

both national-level negotiations and local negotiations over Taizz. Humanitarian negotiators were nevertheless able to overcome some of these challenges, I argue below, by increasing commitment, bargaining collectively, negotiating at multiple levels, improving trust, integrating humanitarian negotiations with peace talks, and strengthening their alternatives to negotiation.

### 3.1 INCREASING COMMITMENT

In July 2015, the IASC declared a Level 3 emergency – the highest level of mobilisation across the humanitarian system. But international capacity remained weak throughout the year. Faced with a precarious security environment, international staff were slow to return,<sup>183</sup> and a risk-averse security culture permeated response leadership, undermining both operations and negotiations, claimed Cunningham.<sup>184</sup>

Parties to the conflict also imposed burdensome bureaucratic and security procedures that hampered international responders.<sup>185</sup> And many early surge staff lacked the knowledge and contacts to operate effectively in Yemen or were junior and inexperienced. Compounding this capacity gap, some national humanitarian staff were forcibly displaced by fighting, leading to an institutional loss of knowledge, contacts, and experience across the sector.<sup>186</sup> The international humanitarian response consequently suffered from diffused, disjointed, and unclear leadership throughout much of 2015 and early 2016, according to the OPR.<sup>187</sup>

<sup>183</sup> An initial wave of only 17 mission-critical international UN staff returned to Yemen from April 2015, in IASC, *Yemen OPR*.

<sup>184</sup> Cunningham, *Enablers and Obstacles to Aid Delivery*, 11 and 16.

<sup>185</sup> IASC, *Yemen OPR*.

<sup>186</sup> Humanitarian security professional covering the Middle East in discussion with author (#17/059214); IASC, *Yemen OPR*, 9 and 16. See also Cunningham, *Enablers and Obstacles to Aid Delivery*, 11 and 16.

<sup>187</sup> IASC, *Yemen OPR*, 7.

The lack of international attention on Yemen further undermined the negotiating position of humanitarian actors and reduced political pressure on parties to the conflict to conduct themselves in accordance with international norms. Yemen had long suffered “relative neglect by international donors,” I argued in 2011.<sup>188</sup> This indifference continued to be evident in the country’s chronic under-funding of humanitarian activities during the Taizz response. As Oxfam Chief Executive Mark Goldring lamented, “Yemen is much like Syria but without the cameras.”<sup>189</sup> Cunningham thus contended that *de facto* leaders consequently “questioned the motivation and seriousness of humanitarian agencies.”<sup>190</sup>

Nevertheless, humanitarian actors in Yemen deliberately and concertedly sought to raise the profile of the humanitarian crisis from early 2016, in part to improve their negotiating position. As claimed by Yemen Humanitarian Coordinator (HC, the most senior UN humanitarian official in a country) Jaimie McGoldrick, “telling the humanitarian story is really crucial.” Not only does media attention affect funding, he claimed, but it also influences public opinion which in turn effects political interest.<sup>191</sup> Humanitarians thus sought to increase the resources available for the response, as well as international political commitment to humanitarian norms to strengthen their negotiating position.

### 3.2 COLLECTIVE BARGAINING

International humanitarian actors addressed leadership and coordination shortfalls in a number of ways. The HCT and humanitarian clusters

<sup>188</sup> Clements, *Yemen: Fragile Lives Hungry Times*, 17. In 2016 the UN-administered appeal for Yemen received less than two-thirds of the amount requested (63 per cent or \$1 billion out of \$1.6 billion), an improvement over the previous year’s 58 per cent (\$930 million out of \$1.6 billion requested). See <http://fts.unocha.org>.

<sup>189</sup> Oxfam, “Oxfam Chief Calls Yemen ‘Syria Without the Cameras’,” Oxfam GB, news release, 1 July 2016.

<sup>190</sup> Cunningham, *Enablers and Obstacles to Aid Delivery*, 15.

<sup>191</sup> Jaimie McGoldrick, “Jamie McGoldrick, Resident and Humanitarian Coordination in Yemen,” interview by Panos Moutzsis, *Peer 2 Peer Support* (14 September 2016).

(sectoral coordination platforms) provided the primary strategic and operational coordination fora in Yemen. An Access Working Group was also established under the HCT to analyse and monitor access constraints and agree a shared strategy to improve humanitarian access in the country. Further, OCHA oversaw an Access Monitoring and Reporting Framework; a mechanism to gather evidence of access constraints to "guide humanitarian access negotiations and [build] an evidence base for advocacy."<sup>192</sup>

From early 2016, the UN began to roll out additional operational hubs to facilitate information-gathering, analysis, and operational monitoring.<sup>193</sup> These hubs were also intended to enhance field-level coordination, build stronger local contacts, and to collectively negotiate local access.<sup>194</sup> In mid-2016 the HCT agreed a code of conduct for humanitarian operations in Yemen, the Joint Operating Principles (JOPs).<sup>195</sup> Whilst the JOPs were reportedly built on the ground rules shared with the Houthis the previous year, they did not explicitly reference them, nor did they allude to the letter of intent signed with Houthi leadership in 2011. Indeed, participants in this research were largely unaware of these earlier agreements. The response by Houthi officials to these documents is unclear.

Separately, international NGOs operating in Yemen negotiated a so-called 'red lines' document that was intended to specify operational and principle-level compromises they would *not* make in exchange for being granted operational access by *de facto* authorities. But agreement among agencies could not be reached on common red lines and the draft was never

<sup>192</sup> OCHA, *Yemen Humanitarian Bulletin*, 4.

<sup>193</sup> IASC, *Yemen OPR*, 3.

<sup>194</sup> In addition the hubs in Sanaa and Hudaydah that were operational in 2015, field hubs opened in Aden, Ibb, Mukalla, and Saada the following year. See IASC, *Yemen OPR*, 9-10.

<sup>195</sup> On file with the author.



endorsed.<sup>196</sup> As Cunningham noted, “agencies [in Yemen] have not always been on the same page on a number of tactical and strategic issues.”<sup>197</sup>

International NGOs had long-maintained humanitarian and security coordination platforms separate from the UN; the International NGO Forum and the INGO Safety Advisory Office – both of which had strengthened access arrangements with national authorities prior to the Houthi coup. But *de facto* authorities shut down both coordination platforms in mid-2016 in what some participants described as an attempt to limit the ability of NGOs to engage in collective bargaining over security issues and humanitarian access.<sup>198</sup> Moodley described the move as a deliberate attempt to “divide and conquer” the humanitarian community. The Houthis were thereby able to play agencies off against one another, he claimed, extracting concessions from one NGO that were used as leverage over others.<sup>199</sup>

Moreover, representatives of the *de facto* government reportedly inserted themselves into humanitarian coordination structures, undermining the ability of humanitarians to openly organise and plan their negotiations. “The Houthis interfere and impose such stress on different parts of the humanitarian system that coordination systems are no longer robust,” insisted one aid worker, who concluded, “[humanitarians] are weaker for not having a more united voice.”<sup>200</sup>

<sup>196</sup> Humanitarian Affairs Officer, UN (#17/059211a).

<sup>197</sup> Cunningham, *Enablers and Obstacles to Aid Delivery*, 10.

<sup>198</sup> UN staff member working on Yemen (#17/059212); Humanitarian Affairs Officer, UN (#17/059211a); UN staff member working on Yemen (#17/059212); Clerc in discussion with author (#17/059216). See also Samuel Hall, *External evaluation of the INGO Safety Advisory Office (ISAO)*, (Samuel Hall, 2013).

<sup>199</sup> Moodley in discussion with author (#17/059208). See also Humanitarian Affairs Officer, UN (#17/059211a).

<sup>200</sup> Aid worker familiar with Yemen in discussion with author (#17/059203).

INGOs consequently became highly dependent on UN coordination platforms.<sup>201</sup> But they gradually began to recognise their need to operate with a greater degree of autonomy – particularly given growing Houthi animosity towards the world body. NGOs were often better-placed to negotiate with parties to the conflict than the UN, insisted one humanitarian, who argued for holding bilateral negotiations. These engagements facilitated contacts and relationships with armed groups that enabled humanitarian negotiators to quickly address security issues and ensure humanitarian staff could move safely without being targeted by combatants.<sup>202</sup> Another humanitarian similarly claimed their organisation had no choice but to negotiate bilaterally with the Houthis given the complex and fluid conflict and security environment.<sup>203</sup>

Humanitarian agencies operating in Yemen also faced competition with one another over scarce resources – such as skilled staff, donor funding, local partners, and operational space.<sup>204</sup> There was consequently limited appetite for coordinated negotiations, claimed Oxfam Regional Humanitarian Coordinator Philippe Clerc. Negotiations during the first months of the response were thus predominantly held at the agency-level.<sup>205</sup> Moreover, there was significant pressure on humanitarian agencies to deliver, noted a UN official, leading some humanitarians to operate outside official coordination structures, thereby undermining any collective positions. This was particularly evident in the frequent violations of the JOPs by some NGOs and UN agencies, they claimed.<sup>206</sup>

Similar tensions were present during the Saada response in the late 2000s. WFP and UNHCR initially led collective negotiations with the Houthis. But

<sup>201</sup> Cunningham, *Enablers and Obstacles to Aid Delivery*, 18.

<sup>202</sup> Humanitarian with experience working in Yemen (#17/059226).

<sup>203</sup> Moodley in discussion with author (#17/059208).

<sup>204</sup> Cunningham, *Enablers and Obstacles to Aid Delivery*.

<sup>205</sup> Clerc in discussion with author (#17/059216).

<sup>206</sup> UN official working in Yemen in discussion with author (#17/059205).

other agencies were concerned that negotiators were prioritising the interests of their own agency or operational sectors over the wider interests of the humanitarian community. OCHA consequently became more involved from 2010 onwards. But this change was met with concern from those agencies that had already established bilateral relationships with the armed group.<sup>207</sup> Cunningham concluded that in Yemen, “there is certainly greater leverage gained when agencies present a united front by coordinating negotiations, but there remains a need for direct communication between INGOs and the relevant authorities, at local, national, regional, and international levels.”<sup>208</sup>

### 3.3 MULTI-LEVEL NEGOTIATIONS

International humanitarian actors faced initial delays as they focused their efforts to negotiate access on Houthi leadership in Sanaa. The weak and decentralised chain of command within Houthi forces meant that agreements made at the central level frequently did not hold on the frontlines. “Negotiating in Sanaa was never enough,” observed one humanitarian who participated in this research.<sup>209</sup> Illustrating this disconnect, a convoy carrying USG O’Brien was denied passage at the last checkpoint before entering Taizz city in March 2017, despite having received “assurances of safe passage from all parties for all stages of the mission,” he reported.<sup>210</sup> A further attempt by the USG to reach the enclave later that year failed after the mission came under attack.<sup>211</sup>

<sup>207</sup> Senior UN official in discussion with author (#17/059201); Talahma in discussion with author (#17/059206).

<sup>208</sup> Andrew Cunningham, *To Stay and Deliver? The Yemen Humanitarian Crisis 2015*, (Médecins Sans Frontières, 2016), 13.

<sup>209</sup> Humanitarian with experience working in Yemen (#17/059226).

<sup>210</sup> Stephen O’Brien, *Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Stephen O’Brien: Remarks to the Media*, (Office for the Coordination of Humanitarian Affairs, 2 March 2017).

<sup>211</sup> Security Council, S/PV.8027, 2.

To overcome the ineffectiveness of centralised negotiations, humanitarians found it necessary to negotiate at multiple levels within the armed group simultaneously.<sup>212</sup> Negotiations around Taizz therefore regularly took place on at least two distinct levels: locally, with representatives of armed groups in direct control of areas in which humanitarians sought to assist civilians; and nationally, directly with representatives of the *de facto* administration. Local or ‘frontline’ negotiations tended to be highly operational, focusing on security and logistical arrangements for moving humanitarian supplies or personnel. The arduous process of getting assistance into Taizz was described by the ICRC as follows: “any emergency field mission requires multiple negotiations by telephone and at checkpoints in the city. Such negotiations take time, which risks lives.”<sup>213</sup>

Moreover, humanitarian personnel were threatened by direct violence by parties to the conflict in Taizz to an extent unfamiliar in other areas of the country. This required humanitarian negotiators to engage with field commanders directly to ensure the safety of humanitarian personnel, supplies, and assets. But progress was undermined by minimal UN capacity beyond Sanaa during the first year of the response – particularly in Taizz where the operational hub was slow to be established.<sup>214</sup>

While effective negotiations had to be very local, they also needed to be complemented by central negotiations to be effective, insisted a UN official.<sup>215</sup> Moreover, frontline negotiations were not viable in Taizz until a degree of access had been negotiated at the central level to enable international humanitarians to identify and safely engage with relevant counterparts. National-level negotiations were both policy-oriented (focusing on issues such as agency registration, staff visas, travel

<sup>212</sup> UN official working in Yemen in discussion with author (#17/059205); Moodley in discussion with author (#17/059208); Humanitarian with experience working in Yemen (#17/059226).

<sup>213</sup> ICRC, *I Saw My City Die*, 27.

<sup>214</sup> Humanitarian Affairs Officer, UN (#17/059211a); OCHA, "Calls for Safe Passage to Taizz."

<sup>215</sup> UN official working in Yemen in discussion with author (#17/059205).

procedures, and sharing operational details or beneficiary lists) as well as operational, in support of frontline negotiations. But as humanitarian agencies scaled up their teams from late 2015, official processes proved slow and burdensome.<sup>216</sup>

The UN established a political mission in Yemen in 2011 with the objective of bringing about a peaceful political transition in the country; the United Nations Office of the Special Envoy of the Secretary-General for Yemen (OSESGY). The Special Envoy traditionally enjoyed higher-level access than most humanitarians and was therefore able to deliver messages and advocate at higher levels.<sup>217</sup> The UN envoy, however, enjoyed limited backing from the international community, claimed a participant working for the donor community on Yemen, undermining his negotiating position and impact on negotiations.<sup>218</sup> Houthi leaders also demonstrated little respect for the position or understanding of the UN's bodies and representatives.<sup>219</sup>

Humanitarian negotiations at the local and national level appear to have largely neglected protection issues. "Protection concerns are more difficult to raise," acknowledged a UN official.<sup>220</sup> Instead, the protection of civilians continued to be addressed primarily through advocacy channels rather than as an issue over which to negotiate with *de facto* authorities.<sup>221</sup> Yet protection-focused negotiations were previously held with Houthi leadership over the group's 2010 listing in the Secretary-General's annual report on Children and Armed Conflict (CAAC) for recruitment and use of

<sup>216</sup> Member of the Yemen donor community (#17/059224).

<sup>217</sup> UN staff member working on Yemen (#17/059212).

<sup>218</sup> Member of the Yemen donor community (#17/059224).

<sup>219</sup> UN staff member working on Yemen (#17/059204b).

<sup>220</sup> UN official working in Yemen in discussion with author (#17/059205). See also IASC, *Yemen OPR*, 14-15.

<sup>221</sup> See for example Security Council, S/PV.8027, 5.

children within its ranks.<sup>222</sup> Houthi leadership committed in November 2012 to enter into dialogue with the UN to address their use and recruitment of children,<sup>223</sup> and an Action Plan (a commitment signed by listed parties that details the steps it will take to comply with international law) was drafted the following year.<sup>224</sup> But after the 2015 coalition offensive, the UN reported a significant increase in the use and recruitment of children by the Houthis, undermining the progress of previous years.<sup>225</sup> The Houthis continued to be listed in the CAAC report through 2017.<sup>226</sup> But as of 2015, “all progress on actions plans and on ending violations has been put on hold,” the UN reported.<sup>227</sup>

In 2016 the Saudi-led coalition was listed in the annual CAAC report (alongside the Houthis, AQAP, Government forces, and pro-Hadi militia) for grave violations against children related to its indiscriminate bombing campaign in Yemen – specifically, killing and maiming children and perpetrating attacks on schools and hospitals.<sup>228</sup> The move “had a huge impact on the ground,” noted a UN official, claiming it jeopardised the already-shaky relationship between coalition forces and international

<sup>222</sup> United Nations General Assembly, *Children and Armed Conflict: Report of the Secretary-General*, A/64/742–S/2010/181 (2010), para 162.

<sup>223</sup> United Nations General Assembly, *Children and Armed Conflict: Report of the Secretary-General*, A/67/845–S/2013/245 (2013), para 171.

<sup>224</sup> United Nations General Assembly, *Children and Armed Conflict: Report of the Secretary-General*, A/68/878–S/2014/339 (2014), para 162. The plan was endorsed by the Houthi Human Rights and Civil Society Office in 2014. See United Nations General Assembly, *Children and Armed Conflict: Report of the Secretary-General*, A/69/926–S/2015/409 (2015), para 216.

<sup>225</sup> General Assembly, A/69/926–S/2015/409, para 216. In 2016 the annual CAAC report documented a fivefold increase in cases of recruitment and use of children, attributing the vast majority to the Houthis. It added the charges of killing and maiming children and attacking schools and hospitals to the group’s listing criteria. See United Nations General Assembly, *Children and Armed Conflict: Report of the Secretary-General*, A/70/836–S/2016/360 (2016), para 165.

<sup>226</sup> See General Assembly, A/67/845–S/2013/245; General Assembly, A/68/878–S/2014/339, para 162; General Assembly, A/69/926–S/2015/409; General Assembly, A/70/836–S/2016/360.

<sup>227</sup> General Assembly, A/69/926–S/2015/409, para 216.

<sup>228</sup> General Assembly, A/70/836–S/2016/360.

humanitarians in Yemen.<sup>229</sup> But Saudi pressure on the UN led to its de-listing two months after the release of the initial report.<sup>230</sup> This further alienated *de facto* authorities and fuelled Houthi animosity and distrust towards the UN. Moreover, Saudi Arabia's de-listing negatively affected humanitarian negotiations with the armed group: "it creates very negative resentment towards the UN that inevitably trickles down to humanitarians on the ground," observed a UN staff member.<sup>231</sup>

The negotiating environment in Yemen was thus shaped, in part, by mechanisms such as the CAAC report, as well as UN sanctions, and Security Council resolutions and statements addressing humanitarian norms and the situation in Taizz directly.<sup>232</sup> Resolution 2140 (2011) established a framework for imposing a travel ban and asset freeze on designated individuals for obstructing or undermining the political transition process, or violating international human rights law or international humanitarian law.<sup>233</sup> Resolution 2216 (2015) imposed an arms embargo on individuals and entities designated by the Sanctions Committee and extended the designation criteria to include obstructing humanitarian access.<sup>234</sup>

These sanctions were designed to influence the behaviour of political actors related to the protection of civilians and humanitarian access.<sup>235</sup> Ahmed Himmiche, Coordinator of the Yemen Panel of Experts, conceded in an interview for this research that the arms embargo, travel restrictions, and asset freezes were likely to have little impact on Houthi leaders who

<sup>229</sup> UN official working in Yemen in discussion with author (#17/059205).

<sup>230</sup> United Nations General Assembly, *Children and Armed Conflict: Report of the Secretary-General: Addendum*, A/70/836/Add.1–S/2016/360/Add.1 (2016).

<sup>231</sup> UN official working in Yemen in discussion with author (#17/059205).

<sup>232</sup> See for example Security Council, S/PV.8027, 6. See also United Nations Security Council, *Resolution 2014 (2011)*, S/RES/2014 (2011), 10; United Nations Security Council, *Resolution 2051 (2012)*, S/RES/2051 (2012), para 13; Security Council, S/RES/2140, para 28; Security Council, S/RES/2216, preamble, para 9 and para 12; United Nations Security Council, *Resolution 2342 (2017)*, S/RES/2342 (2017), preamble.

<sup>233</sup> Security Council, S/RES/2140, para 18.

<sup>234</sup> Security Council, S/RES/2216, para 19.

<sup>235</sup> Panel of Experts, S/2017/81, 4.

maintained smuggling routes through Iran and Oman.<sup>236</sup> Moreover, members of the Houthi network rarely travelled internationally. Nor were they believed to have significant assets abroad.<sup>237</sup> Further, the Houthis grew under a government-imposed blockade during the Saada Wars and were likely little-deterred by such international gestures.<sup>238</sup>

In contrast, however, Himmiche claimed sanctions would have a significant impact on the Saleh network. Designation could end the political career of public figures in Yemen, could separate perpetrators from member states who no longer wanted to be linked to violators, and could encourage member states to pressure listed parties, he suggested.<sup>239</sup> Indeed, a UN staff member claimed that Saleh wanted to see the sanctions lifted.<sup>240</sup>

The Special Envoy to Yemen was more sceptical, however. He suggested the threat of sanctions was more effective than their actual use, describing listed parties as “cornered lions.”<sup>241</sup> Further, whilst the financial and reputational impact of sanctions imposed on Saleh and members of his inner circle likely provided leverage during negotiations, a diplomatic source claimed they also further isolated the former president from the international community and thereby constituted an “obstacle” to peace.<sup>242</sup>

### 3.4 BUILDING TRUST

The perceived impartiality and neutrality of humanitarians was jeopardised from the outset of the response by the seemingly-anti-Houthi position adopted by most international diplomatic actors – including the political

<sup>236</sup> Ahmed Himmiche (Coordinator and Financial Expert, Yemen Panel of Experts) in discussion with author, remote, May 2017 (#17/059202).

<sup>237</sup> Salisbury, "Yemen and the Business of War," 30.

<sup>238</sup> UN staff member working on Yemen in discussion with author (#17/059204b).

<sup>239</sup> Himmiche in discussion with author (#17/059202). See also Kasinof, "Sanaa's Survivor".

<sup>240</sup> UN staff member working on Yemen in discussion with author (#17/059204b).

<sup>241</sup> Yemen Special Envoy in discussion with author (#17/059225).

<sup>242</sup> Diplomatic source working on Yemen in discussion with author (#17/059218).



arms of the UN. Despite many humanitarian agencies having overseen extensive operations in Houthi-controlled areas during the Saada Wars, trust remained low, I argue above, undermining negotiations. While prior relationships and trust built over years of humanitarian operations in rebel-held northern Yemen enabled some aid groups to achieve greater gains from negotiation, these relationships often proved necessary but not sufficient to overcome access restrictions. And the tactics available to humanitarian negotiators were limited by the potential for direct violence against them.

Those agencies with the resources to do so attempted to demonstrate their neutrality by operating on both sides of the frontlines – from government-controlled Aden and Houthi-held Sanaa. One participant in this research described this tactic as critical to demonstrate impartiality and gain acceptance by both sides.<sup>243</sup>

International humanitarians also sought to balance criticism of the Saudi-led coalition and internationally-recognised government with condemnation of alliance forces. But extensive Saudi funding of humanitarian operations in Yemen, and the coalition's de-listing appears to have reinforced the partisan nature of international actors in the eyes of the Houthis. This in turn further compromised trust and likely undermined negotiated outcomes.

The rapid turnover of staff within humanitarian organisations also damaged trust between the two groups, just as the Houthi practice of frequently rotating militia around the country undermined the ability of negotiators to build relationships and trust with field commanders.<sup>244</sup>

At the time at which the bulk of my interviews were conducted, tensions were high over the extent to which INGOs were comfortable with the

<sup>243</sup> Clerc in discussion with author (#17/059216).

<sup>244</sup> Diplomatic source working on Yemen in discussion with author (#17/059218); Panel of Experts, S/2017/81, 21.

United Nations negotiating on their behalf. Many NGOs believed they were better-placed to negotiate than the UN due to its tainted image in Yemen. Some NGOs consequently choose to maintain bilateral negotiations with armed groups for logistical and security reasons, as detailed above.

### 3.5 INTEGRATION WITH PEACE TALKS

The UN facilitated three rounds of peace talks through the office of the Special Envoy.<sup>245</sup> Controversially, humanitarian access was on the agenda of each, including access to Taizz. The first round of talks in Geneva (June 2015) brought few changes on the ground. But Taizz was high on the agenda of the following talks held in Biel (December 2015). This second round was intended as a confidence-building measure based on prisoner swaps, humanitarian access, and economic measures.<sup>246</sup> Houthi representatives committed to facilitate humanitarian access to the besieged city and international humanitarian actors began moving supplies into Taizz within weeks.<sup>247</sup> These gains were only reversed when Popular Resistance forces retook the enclave three months later, prompting alliance forces to re-impose the siege, as detailed above.

When interviewed for this research, the Yemen envoy proposed that the inclusion of access on the agenda at Biel was “very useful,” and progress on the humanitarian front helped move the political agenda forward.<sup>248</sup> But many among the humanitarian community were unhappy at the integration of humanitarian and political agendas. A lack of progress on the political front meant there was pressure to be seen to advance humanitarian issues, noted one UN official, ultimately creating false expectations, resentment

<sup>245</sup> The first – held in Geneva, Switzerland in June 2015 – fell apart within days. A second round of talks took place in Biel, Switzerland in December 2015 and also stalled with little agreement. A third round began in Kuwait in April 2016 and continued to August 2016 before collapsing.

<sup>246</sup> Yemen Special Envoy in discussion with author (#17/059225).

<sup>247</sup> O'Brien, *USG Statement to Council, February 2016*.

<sup>248</sup> Yemen Special Envoy in discussion with author (#17/059225).

among negotiating parties, and further politicising access negotiations.<sup>249</sup> Indeed, the role of the Special Envoy itself became increasingly politicised and ultimately faced outright rejection.<sup>250</sup> In early 2017, Houthi leaders urged the Security Council not to renew the Yemen envoy's tenure. A few months later, whilst on a rare visit to the country, he came under attack by suspected Houthi forces. And in August, the armed group announced it would no longer engage with the OSESGY.<sup>251</sup>

The envoy himself acknowledged that his role was primarily political, preferring not to address humanitarian issues unless he perceived it to be appropriate to do so, or if raised by his counterparts.<sup>252</sup> Other participants, however, wished to see a greater role for the senior UN representative in addressing access restrictions and protection issues with *de facto* authorities.<sup>253</sup> One UN staff member insisted access was inherently political and therefore clearly within the remit of the political mission and the envoy.<sup>254</sup>

A third round of peace talks began in April 2016, ushered in by a cessation of hostilities. But both sides flaunted the ceasefire in Taizz, and the city experienced some of its fiercest fighting to-date.<sup>255</sup> A further cessation of hostilities was announced in August that also failed to translate into frontline access for international humanitarian agencies. Parties to the conflict reportedly used the opportunity to regroup and resupply. The

<sup>249</sup> UN official working in Yemen in discussion with author (#17/059205).

<sup>250</sup> Member of the Yemen donor community in discussion with author(#17/059224); Phillips in discussion with author (#17/059204).

<sup>251</sup> Rick Gladstone, "UN Mediator for Yemen Conflict Leaving Post," *The New York Times*, 22 January 2018; Al Jazeera, "Yemen's Houthis to Boycott UN Envoy," *Al Jazeera*, 7 June 2017.

<sup>252</sup> Yemen Special Envoy in discussion with author (#17/059225).

<sup>253</sup> Humanitarian working in the Middle East in discussion with author (#17/059209).

<sup>254</sup> UN staff member working on Yemen in discussion with author(#17/059212).

<sup>255</sup> OCHA, *Yemen Humanitarian Bulletin 13*, 1. See also MSF, "Two Months of Ceasefire."

inclusion of humanitarian issues on the political agenda thus appeared to have backfired, as some believed it always would.<sup>256</sup>

Finally, access negotiations were also shaped by the broader political context. Given the absence of western diplomats in Sanaa and the lack of Houthi representatives abroad, there was virtually no direct engagement between Houthi leaders and traditional diplomats. International humanitarian actors become the only representatives of the international community in Houthi-controlled areas. Humanitarians were thus one of the few avenues through which the armed group could send diplomatic signals. On occasion, *de facto* authorities summoned humanitarian representatives to demonstrate frustration at the UN envoy, the Security Council, or other international diplomats, claimed a UN official, further complicating the negotiating environment over access and civilian protection.<sup>257</sup>

### 3.6 ALTERNATIVES TO NEGOTIATION

Despite efforts to develop a systematic framework for negotiations over Taizz, staff from international agencies were unable to regularly enter the enclave throughout 2016 and 2017.<sup>258</sup> Humanitarian actors in Taizz consequently sought alternative strategies to negotiation. First, the JOPs afforded humanitarian agencies the option to withdraw from the country if their operations were unduly compromised by *de facto* authorities. But this alternative was never put into force during the research period.

Second, some INGOs recruited staff from local areas in the hope that local tribes would serve as a deterrent against attack.<sup>259</sup> Whilst this improved staff safety in certain areas, it did little to guarantee operations elsewhere. Third, the King Salman Humanitarian Aid and Relief Center (a relief agency

<sup>256</sup> Gunter and Bakhsh, "Life Under Siege in Taiz."

<sup>257</sup> UN official working in Yemen in discussion with author (#17/059205).

<sup>258</sup> OCHA, *Yemen Humanitarian Bulletin* 15, 6.

<sup>259</sup> Humanitarian with experience working in Yemen in discussion with author (#17/059226).

created specifically to channel Saudi government funding to Yemen) resorted to a series of airdrops to bring supplies to the besieged city throughout 2016.<sup>260</sup> But such initiatives were costly and still required partners on the ground to distribute supplies (see chapter 3). Mainstream humanitarian agencies consequently did not consider this a viable option.

A more effective alternative for international humanitarians was to partner with local NGOs that continued to operate in besieged areas. International organisations became strategic partners to local NGOs, building their capacity and providing operational funds to facilitate humanitarian assistance to civilians inside Taizz. This partnership “has meant we can reach more inaccessible areas,” claimed Oxfam.<sup>261</sup> Aid supplies brought to the city through UN-backed convoys were thus often handed to local partners for distribution, who already had staff in place as well as strong contacts within affected communities.

Moreover, international humanitarian organisations often relied on their local partners to do more than implement programmes. They were often required to negotiate access as well. But as Clerc conceded, “we often don’t know who our partners talk to.”<sup>262</sup> Moreover, whilst the Operational Peer Review found that national NGOs were of “paramount importance” to the humanitarian response in Yemen in light of the severe access constraints, it also warned of a limited number of viable local partners.<sup>263</sup>

International humanitarians also used voucher programmes to overcome the regular failure of humanitarian negotiations.<sup>264</sup> WFP Country Director Purnima Kashyap described these initiatives as “an effective way of

<sup>260</sup> Government of Saudi Arabia, “King Salman Center Airdrops Food Supplies to Yemen,” Government of Saudi Arabia, news release, 29 February 2016.

<sup>261</sup> Bassim Assuqair, “Building Local Humanitarian Capacity in Yemen,” *Oxfam Views & Voices* (blog), 16 October 2017.

<sup>262</sup> Clerc in discussion with author (#17/059216).

<sup>263</sup> IASC, *Yemen OPR*, 9.

<sup>264</sup> WFP, “Breakthrough as WFP Reaches Taiz Enclave Using Voucher Assistance,” World Food Programme, news release, 31 July.

addressing access challenges.”<sup>265</sup> Her agency’s programme began in mid-2016, compensating local traders for providing free food to civilians inside the Taizz enclave. The initiative proved viable because local markets largely continued to function, allowing international humanitarians to bypass armed groups. Nevertheless, coalition air strikes often targeted commercial convoys and local markets, reported the United Nations Special Rapporteur on the Right to Food, Hilal Elver, undermining both alternatives to negotiation.<sup>266</sup>

## CONCLUSION

The weak position of humanitarian negotiators in Yemen forced them to engage in protracted, multi-level, multi-stakeholder negotiations that were centralised within OCHA but took time to establish. This strategy allowed international humanitarians to negotiate collectively at the national and local-levels. But success was tied to negotiations with the internationally-recognised government and Saudi-led coalition. The Houthis also changed the structure of the negotiation by obstructing humanitarian coordination fora, thereby undermining collective bargaining. This chapter also demonstrated how changes in the political context and conflict environment had a significant bearing on the outcome of humanitarian negotiations – often decisively so – particularly as the Taizz enclave changed hands.

Humanitarians in Yemen worked hard to build trust, demonstrating impartiality and neutrality through both their operations and their advocacy. Simultaneously, humanitarian organisations strengthened their alternatives to negotiation, particularly through voucher programmes and building partnerships with local NGOs. These initiatives thus improved

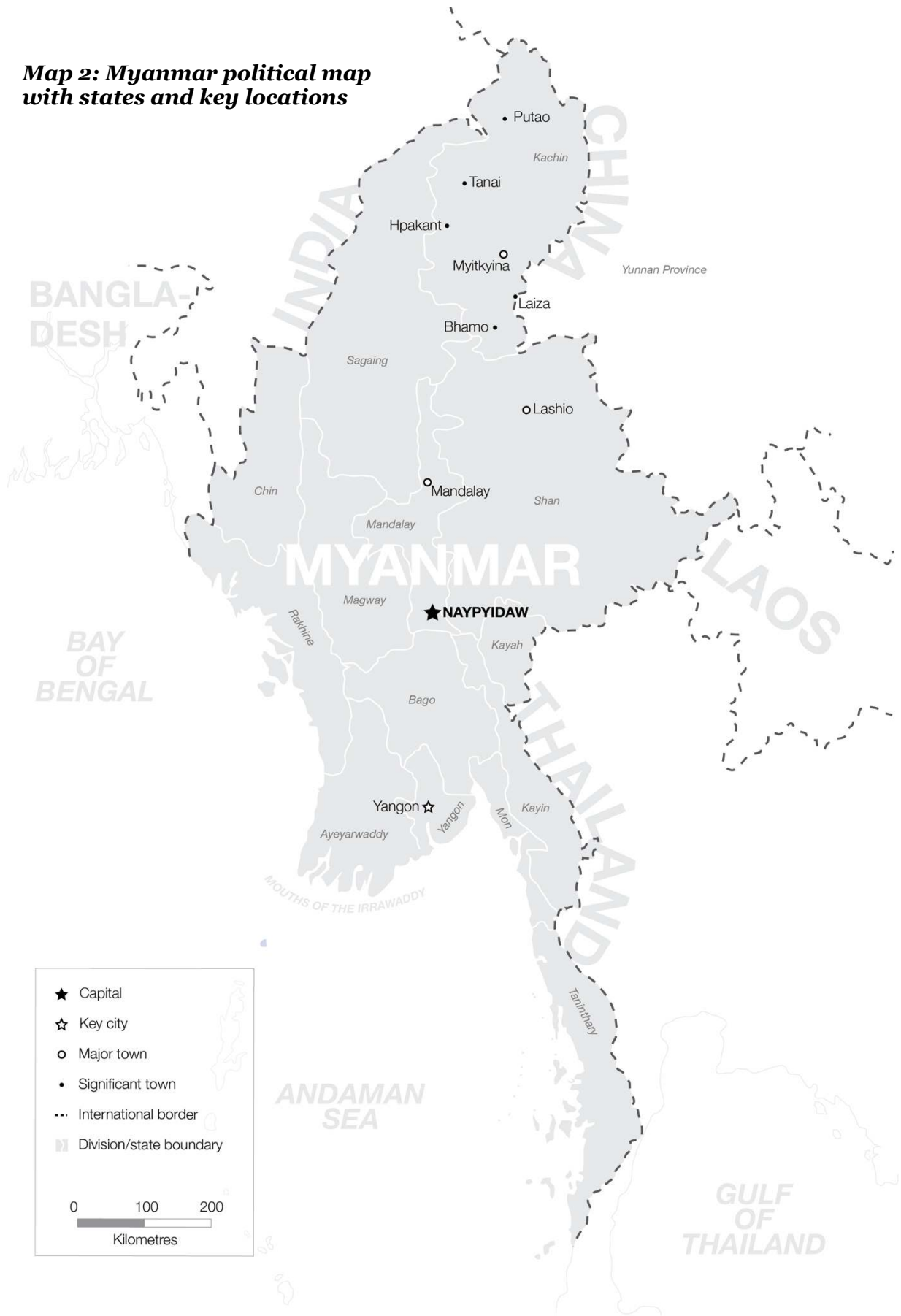
<sup>265</sup> WFP, "WFP Reaches Taiz Enclave."

<sup>266</sup> OCHA, *Yemen Humanitarian Bulletin*, Issue 1 (Office for the Coordination of Humanitarian Affairs, 27 August 2015), 2.

their bargaining position, although both alternatives faced significant challenges. Moreover, humanitarian negotiators demonstrated limited contextual awareness and were slow to adapt their negotiation strategies to the evolving situation and interests of their counterparts.

Negotiations with the Houthis appear to have revolved around their core interests of legitimacy (domestic and local) and side payments by way of linking humanitarian negotiations with peace talks. Humanitarian negotiations had the potential to both serve and undermine the interests of the Houthi Movement and their allies, who sought legitimacy from the deprivation and suffering of civilians, but whose support they also looked to leverage to establish themselves as a permanent force in Yemen's political future. Houthi counterparts likely saw economic value from facilitating humanitarian assistance to areas under their control. But, uncomfortably for principled humanitarians, relief operations also fed the war economy, offered opportunities for Houthi leaders to extract personal gains, and afforded *de facto* authorities the chance to manipulate assistance for strategic advantage. This likely reduced the outright denial of access but may have led to greater interference in the delivery of aid.

**Map 2: Myanmar political map with states and key locations**





# CHAPTER 5

## MYANMAR: A RETURN TO ARMS IN KACHINLAND

My previous case study on Yemen revealed a range of tactics through which humanitarian negotiators could reduce their weak bargaining position to attain more balanced outcomes. This chapter explores whether humanitarian organisations responding to conflict in Kachin State in northern Myanmar (also known as Burma) were similarly able to overcome this power asymmetry to realise access gains and to better protect civilians.

Below I analyse negotiations between international humanitarian organisations and the ethno-nationalist rebel group, the Kachin Independence Army (KIA). I examine the five-year period from the resumption of hostilities in Kachin in June-2011 to a government crackdown on access from mid-2016 that derailed international humanitarian operations in the state. At the heart of this case is the seeming contradiction between the KIA's receptivity to humanitarian access whilst it flouted international norms related to the protection of civilians. I argue the group was deeply integrated into Kachin society, making it amenable to negotiating humanitarian access. These same elements, however, did not translate into civilian protection, towards which the KIA proved deeply intransigent.

Section 1 summarises the key dynamics and drivers of the conflict, emphasising the critical geopolitical and national significance of armed resistance in Kachin State. Section 2 outlines the structure of humanitarian negotiations with the KIA and introduces the complex and symbiotic relationship of fear and trust between the ethnic armed group and their

constituents. I examine the particular form of ethnic identity that the KIA leverages and reproduces, and I detail the group's complex and contradictory relationship with international norms. In this section I also explore how the geopolitical context of the conflict factors into humanitarian negotiations, particularly its significance for both Chinese and western interests.

Section 3 details the complex process of negotiating with the KIA that was interwoven with access negotiations with national authorities, thereby compromising the outcomes of each. I outline the successes and limitations of the highly coordinated and centralised access strategy adopted by international organisations that sought permission from both parties for a series of aid convoys across frontlines. I also explore the repeated failure by international humanitarian negotiators to raise protection concerns with the Kachin rebels and the inability of international organisations to develop viable alternatives to negotiation.

The final section draws on these findings to analyse the power dynamics and tactics that influenced the outcome of humanitarian negotiations with the Kachin rebels. I argue negotiations with the KIA were characterised by high levels of interdependence with respect to humanitarian access that led to operational gains, but humanitarian negotiators failed to build alternatives to negotiation and made few efforts to address protection concerns with the armed group.

## **1. CONFLICT**

Myanmar's isolated northern regions are the backdrop to one of the world's longest-running civil wars that has ebbed and flowed for more than a half century. Resource-rich Kachin and northern Shan states share a porous border with China and play an important role in the national political and economic landscape. Government control of the strategically important area is contested by the KIA, which claims it as an ethnic minority homeland. A 17-year ceasefire gave way to renewed fighting in June 2011, leading to the displacement of around 100,000 civilians during the first five years of the conflict and precipitating a slew of human rights violations by

both sides. Below, figure 3 provides an overview of the latest round of the Kachin conflict from 2010 to 2017 and the number of people displaced in the fighting.

International humanitarian organisations began to respond to the crisis from the outset of hostilities. But they faced substantial challenges reaching affected populations (particularly those within areas under KIA-control) and were forced to engage in protracted humanitarian negotiations with all parties to the conflict, with limited results.

Despite receiving little international attention, the Kachin conflict may well pose one of the greatest threats to the country's political transition and its future stability.<sup>1</sup> A third of Myanmar's population hails from ethnic minorities that occupy more than half the country. These groups have faced over 70 years of political and economic marginalisation at the hands of the central government.<sup>2</sup> Ethnic armed organisations (EAOs) remain in control of much of the country's borderlands, with over 80,000 armed personnel spread across dozens of different groups.<sup>3</sup> At the time of research, tenuous ceasefires were in place with over a dozen ethnic armed groups, and in late 2015, eight of them signed a Nationwide Ceasefire Agreement (NCA) that

<sup>1</sup> Kim Jolliffe, *Ceasefires, Governance and Development: The Karen National Union in Times of Change*, (The Asia Foundation, December 2016), 2; Sean Gleeson, "KNU Return to Conflict 'Inevitable' Without Political Dialogue: Report," *Frontier Myanmar*, 3 April 2017; Laurens J. Visser, *Building Relationships Across Divides: Peace and Conflict Analysis of Kachin State*, (Centre for Peace and Conflict Studies, 2016), 7; Mandy Sadan, "Ongoing Conflict in the Kachin State," in *Southeast Asian Affairs*, ed. Daljit Singh (Singapore: Institute of Southeast Asian Studies, 2015); Ashley South, "From Ceasefires to Lasting Peace?," *The Myanmar Times*, 3-9 September 2012.

<sup>2</sup> Brook Larmer, "Land of Shadows," *National Geographic Magazine*, August 2011; Mandy Sadan, "Women and Conflict in Burma's Borderlands," in *War and Women across Continents*, ed. Shirley Ardener, Fiona Armitage-Woodward, and Lidia D. Sciama (New York, NY: Berghahn, 2016); Paul Vrieze, "Can Aung San Suu Kyi Bring an End to Civil War in Myanmar?," *Foreign Policy*, 9 September 2016; ICG, *A Tentative Peace in Myanmar's Kachin Conflict*, (International Crisis Group, 12 June 2013), 2; United Nations Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, Yanghee Lee, A/HRC/28/72* (2015), para 33.

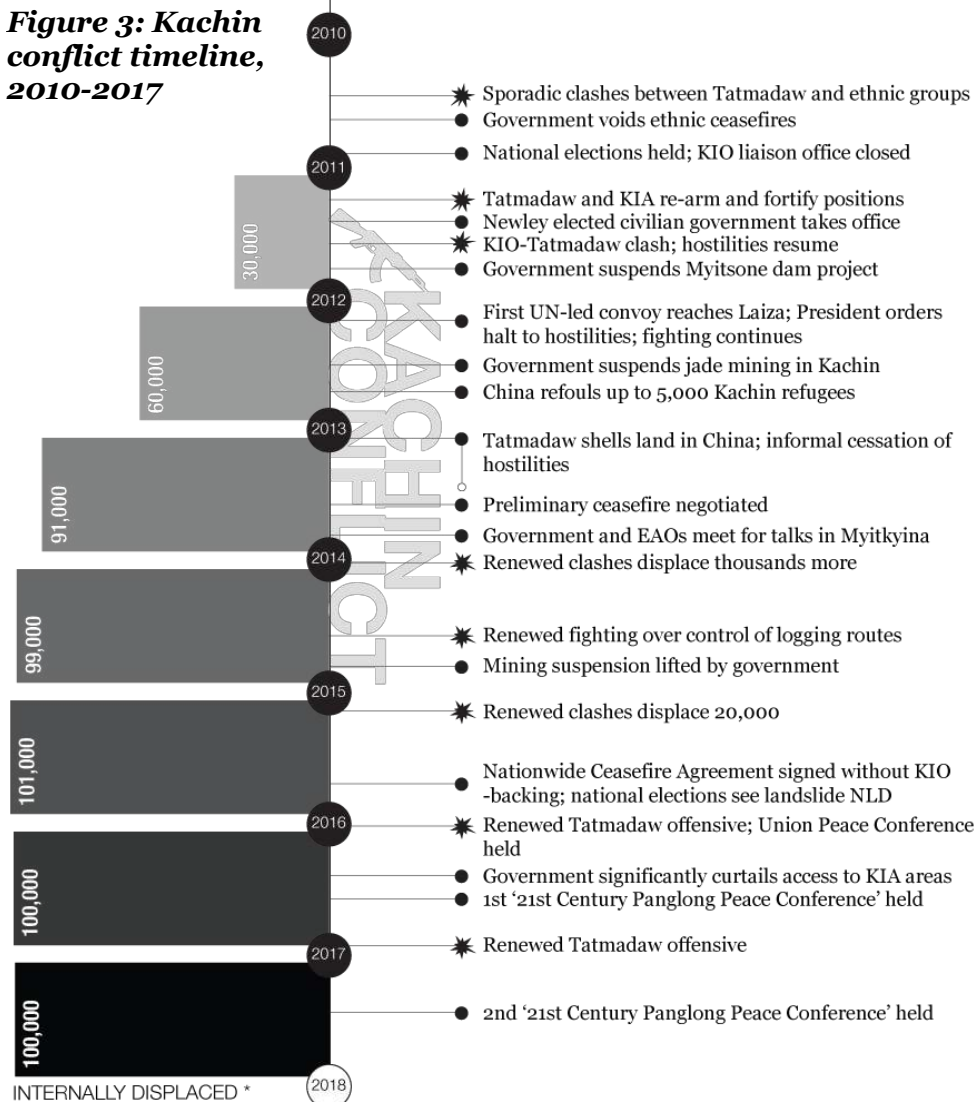
<sup>3</sup> Data compiled from Myanmar Peace Monitor (MMPM), available at <http://mmpeacemonitor.org/stakeholders/armed-ethnic-groups>. See also John Buchanan, *Militias in Myanmar*, (The Asia Foundation, July 2016), 29.

sought to end to the bulk of the country's long-standing conflicts.<sup>4</sup> The KIA was not among them.

Five years of escalating hostilities in Kachin and northern Shan States (an area claimed by some ethnic minority Kachin as their homeland, 'Kachinland') threaten to unravel these agreements and undermine the hard-won reformist image of the country on which its future political and economic fortunes partially rest.<sup>5</sup> When the northern conflict resumed in 2001, the ICG called it "the most serious threat to peace in Myanmar."<sup>6</sup> A member of the Myanmar diplomatic corps interviewed for this research similarly claimed that Kachin was pivotal for the future of the peace process in the country.<sup>7</sup> The following section outlines how historical grievances, exploitation of the state's peoples and natural resources, and national-level political developments, returned Kachin to a state of open conflict.

- 4 Joe Kumbun, "Nationwide Ceasefire Agreement is a Forlorn Hope," *The Irrawaddy*, 12 October 2017; "The Nationwide Ceasefire Agreement Between the Government of the Republic of the Union of Myanmar and the Ethnic Armed Organizations," 15 October 2015.
- 5 Sadan, "Ongoing Conflict in the Kachin State."; Ashley South and Kim Jolliffe, "Forced Migration and the Myanmar Peace Process," *New Issues in Refugee Research* (2015): 4.
- 6 ICG, *Myanmar: A New Peace Initiative*, (International Crisis Group, 30 November 2011), 6.
- 7 Name withheld (member of the diplomatic corps in Myanmar) in discussion with author, Yangon, August 2017 (#17/059407).

**Figure 3: Kachin conflict timeline, 2010-2017**



INTERNALLY DISPLACED \*

\* Data compiled from various OCHA situation reports and UN humanitarian appeals

Rifle icon by Robert A. Di Ieso from the Noun Project, available at [www.thenounproject.com](http://www.thenounproject.com)

## 1.1 HISTORICAL GRIEVANCES

Myanmar’s border regions enjoy distinct languages, cultures, and are predominantly Christian, setting their peoples apart from their lowland, largely Buddhist, ethnic Burman neighbours. The notion of a ‘Kachin’ ethnic identity emerged during the country’s colonial period and applies to

communities that stretch from India through modern-day Myanmar, to southern China.<sup>8</sup>

Kachin identity solidified post-independence (1948) in response to the increasing role of Buddhism within the state,<sup>9</sup> and quickly became an “organising principle” of Kachin resistance.<sup>10</sup> The rebel movement in the state was also driven by deep and well-established historical grievances towards the predominantly Burman central government. These were rooted in the region’s historical separation from lowland areas and the regime’s disregard for the pre-independence ‘Panglong Agreement’ (1947) – an agreement that was intended to guarantee the region’s autonomy and equality for its people’s.<sup>11</sup> But whilst religion and ethno-nationalist identity were the basis for the KIA’s legitimacy and popular appeal, the notion of Kachin ethnicity remains contested and highly problematic, as detailed below.

The first Kachin independence fighters fled to the hills to form an independence army in 1961, consisting largely of veterans of the Second World War.<sup>12</sup> They took up arms against the government the following year and quickly became one of the largest and most well-organised armed groups in the country through a combination of voluntary and forced recruitment.<sup>13</sup> The Kachin initially sought autonomy from Burmese rule. But this position softened into calls for self-governance within a federal

<sup>8</sup> Dagmar Hellmann-Rajanayagam and Sascha Helbardt, "The Kachin of Myanmar: An Approach to a Complex Political and Social History," *Internationales Asienforum* 46, no. 3-4 (2015); Ashley South and Christopher M. Joll, "From Rebels to Rulers: The Challenges of Transition for Non-state Armed Groups in Mindanao and Myanmar," *Critical Asian Studies* 48, no. 2 (2016): 180.

<sup>9</sup> David I. Steinberg, *Myanmar's Perpetual Dilemma: Ethnicity in a 'Discipline-Flourishing Democracy'*, (East-West Center, April 2011), 2.

<sup>10</sup> Hellmann-Rajanayagam and Helbardt, "The Kachin of Myanmar," 366.

<sup>11</sup> Alastair Leithead, "Burma's Kachin Army Prepares for Civil War," *BBC News*, 22 February 2010; Hellmann-Rajanayagam and Helbardt, "The Kachin of Myanmar," 347-349.

<sup>12</sup> Kai Chen, *Comparative Study of Child Soldiering on Myanmar-China Border: Evolutions, Challenges and Countermeasures* (Singapore: Springer, 2014), 25.

<sup>13</sup> Sadan, "Women and Conflict in Burma's Borderlands," 98.

union (although, anthropologists Dagmar Hellmann-Rajanayagam and Sascha Helbardt argued that the perceived lack of peace dividends pushed some young Kachin to become more hard-line).<sup>14</sup>

The rebel group established a political wing, the Kachin Independence Organisation (KIO) to provide government-like services to areas under its control. This fusion of military, social, and political structures within the organisation (an approach mirrored by several of the country's more successful EAOs) enabled the KIA to engage in protracted conflict while supporting its constituents, ensuring its own financial viability, and fostering a sense of its own legitimacy among ethnic Kachin.<sup>15</sup>

During its first three decades, the Kachin conflict was characterised by low-intensity clashes. By the late 1980s, however, Myanmar's armed forces, the *Tatmadaw*, began to make headway in many of its long-standing campaigns against the country's other EAOs. The *Tatmadaw* forced a slew of ceasefires from 1989 that allowed them to intensify efforts in Kachin State.<sup>16</sup> A 1994 offensive saw the government gain control of lucrative jade-mines around Hpakant in western Kachin that were vital to KIA revenues, and displaced around 60,000 IDPs in the border areas. Thousands more refugees fled across the border to China.<sup>17</sup>

The Kachin rebels were struggling under three decades of conflict and were increasingly convinced of the need for a political solution.<sup>18</sup> They also faced

<sup>14</sup> Hellmann-Rajanayagam and Helbardt, "The Kachin of Myanmar," 370-371. See also ICG, *Myanmar's Peace Process: A Nationwide Ceasefire Remains Elusive*, (International Crisis Group, 16 September 2015), 16-17.

<sup>15</sup> Sadan, "Women and Conflict in Burma's Borderlands," 98.

<sup>16</sup> Steinberg estimates 17 verbal ceasefires were agreed with armed ethnic groups from 1989, in *Myanmar's Perpetual Dilemma*, 4. See also ICG, *Myanmar's Military: Back to the Barracks*, (International Crisis Group, 22 April 2014), 6.

<sup>17</sup> Ashley South, *Ethnic Politics in Burma: States of Conflict* (Milton Park: Routledge, 2008), 190; Kim Jolliffe, "Ceasefires and Durable Solutions in Myanmar: A Lessons Learned Review," *New Issues in Refugee Research*, no. 271 (2014): 5.

<sup>18</sup> ICG, *A New Peace Initiative*, 6; Martin Smith, "Reflections on the Kachin Ceasefire: A Cycle of Hope and Disappointment," in *War and Peace in the Borderlands of Myanmar: The Kachin Ceasefire, 1994-2011*, ed. Mandy Sadan (Copenhagen: NIAS Press, 2016).

mounting pressure to resolve the conflict from Beijing, which had become increasingly concerned by threats to Chinese border security and cross-border trade posed by ongoing fighting in Kachin.<sup>19</sup> China was also newly-committed to a bilateral relationship with the central Government of Burma that it hoped would facilitate access to the country's substantial natural resources.<sup>20</sup> With waning prospects for a military victory, the KIA reached a ceasefire with Burmese authorities later that year. The agreement permitted the armed group to retain weapons and territorial control over much of the state, and allowed them to continue to profit from the lucrative jade and timber trade.<sup>21</sup> It also provided the rebels an opportunity to regroup and reconnect with the civilian population on whom they relied as their social, political, and economic base, but from whom they had become increasingly isolated by decades of conflict in remote parts of the state.<sup>22</sup>

## 1.2 THE CEASEFIRE PERIOD: 1994—2011

The 1994 ceasefire brought sufficient stability to Kachin State to facilitate large-scale economic projects oriented towards resources extraction. But the lack of a political settlement fostered uncertainty that undermined more equitable and comprehensive developments in the state.<sup>23</sup> Unchecked exploitation of natural resources – mostly destined for China – enriched elites on both sides of the struggle but provided few benefits to the region's peoples. Companies owned by or affiliated with the *Tatmadaw* exercised tight control over lucrative sectors in ethnic areas,<sup>24</sup> and the country's

<sup>19</sup> Nicholas Farrelly, "Ceasing Ceasefire? Kachin Politics Beyond the Stalemates," in *Myanmar's Transition: Openings, Obstacles and Opportunities*, ed. Nick Cheesman, Monique Skidmore, and Trevor Wilson (Singapore: Institute of Southeast Asian Studies, 2012), 65.

<sup>20</sup> Sadan, "Ongoing Conflict in the Kachin State."

<sup>21</sup> Hellmann-Rajanayagam and Helbardt, "The Kachin of Myanmar," 367.

<sup>22</sup> Sadan, "Ongoing Conflict in the Kachin State."

<sup>23</sup> ICG, *Tentative Peace in Kachin*, 19.

<sup>24</sup> ICG, *Back to the Barracks*, 9-10.



armed forces continued to expand their presence in the state, perpetrating widespread human rights abuses against Kachin civilians.<sup>25</sup>

Access to natural resources was critical to the interests of the KIA and its leadership. Business interests often took precedence over politics in what Kevin Woods, an expert on resource extraction and land rights in Myanmar's border areas, described as "ceasefire capitalism."<sup>26</sup> As part of the 1994 ceasefire arrangement, the KIA was awarded an ongoing stake in the jade business which proved to be a significant driver of conflict.<sup>27</sup> The rebel group openly traded in the valuable mineral, and levied taxes on the industry to fuel its military, political, and social operations.<sup>28</sup> But well-connected and more efficient Chinese-owned firms moved in with the support of the regime.<sup>29</sup> The KIA saw their share of the sector's profits decline throughout the 1990s. The rebel group turned to logging to prop-up its operations,<sup>30</sup> but a Chinese clamp-down in 2005 on the illegal cross-border timber trade, followed by a total ban on gold and logging imposed by the *Tatmadaw* two years later, greatly increased financial pressure on the rebels.<sup>31</sup>

<sup>25</sup> South, *Ethnic Politics in Burma*, 153; *Driven Away: Trafficking of Kachin Women on the China-Burma Border*, (Kachin Women's Association Thailand, 13 December 2005), 11; Hellmann-Rajanayagam and Helbardt, "The Kachin of Myanmar," 368.

<sup>26</sup> Kevin Woods, "Ceasefire Capitalism: Military-private Partnerships, Resource Concessions and Military-state Building in the Burma-China Borderlands," *The Journal of Peasant Studies* 38, no. 4 (2011). See also Kevin Woods, "The Commercialisation of Counterinsurgency: Battlefield Enemies, Business Bedfellows in Kachin State, Burma," in *War and Peace in the Borderlands of Myanmar: The Kachin Ceasefire, 1994-2011*, ed. Mandy Sadan (Copenhagen: NIAS Press, 2016).

<sup>27</sup> Western Kachin is home to the world's most valuable jade deposits, worth an estimated US\$31 billion in 2014 alone, or nearly half the country's annual GDP. See Global Witness, *Jade: Myanmar's "Big State Secret"*, (Global Witness, October 2015), 24 and 26.

<sup>28</sup> Global Witness, *Jade*; South, *Ethnic Politics in Burma*.

<sup>29</sup> South, *Ethnic Politics in Burma*, 164.

<sup>30</sup> Tom Fawthrop, "Smuggling Away Myanmar's Chance for Peace," *The Diplomat* (2017); Paul Keenan, *By Force of Arms: Armed Ethnic Groups in Burma* (India: Vij Books, 2013).

<sup>31</sup> South, *Ethnic Politics in Burma*, 165. See also Keenan, *By Force of Arms: Armed Ethnic Groups in Burma*.

The rampant extraction of Kachin's natural resources turned villages into boom-towns that brought in Burman and Chinese migrants and introduced new social challenges to the state. As extractive industries grew, and former-fighters struggled for employment, drug-use among young Kachin soared, and an HIV/AIDS epidemic struck the region.<sup>32</sup> Many Kachin women, made vulnerable in the fervour over the state's natural resources, found work in karaoke bars and massage parlours in mining towns, with others trafficked to Yangon or China.<sup>33</sup>

Kachin State also saw the growth of a well-connected and increasingly politicised diaspora during this period.<sup>34</sup> Disenchanted urban youth who felt few dividends from the ceasefire became central to the Kachin resistance movement, most of who remembered little of the thirty years of conflict in the state.

Ongoing oppression and violence by the regime also fostered a resurgence of cultural and political identity.<sup>35</sup> The perception thus formed among many Kachin that the ceasefire years had wrought massive social damage.<sup>36</sup> From the early 2000s, there was a growing sense that the regime was neither willing nor able to deliver economic and political change in the borderlands. And many ethnic Kachin began to re-evaluate the merits of the ceasefire.<sup>37</sup>

<sup>32</sup> Hellmann-Rajanayagam and Helbardt, "The Kachin of Myanmar," 368; ICG, *Myanmar: Aid to the Border Areas*, (International Crisis Group, 9 September 2004).

<sup>33</sup> KWAT, *Driven Away: Trafficking of Kachin Women on the China-Burma Border*; KWAT, *Eastward Bound: An Update on Migration and Trafficking of Kachin Women on the China-Burma Border*, (Kachin Women's Association Thailand, 2008); KWAT, *Pushed to the Brink: Conflict and Human Trafficking on the Kachin-China Border*, (Kachin Women's Association Thailand, June 2013).

<sup>34</sup> South, *Ethnic Politics in Burma*, 155 and 198.

<sup>35</sup> Stella Naw, "The Battle for Gideon: A Kachin Perspective," *The Irrawaddy*, 20 December 2016.

<sup>36</sup> Sadan, "Women and Conflict in Burma's Borderlands," 104.

<sup>37</sup> Sadan, "Ongoing Conflict in the Kachin State."

The truce nevertheless largely held during the 1990s, despite sporadic skirmishes.<sup>38</sup> But tensions continued to build during the 2000s in the lead-up to national elections, prompting observers to speculate that a return to hostilities was imminent.<sup>39</sup> When the KIA resisted pressure to transform themselves into a Border Guard Force (BGF, subordinate militias under *Tatmadaw* command), national authorities banned Kachin parties and candidates from standing in the national election and closed the KIO liaison office in the state capital, Myitkyina.<sup>40</sup>

The regime also blocked trade routes vital to KIA revenue and annulled all ceasefire agreements with ethnic armed groups.<sup>41</sup> National authorities began referring to the KIA and other EAOs as “terrorists” in a presumed attempt to pressure the armed group to demobilise.<sup>42</sup> Both sides began a rapid re-fortification and military build-up when the election of a nominally-civilian government in late 2010 failed to bring about long-sought after political dialogue.<sup>43</sup> By the middle of the following year, the KIA and *Tatmadaw* had returned to open war.

### 1.3 RENEWED FIGHTING IN THE BORDERLANDS

When the 1994 ceasefire failed to lead to dialogue and political reform, distrust of the regime grew.<sup>44</sup> Rather than easing tensions, the experience of

<sup>38</sup> South, *Ethnic Politics in Burma*, 159.

<sup>39</sup> Kachin News, "KIA Troops Take to Forests for Possible War with Burmese Army," *Kachin News*, 16 June 2009; Thomas Fuller, "Ethnic Groups in Myanmar Hope for Peace, but Gird for Fight," *The New York Times*, 10 May 2009; Leithead, "Burma's Kachin Army Prepares for Civil War."; Sadan, "Ongoing Conflict in the Kachin State."; BBC, "Burma Army in Tense Stand-off with Kachin Militia," *BBC News*, 19 October 2010.

<sup>40</sup> Farrelly, "Ceasing Ceasefire?," 53; Buchanan, *Militias in Myanmar*, 22-23; ICG, *Tentative Peace in Kachin*, 6-7; ICG, *China's Myanmar Strategy: Elections, Ethnic Politics and Economics*, (International Crisis Group, 21 September 2010), 7; ICG, *A New Peace Initiative*, 7.

<sup>41</sup> ICG, *Tentative Peace in Kachin*, 7.

<sup>42</sup> ICG, *A New Peace Initiative*; Steinberg, *Myanmar's Perpetual Dilemma*, 8.

<sup>43</sup> Farrelly, "Ceasing Ceasefire?," 29; ICG, *China's Myanmar Strategy*, 3; ICG, *A New Peace Initiative*, i.

<sup>44</sup> ICG, *A New Peace Initiative*, 5-6.

many Kachin during the ceasefire years added to the grievances they felt that spilled over in 2011 with the resumption of hostilities. Civil war resumed on 9 June when the KIA refused to back down from *Tatmadaw* provocations, leading to a succession of escalating retaliatory attacks over the following months.<sup>45</sup>

Within the first six months of the conflict, tens of thousands of Kachin civilians had been displaced by fighting.<sup>46</sup> Local aid groups (many of which had been established during the ceasefire years to address the state's growing social challenges) were quick to respond to the impact of renewed fighting. They enjoyed relatively unchecked access to civilians on both sides of the frontlines, and their integration into local communities allowed local NGOs to consistently lead the humanitarian response.<sup>47</sup> They nevertheless faced serious funding and capacity constraints, and were never able to comprehensively address humanitarian needs across the state.<sup>48</sup> Many observers were also concerned about the quality and accountability of locally-led interventions, particularly as the humanitarian impacts of the protracted conflict become more pronounced.<sup>49</sup>

Seeing a role for international responders, the UN and a small number of international NGOs (some of whom were already running development programmes in the state) began exploring options for providing humanitarian assistance to displaced civilians. But international responders were hampered by ongoing hostilities, fluid frontlines, the

<sup>45</sup> Sadan, "Ongoing Conflict in the Kachin State."; Steinberg, *Myanmar's Perpetual Dilemma*; Visser, *Conflict Analysis of Kachin*.

<sup>46</sup> Farrelly, "Ceasing Ceasefire?," 64.

<sup>47</sup> Name withheld (humanitarian worker in Myanmar) in discussion with author, Yangon, August 2017 (#17/059401); name withheld (human rights worker) in discussion with author, Yangon, August 2017 (#17/059412). See also Carine Jaquet and Conor O'Loughlin, "Redefining Humanitarian Space: The Kachin IDP Crisis in Myanmar," *Humanitarian Exchange Magazine*, no. 55 (2012): 28.

<sup>48</sup> HRW, *'Untold Miseries': Wartime Abuses and Forced Displacement in Burma's Kachin State*, (Human Rights Watch, March 2012), 67.

<sup>49</sup> Naw, "The Battle for Gideon."; Francis Wade, "Aid Shortfall Fuels Trafficking in Kachin IDPs," *The Irrawaddy*, 15 June 2012.

destruction of roads and bridges, and the harsh annual wet season that regularly made travel impossible for a large part of June through October each year. Many conflict-affected communities were also heavily isolated in remote mountainous parts of the state.

Moreover, despite the country's transition to nominally-civilian leadership, little had changed regarding the suspicions and restrictions that had long been levelled at international agencies.<sup>50</sup> Further, Kachin State was among the most contaminated parts of the country in terms of landmines and unexploded remnants of war.<sup>51</sup> And the use of guerrilla tactics and improvised explosive devices (IEDs) meant that all travel near frontlines or in previous conflict areas had to be coordinated and negotiated with all parties to the conflict.

Amid high profile moves towards liberalisation and political reform, the party of Nobel Laureate Aung San Suu Kyi (the National League for Democracy, NLD) came to power in a 2015 landslide election victory. Yet fighting in the northern borderlands progressively worsened, largely out of the international spotlight.<sup>52</sup> An impasse emerged in which the government conditioned political dialogue on reaching a ceasefire, whereas the KIA (mindful of the failures of the ceasefire years) demanded peace talks without a cessation of hostilities. The parties developed "divergent, locked-in positions," claimed Myanmar analyst Bertil Lintner.<sup>53</sup> Kachin

<sup>50</sup> ICG, *Myanmar: The Politics of Humanitarian Aid*, (International Crisis Group, 2 April 2002); Terry, "Golfing with the Generals."; South, *Ethnic Politics in Burma*; ICG, *Myanmar: New Threats to Humanitarian Aid*, (International Crisis Group, 8 December 2006).

<sup>51</sup> Amnesty International, *'All the Civilians Suffer': Conflict, Displacement, and Abuse in Northern Myanmar*, (Amnesty International, 2017), 43.

<sup>52</sup> Fawthrop, "Smuggling Away Myanmar's Chance for Peace."; Andrew R.C. Marshall, "Suu Kyi's Perilous Pivot from Icon to Party Boss," *Reuters*, 4 October 2012; Alex Spillius, "Aung San Suu Kyi Facing Backlash for Silence on Abuses," *The Telegraph*, 26 July 2012; The Economist, "The Kachin Dilemma; Myanmar and China," *The Economist* 406, no. 31 (2013); David Baulk, "Myanmar Needs to Get Serious About Peace," *Al Jazeera*, 30 June 2017.

<sup>53</sup> Bertil Lintner, "More War Than Peace in Myanmar," *Asia Time Online* 2012.

ethnographer Mandy Sadan similarly observed that the conflict had become “stubbornly impervious to resolution.”<sup>54</sup>

## 2. NEGOTIATION STRUCTURE

The support structures of the Kachin Independence Army were integrated into much of Kachin culture, society, and religion. The armed group enjoyed enormous support and legitimacy among *Jinghpaw* (the most politically dominant of the six main sub-groups that constitute the Kachin, known also as *Singhpo* in India and *Jingpo* in China) and exerted significant influence over Kachin civil society.

From the outbreak of fighting in 2011 to the time of research, the Kachin rebels grew from between 5,000 to 10,000 soldiers into an estimated 15,000-strong fighting force supplemented by militia fighters.<sup>55</sup> The armed group was characterised by a centralised command structure, was well-versed in diplomatic practices, and was well-regarded by many international diplomatic and humanitarian actors. There was consequently significant potential to negotiate with the group and to create value for both humanitarians and the KIA through the provision of assistance to conflict-affected civilians. And whilst the Kachin rebels regularly facilitated humanitarian access, they often prioritised their war-fighting capabilities at the expense of compliance with humanitarian norms related to the protection of civilians.

This section explores the core dynamics that affected the KIA’s interests during these negotiations, focusing particularly on the group’s main sources

<sup>54</sup> Sadan, "Ongoing Conflict in the Kachin State," 246.

<sup>55</sup> HRW, *'My Gun Was as Tall as Me': Child Soldiers in Burma*, (Human Rights Watch, 2002), 148; BBC, "Burma Army in Tense Stand-off with Kachin Militia."; Child Soldiers International, *A Dangerous Refuge: Ongoing Child Recruitment by the Kachin Independence Army*, (Child Soldiers International, 14 July 2015), 11.

of power and legitimacy, its attitudes towards international norms, and its relationships with external actors.

## 2.1 POWER AND LEGITIMACY

The KIA's main source of strength and legitimacy was grounded in the enormous support it enjoyed within Kachin society. As detailed below, the group carefully cultivated this support, integrating the goals of the rebel movement into Kachin culture, society, and religion. Nevertheless, the KIA represented a very particular form of Kachin identity that was contested by some residents of the state.

The legitimacy of the KIA remained largely unchallenged among its core ethnic and religious constituents since the resumption of hostilities in 2011. The armed group had long provided a range of government-like services in areas under its control, including departments of health, education, agriculture, women's affairs, culture and literature, and development affairs.<sup>56</sup> And from the outbreak of fighting in 2011, it oversaw humanitarian coordination, directly managed IDP camps, publicly embraced many humanitarian norms, and actively solicited international humanitarian assistance.<sup>57</sup> The armed group was even reportedly referred to by some Kachin as 'the government.'<sup>58</sup> The Kachin rebels thus presided over one of the most enduring and sophisticated governance structures of any of the country's EAOs.<sup>59</sup> With local responders facing funding shortfalls and limited capacity, and government restrictions limiting the presence of international humanitarian organisations in the state, the armed group

<sup>56</sup> Keenan, *By Force of Arms: Armed Ethnic Groups in Burma*.

<sup>57</sup> Khon Ja (human rights worker, Kachin Peace Network) in discussion with author, Yangon, August 2017 (#17/059413).

<sup>58</sup> Humanitarian worker in Myanmar in discussion with author (#17/059401).

<sup>59</sup> Child Soldiers International, *A Dangerous Refuge*, 12; ICG, *Tentative Peace in Kachin*.

became the “largest and most consistent source of aid” in areas beyond government control.<sup>60</sup>

### ***Entrenched support***

Outspoken Kachin human rights activist Khon Ja described the armed group in an interview for this research as “trying to get the heart of the [Kachin] people.” As the prospect of a return to war loomed during the early 2000s, the KIA underwent a series of reforms and leadership changes, she argued, with the understanding that it could not perpetrate another war without the strong support of the state’s population.<sup>61</sup> This realisation, Khon Ja claimed, was central to the KIA’s facilitation of humanitarian assistance and its openness towards international actors. Sadan also remarked on the shift in the KIA’s behaviour from the early 2000s, attributing it to the emergence of a newly-politicised, connected, urban and diaspora Kachin population that forced the armed group to modify its “modes of interaction with the political-civil constituency of [contemporary Kachin society].”<sup>62</sup>

A complex and symbiotic relationship developed through which Kachin civil society exerted enormous influence over the rebel group – sometimes reportedly taking more hard-line positions than the KIA itself.<sup>63</sup> Sadan noted an “overarching discourse of unifying communities against an ‘external’ threat” that bound the Kachin rebel movement tightly to civil society.<sup>64</sup> And participants in this research repeatedly stressed that the

<sup>60</sup> Child Soldiers International, *A Dangerous Refuge*, 13.

<sup>61</sup> Khon Ja describes a series of consultations held by the KIA in recent years with Kachin civilians, the church, and civil society to develop policy and formulate strategy. She also notes the formation of a “Think Tank Group” and Technical Advisory Team that advise the KIA on matters related to peace, conflict, and service delivery: Khon Ja in discussion with author (#17/059413).

<sup>62</sup> Sadan, “Ongoing Conflict in the Kachin State.” See also Smith, “Reflections on the Kachin Ceasefire,” 77-78.

<sup>63</sup> Name withheld (member of the diplomatic corps in Myanmar) in discussion with author, Yangon, August 2017 (#17/059409).

<sup>64</sup> Sadan, “Women and Conflict in Burma’s Borderlands,” 100.



Kachin rebels sought legitimacy in both the eyes of the Kachin peoples as well as the international community, aspiring to one day serve as legitimate representatives in a formally-recognised federal government.<sup>65</sup>

Ethnic and religious identity in Kachin State was also intricately woven into family life, civil society, and politics. This dynamic created a complex environment of trust and fear within local communities that sustained the armed group. The Kachin rebels maintained strict control over local media outlets and the education system. These served as a source of propaganda and cultural integration that perpetuated a highly particular form of Kachin identity and reinforced its social support structures.<sup>66</sup> A human rights worker interviewed for this research claimed that “the image of the KIA as paternal protectors of Kachin people has been constructed carefully over the years.”<sup>67</sup> This dynamic created an “entrenched militarised ethno-nationalism,” observed Sadan, in which ethnic identity had become coupled with armed resistance.<sup>68</sup> Advocacy organisation Child Soldiers International similarly claimed the KIA “actively appropriates social networks to garner this support [while] inventing itself as the legitimate upholder of a revolutionary Kachin identity.”<sup>69</sup>

The church also played a particularly significant role in shaping Kachin aspirations and values, and also influenced the KIA directly. Notably, the Kachin Baptist Convention (KBC) church network was considered by some observers to be the most powerful institution in the state.<sup>70</sup> One humanitarian worker described the church group as both powerful and

<sup>65</sup> Name withheld (humanitarian working in Myanmar) in discussion with author, Yangon, August 2017 (#17/059406).

<sup>66</sup> Hellmann-Rajanayagam and Helbardt, "The Kachin of Myanmar," 371; Child Soldiers International, *A Dangerous Refuge*.

<sup>67</sup> Human rights worker in discussion with author, (#17/059412).

<sup>68</sup> Sadan, "Ongoing Conflict in the Kachin State."

<sup>69</sup> Child Soldiers International, *A Dangerous Refuge*, 12.

<sup>70</sup> The Irrawaddy, "News Analysis: State Counselor Seeks Support from Kachin Church Leaders," *The Irrawaddy*, 26 July 2017.

politically-inclined, noting, “KBC is the KIO based in government-controlled areas.”<sup>71</sup>

The KIA also fostered community engagement structures that were reported to have a significant bearing on the armed group’s strategy and policies. These included regular community consultations to present its policy platform and solicit feedback, and a so-called ‘Think Tank Group’ comprised of civil society leaders that contributed to the armed group’s military and peacemaking strategies.<sup>72</sup> As claimed by a member of the diplomatic community in Myanmar, Kachin religious and civil society thus “play an indirect role in [KIA] decision-making.”<sup>73</sup>

Through this complex network, many Kachin civilians were implicitly or explicitly pressured into compliance with the Kachin resistance movement in solidarity with their ethnic group. Some were also reportedly wary of speaking out against the KIA for fear of retaliation, whilst others had become dependent on the armed group’s humanitarian assistance or were living off the wages of a family member working for the group.<sup>74</sup> And in an interview for this research, Piyamal Pichaiwongse, ILO Deputy Representative in Myanmar (the UN agency focused on improving labour practices in the country, including forced recruitment) claimed the centrality of religion and religious institutions within the cultural and political life of the state introduced elements of a holy war.<sup>75</sup> Several other participants were similarly sceptical of the benevolent image of the KIA, suggesting that the group’s economic interests were central to its decision-

<sup>71</sup> Name withheld (humanitarian worker in Myanmar) in discussion with author, Yangon, August 2017 (#17/059402). Indeed, KBC was one of the initial interlocutors that helped broker the 1994 ceasefire. See Smith, "Reflections on the Kachin Ceasefire," 70.

<sup>72</sup> Khon Ja in discussion with author (#17/059413).

<sup>73</sup> Name withheld (member of the diplomatic community in Myanmar) in discussion with author, Yangon, August 2017 (#17/059404).

<sup>74</sup> Humanitarian worker in Myanmar in discussion with author (#17/059401).

<sup>75</sup> Piyamal Pichaiwongse (Deputy Representative, Myanmar, International Labour Organisation) in discussion with author, Yangon, August 2017 (#17/059406).

making.<sup>76</sup> One humanitarian insisted the KIA's conflict with the *Tatmadaw* was fundamentally over natural resources rather than rooted in social or political grievances.<sup>77</sup>

Legitimacy and support for the KIA among Kachin communities also grew alongside the numbers of conflict-displaced civilians.<sup>78</sup> Grievances mounted towards the regime and the *Tatmadaw* over the impact of the conflict. This fuelled the rebel group's legitimacy and acceptance among Kachin civilians, which it fostered by expanding its relief activities. The conflict consequently entrenched support for the group, claimed a human rights worker.<sup>79</sup> And their constructive engagement with international organisations reportedly had a similar "legitimising effect" on the group.<sup>80</sup> This dynamic provided perverse incentives through which the KIA benefited from conflict-induced displacement and suffering whilst simultaneously providing an opportunity to demonstrate benevolence and cement their role within Kachin society.

International assistance also relieved some of the burden of feeding and caring for nearly 50,000 displaced civilians within areas under rebel-control that would otherwise have fallen to the care of under-resourced local NGOs and the KIA's relief wing, the IDPs and Refugees Relief Committee (IRRC).<sup>81</sup> Moreover, the Kachin rebels likely saw increased international attention and the presence of international humanitarian staff as necessary for implementing a future peace agreement with Naypidaw

<sup>76</sup> Humanitarian worker in Myanmar in discussion with author (#17/059401).

<sup>77</sup> Humanitarian worker in Myanmar in discussion with author (#17/059402). See also Global Witness, *Jade*.

<sup>78</sup> Sadan, "Ongoing Conflict in the Kachin State."

<sup>79</sup> Human rights worker in discussion with author, (#17/059412).

<sup>80</sup> Humanitarian worker in Myanmar in discussion with author (#17/059401).

<sup>81</sup> IRRC was established in 2009 to respond to localised fighting in Shan State's Kokang region, replacing the Kachin Refugee Relief Committee that had taken over responsibility for administering civilian relief from combat battalions in 1990. See Zaw Lut, "Armed Conflict, Internally Displaced Persons, and Protection Mechanisms in Kachin State: Case Study: Laiza, Myanmar-China Border, Kachin State, Myanmar" (masters thesis, Chulalongkorn University, 2013), 11; La Rip, *A Kachin IDPs Relief Monitoring Report*, (Relief Action Network for IDP and Refugee and Technical Advisory Team, 28 February 2014), 8-9.

(the capital of Myanmar since 2006), and therefore critical to their long-term interests.

### ***Contested identities***

Despite its widespread support among many ethnic Kachin, the ethno-nationalist identity on which the KIA was predicated proved deeply problematic. Kachin identity, as espoused by the rebel movement, was often reified, despite being claimed by only a portion of the state's indigenous groups.<sup>82</sup> There remains significant diversity within the category of 'Kachin,' noted Sadan,<sup>83</sup> and up to half the population of the state is estimated to be from the Shan ethnic group (who are predominantly Buddhist and have their own language).<sup>84</sup> Kachin elites, however, reconstructed the notion of a shared ethnic identity to be synonymous with the narrower, largely Christian, ethno-linguistic group *Jinghpaw*.<sup>85</sup>

This ethno-nationalist narrative, as with other EAOs, tended to downplay questions around the legitimacy of leaders and elites, suggested conflict and humanitarian researcher Ashley South.<sup>86</sup> Non-*Jinghpaw* sub-groups consequently lacked representation within the KIA and were reportedly forcibly recruited into the ranks of the armed group, as detailed below. This also raised the spectre of intercommunal violence in the state, cautioned the Myanmar Peace Monitor (an independent information project that

<sup>82</sup> Steinberg, *Myanmar's Perpetual Dilemma*, 5.

<sup>83</sup> Sadan, "Women and Conflict in Burma's Borderlands," 104. Visser similarly notes, "Kachin State is also a melting pot of languages and dialects," in Visser, *Conflict Analysis of Kachin*, 12.

<sup>84</sup> Member of the diplomatic community in Myanmar in discussion with author (#17/059404). Official government estimates suggest nearly two-thirds (64%) of the population of Kachin State are Christian and one-third are Buddhist (33.8%), with Islam, Hinduism, Animist, and other religions accounting for around two per cent, in Department of Population, *The 2014 Myanmar Population and Housing Census: Kachin State, Myitkyina District, Kanpaikti Sub-Township Report*, (The Republic of the Union of Myanmar, October 2017).

<sup>85</sup> South, *Ethnic Politics in Burma*.

<sup>86</sup> South and Joll, "From Rebels to Rulers," 189.

supports peace efforts in the country).<sup>87</sup> Conflict researcher Laurens Visser similarly claimed, “the tension around what constitutes Kachin identity does cause confrontation within communities because of its political and social implications, affecting the dynamics of the conflict.”<sup>88</sup>

The KIA was thus simultaneously oppressed and perceived as the oppressor. It reaped benefits from the humanitarian fallout from the conflict whilst cementing these gains by assisting displaced civilians and facilitating international assistance. And the armed group cultivated a complex and entrenched system that reinforced its own legitimacy through religious institutions, social structures, cultural practices, propaganda, and fear.

## 2.2 THE ROLE OF INTERNATIONAL NORMS

The central government labelled the KIA both a ‘terrorist’ and ‘insurgent’ group. But the rebel movement had largely rejected the terrorist-like tactics employed by some EAOs in the country and remained well-regarded by international actors.<sup>89</sup> In spite of its positive reputation and deep integration within Kachin civil society, however, its conduct was often at odds with its rhetoric. The KIA demonstrated a profound ambivalence towards many international norms, I suggest – particularly towards the use and recruitment of child soldiers, forced recruitment, and landmines – significantly affecting humanitarian negotiations.

The KIA was first listed alongside 9 other EAOs and the *Tatmadaw* in the 2007 annual CAAC report of the UN Secretary-General for its recruitment

<sup>87</sup> Myanmar Peace Monitor, *Deciphering Myanmar Peace Process: A Reference Guide* (Chiang Mai: Burma News International, 2014), 14.

<sup>88</sup> Visser, *Conflict Analysis of Kachin*, 12.

<sup>89</sup> HRW, "Burma: Warnings not a Free Pass to Harm Civilians," *Human Rights Watch* (blog), 14 June 2017; Dhaka Tribune, "Myanmar's Kachin Armed Groups Want 'Terrorist' Label Removed," *Dhaka Tribune*, 22 February 2017; Smith, "Reflections on the Kachin Ceasefire."

and use of children within its forces.<sup>90</sup> Child recruitment reportedly increased after the resumption of hostilities in mid-2011, and conservative estimates placed some 500 to 1,000 boys and girls within the group's ranks by 2015.<sup>91</sup> The Kachin rebels admitted to using children but denied any wrong-doing.<sup>92</sup> And whilst the armed group claimed to have a policy prohibiting the recruitment of children under the age of 18, it appears to have been ambiguous and little understood among both senior leaders and field commanders.<sup>93</sup>

Moreover, unlike some EAOs in Myanmar, the KIA refrained from signing Geneva Call's 'Deed of Commitment' that would bind them to specific commitments around humanitarian norms, such as banning landmines or ending the recruitment of children within their ranks.<sup>94</sup> Further, during the research period, no Action Plan between the United Nations and KIA was agreed, as demanded by its formal listing in the annual CAAC report. Further, despite high levels of organisation and its strong administrative capacity, the KIA had done little to establish procedures to verify the age of young recruits.<sup>95</sup> These findings lend weight to the argument advanced by

<sup>90</sup> United Nations General Assembly, *Children and Armed Conflict: Report of the Secretary-General*, A/62/609-S/2007/757 (2007), 21. This was upgraded to 'persistent perpetrator' in 2012 for having been listed for at least five years. See United Nations General Assembly, *Children and Armed Conflict: Report of the Secretary-General*, A/66/782-S/2012/261 (2012).

<sup>91</sup> Child Soldiers International, *A Dangerous Refuge*, 16.

<sup>92</sup> Kay Zue, "KIA Leaders Can't Control Recruitment of Child Soldiers, Admits General," *Mizzima*, 20 August 2014; Chen, *Child Soldiering on Myanmar-China Border*; Amnesty International, *All the Civilians Suffer*, 41; Mark Tran, "Burma Rebels Vow to Stop Using Child Soldiers," *The Guardian*, 8 July 2009.

<sup>93</sup> United Nations Security Council, *Report of the Secretary-General on Children and Armed Conflict in Myanmar*, S/2007/666 (2007), para 20. See also HRW, *Untold Miseries*, 75; Child Soldiers International, *A Dangerous Refuge*, 26; Chen, *Child Soldiering on Myanmar-China Border*; HRW, *Child Soldiers in Burma*.

<sup>94</sup> Geneva Call. "Annual Report 2017." Geneva Call. Geneva, Switzerland: 2017, 23.

<sup>95</sup> Khon Ja in discussion with author (#17/059413). See also Child Soldiers International, *A Dangerous Refuge*.

IR scholar Hyeran Jo that non-compliance among armed groups is particularly entrenched with regard to child soldiers.<sup>96</sup>

Forced or ‘coerced’ recruitment by the KIA extended beyond children. Whilst much of the group’s recruitment was formally voluntary, the extent to which recruits were afforded a genuine choice was often unclear. The Kachin rebels admitted to overseeing a type of military service in the state, implementing a quota system through which each family was expected to provide at least one member.<sup>97</sup> Pichaiwongse thus described a “blurring” of the concept of forced recruitment within the KIA’s ranks,<sup>98</sup> in which non-ethnic Kachin communities suffered disproportionately – particularly those from the Red Shan minority who were traditionally more closely aligned to the national government.<sup>99</sup>

From the collapse of the ceasefire in 2011, the KIA and *Tatmadaw* continued to use landmines and IEDs that restricted the movement of civilians, hindered opposition troops, and demarcated areas of operation.<sup>100</sup> Some minefields were laid in proximity to schools and hospitals, a UN report noted, resulting in the killing and injury of children.<sup>101</sup> Khon Ja insisted that the KIA regularly informed civilians of the location of landmines and attributed the proximity of minefields to civilians to the small size of the border areas within which the rebel group and displaced civilians coexisted.<sup>102</sup> Research conducted by Human Rights Watch (HRW), however, found the KIA’s procedures for documenting and mapping mines

<sup>96</sup> Hyeran Jo, "Compliant Rebels: Rebel Groups and International Law in World Politics," (Cambridge, UK: Cambridge University Press, 2015), 31.

<sup>97</sup> Amnesty International, *All the Civilians Suffer*, 40-411; Child Soldiers International, *A Dangerous Refuge*, 21.

<sup>98</sup> Pichaiwongse in discussion with author (#17/059406).

<sup>99</sup> Nang Mya Nadi, "Shans Seek to Protest Forced Recruitments at KIA Office," *Democratic Voice of Burma*, 18 December 2013; ICG, *NCA Remains Elusive*.

<sup>100</sup> General Assembly, A/66/782–S/2012/261, para 74; General Assembly, A/67/845–S/2013/245, para 102.

<sup>101</sup> General Assembly, A/68/878–S/2014/339, para 110.

<sup>102</sup> Khon Ja in discussion with author (#17/059413).

to be inadequate.<sup>103</sup> Amnesty International consequently alleged the use of landmines in the state was "inherently indiscriminate" and therefore could "amount to war crimes."<sup>104</sup>

The KIA was also accused of extra-judicial killings, of imposing a regime of forced taxation on civilians, and of repeatedly failing to respect the principle of distinction within IHL (that is, that parties to the conflict may only direct attacks against combatants).<sup>105</sup> The rebel group was consequently seen by many community leaders as "a source of destabilisation" in the state, noted Visser.<sup>106</sup>

While some observers attributed the KIA's violations of international norms to a "disconnect" between senior leaders and field commanders,<sup>107</sup> a diplomatic source in Myanmar described the group as "completely pragmatic," and suggested their support for IHL was grounded in its own strategic interests and survival rather than any inherent commitment to such values. Indeed, the rebel movement was well aware of the necessity to have the moral high ground, the diplomatic source claimed.<sup>108</sup> Moreover, the KIA was widely perceived by participants in this research to be institutionally strong and highly capable of implementing policy and strategy, suggesting its failure to do so was by design not incompetence.

## 2.3 EXTERNAL RELATIONS

Beyond the role of its domestic constituents, the KIA's external relations also impacted the group's interests and tactics. The rebel movement proved

<sup>103</sup> HRW, *Untold Miseries*, 62.

<sup>104</sup> Amnesty International, *All the Civilians Suffer*, 9.

<sup>105</sup> Nora Pistor, *Life on Hold: Experiences of Women Displaced by Conflict in Kachin State, Myanmar*, (Trócaire, Oxfam, June 2017), 40; Global Witness, *Jade*, 93; Amnesty International, *All the Civilians Suffer*, 41-42. See also Customary IHL, rule 23 in Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law: Volume I: Rules*, (International Committee of the Red Cross, 2005), 71.

<sup>106</sup> Visser, *Conflict Analysis of Kachin*, 17.

<sup>107</sup> Amnesty International, *All the Civilians Suffer*, 41.

<sup>108</sup> Member of the diplomatic corps in Myanmar in discussion with author (#17/059409).



adept at soliciting support from political forces beyond its borders. It drew on long-founded regional and international networks and capitalised on the shifting regional landscape. In turn, these dynamics shaped the humanitarian negotiating environment, as detailed below.

Despite being physically isolated in the northern periphery of Myanmar, the historical experience of the Kachin positioned them well to engage beyond the state's territorial borders. Western missionaries established strong links in the state, and a shared religious identity ensured many Kachin were well-connected abroad.<sup>109</sup> Moreover, the KIA invested heavily in its relations with actors both within and beyond the country. As Hellmann-Rajanayagam and Helbardt noted, "by necessity, the Kachin had to deal with the outside world at the political and economic levels and enter into negotiations with the hegemonic powers of the day, often balancing them against each other."<sup>110</sup> Further, Kachin leaders and elites were usually well-educated (often in western universities) and were seen to have a strong western orientation.<sup>111</sup>

The reality of the KIA's political orientation was more complex, however. The rebel movement had long-maintained strong diplomatic and economic ties with Kunming – the capital of the neighbouring Chinese province of Yunnan which is home to many ethnic Kachin. In an interview for this research, a member of the diplomatic community in Myanmar questioned the narrative of the KIA as pro-west and supportive of international humanitarian norms, claiming, "in reality, the KIA is closer to China than the West." Physical proximity to China and the group's reliance on a

<sup>109</sup> Smith, "Reflections on the Kachin Ceasefire."

<sup>110</sup> Hellmann-Rajanayagam and Helbardt, "The Kachin of Myanmar," 350. See also Smith, "Reflections on the Kachin Ceasefire."; Sadan, "Ongoing Conflict in the Kachin State."

<sup>111</sup> Khon Ja in discussion with author (#17/059413). See also Smith, "Reflections on the Kachin Ceasefire," 62.

supportive foreign policy by its eastern neighbour were far more important to KIA interests, the diplomatic source asserted.<sup>112</sup>

China permitted the cross-border flow of natural resources and labour in one direction, and the movement of military and humanitarian supplies in the other.<sup>113</sup> Whilst western funding was important to sustain local relief efforts and press the central government to resolve the conflict, China was seemingly more important for the daily survival of the rebel movement and its ability to realise its long-term goals.<sup>114</sup> Such considerations call into question the dominant narrative of the KIA as a benign popular fighting force with a pro-western orientation and inherent support for humanitarian values. In the midst of geopolitical rivalry between the US and China over influence in Myanmar, the Kachin deftly positioned themselves as allies to each without being subject to the whims of either.<sup>115</sup>

Throughout the latest conflict, western diplomats in Myanmar gradually reduced their engagement with EAOs, including the KIA, amid warming relations with the central government.<sup>116</sup> The election of progressively more democratic governments in 2010 and 2015 opened a window for enhanced diplomatic relations and deeper engagement with Naypidaw. Political liberalisation offered not only economic opportunities for western interests, but also a chance to counter decades of unchecked Chinese influence in the country. The interests of the KIA and Kachin peoples thus became a distinctly secondary concern for most diplomatic missions in the country.

National political developments also reduced the accountability of Myanmar's armed forces in Kachin State. Decades of human rights violations by the *Tatmadaw* worsened alongside political reforms presided

<sup>112</sup> Member of the diplomatic community in Myanmar in discussion with author (#17/059404).

<sup>113</sup> ICG, *A New Peace Initiative*, 19.

<sup>114</sup> ICG, *Tentative Peace in Kachin*, 17.

<sup>115</sup> See Sadan, "Ongoing Conflict in the Kachin State."

<sup>116</sup> Lintner, "More War Than Peace in Myanmar."

over by President Thein Sein and his successor State Councillor Aung San Suu Kyi.<sup>117</sup> The military employed the infamous ‘four cuts’ doctrine in Kachin, targeting civilians by cutting off food, funding, and information to undermine the group’s popular support.<sup>118</sup> A human rights worker described access restrictions as the ‘fifth cut’ in the regime’s strategy against the KIA.<sup>119</sup> But, as recipients of high profile international accolades for their peace efforts,<sup>120</sup> both Thein Sein and Suu Kyi were largely insulated from criticism over the conduct of their country’s armed forces.

Moreover, the 2015 landslide election victory gave Suu Kyi a sufficiently strong domestic mandate that she appeared to feel little need to court international support or uphold international norms, claimed a member of the diplomatic corps in Yangon.<sup>121</sup> Amid international optimism at the pace and breadth of political reform in the country, international actors also grew concerned that any pressure on the regime might undermine their relationships in Naypidaw or jeopardise the transition.<sup>122</sup>

For its part, the Chinese approach to Kachin was also somewhat inconsistent. Day-to-day policies appeared to have been set largely by Kunming, which was broadly sympathetic to the Kachin and the KIA. Kunming stood to suffer economically if peace led to strong centralised governance and greater Union government control over Kachin’s natural resources, stemming the illicit flows into China. Yet, escalating fighting in

<sup>117</sup> See in particular Marzuki Darusman, Radhika Coomaraswamy, and Christopher D. Sidoti, *Report of the Independent International Fact-finding Mission on Myanmar (A/HRC/39/64, Advance Unedited Version)*, (Human Rights Council, 24 August 2018); Matthew Smith, "Is Genocide Unfolding in Myanmar?," *CNN*, 6 December 2016; HRW, *'All You Can Do is Pray': Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State*, (Human Rights Watch, April 2013).

<sup>118</sup> Stella Naw, "'Four Cuts' Strategy Deepens Myanmar's War Wounds," *Asia Times*, 15 July 2017.

<sup>119</sup> Human rights worker in discussion with author, (#17/059412).

<sup>120</sup> Thein Sein was awarded the International Crisis Group’s ‘In Pursuit of Peace’ Award in 2013. Aung San Suu Kyi was a recipient of the 1991 Nobel Peace Prize.

<sup>121</sup> Member of the diplomatic corps in Myanmar in discussion with author (#17/059407).

<sup>122</sup> Marshall, "Suu Kyi's Perilous Pivot."

late 2012 directly threatened broader Chinese interests in the country. Beijing was pulled in to mediate the crisis, and pressed both parties to hold peace talks.<sup>123</sup> China also resisted international involvement in the peace process in Kachin as it sought to maintain its own influence over Naypidaw, noted a member of the diplomatic community.<sup>124</sup> The involvement of international humanitarian actors in the Kachin crisis was therefore likely seen by China as an unwelcome internationalisation of the conflict.<sup>125</sup>

### 3. NEGOTIATION PROCESS

In the following section I explore the tactics employed by humanitarian negotiators to address access and protection issues with the KIA. I describe their use of sequenced, multi-level and multi-party negotiations aimed at facilitating cross-line missions, and I emphasise their highly centralised and coordinated nature. I argue that humanitarians were nevertheless largely unable to develop viable alternatives to negotiation or effectively raise protection concerns with the KIA. I also conclude that whilst humanitarians negotiated operational access with the Kachin rebel movement – due largely to the tangible benefits apparent to both negotiating parties – they failed to separate these negotiations from those held with Myanmar authorities, thereby limiting that which could be agreed. Negotiations were also undermined by the limited commitment to the Kachin response that was evident among the humanitarian and diplomatic communities.

#### 3.1 SEQUENCE, MULTI-LEVEL, MULTI-PARTY NEGOTIATIONS

Myanmar HC Ashok Nigam and representatives from OCHA first reached out to the KIA soon after the resumption of hostilities in mid-2011.

<sup>123</sup> Sadan, "Ongoing Conflict in the Kachin State."

<sup>124</sup> Member of the diplomatic corps in Myanmar in discussion with author (#17/059409).

<sup>125</sup> ICG, *Tentative Peace in Kachin*, 16.

Humanitarian officials also invested in relationships with local Kachin-based development and humanitarian workers, using these groups to make initial contact with the KIA via mobile telephone.<sup>126</sup> The Kachin rebels proved receptive to international offers of assistance but reportedly refused to provide written authorisation for humanitarian personnel.<sup>127</sup> International organisations also required permission from national, local, and military authorities to reach KIA-territory. And this too had to be negotiated.

During the first months of fighting, requests by senior UN officials for blanket permission to access all conflict-affected areas in the state were quickly rejected at the highest levels in Naypidaw. Early negotiations with Union officials to establish days of tranquillity and humanitarian corridors also failed.<sup>128</sup>

In parallel, international humanitarians began to engage with the Kachin State Government (KSG) to negotiate access to KIA-held areas. But state authorities refused to permit international agencies to cross frontlines, deferring to their national counterparts who in turn often delayed negotiations by claiming to consult the KSG or the *Tatmadaw* prior to making a decision. National and state authorities rarely refused access requests outright, but instead delayed decisions, ignored demands, or objected to the timing of travel requests – usually citing security concerns.<sup>129</sup> Approaches were also made to negotiate directly with the *Tatmadaw*'s Northern Command in Kachin State. But they too insisted on

<sup>126</sup> Humanitarian working in Myanmar in discussion with author (#17/059406).

<sup>127</sup> Jaquet and O'Loughlin, "The Kachin IDP Crisis," 29.

<sup>128</sup> Confidential record of a meeting held on 16 May 2012 between the United Nations Humanitarian Coordinator and the Vice-President of the Union of Myanmar, on file with the author.

<sup>129</sup> HRW, *Untold Miseries*, 68-69.

receiving permission from Naypidaw prior to negotiating access by international agencies.<sup>130</sup>

Negotiations with national authorities over access to rebel-held areas of Kachin State were undermined by the opaque decision-making structures within the former military regime. The outbreak of fighting in mid-2011 coincided with the transition to a nominally-civilian government under the leadership of President Thein Sein. Decision-making and political agendas within the new administration proved somewhat unknown and untested for international negotiators, leading to months of delays and uncertainty. Humanitarians were thus caught between state and national authorities, and between political and military actors, in a complex negotiation process that in turn determined the viability of negotiations with the KIA.

Five key interests likely influenced the attitude of political and military authorities towards humanitarian access. First, national authorities were determined to limit the presence of international personnel within the state who could bear witness to the conduct of *Tatmadaw* forces and would thereby increase political pressure on the regime. Second, Naypidaw was likely fearful that a substantial international presence in KIA-held areas would legitimise the armed group and bolster their support.

Third, both political and military authorities expressed concern that substantial flows of relief into KIA-controlled areas were being diverted for use by the Kachin rebels or were allowing the armed group to redirect resources away from relief activities to support combat – a concern that was not entirely unfounded, according to one humanitarian.<sup>131</sup> Fourth, Naypidaw and the *Tatmadaw* appear to have withheld humanitarian access to pressure the KIA into signing the NCA and participate in peace talks amid a renewed push for peace from 2015 under Aung San Suu Kyi's

<sup>130</sup> Humanitarian worker in Myanmar in discussion with author (#17/059402).

<sup>131</sup> Humanitarian working in Myanmar in discussion with author (#17/059406).

leadership.<sup>132</sup> Finally, in keeping with China's stated policy, the national government was concerned to avoid drawing attention to the Kachin conflict that a greater international presence in the state would likely entail.<sup>133</sup> Consequently, international negotiations with national authorities resulted in only sporadic approvals, and were ultimately terminated in mid-2016, as detailed below.

### 3.2 CROSS-LINE MISSIONS

Given restrictions imposed by national authorities, international humanitarian negotiations focused on the single objective of attaining permission for *ad hoc* relief convoys to bring relief goods to IDPs across frontlines. These so-called 'cross-line missions' were intended to meet both immediate humanitarian needs in displacement camps and as trust-building measures that would eventually give way to more comprehensive humanitarian access.<sup>134</sup>

After six months of multi-party negotiations, the first UN-led cross-line mission left the government-controlled state capital Myitkyina on 13 December 2011 for Laiza, the headquarters of the KIA. Local civil society organisations acted as interlocutors during the negotiations and supported the mission with their own staff and assets.<sup>135</sup> Trucks hired by UN agencies and led by OCHA provided relief goods to some 3,200 displaced civilians and afforded international staff an opportunity to establish relationships and build trust with their counterparts within the KIA.<sup>136</sup> But shortly after

<sup>132</sup> Humanitarian worker in Myanmar in discussion with author (#17/059402); humanitarian working in Myanmar in discussion with author (#17/059406).

<sup>133</sup> The former Vice-President Dr Sai Muak Kham acknowledged in a meeting held on 16 May 2012 with the former United Nations Humanitarian Coordinator Ashock Nigam that the Government did not wish to see the Kachin issue "internationalised," in a record of the meeting on file with the author.

<sup>134</sup> Humanitarian working in Myanmar in discussion with author (#17/059406).

<sup>135</sup> Jaquet and O'Loughlin, "The Kachin IDP Crisis," 28; HRW, *Untold Miseries*, 68.

<sup>136</sup> OCHA, *Myanmar Humanitarian Bulletin*, Issue 8 (Office for the Coordination of Humanitarian Affairs, 30 September 2013), 5.

the convoy's return, renewed fighting eroded what progress had been made in reaching a peace settlement in the state. And no further cross-line missions were authorised for more than three months.<sup>137</sup>

Yangon-based UN officials travelled to Chiang Mai in northern Thailand to meet senior KIA leadership and consolidate the relationship in early 2012. And amid a series of peace talks and the suspension of European Union sanctions, authorisation was again granted by Naypidaw for a resumption of cross-line missions that brought humanitarian assistance to over 15,000 IDPs in non-government-controlled areas during the first half of the year.<sup>138</sup> The KIA once again consented to these missions. But in July, the government stopped issuing permits for UN staff to travel to areas under KIA-control, in a cycle of acquiescence and denial that continued for a further four years (see figure 4 below).

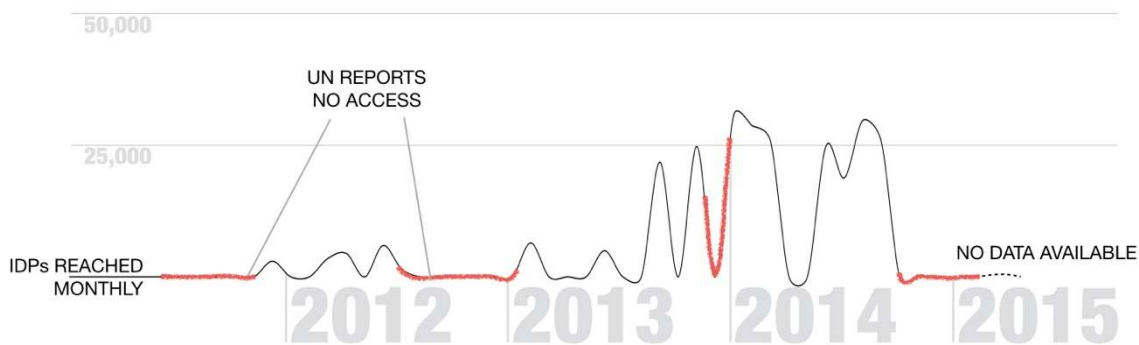
In all, the UN led some 50 cross-line missions to areas under the control of the Kachin rebels from late 2011 to early 2015 – a figure that would likely have been far higher if negotiations with national and local authorities had been more successful.<sup>139</sup>

<sup>137</sup> HRW, *Untold Miseries*, 68. see also OCHA, *Myanmar Humanitarian Bulletin 8 2013*, 5.

<sup>138</sup> OCHA, *Myanmar Humanitarian Bulletin 8 2013*, 5.

<sup>139</sup> Figure draws from multiple humanitarian bulletins released by OCHA Myanmar, available at <http://www.reliefweb.org>.





**Figure 4: Number of IDPs reached monthly with cross-line missions, 2011-2015**

*Data drawn from multiple humanitarian bulletins released by OCHA Myanmar from July 2009 to November 2017, available at <http://www.reliefweb.org>.*

Throughout the first five years of the Kachin conflict, UN and international NGO officials had minimal direct contact with the rebel movement beyond representatives of the IRRC. Most negotiation and engagement with the armed group was mediated by local humanitarian partners, religious leaders (primarily KBC), civil society interlocutors, or other intermediaries trusted by both parties.<sup>140</sup> On occasion, international negotiators engaged directly with more senior leaders within the armed group via mobile and satellite phone for logistical and deconfliction purposes – mostly during cross-line missions. And the small number of convoys to Laiza afforded international staff the opportunity to establish direct relations with their KIA counterparts.<sup>141</sup>

The rebel group proved highly receptive to offers of international assistance. Indeed, the KIA never rejected requests by international actors to provide relief within areas under its control, according to several participants in this research.<sup>142</sup> Some participants consequently even questioned whether international humanitarians had ever truly ‘negotiated’

<sup>140</sup> Humanitarian worker in Myanmar in discussion with author (#17/059401).

<sup>141</sup> Humanitarian working in Myanmar in discussion with author (#17/059406).

<sup>142</sup> Humanitarian working in Myanmar in discussion with author (#17/059406).

with the KIA at all, suggesting that the engagement was better characterised as logistical arrangements or ‘deconfliction’ (see appendix I).<sup>143</sup> Moreover, the Kachin rebels actively solicited international humanitarian support and even reported on access restrictions at the hands of the Government.<sup>144</sup>

Several international non-governmental organisations nevertheless preferred to operate primarily in areas under government control. These agencies feared that operations in KIA-held areas would jeopardise their programmes in other parts of the country and undermine years of relationship-building in Naypidaw.<sup>145</sup> One humanitarian worker noted that their organisation only operated in KIA-controlled areas sporadically, so as to avoid any “misunderstanding” with the government. This agency was also reportedly concerned at the reputational and security risks of straying into rebel-held territory. Moreover, the aid worker interpreted their organisational policy to require that humanitarian staff “avoid contact with the KIA, where possible.”<sup>146</sup> Further, the government actively discouraged international humanitarians from engaging directly with the Kachin rebels – particularly following the failure of the KIA to sign the 2015 NCA<sup>147</sup> – prompting humanitarian to adopt more low-key and indirect engagement with the armed group wherever possible.<sup>148</sup>

<sup>143</sup> Member of the diplomatic corps in Myanmar in discussion with author (#17/059407); member of the diplomatic corps in Myanmar in discussion with author (#17/059414).

<sup>144</sup> Yen Saning and Nang Seng Nom, "Myanmar Government Blocking Aid to Kachin IDP Camps: KIO," *The Irrawaddy*, 5 December 2014.

<sup>145</sup> HRW, *Untold Miseries*, 69; Jaquet and O'Loughlin, "The Kachin IDP Crisis."; South, *Ethnic Politics in Burma*.

<sup>146</sup> Humanitarian worker in Myanmar in discussion with author (#17/059402).

<sup>147</sup> Humanitarian worker in Myanmar in discussion with author (#17/059401).

<sup>148</sup> In a meeting held on 16 May 2012 with the United Nations Humanitarian Coordinator Ashock Nigam, the Vice-President of the Union of Myanmar Dr Sai Mauk Kham insisted that international humanitarians avoid direct contact with the KIA as it “could create misunderstandings.” Record of meeting on file with author.

### 3.3 COMMITMENT

There was a strong and unified negotiation strategy among members of the HCT during the first years of the Kachin response. In contrast to my study of negotiations in Yemen in chapter 4, negotiations in Kachin were centralised within OCHA on behalf of the HC from the outset of the response in 2011. This reduced the extent to which either the Government or the KIA could play international humanitarian agencies against one another and allowed for collective bargaining. Even as international staff turned-over rapidly, several Myanmar nationals within international NGOs and UN agencies maintained relationships with members of the KIA. This helped to ensure institutional knowledge was not lost and trust was sustained throughout the research period.

Despite strong early investment in the relationship with the KIA by UN officials, substantial support for humanitarian operations in Kachin state from international humanitarian and diplomatic actors was never forthcoming. International agencies often faced funding shortfalls.<sup>149</sup> Moreover, intercommunal violence in Rakhine state regularly took precedence over the Kachin conflict within humanitarian and diplomatic communities. UN leadership could only manage one emergency at a time, suggested one humanitarian worker, claiming the Kachin conflict was routinely bumped off the agenda.<sup>150</sup> Another humanitarian similarly claimed that senior UN leadership focused on development and political advances at the expense of humanitarian issues.<sup>151</sup> Further, a member of the diplomatic corps acknowledged that the Kachin response often competed for attention with intercommunal violence in Rakhine State from 2012.<sup>152</sup>

<sup>149</sup> HRW, *Untold Miseries*, 68.

<sup>150</sup> Humanitarian worker in Myanmar in discussion with author (#17/059401).

<sup>151</sup> Humanitarian working in Myanmar in discussion with author (#17/059406).

<sup>152</sup> Member of the diplomatic corps in Myanmar in discussion with author (#17/059407).

The passive stance of UN leadership on certain protection and humanitarian issues in Myanmar – including Kachin State – also reportedly created a schism within the humanitarian community. One internal UN memo alleged that the mission in the country had become “glaringly dysfunctional” and had been condemned to “irrelevance” under the leadership of Renata Lok-Dessallien, the Myanmar UN Resident Coordinator (the highest-ranking UN official in a country).<sup>153</sup> Lok-Dessallien was subsequently rotated out of the country prematurely amid allegations of repeatedly failing to address human rights issues.<sup>154</sup>

Media coverage of the northern civil war was also minimal, leading to limited pressure on international actors to intervene or on Naypidaw to resolve the crisis.<sup>155</sup> Moreover, humanitarian clusters reportedly focused only on areas in which their members had ongoing activities. This limited the reporting or analysis of humanitarian needs and activities in areas beyond government control. Further, a renewed push by Union officials from 2015 to end to the country’s long-standing ethnic armed conflicts encouraged donor governments to reallocate funding and support away from humanitarian operations in favour of peace initiatives, claimed one humanitarian interviewed for this research.<sup>156</sup> International commitment to Kachin was therefore low, reducing the value that either the government or KIA could derive from negotiating with humanitarians.

From mid-2016, the strategy of negotiating *ad hoc* cross-line missions failed amid renewed government restrictions. The Union government ceased issuing permits for UN-led convoys from May, citing concerns over insecurity, the validity of the UN’s reporting on IDP numbers, and alleging

<sup>153</sup> Poppy McPherson, "Inside the 'Glarlyngly Dysfunctional' UN Mission in Myanmar," *IRIN*, 17 July 2017.

<sup>154</sup> Jonah Fisher, "Myanmar: Top UN Official in Myanmar to be Changed," *BBC News*, 13 June 2017.

<sup>155</sup> The Economist, "The Kachin Dilemma; Myanmar and China."

<sup>156</sup> Humanitarian worker in Myanmar in discussion with author (#17/059401).

that international humanitarian assistance was being diverted by the KIA.<sup>157</sup> The deficiencies in the strategy adopted by international actors became apparent as coordination broke down and agencies were left to fend for themselves.<sup>158</sup> As prospects for cross-line missions faded, international humanitarian agencies had little reason to engage the KIA, and negotiations stalled.<sup>159</sup>

### 3.4 ALTERNATIVES TO NEGOTIATION

Humanitarian negotiations with the KIA were predicated on continued permission for cross-line missions from the Union-level. Humanitarians expected cross-line missions to build trust and expand opportunities for further access and protection activities in rebel-held areas. They consequently made little progress establishing alternatives to negotiation. This failure, I claimed, reduced their negotiating leverage. Moreover, when the government ended permission for UN-led convoys in 2016, international operations beyond government control effectively ended.

Political conditions in other conflict-affected border areas in Myanmar allowed relief operations to run from neighbouring countries. Both Karen State that borders Thailand and Rakhine State on the Bangladesh border, for example, had a long history of cross-border humanitarian and development operations.<sup>160</sup> Indeed, in Kachin, local aid groups also regularly moved aid supplies across the porous Chinese border or used private contractors to bring goods across frontlines from government-controlled areas. In this way, they were able to maintain access to civilians on both sides of the conflict.

<sup>157</sup> Humanitarian working in Myanmar in discussion with author (#17/059406).

<sup>158</sup> Humanitarian worker in Myanmar in discussion with author (#17/059401); humanitarian worker in Myanmar in discussion with author (#17/059402).

<sup>159</sup> Humanitarian working in Myanmar in discussion with author (#17/059406).

<sup>160</sup> See for example Jolliffe, *The KNU in Times of Change*.

Such tactics, however, were considered too risky and controversial for international actors in Kachin who were fearful of compromising their access to other parts of the country or losing what little access they had been able to achieve in Kachin.<sup>161</sup> National authorities prohibited international humanitarians from operating from abroad.<sup>162</sup> And China – Kachin’s main neighbour – strongly resisted international involvement in the conflict, effectively ruling out international relief operations from Yunnan.

Options from the Indian side were no better. The mountainous border region is sparsely populated and has few roads capable of moving relief goods. Moreover, the Indian government had shown little sympathy for Myanmar’s rebel groups, allegedly supplying weapons to Naypidaw that were used in Kachin state.<sup>163</sup> International humanitarian operations were therefore run almost exclusively from the government-controlled state capital, Myitkyina (with a smaller operational hub in government-held Bhamo), and were therefore dependent on approval by the relevant national, local, and military authorities.

The UN and international NGOs repeatedly denounced the obstruction of humanitarian access in Kachin by the Myanmar Government and *Tatmadaw*.<sup>164</sup> But international actors were frequently criticised for not

<sup>161</sup> Humanitarian worker in Myanmar in discussion with author (#17/059401). This decision follows the precedent set by NGOs and UN agencies operating on the Thai-Myanmar border in support of Karen refugees since the mid-1970s, in which operations are restricted to Thailand so as to avoid the perception of violating state sovereignty that would undermine their ability to operate around the world, claims Cecilia Jacob in *Child Security in Asia: The Impact of Armed Conflict in Cambodia and Myanmar*, Routledge Contemporary Asia Series (Abingdon, Oxon: Routledge, 2013), Book, 117 and 119.

<sup>162</sup> Confidential record of a meeting held on 16 May 2012 between the United Nations Humanitarian Coordinator and the Vice-President of the Union of Myanmar, on file with the author. Similarly, the government reportedly pushed back on humanitarian personnel meeting with the KIA, Humanitarian worker in Myanmar in discussion with author (#17/059401).

<sup>163</sup> Lintner, "More War Than Peace in Myanmar."

<sup>164</sup> See for example OCHA, *Myanmar Humanitarian Bulletin June 2013*, 4; OCHA, *Myanmar Humanitarian Bulletin June 2013*, 2; OCHA, *Myanmar Humanitarian Bulletin June 2013*, 4; OCHA, *Myanmar Humanitarian Bulletin 6 2013*, 1.

making better use of the access enjoyed by local partners and of equating humanitarian access with *international* access. Moreover, local NGOs expressed frustration that donors continued to fund only international agencies or withheld funding for Kachin operations completely, rather than support local humanitarian groups.<sup>165</sup>

International agencies and institutional humanitarian donors, however, were sceptical about local capabilities. The complex and often symbiotic relationship enjoyed by Kachin civil society and the KIA (described above), was widely believed to compromise the ability to provide principled and quality assistance. Further, local partners were not perceived to be willing or able to criticise the church or IRRC, noted a humanitarian worker.<sup>166</sup> International humanitarians consequently continued to negotiate for their own access to rebel-held areas rather than work primarily through local partners.

Given the protracted access constraints, some international humanitarian actors began shifting to cash-based assistance. Mobile money or digital transfers were used to provide funding directly to IDPs in KIA-controlled areas. Although this approach bypassed the need for approval from national or local authorities, it was limited by the quality of mobile networks in the border areas.<sup>167</sup> These programmes were therefore small scale, had only a limited impact on humanitarian needs, and had a negligible impact on negotiations.<sup>168</sup>

The government proposed their own alternative to international access to KIA areas. National authorities suggested that international agencies

<sup>165</sup> Jaquet and O'Loughlin, "The Kachin IDP Crisis," 28.

<sup>166</sup> Humanitarian worker in Myanmar in discussion with author (#17/059401).

<sup>167</sup> Humanitarian worker in Myanmar in discussion with author (#17/059402).

<sup>168</sup> Recent reports from the United Nations, however, suggest agencies are "increasingly using cash transfer programming" where markets working in Kachin State, in OCHA HNO 2017 OCHA, *Myanmar 2017 Humanitarian Needs Overview*, (Myanmar Humanitarian Country Team, December 2016), 11.

establish designated distribution points in government areas, to which IDPs from rebel-controlled territory would travel to receive supplies. But humanitarian officials rejected this proposal outright, criticising the security implications of requiring civilians to cross active frontlines and landmine-contaminated areas.<sup>169</sup> They also feared this approach would consign humanitarian assistance to little more than material support, forgoing opportunities for protection activities or monitoring. Further, a human rights worker speculated that Kachin civilians would be unable or unwilling to undertake such a journey as it would likely be seen as a betrayal of the rebel movement.<sup>170</sup>

International humanitarians thus largely failed to develop viable alternatives to negotiation. The HCT had no contingency or alternative strategy following the breakdown of cross-line missions from 2016. Indeed, one humanitarian interviewed for this research claimed, “most other modalities are off the table.”<sup>171</sup>

### 3.5 NEGOTIATING CIVILIAN PROTECTION

This symbiotic relationship between the KIA and Kachin civilians encouraged the group to comply with IHL, argued EAO researcher Stan Jagger.<sup>172</sup> Yet the Kachin rebels continued to violate international norms related to the protection of civilians. Indeed, international humanitarians had limited success negotiating protection concerns with the armed group. During negotiations with the KIA, “violations of IHL are a real no-go,” claimed a humanitarian working in Myanmar interviewed for this

<sup>169</sup> OCHA, *Myanmar Humanitarian Bulletin*, Issue 4 (Office for the Coordination of Humanitarian Affairs, January 2017), 6.

<sup>170</sup> Human rights worker in discussion with author, (#17/059412).

<sup>171</sup> Humanitarian worker in Myanmar in discussion with author (#17/059401).

<sup>172</sup> Stan Jagger, "Part of the Problem and Part of the Solution?: Non-State Armed Groups and Humanitarian Norms in Burma/Myanmar" (PhD dissertation, The University of Waikato, 2016), 4-5.



research.<sup>173</sup> Another humanitarian insisted, “protection has not been on the negotiating agenda.”<sup>174</sup>

The absence of progress on protection issues contrasts with the group’s readiness to facilitate operational access. This seeming contradiction is due, I argue, to four main factors: the prioritisation by international humanitarian actors of access over protection; the absence of sufficient incentives for the KIA to comply with international norms related to civilian protection; and limited awareness by civil society and the KIA of the armed group’s obligations under IHL.

First, the UN’s conservative approach in the country, as detailed above, meant that it tended to favour softer development and economic interests over more controversial human rights and humanitarian concerns. UN and NGO officials may also have perceived the relationship between access and protection to be zero-sum, choosing not to compromise their larger development programmes or existing humanitarian operations. Or they may have prioritised political reform over protection issues. As South noted with respect to negotiations with the government,

In a constrained working environment such as Burma, it is often easier to focus on service delivery and relief activities, than on more politically challenging issues, such as protection. There is a danger that power-holders (especially the government) may withdraw the access to vulnerable populations which is necessary to deliver assistance, should humanitarian actors seek to engage power-holders on sensitive issues.<sup>175</sup>

Humanitarian leadership consequently appears to have been reticent to negotiate with the KIA over the protection of civilians.

Second, the KIA faced insufficient incentives to comply with humanitarian norms, I contend. The conduct of the *Tatmadaw* in Kachin State (and

<sup>173</sup> Humanitarian worker in Myanmar in discussion with author (#17/059401).

<sup>174</sup> Humanitarian working in Myanmar in discussion with author (#17/059406).

<sup>175</sup> South, *Ethnic Politics in Burma*, 211.

elsewhere) insulated the Kachin rebel movement from accountability. Moreover, the international community had been eager not to derail the country's democratisation, and consequently, as political reforms progressed, they eased pressure on the regime to address its human rights abuses. International actors therefore had little leverage over armed groups with which to compel them to comply with international norms. As South noted, "the government [of Myanmar] has been widely regarded as illegitimate. As a result, armed opposition groups have not been called upon to demonstrate their own credibility."<sup>176</sup> The KIA therefore used the poor reputation of the *Tatmadaw* to its advantage, claimed a member of the diplomatic corps.<sup>177</sup> Moreover, the KIA had historically been courted by both China and the US as each vied for influence in the country, claimed Sadan.<sup>178</sup> These factors, I have argued, insulated the group from the delegitimising effects of non-compliance.

Third, the relationship between the KIA and Kachin society also undermined the ability of international humanitarians to address protection issues with the rebel movement. Its deep and entrenched support likely lead to under-reporting of protection issues. A human rights worker claimed, "people won't readily talk about [the KIA's] abuses."<sup>179</sup> Amnesty International also warned that documenting forced or child recruitment in Kachin State was complicated by many families having one or more members serving with the KIA, making them hesitant to report on its abusive practices.<sup>180</sup>

Moreover, Kachin civilians likely prioritised duty and responsibility to the rebel movement over protection concerns. Many may not even see violations of international norms as such, the human rights worker

<sup>176</sup> South, "From Ceasefires to Lasting Peace?."

<sup>177</sup> Member of the diplomatic corps in Myanmar in discussion with author (#17/059409).

<sup>178</sup> Sadan, "Ongoing Conflict in the Kachin State."

<sup>179</sup> Human rights worker in discussion with author, (#17/059412).

<sup>180</sup> Amnesty International, *All the Civilians Suffer*, 40.

claimed.<sup>181</sup> Jagger argued that the KIA's behaviour did not constitute "deliberate policies of violence directed towards civilian populations," but was rather dictated by perceived military necessity.<sup>182</sup> But a human rights worker offered a note of caution, arguing that whilst the armed group appeared receptive to calls to comply with international norms, in reality, its dedication to these principles "does not translate into adherence."<sup>183</sup> Further, Amnesty International speculated that many EAOs facing increased pressures from the Union government and *Tatmadaw* "will likely seek to continue to grow, or at least replenish, their ranks and coffers — with civilians bearing much of the burden."<sup>184</sup> Finally, as Jo contended, the behaviour of armed groups is profoundly affected by the preferences and values of its key constituents.<sup>185</sup> The attitudes of Kachin civilians therefore meant that the KIA faced insufficient pressure to comply with international norms.

This limiting factor extended beyond Kachin civilians. Given international access constraints, the UN and INGOs relied on civil society to report on the conduct of the KIA. But few local partners were willing to feed into international reporting within KIA-held areas, claimed participants.<sup>186</sup> Pichaiwongse asserted that the UN's reliance on local partners for monitoring and advocacy with the rebel group was flawed. Successful protection negotiations, she insisted, required an external actor to pressure armed groups into compliance.<sup>187</sup> Similarly, there is an "issue with civil society alignment with one side of the conflict," claimed a member of the

<sup>181</sup> Human rights worker in discussion with author, (#17/059412).

<sup>182</sup> Jagger, "Armed Groups and Humanitarian Norms in Myanmar," 7-8.

<sup>183</sup> Human rights worker in discussion with author, (#17/059412).

<sup>184</sup> Amnesty International, *All the Civilians Suffer*, 42.

<sup>185</sup> Jo, "Compliant Rebels," 16-18.

<sup>186</sup> Humanitarian worker in Myanmar in discussion with author (#17/059401); humanitarian working in Myanmar in discussion with author (#17/059406).

<sup>187</sup> Pichaiwongse in discussion with author (#17/059406).

diplomatic corps in Myanmar, undermining trust between international and local humanitarian actors.<sup>188</sup>

Moreover, another humanitarian suggested that Kachin civil society groups had little experience, limited technical capacity to collect data on IHL violations, and would likely be unwilling to escalate protection concerns.<sup>189</sup> Nevertheless, as a human rights worker cautioned, negotiations with local actors may well take place that are not seen by international organisations.<sup>190</sup> Both KBC and Karuna Mission Social Solidarity (the largest Catholic network in Kachin State) did not reply to requests to be interviewed for this research.

A fourth factor undermining humanitarian negotiations over protection was the limited understanding and awareness of IHL by Kachin civilians and leadership within the rebel movement itself. Child Soldiers International noted that access restrictions by Chinese and Myanmar authorities limited international organisations from providing training and awareness on international humanitarian and human rights laws and standards to KIA officials. This afforded international actors few opportunities to raise protection concerns.<sup>191</sup> Indeed, despite cordial relations between some senior members of the KIA and the UN, many key leaders within the Kachin resistance movement remain inaccessible and are largely unknown to outsiders.<sup>192</sup> As conflict researcher Cecilia Jacob noted with regard to EAOs more broadly, “the international community has no access to non-state groups recruiting children [in Myanmar] who are not party to the government programme to end child soldiering.”<sup>193</sup>

<sup>188</sup> Member of the diplomatic corps in Myanmar in discussion with author (#17/059407).

<sup>189</sup> Humanitarian worker in Myanmar in discussion with author (#17/059401).

<sup>190</sup> Human rights worker in discussion with author, (#17/059412).

<sup>191</sup> Child Soldiers International, *A Dangerous Refuge*, 29.

<sup>192</sup> Member of the diplomatic community in Myanmar in discussion with author (#17/059404).

<sup>193</sup> Jacob, *Child Security in Asia*, 144.

Government restrictions also compromised the negotiation of Action Plans over the use and recruitment of child soldiers between the UN and several of the country's ethnic armed groups.<sup>194</sup> I assume this to include negotiations with the KIA, although UNICEF (the agency responsible for negotiating Action Plans related to CAAC in Myanmar) declined to participate in this research. Pichaiwongse attributed these obstructions to the *Tatmadaw's* desire to be de-listed prior to EAOs.<sup>195</sup> These dynamics meant that protection violations were largely invisible in Kachin State, claimed a member of the diplomatic corps.<sup>196</sup>

Nevertheless, some successes did result from protection-oriented negotiations with the KIA. One school used by a KIA-affiliated militia was vacated in 2014 following advocacy from UNICEF. The KIA subsequently committed in writing to prohibit its further military use and banned uniformed soldiers from entering school premises.<sup>197</sup>

Moreover, ILO began working with EAOs in Myanmar in 2007 as part of its portfolio on forced labour. Its representatives travelled to Thailand to build relationships with rebel leaders who often spent time in neighbouring safe havens. ILO found KIA leadership to be “very compliant” and forthcoming about the use of child soldiers, claims Pichaiwongse, but had weak standards for verifying the age of new recruits and lacked the technical capacity to demobilise children within its ranks or provide alternatives to vulnerable children looking to the armed group to provide for their family. Negotiations between ILO and the KIA focused on removing children from combat roles whilst investing in livelihoods programmes that could support current or prospective child recruits. But unlike humanitarians who demand respect for international law where there often is none, claimed

<sup>194</sup> Security Council, S/RES/2051.

<sup>195</sup> Pichaiwongse in discussion with author (#17/059406).

<sup>196</sup> Member of the diplomatic corps in Myanmar in discussion with author (#17/059409).

<sup>197</sup> General Assembly, A/69/926–S/2015/409, para 142; Child Soldiers International, *A Dangerous Refuge*.

Pichaiwongse, ILO's negotiations focused on accountability for recruitment and were predicated on ILO's ability to impose sanctions on the group. The negotiating position of ILO, she claimed, was therefore far stronger than that of humanitarian actors.

## CONCLUSION

Humanitarian agencies and the KIA enjoyed strong interdependence with respect to access. Bilateral negotiations over access were perceived by the group to strengthen its legitimacy, substitute for its own investment in relief operations, and offered potential side payments related to the peace process. But these negotiations were ultimately predicated on humanitarians receiving permission from national authorities. Government consent was irregular for the first years of the conflict and ultimately ceased from mid-2016. Further, competing developmental and political priorities, limited funding, and a lack of media attention resulted in few resources and little attention being brought to bear on the Kachin conflict, thereby undermining international commitment that weakened the humanitarian negotiating position.

In contrast, strong centralisation and coordination through the HC and OCHA strengthened the international bargaining position and minimised transaction costs for all negotiating parties. But when government authorisation for cross-line missions ended, the lack of bilateral contacts and the limited capacity of other agencies to negotiate was exposed.

Despite the KIA's rhetoric, the group showed little genuine support for international humanitarian norms. It was largely insulated from pressure to reform and routinely appeared to prioritise its war-fighting capabilities over compliance. The complex web of trust, fear, and dependency woven into Kachin society strongly mediated against the need for the armed group to conform to international law. Moreover, well-publicised atrocities by *Tatmadaw* forces, combined with national and regional political dynamics, reduced pressure on the KIA to address its own conduct. Further, international humanitarian agencies had limited access to rebel-held areas, forcing them to rely on information channelled through Kachin civil society,

local humanitarian partners, and local media. Reporting on protection abuses was therefore minimal and inconsistent, undermining the ability of international humanitarians to negotiate effectively. Finally, humanitarians were wary of undermining their own access by raising concerns over the group's conduct, and their strategy of sequencing negotiations (establishing access before progressing to protection) failed to deliver.

Human rights actors, however, did not face the same potential trade-off between operational access and protection. They also offered programmatic incentives to the KIA that reportedly encouraged the group to curtail its retirement of children (at least for combat roles). But human rights and humanitarian actors did not align their approaches or seek to complement each other's work, and instead often saw themselves as being somewhat in competition (see chapter 7).

Finally, humanitarian negotiators largely failed to strengthen their alternatives to negotiation. National and international political imperatives confined humanitarian operations to government-held areas. Moreover, efforts to develop alternative access modalities through cash transfers and local partners were insufficient and belated. The lack of infrastructure within rebel-held areas also limited these options, while the partisan nature and limited capacity of local partners undermined their effectiveness.

Ultimately, humanitarian negotiators were able to somewhat reduce their weak bargaining position with the KIA, particularly through leveraging the group's strategic interests, building trust and relationships, and centralising negotiations. They also enjoyed early successes due to high levels of interdependence with respect to humanitarian access. But they failed to develop strong alternatives to negotiation and proved both unwilling and unable to meaningfully address protection issues.





# CHAPTER 6

## OVERCOMING POWER ASYMMETRY<sup>1</sup>

Chapter 3 drew on existing literature to affirm my hypothesis that humanitarians negotiate with armed groups from a position of weakness. The preceding two chapters explored the tactics used by humanitarian negotiators to reduce this weak bargaining position in Yemen and Myanmar (chapters 4 and 5, respectively). In this chapter, I draw on this empirical data and broader negotiation scholarship to identify a range of tactics or 'humanitarian levers' (see introduction) that negotiators deploy to reduce their power asymmetry. I ground these tactics in negotiation theory and contend that Habeeb's triadic concept of power relations largely holds for this analysis, in which relative power is a function of alternatives, commitment, and control. Further, I emphasise the importance of both formal negotiation tactics as well as extra-negotiatory moves for the weaker party, but caution that these tactics are often high-risk for both humanitarians and those they seek to assist. And finally, whilst the fragmentation and competition that characterises the humanitarian sector has driven this research to focus on tactics rather than strategies, as noted in the introduction, some of the tactics identified below overlap with what could alternatively be considered negotiation strategies.

<sup>1</sup> An earlier version of this chapter appeared as Ashley Jonathan Clements. "Overcoming Power Asymmetry in Humanitarian Negotiations with Armed Groups." *International Negotiation* 23, no. 3 (2018).

## 1. TACTICAL OPTIONS FOR THE WEAK

Burderlein contended that power relations within humanitarian negotiation are immutable; “there is little humanitarian negotiators can do about them,” he argues.<sup>2</sup> This assertion, however, is in stark contrast to the bulk of negotiation literature on power that concludes that structurally weaker parties *can* reach agreements that do not wholly reflect the power relations of the negotiation – the structuralists’s dilemma (see chapter 1).

Analysis of international negotiations suggest tactics such as brinkmanship, delaying negotiations, behaving unpredictably, and nuisance behaviour can prove effective in changing the power balance of a negotiation.<sup>3</sup> Other studies suggest that by invoking rules, appealing to a higher authority, public denunciation, or stonewalling, weaker parties may level the playing field.<sup>4</sup> Further, the weaker party can often pick the timing of a negotiation to improve the likelihood of attaining their preferred outcome.<sup>5</sup>

Most of these tactics, however, are not available to humanitarians when negotiating with armed groups, I contend (although they are regularly used *against* humanitarians). Some of these manoeuvres will likely place humanitarian personnel at great risk and undermine the potential for reaching or maintaining an agreement. Nuisance and delaying tactics are likely to frustrate armed groups, jeopardising the safety of humanitarians. Moreover, may lead to a breakdown of negotiations that disadvantages humanitarians more than their counterparts. Humanitarian actors also have limited options with regard to timing. Whilst they may capitalise on shifts in the context, they routinely face immediate pressure on humanitarian negotiators to deliver assistance. Further, the needs of

<sup>2</sup> Bruderlein, "Frontline Negotiations".

<sup>3</sup> Wriggins, "Up for Auction."; Hampson, "Negotiation."

<sup>4</sup> Zartman and Rubin, *Power and Negotiation*, chapter 12.

<sup>5</sup> Habeeb, *Power and Tactics*; Daniel Druckman, "Stages, Turning Points, and Crises: Negotiating Military Base Rights, Spain and the United States," *The Journal of Conflict Resolution* 30, no. 2 (1986).

affected communities grow more severe with time, thereby increasing pressure to offer concessions (see chapter 3). This lends weight to the contention of both Bruderlein and Lempereur (see introduction) that humanitarian negotiation differs fundamentally from other forms of negotiation.

Nevertheless, my empirical analyses in chapters 4 and 5 strongly suggested that humanitarian negotiators *are* able to deploy tactics to reduce their power asymmetry. They are thereby able to realise better outcomes when negotiating with armed groups than much of the literature assumes. Indeed, I contend that humanitarian negotiators potentially enjoy an ‘asymmetry of influence’ in which they have a greater potential to sway the position of their opponents than their opponents are able influence their position.<sup>6</sup>

In the following section I draw on my two case studies and a number of case illustrations from the literature to identify six tactical areas that humanitarian negotiators use to overcome their weak negotiating position. These consist of persuasion; commitment and coalitions; influencing trust and reputation; mobilising third-party support; employing negotiation linkages; and changing alternatives to negotiation.

## 1.1 PERSUASION

Compliance and enforcement mechanisms within international law are weak, particularly as they related to armed groups and NIAC (see chapters 3). Humanitarians therefore have few means through which to compel armed groups to acquiesce to their demands. Persuasion, I contend, is thus an invaluable lever to improve access and civilian protection. Indeed, as I demonstrated in chapters 4 and 5, humanitarians regularly have success persuading armed groups that it is in their interests to uphold (at least

<sup>6</sup> Wolfe and McGinn, "Perceived Relative Power."

some) elements of international law.<sup>7</sup> “The art of persuasion must remain the focus of [humanitarians’] ability to negotiate the successful recognition of humanitarian norms,” argued leading humanitarian scholar and ethicist Hugo Slim.<sup>8</sup> Indeed, Geneva Call, claimed 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 banning landmines or ending the recruitment of children within their ranks.<sup>9</sup> Further, persuasion within humanitarian negotiation, I argue below, is most effective when grounded in legitimacy, substitution, or side payments, rather than legal argumentation suggested by policy (see chapter 1).

First, persuasion has proved particularly effective for those groups concerned about their international image and those seeking domestic legitimacy. Access negotiations with Hamas in Gaza were tempered by the group’s aspirations for international legitimacy, claimed Galli. Negotiators were most successful when they appealed to Hamas’s dependence on popular support that compelled the group to facilitate relief activities.<sup>10</sup> Similarly, during the conflict in Bosnia in the early 1990s, all key factions were seeking international legitimacy, claimed Morris, making them more susceptible to influence and persuasion regarding humanitarian norms.<sup>11</sup> Moreover, Crombé and Hofman attributed the positive reception one humanitarian medical NGO received from Jihadist groups in Afghanistan during the 1980s to the provision of assistance to the group’s constituents and the subsequent improvements to their image in the eyes of western

<sup>7</sup> See also Claudia Hofmann, “Engaging Non-State Armed Groups in Humanitarian Action,” *International Peacekeeping* 13, no. 3 (2006).

<sup>8</sup> Hugo Slim, “Marketing Humanitarian Space: Argument and Method in Humanitarian Persuasion”, presented at *Humanitarian Negotiators Network*, Geneva, Switzerland, 12 May 2003.

<sup>9</sup> As of mid-2018, Geneva Call reported that 52 armed groups had signed a Deed of Commitment banning landmines, 26 signed agreed to protect children in armed conflict, and 24 prohibi sexual violence and gender discrimination. See <https://genevacall.org/how-we-work/deed-of-commitment/>.

<sup>10</sup> Galli, “Negotiating Humanitarian Access with Hamas in Gaza,” 17-18.

<sup>11</sup> Morris, “The Limits of Humanitarian Action,” 359.

states.<sup>12</sup> Further, as detailed in chapter 4, one negotiator in Yemen insisted that legitimacy was *the* primary reason the Houthis were willing to meet with humanitarian negotiators. Indeed, Jo argued that legitimacy is the key driver of compliance among rebel groups, but cautioned that international legitimacy is usually a means through which armed groups enhance domestic legitimacy, rather than an end in itself.<sup>13</sup>

A second key to effective persuasion is substitution. International humanitarian assistance negotiated with the KIA reduced the group's burden of caring for displaced Kachin civilians, freeing up resources for other activities (see chapter 5). Belliveau similarly attributed the acceptance of one medical NGO by Somalia's Islamist group al-Shabaab to the concrete benefits derived from their humanitarian activities.<sup>14</sup>

Third, persuasion during humanitarian negotiations may also leverage the prospect of side payments. When humanitarian interests were included on the agenda of peace talks in Yemen, for example, the Houthis faced greater incentives to reach an agreement over access to Taizz (see chapter 4). Similarly, the KIA likely saw longer-term benefits from the presence of international humanitarian personnel related to the peace process in Myanmar (see chapter 5). Such negotiation linkages are discussed further below.

Ultimately, appealing to the interests of armed groups is likely to be a more effective method of persuasion than relying on international law or evoking ethical arguments.<sup>15</sup> But persuasion appears to also function within humanitarian negotiation in a more relational and less transactional fashion. Another element of persuasion is grounded in culture, acceptance, and the behaviour of humanitarian negotiators. "Taking aid to Ituri's

<sup>12</sup> Crombé and Hofman, "Regaining Leverage," 54.

<sup>13</sup> Jo, "Compliant Rebels," 16-18.

<sup>14</sup> Belliveau, *Red Lines and Al-Shabaab*, 3.

<sup>15</sup> Galli, "Negotiating Humanitarian Access with Hamas in Gaza," 19.

suffering populations required not only courage," wrote Pottier in his ethnography of so-called 'roadblock negotiations' in the DRC, "but also a cool head, sound perception, assertiveness, skills in cultural sensitivity, and humour."<sup>16</sup> Indeed, several humanitarian negotiators interviewed for this project emphasised the relational element of humanitarian negotiation (see also 'influencing trust and reputations').<sup>17</sup> This finding strongly supports Kerr's assertion that persuasion is an under-documented but essential component of the negotiation process.<sup>18</sup>

## 1.2 COMMITMENT AND COALITIONS

Commitment (or willpower and volition) is an established element of power in a negotiation that is often deployed effectively by weaker parties.<sup>19</sup> In negotiation terms, commitment refers to the degree to which an actor desires their preferred outcome. It can be either positive or negative.<sup>20</sup> Commitment can shift the balance of a negotiation in three main ways. First, weaker parties may commit a disproportionate number of resources to a negotiation in which they are deeply devoted, in what Habeeb terms an 'asymmetry of attention.'<sup>21</sup> 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 less critical.<sup>22</sup> Public commitment to the Bosnian humanitarian operation by UN leadership, for example, "played a major part in the expansion of

<sup>16</sup> Pottier, "Roadblock Ethnography," 169.

<sup>17</sup> Name withheld, (senior UN official) in discussion with author, location withheld, July 2017 (#17/059114); humanitarian-negotiation researcher in discussion with author (#17/059103).

<sup>18</sup> Pauline L. Kerr, "Diplomatic Persuasion: An Under-Investigated Process," *The Hague Journal of Diplomacy* 5, no. 3 (2010).

<sup>19</sup> Hopmann, *The Negotiation Process and the Resolution of International Conflicts*.

<sup>20</sup> Habeeb, *Power and Tactics*, 22.

<sup>21</sup> Habeeb, *Power and Tactics*, 132.

<sup>22</sup> Keohane and Nye, *Power and Interdependence*, 16; Snyder and Diesing, *Conflict Among Nations: Bargaining, Decision Making, and System Structure in International Crises*, 254-255 and 189-195.

UNHCR's role and reinforced UNHCR's standing as a negotiator," claimed Morris.<sup>23</sup>

Second, a weaker party can foster commitment to reach a negotiated agreement in the leadership of their counterpart. As Salacuse noted, "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."<sup>24</sup> In the early stages of negotiations with the KIA, for example, UN negotiators regularly travelled to Thailand to meet the leaders within the armed group to build trust and foster their commitment to future agreements (see chapter 4).

Third, with strong commitment comes increased resources and tactical options. If humanitarian, political, and diplomatic actors are committed to a particular humanitarian response, humanitarian operations are likely to be better funded. This increases the potential value that can be derived from a negotiation and thereby improves the bargaining position of humanitarian negotiators. Moreover, with political and diplomatic attention comes an expanded set of options. In Yemen, strong engagement by the Security Council on humanitarian issues introduced opportunities for both threats and incentives by way of denunciation through the Council's resolutions, targeted sanctions, and peace talks. In Kachin State, however, low international commitment meant such tactics were largely unavailable to humanitarian organisations.

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 momentum.<sup>25</sup> Coordinated approaches to negotiation among humanitarian agencies can similarly strengthen their negotiating position

<sup>23</sup> Morris, "The Limits of Humanitarian Action," 325.

<sup>24</sup> Salacuse, "Lessons for Practice," 266.

<sup>25</sup> Habeeb, *Power and Tactics*, 144.

and limit the extent to which they are susceptible to being played off against one another, as was the case in Angola.<sup>26</sup>

Humanitarian negotiators often coordinate their positions through ground rules, operating protocols, or letters of agreement with parties to the conflict, making the process more predictable and effective, argued a UN report.<sup>27</sup> As previously noted, such tools replicate traditional diplomatic approaches, and may also reduce the boundary role conflict by minimising the range of positions held by humanitarian actors (see chapter 3). Jackson similarly concluded in her extensive study of humanitarian negotiations in Afghanistan, Sudan, and Somalia, that “coordinated action and advocacy is required to tackle the broader challenges to engagement [with armed groups].” Moreover, humanitarian researcher Antonio Donini found that “strong leadership and coordination seem to be necessary ingredients in successful negotiation.”<sup>28</sup> Further, field-level cooperation in the DRC reportedly strengthened the bargaining position of humanitarians at roadblocks and provided a wider source of information to facilitate access.<sup>29</sup> In contrast, the Houthis undermined humanitarian negotiators when they disbanded and disrupted coordination fora.

Nevertheless, both case studies demonstrate the limits of collective bargaining. In Myanmar, highly coordinated negotiations under the auspices of the HC proved effective for the first years of the response. But this centralisation also meant that humanitarian organisations failed to build relationships with their counterparts and never developed localised negotiating skills and capabilities. UN leadership also failed to strengthen alternatives to negotiation, ultimately undermining long-term negotiated outcomes for all humanitarian actors in Kachin State. And in Yemen, agencies found it necessary to maintain bilateral negotiations to ensure

<sup>26</sup> Richardson, *Negotiating Humanitarian Access in Angola*. See also Hofmann 2016

<sup>27</sup> Security Council, S/2001/331, para 15.

<sup>28</sup> Donini, "Negotiating with the Taliban," 170.

<sup>29</sup> Pottier, "Roadblock Ethnography."



staff safety, to address security challenges, and de-conflict with combatants.<sup>30</sup>

Mirroring this finding, Zartman and Berman contended that there is strength in unity, but unity also leads to rigidity and slowness.<sup>31</sup> Under certain conditions, humanitarian organisations may therefore achieve better results from negotiating bilaterally in alignment with other humanitarians rather than negotiating collectively.<sup>32</sup>

### 1.3 INFLUENCING TRUST AND DEVELOP REPUTATIONS

Reputations usually matter to both humanitarian actors and the armed groups with whom they must negotiate. But the reputation of humanitarians among armed groups is often negative – they are frequently seen as colonialists,<sup>33</sup> western spies,<sup>34</sup> or proselytisers.<sup>35</sup> This dynamic can significantly undermine prospects for negotiation. Pottier concluded, “a relief worker’s bargaining power is shown to be influenced by militia perceptions of how his/her organisation is positioned in the conflict.”<sup>36</sup> Indeed, reputations matter in many different types of negotiation beyond the humanitarian variety. Negotiation scholars Paul Meerts and Raymond Cohen conceded, “trust has always been ‘the’ problem in negotiation.” Moreover, Meerts and Cohen suggested negotiators within international contexts overcome this trust deficit through regime formation.<sup>37</sup> Yet, armed

<sup>30</sup> Natsios, "Conflict or Cooperation," 416.

<sup>31</sup> Zartman and Berman, *The Practical Negotiator*, 205.

<sup>32</sup> For more on the distinction between alignment and coalition bargaining see Roger V. Dingman, "Theories of, and Approaches to, Alliance Politics," in *Diplomacy: New Approaches in History, Theory, and Policy*, ed. Paul Gordon Lauren (New York: Free Press, 1979).

<sup>33</sup> Pottier, "Roadblock Ethnography."

<sup>34</sup> Ashley Jackson, *Negotiating Perceptions: Al-Shabaab and Taliban Views of Aid Agencies*, (Overseas Development Institute, August 2014).

<sup>35</sup> Bradol, "Working in the Face of AQ and IS," 3.

<sup>36</sup> Pottier, "Roadblock Ethnography," 151.

<sup>37</sup> Paul Meerts and Raymond Cohen, "The Evolution of International Negotiation Processes," *International Negotiation* 13, no. 2 (2008): 153.

groups consistently oppose the regimes within which humanitarianism is advanced. This solution therefore holds little promise for humanitarian negotiators looking to overcome distrust and reputational issues.

Rather than rely on regimes, the literature suggests humanitarians expend considerable effort to demonstrate their viability as negotiation counterparts. In the DRC, for example, humanitarian organisations implemented programs that serviced different ethnic groups equally to establish their commitment to humanitarian principles. They also hired staff from both main ethnic groups to demonstrate impartiality.<sup>38</sup> Humanitarians in Afghanistan and Somalia pledged not to spy on the Taliban and al-Shebaab, and relied on the positive impacts of their programmes to demonstrate their impartiality.<sup>39</sup> Also in Afghanistan, MSF's operations reportedly crossed the country's multiple frontlines "to earn its reputation and acceptance [among parties to the conflict]"<sup>40</sup> – an approach mirrored by several agencies in Yemen (see chapter 4). Further, humanitarian actors in Angola lobbied to separate the humanitarian and the political processes as a demonstration of their operational independence.<sup>41</sup>

Reputations are so fundamental to frontline humanitarian negotiators, claimed Slim, that the humanitarian 'brand' must be carefully managed and leveraged. Applying principles adopted from marketing theory, Slim argued, "the power of humanitarian brands is central in promoting the value of humanitarian norms and in transmitting consistent humanitarian

<sup>38</sup> Pottier, "Roadblock Ethnography," 172 and 175. 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 organisation in 2000, and the murder of six staff from the International Committee of the Red Cross in 2001. See Glaser, *The Parameters of Negotiated Access*, 10.

<sup>39</sup> Jackson, *Negotiating Perceptions*.

<sup>40</sup> Crombé and Hofman, "Regaining Leverage," 55.

<sup>41</sup> Richardson, *Negotiating Humanitarian Access in Angola*, 10.

messages at every point of contact.”<sup>42</sup> Indeed, trust among negotiation counterparts is key for Bruderlein too: “[it] poses one of the greatest hurdles to negotiations,” he claimed.<sup>43</sup> Grace similarly emphasised the need for greater “attention to the human element of negotiation... to cultivate trust.”<sup>44</sup> This dynamic resembles the concept of ‘attitudinal structuring,’ in which efforts to alter the relationships among parties are understood as a major function of the negotiation process itself (see chapter 1).<sup>45</sup>

In parallel, the reputation of armed can also affect negotiations. Negative reputations can undermine a group’s legitimacy and external support but may also provide 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,<sup>46</sup> Bosnia,<sup>47</sup> and Yemen (chapter 4). Indeed, former senior SPLM/A official Lam Akol acknowledged that humanitarian negotiations during OLS facilitated sustained contact between the rebel movement and the international community (see also introduction). The process consequently provided international actors greater leverage and influence over the armed group, resulting in what he described as a “profound connection” between humanitarian negotiations and opportunities for peacemaking.<sup>48</sup> Claude Bruderlein similarly contended that an armed group’s receptivity to negotiation – particularly around the protection of civilians – is heavily

<sup>42</sup> Slim, “Marketing Humanitarian Space: Argument and Method in Humanitarian Persuasion”.

<sup>43</sup> Bruderlein, “Frontline Negotiations”.

<sup>44</sup> Grace, *Understanding Humanitarian Negotiation*, 12.

<sup>45</sup> Walton and McKersie, *A Behavioral Theory of Labor Negotiations*, 5 and 273.

<sup>46</sup> Richardson, *Negotiating Humanitarian Access in Angola*.

<sup>47</sup> Morris, “The Limits of Humanitarian Action.”

<sup>48</sup> Akol, “Operation Lifeline Sudan,” 54.

determined by the extent to which they are seeking to gain or maintain political legitimacy among their constituents.<sup>49</sup>

IHL, however, establishes the principle that engagement with armed groups does not confer legitimacy or affect their legal status.<sup>50</sup> But both armed groups and national governments may see negotiations differently, believing them to implicitly entail a form of recognition.<sup>51</sup> This can lead to opportunities for improving negotiated outcomes with armed groups. But it can also jeopardise the standing of humanitarian actors with the national government, risking a zero-sum game between the relationship of humanitarians with armed groups or national authorities, as emerged in Kachin (see chapter 5).<sup>52</sup>

The reputation and perception of armed groups can equally be undermined by humanitarian negotiators through denunciation. Media reports of Hamas denying humanitarian access in Gaza during the 2012 conflict led to pressure on the militant group to find a negotiated solution, argued Galli.<sup>53</sup> Even the mere threat of denunciation may prove effective. Terry attributed a deliberate policy of self-censorship and a lack of denunciation for MSF's sustained presence in conflict-affected areas of Myanmar.<sup>54</sup> Further, Pottier recounted 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

<sup>49</sup> Modirzadeh et al., "Humanitarian Engagement Under Counter-Terrorism: A Conflict of Norms and the Emerging Policy Landscape," 11.

<sup>50</sup> Geneva Convention IV: article 3 common to the four Geneva Conventions.

<sup>51</sup> Maurer, "A Critical Review of the Challenges and Opportunities of Humanitarian Access".

<sup>52</sup> Also Gorgeau in discussion with author (#17/059109).

<sup>53</sup> Galli, "Negotiating Humanitarian Access with Hamas in Gaza," 19.

<sup>54</sup> Terry, "Golfing with the Generals."

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.<sup>55</sup>

Indeed, denunciation initially proved effective in Angola with UNITA who were shamed into agreement, contended Richardson. But as the conflict stagnated, the rebel group became more hard-line and unconcerned with its international standing. And public condemnation served only to further alienate the armed group, leading eventually to a total breakdown in access negotiations that placed humanitarian personnel at great risk.<sup>56</sup> Early negotiations with Yemen's Houthi Movement were similarly characterised by frequent successes. Following renewed violence and the vilification of the armed group within the Security Council, however, humanitarian negotiations suffered (see chapter 4). Denunciatory tactics also backfired during the conflict in Bosnia by undermining trust. Public denunciation, Cutts observed, "naturally strained relations with the warring parties concerned, complicating negotiations over access and jeopardising ongoing assistance programs."<sup>57</sup>

The evidence therefore suggests that reputations matter on all sides, as with other forms of negotiation – particularly mediation and conflict resolution.<sup>58</sup> Denunciation can motivate armed groups to return to the negotiating table or encourage them to reach agreements that are more favourable to humanitarian interests than might otherwise be the case. Denunciation, however, also carries little weight with groups unconcerned for their international standing or with little need to be respected by the intended recipients of aid. Moreover, poorly timed or repeated denunciation risks alienating negotiating counterparts, thereby reducing prospects for agreement.

<sup>55</sup> Interview with Marcus Sack, head of German Agro Action in Bunia in 2004, cited in Pottier, "Roadblock Ethnography," 173.

<sup>56</sup> Richardson, *Negotiating Humanitarian Access in Angola*.

<sup>57</sup> Cutts, *The Humanitarian Operation in Bosnia*, 17.

<sup>58</sup> Schelling, *The Strategy of Conflict*, 30.

When humanitarians are trusted and seen as fair and impartial – in terms of both staffing and operations – negotiated outcomes are likely to be more balanced. Zartman and Berman similarly insisted that trust is intertwined with negotiated agreements, “to the point where neither is possible without the other.”<sup>59</sup> Nevertheless, political scientist Jonathan Mercer cautioned, “our theoretical understanding of reputation remains shallow.”<sup>60</sup> Different observers may use reputation to explain the same act differently, he noted.<sup>61</sup> Humanitarian organisations can therefore not always rely on a direct link between their behaviour and their reputation.

#### 1.4 MOBILISING THIRD-PARTY SUPPORT

Another tactic frequently employed by humanitarian negotiators (and a widely recognised source of power throughout negotiation scholarship) is to mobilise the support of third parties.<sup>62</sup> Humanitarian actors may not have sticks, but others around them do, observed Herrero.<sup>63</sup> Similarly, Minear noted, “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.”<sup>64</sup>

Third parties can alter a negotiation by introducing side payments or linking issues so as to improve the prospects of reaching a settlement. By demonstrating their interest in humanitarian negotiations, third parties

<sup>59</sup> Zartman and Berman, *The Practical Negotiator*, 32.

<sup>60</sup> Jonathan Mercer, *Reputation and International Politics* (Ithaca, N.Y.: Cornell University Press, 1996), 3.

<sup>61</sup> Mercer, *Reputation and International Politics*, 212 and 227.

<sup>62</sup> Fox, *The Power of Small States*; Ikle, *How Nations Negotiate*, chapter 4; Donald E. Conlon, Peter Carnevale, and William H. Ross, “The Influence of Third Party Power and Suggestions on Negotiation: The Surface Value of a Compromise,” *Journal of Applied Social Psychology* 24, no. 12 (1994); Saadia Touval and I. William Zartman, “Mediation in International Conflicts,” in *Mediation Research: The Process and Effectiveness of Third-Party Intervention*, ed. Kenneth Kressel and Dean G. Pruitt (San Francisco: Jossey-Bass, 1989); Salacuse, “Lessons for Practice.”

<sup>63</sup> Herrero, “Between a Rock and a Hard Place”.

<sup>64</sup> Minear, “The Craft of Humanitarian Diplomacy,” 10.

may also encourage ‘ingratiating,’ that is, parties may act in such a way as to gain favour with the more powerful third party.<sup>65</sup>

Third-party support can be particularly effective during humanitarian negotiations with states – see for example, the case of Myanmar’s 2008 Cyclone Nargis.<sup>66</sup> But armed groups can also be susceptible to third-party influence. Representatives of the Russian Federation in Yemen reportedly brokered access to the country by humanitarian personnel (although Iran, which wielded greater influence over the Houthis, did not demonstrate any interest in humanitarian negotiations, see chapter 4). In contrast, China acted as a spoiler during negotiations in Kachin State by discouraging the involvement of international actors – both humanitarian and political (see chapter 5).

The UN Security Council can be another source of third-party power. Through its statements and resolutions, the world body can offer incentives or wield threats over armed groups to alter their positions and interests. Indeed, it has become common-practice for the Council to do so (see chapter 1). In Bosnia, for example, the Council passed sixteen resolutions calling for parties to the conflict to allow unimpeded access.<sup>67</sup> It similarly passed six resolutions on Syria in 2014 and 2015 that called on all parties to facilitate humanitarian access.<sup>68</sup>

In both cases, however, the limitations of the Security Council’s power became evident as its resolutions brought little change on the ground. Although the Bosnian resolutions initially strengthened the negotiating

<sup>65</sup> Conlon et al., "The Influence of Third Party Power."

<sup>66</sup> Roberta Cohen, "The Burma Cyclone and the Responsibility to Protect," *Global Responsibility to Protect* 1, no. 2 (2009); Bellamy, "The Responsibility to Protect," 152.

<sup>67</sup> Cutts, *The Humanitarian Operation in Bosnia*, 3.

<sup>68</sup> These include United Nations Security Council, *Resolution 2139 (2014)*, S/RES/2139 (2014); United Nations Security Council, *Resolution 2165 (2014)*, S/RES/2165 (2014); United Nations Security Council, *Resolution 2175 (2014)*, S/RES/2175 (2014); United Nations Security Council, *Resolution 2191 (2014)*, S/RES/2191 (2014); United Nations Security Council, *Resolution 2258 (2015)*, S/RES/2258 (2015).

position of humanitarians, Morris claimed, the Council lost credibility with the main parties as its inability to enforce its decisions became apparent.<sup>69</sup> Similarly, Secretary-General Ban reported that little changed in Syria in terms of access, despite the Council's repeated calls.<sup>70</sup> And 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.<sup>71</sup> Conversely, whilst the Council's targeted sanctions in Yemen were acknowledged to have had little impact on the conduct of the Houthis, they likely provided a powerful incentive for members of the former Saleh regime to moderate their behaviour and served as a warning for members of the internationally-recognised government (see chapter 4).

Fisher and Ury cautioned that pressure within a negotiation often accomplishes the opposite of what is intended. They advocate instead that negotiators use warnings of what others may do rather than threats of what they themselves will do if agreement is not reached.<sup>72</sup> Deployed in this way, third parties may offer humanitarian negotiators indirect leverage. Such indirect coercive power has the potential to minimise the detrimental effect that denunciation and threats can have on trust and relationships during negotiation, whilst still being an effective tactic that can improve the relative bargaining position of humanitarian actors.<sup>73</sup>

The examples above, however, suggest the impact of the Security Council and the inclusion of humanitarian issues on the agenda of peace talks have been inconsistent, at best. Further, third parties can serve either as

<sup>69</sup> Morris, "The Limits of Humanitarian Action," 360.

<sup>70</sup> United Nations *Report of the Secretary-General on the implementation of Security Council resolution 2139 (2014)*, S/2014/427 (2014), para 22.

<sup>71</sup> Richardson, *Negotiating Humanitarian Access in Angola*.

<sup>72</sup> Fisher and Ury, *Getting to Yes*, 62 See also Zartman and Rubin, "Symmetry and Asymmetry in Negotiation."

<sup>73</sup> For a parallel within IR, see Evelyn Goh's concept of China's indirect influence over structurally weaker and more dependent partners to induce behavioural changes that she terms a 'preference multiplier,' in Goh, "The Modes of China's Influence."



mediator, pressing both parties to reach a settlement and changing the incentive structure of the negotiation, or can introduce their own set of interests that shifts a dyadic negotiation into a triad.<sup>74</sup> In triadic negotiations involving a powerful third party, humanitarians are likely to face an even weaker bargaining position. Moreover, humanitarian interests are at greater risk of being overtaken by political and security concerns under such conditions (see chapter 1). As Zartman and Rubin cautioned, “external intervention rides the diplomatic equivalent of a Trojan horse.”<sup>75</sup>

## 1.5 NEGOTIATION LINKAGES

Negotiation linkages – that is, when one negotiation influences the process or outcome of another – are present in many forms of negotiation.<sup>76</sup> They are generally understood to improve the range of items that can be traded, thereby increasing the potential for an efficient and mutually-beneficial agreement.<sup>77</sup> Linkages are often used to break impasses or increase interdependence.<sup>78</sup> But their use within humanitarian negotiation is controversial. One literature review of the field described linkages with other negotiation processes as a second bargaining level that requires humanitarians to manage relationships with parties that are not directly involved.<sup>79</sup> Indeed, Bruderlein rejected the viability of such linkages, insisting humanitarians must maintain the independence of humanitarian

<sup>74</sup> For a discussion of how third parties can influence dyads in international relations see Michael A. Allen, Sam R. Bell, and K. Chad Clay, "Deadly Triangles: The Implications of Regional Competition on Interactions in Asymmetric Dyads," *Foreign Policy Analysis* 14 (2016).

<sup>75</sup> Zartman and Rubin, "Symmetry and Asymmetry in Negotiation," 288.

<sup>76</sup> Larry Crump, "Toward a Theory of Negotiation Precedent," *Negotiation Journal* 32, no. 2 (2016); Raiffa, *The Art and Science of Negotiation*. See also Schelling for a discussion on 'intersecting negotiations,' in Schelling, *The Strategy of Conflict*, 30.

<sup>77</sup> Daoudy, "Asymmetric Power: Negotiating Water in the Euphrates and Tigris."

<sup>78</sup> Daniel Druckman, "Negotiation," in *Conflict: From Analysis to Intervention*, ed. Sandra Cheldelin, Daniel Druckman, and Larissa Fast (London: Continuum, 2003), 199.

<sup>79</sup> United States Institute of Peace, *Frontline Diplomacy Under Review: Challenges and Dilemmas of Negotiating Access to Populations in Need in Increasingly Integrated International Responses*, 2016).

negotiation processes from other negotiations to preserve the neutrality and impartiality of humanitarian actors and humanitarian action.<sup>80</sup>

My Yemen case illustrates the contentious nature of negotiation linkages. Humanitarian negotiations with the Houthis over Taizz were bound up with UN-led peace talks. These brought greater diplomatic attention and political pressure on parties to the conflict to address humanitarian issues and introduced further incentives for the armed group to reach an agreement. Linkages thereby contributed to short-term access gains to Taizz. But they also politicised humanitarian negotiations and appear to have undermined the reputation of humanitarian organisations, jeopardising future agreements (see chapter 3).

Negotiation linkages can therefore provide structural disadvantages that weaken the position of humanitarians. And they may also present humanitarian negotiators with ethical challenges as they are forced to compromise some principles in exchange for others (see chapters 1 and 7). But linkages may nevertheless be an effective tactic on which humanitarians can draw to reduce their weak bargaining position to reach more balanced agreements.

## 1.6 CHANGING ALTERNATIVES

A final way in which humanitarians reduce power asymmetry is to strengthen their alternatives or to worsen those of their counterparts. For Fisher and Ury, alternatives are *the* most important determinants of relative power in a negotiation. But alternatives do not simply exist, they contend, they must be developed.<sup>81</sup> Humanitarians develop alternatives in two main ways. First, they may withdraw from negotiations entirely. But as discussed in chapter 3, this alternative is usually weak and self-defeating,

<sup>80</sup> Bruderlein et al., *Humanitarian Negotiation in Practice*.

<sup>81</sup> Fisher and Ury, *Getting to Yes*, 52-54. See also David A. Lax and James K. Sebenius, "The Power of Alternatives or the Limits to Negotiation," *Negotiation Journal* 1, no. 2 (1985); Hopmann, *The Negotiation Process and the Resolution of International Conflicts*.

and often present an even greater ethical compromise than accepting unbalanced agreement with an armed group.

The second way in which humanitarians strengthen their alternatives is to developing alternative access modalities. In both Yemen and Myanmar, international humanitarians worked through local partners to overcome access challenges and bypass their need to negotiate access. Moreover, they also used cash and voucher programmes as an alternative to negotiating with armed groups. In Angola, Bosnia, and Iraq, they improved their short-term access through armed escorts from the respective UN Missions or co-locating humanitarian bases with security forces to allow them to access areas without the need to negotiate with parties to the conflict.<sup>82</sup> Further, humanitarians in Syria lobbied the Security Council to authorise cross-border relief operations that overcame their need to negotiate national government approval.<sup>83</sup> Following sustained advocacy, the Council approved resolution 2139 (2014) that authorised such missions, thereby improving the humanitarian negotiating position with both the national government and armed groups.<sup>84</sup> Finally, a similar initiative saw pressure on humanitarians to conduct air drops in Syria as an alternative to negotiated access.<sup>85</sup>

But as UK ambassador to the UN Matthew Rycroft conceded that in Syria, “airdrops are complex, costly, risky [and consequently] are the last resort.”<sup>86</sup> Indeed, both airdrops and non-consensual cross-line missions present significant legal, operational, and ethical challenges for

<sup>82</sup> Cutts, *The Humanitarian Operation in Bosnia*; Richardson, *Negotiating Humanitarian Access in Angola*; The Lancet, "Examining Humanitarian Principles in Changing Warfare," *The Lancet* 391 (2018).

<sup>83</sup> Legal scholars generally interpret IHL as requiring that humanitarians receive permission from the state in whose territory operations are to be carried out. See Emanuela-Chiara Gillard, "The Law Regulating Cross-Border Relief Operations," *International Review of the Red Cross* 95, no. 890 (2014).

<sup>84</sup> Council, S/RES/2139.

<sup>85</sup> BBC, "Syria Conflict: UN 'to Seek Permission' to Air Drop Humanitarian Aid," *BBC News*, 3 June 2016.

<sup>86</sup> Al Jazeera, "UN to Ask Permission from Damascus to Airdrop Aid," 4 June 2016.

humanitarians, and still require some level of operational access to be effective (see chapter 3).<sup>87</sup> Moreover, armed escorts and collaborations between political and humanitarian operations (a second alternative access modality) often undermine trust and may ultimately compromise long-term access. Further, cash transfers are only effective under specific circumstances (such as functioning markets and adequate infrastructure) and are likely to have limited protection impacts. Finally, the capacity and reach of local partners is often limited. And their impartiality may also be in question, thereby undermining their effectiveness as an alternative to negotiation.

In addition to strengthening their own alternatives, weaker parties may also improve their relative position by weakening the alternatives available to their opponents. In Liberia, sanctions were imposed on warring parties that obstructed humanitarian access and targeted humanitarian personnel and assets. This increased the leverage of the humanitarian community over armed groups, contended Atkinson and Leader. Humanitarians also denounced the conduct of warring parties to pressure them into compliance, they found.<sup>88</sup> Similar leverage was used in Yemen as targeted sanctions were imposed on Houthi leaders and members of the former Saleh regime (see chapter 4). In contrast, however, the ICC's attempt to prosecute Sudanese President Omar al-Bashir backfired in 2009 for his alleged role orchestrating systemic human rights violations in Darfur state.<sup>89</sup> Bashir retaliated by announcing the expulsion and asset-seizure of 10 humanitarian organisations operating in the country.<sup>90</sup> Further, as

<sup>87</sup> Giugni, "Humanitarian Airdrops".

<sup>88</sup> Atkinson and Leader, *The 'Joint Policy of Operation' and the 'Principles and Protocols of Humanitarian Operation' in Liberia*, 6-7.

<sup>89</sup> ICC, *Case Information Sheet: The Prosecutor v. Omar Hassan Ahmad Al Bashir*, (International Criminal Court, April 2018).

<sup>90</sup> Xan Rice and Tania Branigan, "Sudanese President Omar al-Bashir Expels Aid Agencies," *The Guardian*, 5 March 2009.

detailed previously, sanctions in Angola and Yemen alienated UNITA and the Houthis, respectively, undermining long-term negotiations.

Such attempts to strengthen alternatives for humanitarians and to weaken those of their negotiation counterparts have met with limited success. But these tactics nevertheless have the potential to fundamentally change power relations within a negotiation and should therefore be deployed when viable.

## 2. DEPLOYING HUMANITARIAN LEVERS

Above, I outline six key tactics that humanitarians deploy to offset their weak bargaining position relative to armed groups. These tactics build on the concept of ‘humanitarian levers’ advanced by HD's handbook on the field (see introduction). As a consequence, humanitarian negotiators potentially enjoy an asymmetry of influence, I argue – that is, whilst they face an initial structural disadvantage (their ‘weak hand,’ see chapter 3), ultimately, they have a greater range of tactical options to overcome the imbalance they face than are generally available to their counterparts (armed groups).

In this section, I suggest a theoretical frame through which to analyse these tactics. First, I revive Habeeb’s neglected framework to argue his three constituent elements of negotiatory power largely hold also for humanitarian negotiations. These include alternatives, commitment, and control (see chapter 2) – although I contend below that within humanitarian negotiation, the notion of ‘control’ can more aptly be considered as ‘dependency.’ I then argue that parties negotiating from a position of weakness should deploy these tactics both *within* and *beyond* the formal negotiation process to improve negotiated outcomes in their favour. In the context of humanitarian negotiations, extra-negotiatory moves consist of both tacit operational moves as well as diplomatic action that can be understood as part of the practice of humanitarian diplomacy. Yet these tactics can also present significant risks, I caution, as I outline in the final section below.

## 2.1 CHANGING POWER RELATIONS

Habeeb proposed that relative power within an international negotiation is constituted by three main elements: alternatives, commitment, and control. Tactics, Habeeb contended, succeed by altering the perceived value of each of these elements and thereby changing power relations that in turn affect outcomes.

‘Alternatives’ are the ability of each party to gain their preferred outcome elsewhere. ‘Commitment’ is the degree to which a party desires and pursues their preferred outcome. (It can be positive if the desire is strong or negative if the party’s resolve is weak). And ‘control’ is the extent to which each negotiating party can unilaterally achieve more of their preferred outcome than their opponent without negotiating. Control for Habeeb differs from alternatives in so far as it is the relative nature of options outside the negotiation process.<sup>91</sup> I argue, however, that within the humanitarian negotiations detailed in chapters 3 to 5, the concept of control is barely distinguishable from alternatives. I propose instead the related notion of ‘dependency’ – that is, the degree to which each party *perceives* that negotiation is necessary to realise their objectives. As I argue in chapter 3, armed groups typically see little value in negotiating with humanitarians, thereby strengthening their relative position.

But a negotiating party can deploy tactics that may render them less dependent on reaching a settlement, I contend. Or they may foster dependency in their opponent. I therefore propose a modification to Habeeb’s framework, in which power relations within humanitarian negotiations are determined by alternatives, commitment, and dependency. As detailed below, these elements are interrelated and may simultaneously reinforce one another whilst also being in tension with each other element.

<sup>91</sup> Habeeb, *Power and Tactics*, 22.

### ***Alternatives***

Humanitarians may work to improve their alternatives to negotiation or worsen those of their counterparts, as detailed above. But the importance of alternatives does not end with reaching an agreement. Humanitarian negotiations frequently result in insecure contracts that introduce problems of enforcement and adherence. As Raiffa cautioned, “an astute negotiator will be wise to consider mechanisms for enforcement, because joint decisions are not necessarily mutually binding.”<sup>92</sup>

To combat this challenge, negotiators should foster strong alternatives. Lax and Sebenius noted, “the enforceability and sustainability of many agreements depend on each party's alternatives to continued adherence.”<sup>93</sup> Zartman also emphasises the importance of alternatives, asserting that parties can improve their position by improving their alternatives and worsening those of their opponent; “this means that other things than negotiation are to be expected at the same time as negotiations and, indeed, are part of the negotiation process.”<sup>94</sup> Humanitarian negotiators should therefore continually seek to strengthen their own alternatives and perhaps weaken those of their counterparts if they are to reach more balanced outcomes.

### ***Dependency***

Alternatives also affect dependency. Zartman and Berman noted that “negotiations can be brought about by convincing the other party that only worse alternatives exist in the absence of a joint solution.”<sup>95</sup> As the

<sup>92</sup> Howard Raiffa, John Richardson, and David Metcalfe, *Negotiation Analysis: The Science and Art of Collaborative Decision Making* (Cambridge and London: Harvard University Press, 2002), 82.

<sup>93</sup> Lax and Sebenius, “The Power of Alternatives,” 166. See also James K. Sebenius, “Negotiation Analysis,” in *International Negotiation: Analysis, Approaches, Issues*, ed. Viktor Aleksandrovich Kremeniuk (San Francisco: Jossey-Bass Publishers, 1991), 211.

<sup>94</sup> Zartman, “The Structure of Negotiation,” 77.

<sup>95</sup> Zartman and Berman, *The Practical Negotiator*, 74.

perceived value of one party's alternatives declines, they become more dependent on their negotiation counterpart, which thereby becomes relatively more powerful. Indeed, Keohane and Nye recognised that manipulating interdependence can be an "instrument of power."<sup>96</sup> Thus, when interdependence is low within humanitarian negotiations, humanitarians may work to reduce the alternatives available to their counterparts. They may also employ negotiation linkages, for example, to create more value for armed groups, thereby increasing their dependency.

Indeed, linkages appear to be a key tactic through which humanitarian negotiators foster such interdependence. By linking humanitarian and political negotiations, the dividends of political agreements for armed groups can be integrated into the value structures of humanitarian negotiations. Armed groups may then perceive sufficient value to reach an agreement on humanitarian issues.

Persuasion can also be used as a tactic to induce greater dependency by the stronger party. Humanitarians use persuasion to increase the perception among armed groups that humanitarian agreements can yield benefits in terms of legitimacy, substitution, or side payments. Persuasion can also be used to demonstrate how the failure to reach an agreement on humanitarian issues can result in damage to an armed group's interests, either through denunciation that undermines their legitimacy or through indirect threats or warnings.

### ***Commitment***

The third constituent element of power, commitment, is related to both alternatives and dependency. A party that faces weak alternatives and strong dependency can reduce these disadvantages by increasing its commitment. Commitment, in the context of humanitarian negotiations, may consist of increased investment in the capacity or humanitarian

<sup>96</sup> Keohane and Nye, *Power and Interdependence*, 15.



negotiators, improved institutional learning, ensuring the continuity of negotiators, or may be related to public expressions of that to which each party is (or is not) willing to commit.

Weak parties use coalitions to increase their commitment by adding to their overall value-proposition, thereby strengthening their relative position. Coalitions also reduce risks of factions within a party being played off against one another – what Weiss called “bidding wars for access.”<sup>97</sup> A structurally weaker party may also commit a greater share of their resources to a negotiation than their counterpart to offset their initial disadvantage. Moreover, weaker parties can foster commitment among strong third parties whose power they hope to leverage. For humanitarian negotiators this can be through public advocacy to garner popular support for an issue or through private lobbying within multilateral fora. Further, by fostering commitment among third parties, humanitarians may also increase the resources they are allocated for their operations, which in turn increases the value of an agreement (particularly in terms of substitution).

Humanitarian negotiators may also undermine commitment among armed groups to strengthen their own position. By engaging at multiple levels within their counterparts, for example, humanitarian negotiators may win over sympathetic factions or commanders to their cause. Or they may use persuasion and third-party pressure to strengthen elements within an armed group that are supportive of reaching agreement on humanitarian norms.

Altering commitment can thus be particularly effective among groups with low-levels of cohesion. Group cohesion (that is, the absence of fragmentation, measured both vertically as an indicator of the extent of command-and-control over cadres, and horizontally to denote the degree of unity among leadership), is increasingly recognised as a key determinant of

<sup>97</sup> Weiss, *Humanitarian Business*, 121.

the effectiveness and durability of peace negotiations with armed groups.<sup>98</sup> Indeed, somewhat contrary to expectations, the complex nature of fragmented groups can lead to opportunities. Conflict analyst Harmonie Toros argued that al-Qaeda's lack of cohesion, for example, offered multiple points of entry and interest, presenting opportunities for negotiation.<sup>99</sup> Indeed, my research suggests humanitarians have had partial success negotiating with AQAP in Yemen and even IS in Syria, despite their absolutist label (see chapter 7).

Finally, humanitarian organisations can take steps to improve their reputation and build trust with armed groups to foster commitment among their opponents to reach a settlement (particularly through tacit bargaining, as detailed below). In contrast, however, commitment can bind one party to a particular course of action, making it hard to reach agreement. Strict adherence to humanitarian principles, for example, limits that to which humanitarian negotiators can agree. And absolutist armed groups may reject humanitarianism outright. Commitment, as Zartman has claimed, must therefore be harnessed by negotiating parties.<sup>100</sup>

Habeeb's neglected model of power relations – posited some 30-years ago – thus retains significant explanatory potential when applied to humanitarian negotiation, I contend. It offers a framework through which to evaluate the effectiveness and viability of tactical choices or humanitarian levers that alter power relations and thereby change the likely outcomes of a negotiation.

<sup>98</sup> Cale Salih and Stephen Gray, *Group Cohesion and Peace Processes*, (United States Institute of Peace, September 2017); David Brenner, "Authority and Contestation Inside Rebel Groups: Insights from Myanmar," *Political Violence at a Glance* (blog), 21 June 2017; Kristin M. Bakke, Kathleen Gallagher Cunningham, and Lee J. M. Seymour, "A Plague of Initials: Fragmentation, Cohesion, and Infighting in Civil Wars," *Perspectives on Politics* 10, no. 2 (2012).

<sup>99</sup> Harmonie Toros, "'We Don't Negotiate with Terrorists!': Legitimacy and Complexity in Terrorist Conflicts," *Security Dialogue* 39, no. 4 (2008): 422.

<sup>100</sup> I. William Zartman, "The Last Mile," in *Elusive Peace: Negotiating an End to Civil Wars*, ed. I. William Zartman (Washington, DC: Brookings Institution, 1995), 337.

## 2.2 THREE-DIMENSIONAL NEGOTIATIONS

The tactics deployed by humanitarian negotiators throughout the preceding empirical chapters consist of both conventional negotiating tactics (those deployed *within* the formal negotiation) and extra-negotiatory moves (those that are *beyond* the formal process, described also as ‘moves away from the table’ in chapter 2). Both sets of tactics, I contend, are critical for effective humanitarian negotiation and should be aligned with empirically-grounded strategic approaches, as I detail below.

### ***Conventional bargaining***

Typical concession-convergence bargaining (where parties make offers and counter-offers that progressively move away from their initial positions towards a shared position) tends to disadvantage the weaker party. Negotiators facing a weaker bargaining position will be under greater pressure to make costly concessions and accept the offers of their opponent, leading to outcomes that favour the stronger party. But my empirical evidence demonstrates at least two conventional bargaining tactics and two strategic approaches that are available to the weaker party to avoid such costly concessions. These include the use of persuasion and commitment as tactics, and strategies of multi-level engagement and continuous negotiation.

The first conventional bargaining tactic suggested by my research is persuasion. Humanitarian negotiators use persuasion to appeal to the strategic interests of armed groups and increase the values they attach to an agreement (or reduce the value they attach to alternatives). Effective persuasion within humanitarian negotiation is typically grounded in legitimacy, substitution, and side payments, I contend, rather than international norms and IHL, as suggested by policy. But trust and relationships also appear to be a critical component of persuasion. And as

Walcott, Hopmann and King concluded, persuasion and debate generally coexist alongside other bargaining strategies within negotiations.<sup>101</sup>

A second conventional tactic available to humanitarians within a negotiation is to improve their commitment. They do so by strengthening ingroup alignment and establishing coordination mechanisms (through coalitions or shared strategic approaches such as ground rules or guiding principles). Agencies should, however, still be willing and capable of pursuing bilateral negotiations, where appropriate.

My research also suggests two key strategic approaches to conventional bargaining that humanitarians should pursue. First, humanitarian negotiators in Yemen and elsewhere used multi-level negotiations to engage different elements within an armed group, both vertically (from foot-soldiers to leadership) and horizontally (between different factions).<sup>102</sup> Similarly, a senior UN official recalled how parties to the conflict wielded too little control on the ground during OLS (see introduction), requiring humanitarians to engage at all levels continuously.<sup>103</sup>

Moreover, Rabe negotiated at all levels to establish the Nanking international safety zone (see introduction).<sup>104</sup> And humanitarian practitioner Jean-Hervé Bradol described his limited success negotiating with a local faction of the IS on behalf of an international medical NGO.<sup>105</sup> Whilst Bradol's negotiations ultimately broke down and his team was evacuated after a change in local IS leadership, his experience demonstrates the potential dividends of multi-level negotiations. Such tactics can enable weaker parties to decrease their opponent's commitment and can open fissures within a group that can be leveraged. Multi-level negotiations also

<sup>101</sup> Walcott et al., "The Role of Debate in Negotiation."

<sup>102</sup> Baconnet, *Humanitarian Negotiation in International NGOs*, 6.

<sup>103</sup> Senior UN official in discussion with author (#17/059114).

<sup>104</sup> Lempereur, "The Nanking International Safety Zone," 690.

<sup>105</sup> Bradol, "Working in the Face of AQ and IS."

ensure that agreements reached at one level with a decentralised group are communicated at other levels, facilitating the implementation of an agreement.

Second, successful humanitarian negotiations are usually continuous. Continuity is needed to build trust and establish reputations that make agreement possible. Negotiators in Yemen failed to maintain contacts within the Houthi Movement and rotated humanitarian personnel, effectively resetting negotiations. Continuous negotiations are also necessary to identify and capitalise on strategic changes within an armed group that make them more amenable to negotiation. Bradol argued that even the groups which are least-inclined to accept humanitarian assistance ultimately evolve in ways that make them more negotiable.<sup>106</sup>

### ***Extra-negotiatory moves***

Returning to my recurring analogy between humanitarian negotiation and a game of cards, the conventional bargaining tactics described above parallel the moves a poker player may make. But ‘players’ within humanitarian negotiations can change the ‘game’ itself to the advantage of skilful negotiators, I argued in chapter 2.<sup>107</sup> Indeed, many of the tactics identified throughout this thesis operate beyond the formal negotiation process as extra-negotiatory moves, I contend, consisting of either tacit bargaining or diplomatic action.

Tacit bargaining (see chapter 1) was particularly evident in Yemen. Humanitarian agencies opened offices on each side of the frontlines to demonstrate their impartiality with the aim of increasing trust and interdependence. Similarly, humanitarians in Somalia leveraged ‘clan deterrence,’ hiring staff from local tribes to provide security guarantees that

<sup>106</sup> Bradol, "Working in the Face of AQ and IS," 12.

<sup>107</sup> Lax and Sebenius, "The Power of Alternatives.,"; Lax and Sebenius, "Dealcrafting."

effectively introduced third parties that changed the value structure of the negotiations.<sup>108</sup>

Moreover, in virtually all cases examined here, humanitarian organisations also emphasised humanitarian principles in their programmes and messaging. This signalling and tacit bargaining was designed (at least in part) to alter perceptions, improve reputations, foster trust, and ultimately make humanitarians more viable negotiating partners, mirroring the negotiation concept of ‘attitudinal structuring’ (see chapter 1). Further, tacit bargaining also targets third parties – what Zartman and Berman described as, ‘directed towards the gallery.’<sup>109</sup> Humanitarian negotiators regularly cultivate the perception that they are operating according to international norms to foster commitment in third parties to uphold their interests.

In addition to field-oriented tacit moves, humanitarian negotiators also leverage diplomatic action and diplomatic actors. Third parties bring additional power to a negotiation, in particular by improving the potential value of an agreement through negotiation linkages or side payments, as detailed above. But third parties may also increase the costs of failure, though, for example, strengthened compliance mechanisms that hold perpetrators of international norms to account.

Moreover, humanitarian organisations do more than simply leverage existing diplomatic actors and instruments. Humanitarians have become diplomatic actors in their own right, I contend. They frame the narrative of a crisis and help to set the agenda on which states engage. Further, humanitarians advocate and lobby for specific operational or political solutions to a crisis. Humanitarian negotiators may also be the only international interlocutors with whom armed groups engage, as was the case in Yemen. These elements, I argue, render humanitarian negotiators

<sup>108</sup> Abild, "Creating Humanitarian Space."

<sup>109</sup> Zartman and Berman, *The Practical Negotiator*, 160.

and humanitarian organisations diplomatic actors with the power to shape international relations (see also chapters 1 and 7).

My analysis of the process of humanitarian negotiation demonstrated the need for negotiators to operate at multiple levels, continuously bargaining over the issues whilst they also work on the interpersonal level and take steps to change the structure of the game itself. Lax and Sebenius expressed a similar-wholistic approach to negotiation through their concept of a 'three-dimensional' approach to negotiation (see chapter 2).<sup>110</sup> Each dimension is critical if negotiators are to maximise the value they derive from a negotiated agreement, they contend. Moreover, Ury and Fisher argued that negotiators should employ different sources of negotiating power in harmony with one another.<sup>111</sup> And Odell stressed the need for negotiators to balance moves *away* from the table with moves *at* the table to reach a favourable agreement.<sup>112</sup> It is therefore important for negotiators – particularly those facing a weak bargaining position – to deploy a broad range of negotiating tactics in line with evidence-based negotiation strategies.

### 2.3 RISK

While the tactics identified above have the potential to improve the bargaining position of humanitarian negotiators, my empirical analysis suggests they can also prove detrimental to humanitarian interests if poorly deployed. This section details the tactical and strategic risks that humanitarian negotiators may face when attempting to overcome their weak bargaining position.

<sup>110</sup> Lax and Sebenius, "Dealcrafting."

<sup>111</sup> Fisher and Ury, *Getting to Yes*, 90.

<sup>112</sup> Odell, "Negotiating from Weakness."

### ***Tactical Risks***

Of the six tactics presented above, persuasion is perhaps the lowest risk. Persuasion is most effective with armed groups concerned for the welfare of civilians in their territory or those particularly sensitive to their international or domestic standing. But it is by no means without risk. Persuasion within humanitarian negotiation, I argue above, relies primarily on increasing the value that armed groups attach to an agreement related to legitimacy, substitution, or side payments. But host governments and other states are likely to be hostile to agreements that benefit armed groups in these ways, I contend.

Commitment and coalitions were recognised in many cases of humanitarian negotiation drawn on throughout the preceding chapters as important 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 (see chapter 1). And the boundary role conflict is particularly pronounced during humanitarian negotiations given the centrality and perceived non-negotiability of humanitarian principles (see chapters 1 and 3). Moreover, coalitions have their limits and can prove counterproductive under certain conditions, I conclude. Further, humanitarians routinely strive to demonstrate their impartiality and neutrality. Yet, as cautioned above, there is rarely a direct link between one's actions and one's reputation, meaning humanitarians do not have absolute control over how they are perceived.

This research has also failed to identify avenues for reconciling the competing notions of justice that regularly persist between armed groups and humanitarian organisations. Moreover, whilst initiatives to strengthen or undermine the standing of armed groups can be effective, such tactics are high-risk and may jeopardise the safety of humanitarians. In the long-run, they may also alienate armed groups, making them less susceptible to other tactics.

The mobilisation of third parties can also be a two-edged sword. Even if states are in a position to exercise influence over the conduct of armed



groups, their willingness to do so is likely to be moderated by political and security considerations. Similarly, Security Council engagement may open new tactical options for humanitarian negotiators and allows for indirect threats. But the Council's limitations are routinely evident in contemporary conflict. Further, the introduction of third parties risks turning a dyadic negotiation into triadic or multilateral negotiation that have fundamentally different power dynamics. Thus, while new players bring new trade-offs and new value structures, they may ultimately undermine humanitarian interests.<sup>113</sup> Finally, initiatives to strengthen alternatives to negotiation generally appear to carry fewer risks and are worth pursuing. As noted above, however, most still require some level of negotiated access to be effective and so will rarely be a panacea.

### ***Strategic Risks***

In addition to the tactical risks identified above, there are at least four strategic risks inherent in humanitarian negotiations. First, the act itself of negotiating with armed groups carries risks for both humanitarian negotiators and their organisations. Meeting counterparts from armed groups may endanger humanitarian personnel. Their organisations may also face reputational and legal risks (see introduction).<sup>114</sup> Moreover, negotiated agreements, by definition, add value to both parties. Thus, armed groups routinely benefit from negotiating with humanitarian organisations, whether in the form of enhanced legitimacy, substitution, or side payments. This dynamic is problematic for principled humanitarian actors. As Jackson insisted, "it goes against the very nature of the UN to give legitimacy to [armed] groups."<sup>115</sup> And the substitutive effect of

<sup>113</sup> For a discussion of how new actors introduced new opportunities during Israeli-Palestinian negotiations, see I. William Zartman, "New Elements for Introducing Symmetry in the Middle East Peace Process," *International Negotiation* 23, no. 1 (2018).

<sup>114</sup> Kate Mackintosh and Patrick Duplat, *Study of the Impact of Donor Counter-Terrorism Measures on Principled Humanitarian Action*, (OCHA and NRC, 2013); Belliveau, *Red Lines and Al-Shabaab*.

<sup>115</sup> Jackson in discussion with author (17/059102).

negotiated agreements may constitute material support to terrorist groups and thereby contravene counter-terror legislation. Or it may allow combatants to reallocate their resources into war-fighting, thus perpetuating conflict (see chapter 5). Host governments and their allies may consequently be hostile to humanitarian negotiation and may look for ways to punish those who engage with their opponents.

Second, whilst humanitarians continue to describe both access and protection as integral and complementary elements of humanitarian negotiation, the preceding empirical analysis challenges this assumption. The incentives and power structures differ markedly between these two issue areas. Operational access and civilian protection are therefore simultaneously complementary as well as existing in tension with one another. A degree of access is needed for effective protection, which in turn is an essential component of effective operations. And access gains may increase the leverage of humanitarian negotiators over protection issues. But agencies also routinely face a zero-sum game in which the promotion of protection may undermine access. Indeed, successfully-negotiated access also makes humanitarians more vulnerable as they have more at stake (see in particular chapter 5). Moreover, as one humanitarian interviewed for this research noted, sequencing is problematic as protection is not a secondary concern but is central to humanitarian action.<sup>116</sup> The relationship between access and protection is therefore complex and may not be as complementary as both the literature and practitioners suggest.

A third strategic risk associated with negotiating with armed groups concerns the susceptibility of humanitarian negotiations (and humanitarian action) to manipulation. Armed groups may leverage humanitarian assistance to bolster their legitimacy, for economic and financial gain, or to punish their opponents. They may also enter into negotiations in bad faith, seeking the legitimising effect of the negotiation process itself, rather than

<sup>116</sup> Humanitarian working in the Middle East in discussion with author (#17/059209).

genuinely pursuing agreement. Moreover, other parties to the conflict (donor governments or influential third-party states) may also seek to exploit humanitarian negotiations to their advantage (see chapter 1).

Finally, the second bargaining level of negotiation linkages can be risky. The relationship between humanitarian and political negotiations is multifaceted and poorly understood. The preceding cases demonstrate that there is a complex interplay between the two through which humanitarian and political negotiations at times reinforce one other, whilst having the potential to undermine one another.

## CONCLUSION

I argued in chapter 2 that the focus within negotiation scholarship on erratic behaviour, nuisance tactics, and brinkmanship as tools available to weaker parties is deficient when applied to humanitarian negotiation. Nevertheless, with experience and skill, humanitarians routinely alter the structure of negotiations in their favour to reach more balanced outcomes, as demonstrated throughout part II of this thesis. In this chapter I validate and extend negotiation scholarship on power asymmetry to identify six tactics or humanitarian levers available to humanitarian negotiators, including; persuasion, commitment and coalitions, influencing trust and reputations, mobilising third parties, employing negotiation linkages, and changing alternatives. Humanitarian negotiators thus have the potential to enjoy an asymmetry of influence, I argue, in which they have a greater potential to influence the position of their opponent than their opponent can influence them. Drawing on Mark Habeeb's framework (see chapter 2), I contend that these tactics operate by changing the three constitutive elements of power relations within a negotiation; alternatives, commitment, and dependency.

These tactics lend weight to my central hypothesis that if humanitarian negotiators understand the reasons for their weak bargaining position, then they can deploy tactics to overcome (or reduce) this power asymmetry and thereby realise more balanced outcomes from negotiation (see introduction). They also support the position argued by Barnett and Weiss,

that, “although humanitarianism is frequently presented as devoid of power, this claim represents both a comfortable myth that aid workers tell themselves and simultaneously helps manufacture their power, which rests on their authority.”<sup>117</sup>

Nevertheless, I have argued that these tactics present significant tactical and strategic risks for humanitarian personnel and civilians if not deployed appropriately. Further, negotiators are most likely to be effective if they deploy appropriate conventional bargaining tactics in line with effective negotiation strategies, at the same time as seeking to change the game of negotiation itself. By emphasising both conventional and extra-negotiatory tactics within humanitarian negotiation, the process is reconceptualised as a broader set of activities that are undertaken in pursuit of humanitarian ends. It is this broader analysis of humanitarian negotiation as a central element of the practice of humanitarian diplomacy and its relationship with humanitarianism that preoccupies the final section of this thesis.

<sup>117</sup> Michael Barnett and Thomas G. Weiss, "Humanitarianism: A Brief History of the Present," in *Humanitarianism in Question: Politics, Power, Ethics*, ed. Michael N. Barnett and Thomas George Weiss (Ithaca: Cornell University Press, 2008), 38.

# **PART III**

## **THE FUTURE OF HUMANITARIAN NEGOTIATION**



# CHAPTER 7

## ADVANCING THE FRONTLINES OF HUMANITARIAN NEGOTIATION

I have claimed that power asymmetry is an inherent and defining feature of the field of humanitarian negotiation. When negotiating with armed groups, humanitarians therefore concede many of their demands, leading to unfavourable and highly compromised agreements. Yet humanitarian negotiators also enjoy a potential asymmetry of influence, I argued in the previous part of this thesis. By adopting appropriate negotiation tactics and strategies, humanitarians improve their likelihood of being able to realise more balanced outcomes through negotiation. My research suggests that one of the ways in which they do so is by leveraging diplomatic tools and diplomatic actors in support of humanitarian interests. This constitutes a distinct form of diplomacy, namely ‘humanitarian diplomacy.’

This chapter draws on the preceding empirical analysis to conceptualise the practice of humanitarian negotiation itself. First, I delineate the boundaries of the field, outline its fundamental components, and revisit the role of humanitarian principles within the practice. I echo other scholars of humanitarianism to propose a principled pragmatism within humanitarian negotiations, in which ethical compromises are resisted where possible, but accepted as a frequent precondition to action. Second, I explore the relationship between humanitarian negotiation and the field of humanitarian diplomacy. I conclude that humanitarian negotiation is central to humanitarian diplomacy. Moreover, I suggest that the very concept of humanitarian diplomacy challenges traditional notions of diplomatic practices and actors, thereby forming the figurative ‘frontlines’

of diplomacy scholarship. Finally, I return to some of the underlying dilemmas and paradoxes that recur throughout this thesis, including the tension between principles and pragmatism, between operational access and civilian protection, and between short-term and long-term negotiated gains.

## 1. THE PRACTICE OF HUMANITARIAN NEGOTIATION

I argued in chapter 1 that humanitarian negotiation is both a reaction to the changed operating environment in which contemporary humanitarian action occurs as well as an increasingly important modality through which humanitarians sustain and expand their operations in today's complex and contested environments. The practice thus evolved out of the necessities of the post-Cold War era to serve the interests of an expansionist humanitarian sector. But beyond the discussion in the introduction,<sup>1</sup> I have not yet directly addressed the question of what humanitarian negotiation actually *is*. It is to this question that I now turn.

In this section I first build on my working definition to explore the boundaries of the phenomenon. This exploration introduces a number of challenges related to the nature of humanitarian actors and humanitarian action. Second, I revisit the role of power within the practice of humanitarian negotiation. I discuss the complex relationship between humanitarian negotiation and its international legal and principled foundations. I also reject apolitical conceptions of humanitarianism and argue that the phenomenon of humanitarian negotiation is an inherently political act in a field that is increasingly characterised by its political nature. Only by accepting this dynamic and learning to work within it, I contend, can humanitarians improve their outcomes from negotiation and

<sup>1</sup> My working definition stated in the introduction was: a process through which humanitarian actors seek to secure agreement from parties to a conflict for the safe and principled provision of humanitarian assistance and protection for civilians facing humanitarian needs.



engage in humanitarian action that is both effective and informed by principle.

## 1.1 THE CONCEPT OF HUMANITARIAN NEGOTIATION

In this section I address some key questions that recur throughout the preceding chapters and help to define the concept of humanitarian negotiation. These include: which actors are central to its practice (*who* negotiates?); what is the field's relationship with international law and humanitarian principles (on what basis do they negotiate?); what are the issues that it seeks to address (*what* do they negotiate about?); and what is the nature of the interactions between these parties that constitutes humanitarian negotiation (*how* do they negotiate?).

### ***Who negotiates?***

My working definition suggests that humanitarian negotiation involves humanitarian actors and parties to the conflict (confined to armed groups for the purposes of this thesis). Yet, the concept of a so-called 'humanitarian actor' is deeply problematic, as I acknowledged in the introduction. It is particularly unclear given the fragmentation of the humanitarian sector and the diversity and proliferation of non-traditional actors that profess to be 'humanitarian' and carry out some form of humanitarian action (or at least 'relief,' as discussed in chapter 1). Multi-mandate organisations and integrated UN missions also raise questions around which entities – or sections within these entities – can appropriately be considered to undertake humanitarian negotiation in accordance with international law. Moreover, the conceptual blurring between humanitarian, human rights, development, or peacebuilding personnel tests the boundaries of the practice of humanitarian action. This ambiguity therefore challenges the boundaries of humanitarianism itself rather than presenting a definitional challenge to humanitarian negotiation alone. Resolving this tension is therefore not a prerequisite for refining the concept of humanitarian negotiation, I contend. Rather, it is a broader tension for scholars of humanitarianism to debate.

Further, humanitarians are not the only actors engaging with armed groups. Human rights actors, for example, also negotiate over compliance with IHL and IHRL (see in particular chapter 5). And, as detailed in chapter 1, there has been an expansion of non-humanitarian actors in humanitarian operating environments. States and other political entities frequently address issues of civilian protection and humanitarian access with parties to a conflict. Moreover, for-profit NGOs, militaries, and private contractors are all new-entrants into this arena. My definition of the phenomenon, however, excludes negotiations led by such groups from consideration (although they frequently participate as third parties, as detailed in chapter 6). Whilst they may be central players within humanitarian diplomacy, I contend, their engagement with armed groups falls short of 'humanitarian negotiation,' *per se*.

The question of who constitutes a party to the conflict also raises complications for humanitarian negotiation. Fragmentation and shifting alliances within armed groups can make it difficult for humanitarian negotiators to identify appropriate interlocutors.<sup>2</sup> Extended negotiations may occur with individuals who do not exert sufficient control over the conduct of belligerents to deliver on the terms of an agreement. Or negotiations may take place with individuals who turn out to have little or no affiliation with the groups they purport to represent. Nevertheless, such issues represent tactical challenges for negotiators, I argue in chapter 3, more than conceptual challenges to the concept of humanitarian negotiation itself.

Finally, as is particularly evident within the Kachin case study (chapter 5), humanitarian negotiations with armed groups are often inseparable from negotiations with other parties. This makes the distinction between

<sup>2</sup> See also Kleiner for a discussion on the difficulties of negotiating with the Taliban due to its reliance on verbal communication, lack of bureaucratic structures, constantly-changing policies, and lack of experience, in Kleiner, "Diplomacy with Fundamentalists: The United States and the Taliban," 223-225.

negotiating with states and armed groups problematic, but necessary within the parameters of this dissertation.

***On what basis do they negotiate?***

My second conceptual question concerns the relationship between international law, humanitarian principles, and humanitarian negotiation. I conceded in the introduction that an inherent tension exists within the very concept of humanitarian negotiation. On the one hand, the phenomenon describes a set of strictly-defined activities considered ‘humanitarian’ that are sanctioned under international law. On the other, the essence of the concept of negotiation necessarily entails compromise, which contrasts with the strict legal foundations of humanitarianism (the ‘operational paradox’ elaborated in chapter 1). If it is clear that humanitarian negotiators must accept compromise as inherent in their practice, it is less clear where this pragmatism should end. Without the need to strictly adhere to humanitarian principles, humanitarians are free to expand their alternatives through the use of armed escorts. Or they may link operational access with political incentives without considering the ethical implications of these choices (see chapter 6). Indeed, unconstrained humanitarians would likely choose to avoid or bypass negotiations entirely in many complex crises if not bound by international law.

But actions that fall short of the requirements of international law call into question whether they can be considered ‘humanitarian’ at all. Indeed, it is adherence to IHL that legitimises humanitarians as the third actor on the battlefield. By making principle-level compromises during negotiation, as I argue they must, humanitarian negotiators undermine the very basis on which their legitimacy is founded. An uncertain line therefore exists between relief providers that fail to strictly adhere to humanitarian principles and those that do not attempt to do so at all. This leads to the somewhat unsatisfactory conclusion that the former can engage in humanitarian negotiation, whilst the latter cannot.

***What do they negotiate about?***

My third question concerns the content of humanitarian negotiation. Various non-humanitarian issues are regularly included on the agenda of humanitarian negotiations, such as the legitimacy of armed groups or targeted sanctions. But these issues are peripheral to the core of the process, I suggest – they are introduced to change the value structure of a humanitarian negotiation. What is central to the practice, I argued in the introduction, is both operational access and civilian protection. These are fundamental and inseparable components of humanitarian action that are also central to humanitarian negotiation itself. If these are not integrated, cautioned Prendergast, operational access may improve whilst civilians are not protected.<sup>3</sup> Nowhere is this tension better exemplified than the concept of the ‘well-fed dead’ that grew from the failings of the international community to staunch ethnic cleansing in Bosnia and elsewhere, despite continuing to mount relief operations.<sup>4</sup>

Yet, humanitarian negotiators often perceive (sometimes correctly) there to be a zero-sum relationship between these two components of humanitarian action. Problematically, humanitarian negotiators often emphasise operational access and leave protection *un* or *under*-addressed. Or they pursue sequenced negotiations in which they seek access prior to promoting protection. But as demonstrated in chapters 3 and 6, negotiations rarely progress beyond access to address protection concerns. There is, therefore, significant potential to improve protection-oriented humanitarian negotiations by integrating both components more fully. Moreover, both components of the practice will benefit from efforts to reduce the power asymmetry inherent in the field, as detailed in chapter 6. As Bruderlein concluded, opportunities for engaging with armed groups on

<sup>3</sup> Prendergast, *Frontline Diplomacy*.

<sup>4</sup> See for example New York Times, "The Well-Fed Dead in Bosnia," *The New York Times*, 15 July 1992.

protection issues “may well represent the most important challenge facing human security.”<sup>5</sup>

### ***How do they negotiate?***

The fourth and final question related to the concept of humanitarian negotiation concerns the nature of interactions between parties that constitute its practice. Three issues challenge my treatment of this process as ‘negotiation’ at all. The first concerns whether the nature of interactions constitute a single, discrete, coherent phenomenon (as I assumed in the introduction), or whether the field should be investigated as separate processes. The set of activities I have thus far considered under the label of humanitarian negotiation are undeniably broad and diverse, ranging from *ad hoc* field-level bargains through to formal high-level processes. Some observers may contend that humanitarian negotiation is therefore an umbrella term for a range of negotiation encounters that should be analysed and theorised separately. Indeed, the CCHN employs the term ‘frontline negotiation’ to describe field-level exchanges between humanitarian personnel and armed groups, paying relatively little attention to the broader sets of activities I describe throughout this thesis.

But the breadth of the concept of humanitarian negotiation is by no means unique to this field. As I argued in the introduction, conflict resolution processes are understood to span community-level dialogue through to formal internationally-brokered peace talks. Indeed, Druckman held that “negotiation takes many forms. It consists of communication exchanged from a distance or face-to-face.”<sup>6</sup> Further, humanitarian negotiation, whilst its theory and practice remain somewhat nascent, has nevertheless been recognised as a discrete set of activities by humanitarian practitioners for nearly three decades – although the exact parameters of this practice are

<sup>5</sup> Claude Bruderlein, *The Role of Non-State Actors in Building Human Security: The Case of Armed Groups in Intra-State Wars*, (Centre for Humanitarian Dialogue, May 2000), 19.

<sup>6</sup> Druckman, "Negotiation," 193.

subject to debate (see introduction). There is, therefore, ample justification to approach humanitarian negotiation as a discrete and unique phenomenon worthy of independent study, I contend. Moreover, the findings outlined in chapter 6 illustrate trends that recur between different cases of humanitarian negotiation, lending weight to my assertion that this is indeed a coherent field of negotiation.

The second definitional challenge is the degree to which moves away from the table should be considered part of the negotiation process at all. I argued in chapters 2 and 6 that a critical and under-appreciated aspect of the phenomenon concerns the importance of extra-negotiatory moves, including tacit bargaining. In Yemen, for example, several humanitarian organisations opened offices on both sides of the frontlines to demonstrate neutrality, impartiality, and to build trust with parties to the conflict. Without speaking with Houthi representatives for this research, however, I can only speculate about how they perceived such moves, or indeed whether they factored into negotiations at all.

But this problem is historical rather than conceptual, I contend. The degree to which such moves affected specific negotiated outcomes in a particular context may be uncertain or contested, but the weight of evidence laid out in chapter 6 clearly demonstrates the importance of extra-negotiatory moves. Thus, any action undertaken by a negotiating party to deliberately alter power relations within a negotiation – however far outside the formal encounter – constitutes purposive action that must be accounted for when analysing the process.

The third conceptual challenge is the informal nature of both the process and the agreements that are reached through humanitarian negotiation. Humanitarians often ‘engage’ or enter into ‘dialogue’ with armed groups. Such encounters, however, fall short of actual negotiation if there is no

bargaining or transaction.<sup>7</sup> Indeed, a humanitarian negotiation researcher interviewed for this project questioned whether the practice is ever transactional, proposing that it may instead be essentially a relational encounter rather than a negotiation.<sup>8</sup>

Moreover, even when humanitarian negotiators and armed groups do reach formal agreements, they are often on a principle-level, leaving a high degree of ambiguity around operational details. Humanitarians may be unable to press parties to the conflict for clarity on certain issues for fear of jeopardising the broader arrangement or may choose to embrace the ambiguity of a vague agreement to enable them to push their operational boundaries. Further, in many contexts in which humanitarians have limited access or no direct relationship with combatants, negotiation is carried out via intermediaries or local communities, rendering the process even more opaque. Humanitarian negotiations are thereby characterised by uncertainty and informality, in which the actions and outcomes may be unclear to negotiating parties, as well to observers and researchers. Indeed, at times it may be unclear whether negotiation has taken place at all.

Again, however, these challenges are not unique to humanitarian negotiation. Once we recognise the importance of extra-negotiatory tactics in *any* field of negotiation – from multilateral trade talks to conflict mediation – we are presented with similar issues of perception, impact, and how far from the table we can consider actions to still constitute part of the negotiation process. Resolving such conceptual issues is therefore the broader responsibility of negotiation scholars, I argue, rather than a definitional issue that plagues this particular field.

My definition of humanitarian negotiation therefore largely holds, I contend. Nevertheless, a degree of ambiguity remains concerning what

<sup>7</sup> See for example Fiona Terry, "Humanitarian Diplomacy: the ICRC Experience," in *Negotiating Relief: The Politics of Humanitarian Space*, ed. Michele Acuto (London: Hurst & Co., 2014).

<sup>8</sup> Humanitarian-negotiation researcher in discussion with author (#17/059103).

constitutes principled humanitarian action (and therefore actors) given the necessity to make principle-level compromises that is implicit within this field. It is to this question that I now turn.

## 1.2 POWER, POLITICS, AND PRINCIPLES IN HUMANITARIAN NEGOTIATION

Humanitarians face a dilemma. They are rightly concerned to protect their neutrality and impartiality that are the foundation of their ability to operate in some of the world's most brutal and entrenched conflicts. Yet, adherence to these principles regularly fails to guarantee their access and safety, and is widely perceived to inhibit their ability to employ political tools or actors in the service of humanitarian interests. Moreover, humanitarians recognise that they cannot resolve the conflicts to which they respond. Practitioners are well aware of the words of Sadako Ogata, High Commissioner for Refugees (1991-2000), who held that “there are no humanitarian solutions to humanitarian issues.”<sup>9</sup> Nevertheless, a clear finding from my empirical research is that humanitarian actors help to shape their political environment – for better or worse. In turn, the political dynamics of today's conflicts shape humanitarian action. In this section I explore this tension between politics and principles in humanitarian negotiation and conclude that principle-level concessions are implicit in the practice.

### *Principles revisited*

The systemic pressures of contemporary humanitarian operating environments detailed in chapter 1 present significant ethical and operational challenges for humanitarian organisations. Some agencies have responded by entrenching their work in an almost fundamentalist understanding of humanitarian principles. They tend to “recite [the core humanitarian principles] as a mantra and treat them as moral absolutes,”

<sup>9</sup> UNHCR, "Ogata Calls for Stronger Political Will to Solve Refugee Crises," United Nations High Commissioner for Refugees, news release, 27 May 2005.



claimed Terry.<sup>10</sup> Humanitarian practitioner Ed Schenkenberg described the principles of neutrality and independence as “articles of faith” for Dunantist organisations.<sup>11</sup> And Gordon and Donini cautioned that the status of these principles borders on being an ‘end’ in itself rather than a means for facilitating effective humanitarian action.<sup>12</sup>

But other self-professed humanitarians disagree, evidence of the widening gulf over the role and importance of humanitarian principles within the sector (see chapter 1).<sup>13</sup> This group rejects humanitarian principles outright, claiming they no longer have relevance or utility in today’s complex and highly politicised environments.<sup>14</sup>

International relations scholar David Campbell contended that humanitarian principles are increasingly tenuous in today’s conflicts.<sup>15</sup> Impartiality and neutrality were also dismissed by Barnett as “a dysfunctional shield” in the complex landscape of contemporary humanitarianism.<sup>16</sup> And Mills insisted the fundamental principles are now little more than myth, questioning their significance when combatants in today’s asymmetric conflicts reject the very logic of international

<sup>10</sup> Fiona Terry, "Book Review: Humanitarian Ethics: A Guide to the Morality of Aid in War and Disaster by Hugo Slim," *International Review of the Red Cross* 97, no. 897/898 (2015): 470.

<sup>11</sup> Ed Schenkenberg van Mierop, "Coming Clean on Neutrality and Independence: The Need to Assess the Application of Humanitarian Principles," *International Review of the Red Cross* 97, no. 897-898 (2015): 317.

<sup>12</sup> Gordon and Donini, "Romancing Principles and Human Rights: Are Humanitarian Principles Salvageable?," 79.

<sup>13</sup> Taylor et al., *The State of the Humanitarian System*, 13; Walker and Maxwell, *Shaping the Humanitarian World*; Jérémie Labbé and Pascal Daudin, "Applying the Humanitarian Principles: Reflecting on the Experience of the International Committee of the Red Cross," *International Review of the Red Cross* 97, no. 897-898 (2015); Hugo Slim, "Relief Agencies and Moral Standing in War: Principles of Humanity, Neutrality, Impartiality and Solidarity," *Development in Practice* 7, no. 4 (1997): 344.

<sup>14</sup> See for example Michael N. Barnett, "Humanitarian Governance," *Annual Review of Political Science* 16, no. 1 (2013); Mills, "Neo-Humanitarianism."

<sup>15</sup> David Campbell, "Why Fight: Humanitarianism, Principles, and Post-structuralism " *Millennium: Journal of International Studies* 27, no. 3 (1998): 498-500.

<sup>16</sup> Michael Barnett, "Bureaucratizing the Duty to Aid: The United Nations and Rwandan Genocide," in *Just Intervention*, ed. Anthony F. Jr. Lang (Washington DC: Georgetown University Press, 2003), 179.

humanitarian law.<sup>17</sup> Other rejectionists couch their refutation in the language of cultural imperialism and colonialism, ascribing humanitarian principles to an ‘outgrowth’ of western ideology.<sup>18</sup>

But within the context of humanitarian negotiation, I argue that both the fundamentalist stance and the rejectionist stance are deficient. The fundamentalist interpretation easily lends itself to a treatment of humanitarian principles as immutable and non-negotiable, naively and mistakenly casting strict adherence to principle as a panacea to the considerable challenges facing the sector. Anderson’s widely operationalised Do No Harm (see chapter 1) was predicated on faith in the existence of ‘good’ options in complex crises. But it is all too evident in the preceding chapters that humanitarians must frequently choose between ‘less bad’ options. Campbell was similarly sceptical of Anderson’s framework. He claimed that “the faith invested in the existence of options which will do no harm seems misplaced.”<sup>19</sup>

Moreover, within the context of humanitarian negotiation, strict adherence to principle is highly problematic. Toole warned, “the belief that one party is legally and morally correct leaves little room to manoeuvre or for the development of options.”<sup>20</sup> This intransigence endangers negotiated agreements and may ultimately force humanitarians to return to the less contested periphery of conflict – a principle-level compromise in itself. Efficient and effective agreements negotiated with parties to the conflict over humanitarian issues will therefore routinely require that humanitarians make principle-level compromises, I contend.

<sup>17</sup> Mills, "Neo-Humanitarianism," 161-164.

<sup>18</sup> Labbé and Daudin, "Applying the Humanitarian Principles," 191-195. For a critique of international law itself, see Jeremy Rabkin, "The Strange Pretensions of Contemporary Humanitarian Law," in *Rethinking the Law of Armed Conflict in an Age of Terrorism*, ed. Christopher A. Ford and Amichai Cohen (Lanham, MD: Lexington Books, 2012), 64; Ford, "Living in the 'New Normal'."

<sup>19</sup> Campbell, "Why Fight," 500.

<sup>20</sup> Toole, *Humanitarian Negotiation*, 3.

On the other hand, a rejectionist stance is also deeply problematic. I suggest there are two key reasons to retain humanitarian principles as a central and defining feature of humanitarian negotiation. The first is normative, the second pragmatic. First, as is well established throughout this thesis, humanitarian action is defined under international law by its adherence to principle and is predicated on the impartial provision of assistance that is exclusively humanitarian and offered without adverse distinction. Once these principles are abandoned, however, the provision of assistance ceases to be 'humanitarian' in any meaningful sense. The protective shield of adherence to principle may be insufficient to fully insulate humanitarianism from political influence and outright violence, but without it, assistance is likely to become little more than an adjunct to military and political action. Parties to the conflict would quickly come to see aid workers as "assets or allies" of foreign powers that have taken sides in the conflict, warned Barber.<sup>21</sup> There would thus be no legal or moral brace against the blatant manipulations of warring parties.<sup>22</sup>

Further, the protective component of humanitarian negotiation only exists if the practice is founded on international law and therefore adheres to humanitarian principles. Indeed, it is the core principles of humanitarianism that define the project in terms that are oriented around civilians in need rather than the self-interested givers or backers of relief activities.

The second reason to retain a central place for humanitarian principles within this field is pragmatic. Simply put, agencies that negotiate according to the core principles are more successful at enabling access, concluded a flagship study on aid worker security commissioned by OCHA.<sup>23</sup> Gordon and Donini similarly found, "the principles, operationalised consistently,

<sup>21</sup> Barber, *Blinded by Humanity*, 196.

<sup>22</sup> See also Kent, "International Humanitarian Crises," 864.

<sup>23</sup> Egeland et al., *To Stay and Deliver: Good Practice for Humanitarians in Complex Security Environments*.

[do] in fact offer the best mode of access.”<sup>24</sup> An evaluation by the European Union’s humanitarian aid branch also found the failure of operational agencies to adhere to humanitarian principles reduced their access over the medium and long-term.<sup>25</sup>

Nevertheless, Larissa Fast raised a legitimate concern with this pragmatic argument. She claimed that it is far from clear that armed groups evaluate or account for the principled conduct of aid providers. She consequently suggested practitioners should “revisit assumptions about the inherent protective value of impartiality and neutrality.”<sup>26</sup> But my empirical cases lend weight to the importance of trust and reputation during humanitarian negotiation. Such variables, I argued in chapter 6, are fundamentally shaped by the behaviour of negotiating parties. Negotiated outcomes therefore appear to be heavily influenced by the ways in which humanitarians are perceived, and adherence to principle influences the attitudes of armed groups towards humanitarians, I conclude.

Moreover, whilst humanitarian practitioners Jérémie Labbé and Pascal Daudin found that non-principled relief organisations operate more freely than principled ones in areas controlled by groups with whom they align themselves, their access usually comes at the cost of their ability to operate in territory controlled by opposition groups. Further, their alignment may jeopardise their long-term capacity to operate if the context changes substantially, and it undermines their acceptance in other crises.<sup>27</sup>

Another pragmatic argument to retain a central role for principles within humanitarian negotiation relates to coordination – often a key component

<sup>24</sup> Gordon and Donini, "Romancing Principles and Human Rights: Are Humanitarian Principles Salvageable?," 106.

<sup>25</sup> Julia Steets, Urban Reichhold, and Elias Sagmeister, *Evaluation and Review of Humanitarian Access Strategies in DG ECHO Funded Interventions*, (ECHO and the Global Public Policy Institute, 29 June 2012), 26.

<sup>26</sup> Fast, "Mind the Gap," 381.

<sup>27</sup> Labbé and Daudin, "Applying the Humanitarian Principles," 209.

of commitment. Without a minimum level of coordination, humanitarian agencies are highly susceptible to being played off one another, I argue in chapter 6. But whilst coordination and coalitions are important tactics to overcome the power asymmetry inherent in humanitarian negotiation, these tactics are regularly undermined by the competition between organisations and operational sectors that characterises the humanitarian system. Humanitarian principles, then, whilst not a panacea, provide a possible framework for humanitarian organisations to agree on objectives and red lines from which to negotiate with armed groups, and thereby improve their likely outcomes from negotiation.<sup>28</sup>

I therefore argue that for both normative and pragmatic reasons, the core humanitarian principles are central to humanitarian negotiation and are a distinctive element of that sets the field apart from other forms of negotiation.

### ***The inherent negotiability of humanitarianism***

Humanitarian principles are thus central to this field. Yet, I conclude in chapter 6 that compromise is inherent in humanitarian negotiation – as with all forms of negotiation. As noted above, these two claims are in tension with one another. To reconcile this tension, I contend that principled humanitarian action does not avoid the need to compromise and make concessions. Rather, humanitarian principles should be understood as hierarchical and serve as a guide, not a dogma. I therefore contend that it is the struggle to find the most acceptable and principled compromise that constitutes a principled approach to humanitarian negotiation.

Omar and de Waal rightly insisted, “the ethics of humanitarian operations in political emergencies is a murky area.”<sup>29</sup> Tough ethical choices are part of the humanitarian landscape, as evidenced throughout this thesis. Labbé

<sup>28</sup> Slim, "Relief Agencies and Moral Standing in War."

<sup>29</sup> Omaar and de Waal, "Humanitarianism Unbound?," 9.

and Daudin similarly acknowledged that moral dilemmas are “part and parcel of humanitarian work.”<sup>30</sup> In order to get the job done, humanitarian researcher Erin Weir claimed, “most humanitarian actors have to compromise every day.”<sup>31</sup>

Some practitioners and theorists have looked to international humanitarian law and humanitarian principles to resolve these ethical quandaries. But they have been let down. As Katherine Haver claimed, adherence to these principles will still routinely require that humanitarian actors make compromises and concessions. She described this as the “inevitability of compromise” that is inherent in humanitarian action itself.<sup>32</sup> Slim similarly recognised that humanitarians are forced to make moral decisions in non-ideal situations in which some level of complicity and moral compromise is unavoidable – and perhaps even desirable if they are to realise some positive outcomes from their work.<sup>33</sup> Indeed, European Commission analyst Seán Greenaway stressed that even within the Red Cross movement (which practices the most rigorous application of humanitarian principles within the sector), “many scholars have never held its deontology to be more than instrumental and particular.”<sup>34</sup> Slim described the belief in the inviolability of these principles as the “non-negotiable heresy,” claiming, “unless assistance is delivered by force, humanitarianism will always be negotiable.”<sup>35</sup>

<sup>30</sup> Labbé and Daudin, "Applying the Humanitarian Principles," 198.

<sup>31</sup> Weir, *Conflict and Compromise*, 45.

<sup>32</sup> Katherine Haver, *Tug of War: Ethical Decision-Making to Enable Humanitarian Access in High-Risk Environments*, (Overseas Development Institute, November 2016), 3.

<sup>33</sup> Hugo Slim, "Claiming a Humanitarian Imperative: NGOs and the Cultivation of Humanitarian Duty," *Refugee Survey Quarterly* 21, no. 3 (2002). See also Labbé and Daudin, "Applying the Humanitarian Principles," 198.

<sup>34</sup> Seán Greenaway, "Post-Modern Conflict and Humanitarian Action: Questioning the Paradigm," *The Journal of Humanitarian Assistance* (2000).

<sup>35</sup> Slim, "Relief Agencies and Moral Standing in War," 345.

Adherence to principle therefore does not overcome the need to make difficult ethical choices.<sup>36</sup> As demonstrated in part II of this thesis, choices must often be made between humanitarian principles themselves. To guide these decisions, scholars increasingly argue for a hierarchy of principles that places the principle of humanity – the fundamental goal of humanitarian action – at the top.<sup>37</sup> As Haver has argued, independence and neutrality thus become ‘instrumental principles’<sup>38</sup> – or what Labbé and Daudin described as “practical tools” for realising the goals of humanity.<sup>39</sup> Principled humanitarian action thereby becomes less about strict adherence than it is descriptive of the means through which humanitarians weigh up the choices available to them. Indeed, for Haver and Carter, the humanitarian mission “is all about the art of finding acceptable compromises.”<sup>40</sup> In the end, laments Rieff, it may well be that this struggle over what constitutes principled action is the most ethical approach to humanitarian action afforded humanitarians in conflict.<sup>41</sup>

Once principle-level compromises are acknowledged as necessary and perhaps even desirable within humanitarian action, new opportunities for humanitarian negotiation are introduced. Humanitarians need no longer shun power and politics – both of which I argue are irrevocably wedded to the humanitarian enterprise. Donini cautioned that humanitarianism emerged in confrontation with power but has come to employ and embody power, thereby endangering the very nature of the humanitarian enterprise: “humanitarianism started off as a powerful discourse, now it is a discourse

<sup>36</sup> See in particular Haver and Carter, *What It Takes*, 36.

<sup>37</sup> Labbé and Daudin, "Applying the Humanitarian Principles," 186; Hugo Slim, "Aid in Danger: The Perils and Promise of Humanitarianism: A review of the book by Larissa Fast," *International Affairs* 91, no. 3 (2015); Haver and Carter, *What It Takes*, 4.

<sup>38</sup> Haver and Carter, *What It Takes*, 6.

<sup>39</sup> Labbé and Daudin, "Applying the Humanitarian Principles," 187.

<sup>40</sup> Haver and Carter, *What It Takes*, 68.

<sup>41</sup> David Rieff, "Afterword," in *Humanitarian Negotiations Revealed: The MSF Experience*, ed. Claire Magone, Michaël Neuman, and Fabrice Weissman (London: Hurst, 2011), 258.

of power.”<sup>42</sup> I contend, however, that failure to leverage this power for humanitarian ends through the tactics and strategies identified in chapter 6 is a principle-level compromise in itself.

## 2. THE PROMISE OF HUMANITARIAN DIPLOMACY

I have argued throughout this thesis that through negotiation and other modes of operation, humanitarians replicate many of the functions of traditional diplomats. In this section I build on the discussion from chapter 1 on the changing modes of diplomacy to investigate the relationship between humanitarians and diplomats. I conclude that the actions of humanitarian negotiators can constitute diplomacy in the form of humanitarian diplomacy. This is a distinct and under-theorised form of diplomatic activity, I contend, and an important lever through which humanitarians can reduce their weak bargaining position.

### 2.1 RELUCTANT DIPLOMATS

The relationship between humanitarianism and diplomacy is reciprocal. On the one hand, humanitarian issues are increasingly prevalent in global diplomacy and influence both the issues and language of diplomatic encounters (see chapter 1). Moreover, the environment in which humanitarians negotiate is heavily determined by diplomatic encounters – whether between states or through multilateral fora such as the Security Council. As Sending recognised, “diplomacy makes up an infrastructure through which both diplomats and humanitarian actors operate.”<sup>43</sup>

On the other hand, humanitarians operating within today’s conflicts play an increasingly important political role themselves, influencing the language and actions of states, non-state actors, as well as multilateral institutions.

<sup>42</sup> Antonio Donini, "Humanitarianism, Perceptions and Power," in *Negotiating Relief: The Politics of Humanitarian Space*, ed. Michele Acuto (London: Hurst & Co., 2014), 44.

<sup>43</sup> Sending, "Diplomats and Humanitarians," 258.



Indeed, as Abild has argued, “agencies have to play a proactive role in ‘creating’ the environment in which they work.”<sup>44</sup> Humanitarian actors consequently shape the contexts in which they work and employ many of the tools of traditional diplomacy in a manner that is illustrative of broader changes in the modes of diplomacy and the nature of diplomatic actors, as detailed below.

In the crises in which they work, humanitarians help to frame the narrative and frequently contribute to the diplomatic agenda on which states engage. In contexts such as Yemen, humanitarian personnel may be the only international presence that remains after the diplomatic corps has left and journalists have been forced out. Humanitarians consequently play an important role in identifying the issues and presenting their own account of the conflict and its impacts. Frequently, humanitarians even propose political solutions to a crisis. The most senior humanitarian official, the Emergency Relief Coordinator,<sup>45</sup> regularly addresses the Security Council on the issues that dominate its agenda. Indeed, as Wiseman and Basu have noted, “NGOs have made inroads into the Security Council as well.”<sup>46</sup> Further, humanitarian organisations conduct research, share information, advocate and lobby, and engage with the media to shape public awareness of each of the crises in which they are involved, as I detailed in chapters 4 and 5.<sup>47</sup> As Omaar and de Waal noted, “[relief organisations] play a crucial role in setting the international agenda... [they] act as news agencies and diplomats.”<sup>48</sup>

<sup>44</sup> Abild, "Creating Humanitarian Space," 67.

<sup>45</sup> Described by Jacinta O'Hagan as “perhaps one of the world’s chief humanitarian diplomats,” in "Australia and the Promise and the Perils of Humanitarian Diplomacy," 660.

<sup>46</sup> Wiseman and Basu, "The United Nations," 333.

<sup>47</sup> Mark Schuller, "Spotlights and Mirrors: Media and the Humanitarian Community in Haiti’s Disaster," in *Negotiating Relief: The Politics of Humanitarian Space*, ed. Michele Acuto (London: Hurst & Co., 2014); Rieff, "The Humanitarian Trap," 7-8.

<sup>48</sup> Omaar and de Waal, "Humanitarianism Unbound?," 6.

Humanitarian organisations also have the potential to influence the ways in which certain groups are perceived, both domestically and internationally. The legitimising effect on armed groups of negotiation is often a significant source of power for humanitarian organisations I argued in chapter 6, that strongly determines the level of interdependence and thereby the nature of agreements that are available. Similarly, the provision of humanitarian assistance to areas under the control of one armed group can contribute to its legitimacy, just as its condemnation by humanitarians for protection violations or access denial may serve to undermine its domestic or international standing. These effects, I contend, can have a significant bearing on a group's ability to realise its strategic interests. Bruderlein similarly claimed that humanitarian organisations often have “a significant influence on the political dynamic of an armed group.”<sup>49</sup>

The potential for humanitarians to influence legitimacy is given further weight by the attitudes of both states and armed groups themselves. A 2001 report by Secretary-General Annan stressed that such engagement should not affect the legitimacy of armed groups or their claims.<sup>50</sup> Moreover, OCHA's manual on negotiating with armed groups categorically states, “humanitarian negotiations *do not in any way* confer legitimacy or recognition upon armed groups.”<sup>51</sup> Yet, as Rob Grace has argued, evidence suggests otherwise: “one reason that some armed groups engage with humanitarian organisations is to derive this very form of legitimacy about which governments have expressed concern.”<sup>52</sup> Indeed, humanitarian negotiator Tareq Talahma insisted that the legitimising effects of

<sup>49</sup> Bruderlein, *The Role of NSAs in Building Human Security*, 12.

<sup>50</sup> Security Council, S/2001/331, para 49.

<sup>51</sup> Mc Hugh and Bessler, *Humanitarian Negotiations with Armed Groups*, emphasis added. See also Geneva Convention IV: article 3.

<sup>52</sup> Grace, *Humanitarian Negotiation*, 6. See also Glaser, *Negotiated Access*, 40.

negotiation were the *primary* reason the Houthis was willing to engage with the UN in Yemen (see chapter 4).<sup>53</sup>

As a consequence, states often obstruct negotiations with armed groups and at times resort to labelling these groups as ‘terrorists’ – even if not formally listed as such. As doctrine often holds that one should not negotiate with terrorists,<sup>54</sup> humanitarians may thereby come under pressure to disengage from such groups or to refrain from making contact in the first place.<sup>55</sup> National authorities attempted to delegitimise both the Houthis and the KIA in this way (see chapters 4 and 5). Indeed, the UN Working Group on Terrorism expressed concern in 2002 that “labelling opponents and adversaries as terrorists offers a time-tested technique to de-legitimise and demonise them.”<sup>56</sup> Thus, in contrast to the pronouncements of policy and IHL, both armed groups and states demonstrate a belief in the legitimising effects of humanitarian negotiation.

This dynamic places humanitarian negotiators in a difficult (and perhaps irreconcilable) position as they may be forced to choose between advancing the interests of a national government or an armed group at the expense of the other.<sup>57</sup> Moreover, when interviewed for this thesis, Jackson insisted that even talking with armed groups is “existentially difficult for the UN” as it goes against its state-centric framework.<sup>58</sup> Cutts similarly cautioned when

<sup>53</sup> Talahma in discussion with author (#17/059206).

<sup>54</sup> See for example, Faure, "Negotiating Hostages with Terrorists: Paradoxes and Dilemmas."; Toros, "Legitimacy and Complexity in Terrorist Conflicts."

<sup>55</sup> Program on Humanitarian Policy and Conflict Research, *Countering Terror in Humanitarian Crises: The Challenges of Delivering Aid to Somalia*, (Harvard University, July 2012); Modirzadeh et al., "Humanitarian Engagement Under Counter-Terrorism: A Conflict of Norms and the Emerging Policy Landscape."; Peter Maurer, "Why the Red Cross Talks to 'Terrorists'," interview by James Bays, *Al Jazeera* (5 November 2016).

<sup>56</sup> United Nations General Assembly, *Report of the Policy Working Group of the United Nations and Terrorism*, A/57/273-S/2002/875 (6 August 2002), para 15.

<sup>57</sup> Grace, *Humanitarian Negotiation*, 7. For a detailed discussion of the implications of engagement on the legitimacy of armed groups see Dawn Steinhoff, "Talking to the Enemy: State Legitimacy Concerns with Engaging Non-State Armed Groups," *Texas International Law Journal* 45, no. 1 (2009).

<sup>58</sup> Ashley Jackson (independent researcher) in discussion with author, remote, May 2017 (17/059102).

interviewed, “the humanitarian community is still very ambivalent about how it deals with armed groups.”<sup>59</sup> There is nevertheless a growing tendency for the Security Council to address armed groups directly (see chapter 1).<sup>60</sup> And both the Council and the General Assembly have recognised humanitarian negotiation to be a legitimate practice that is integral to humanitarian action, even if the actions of its members may at times conflict with this sentiment.<sup>61</sup>

Humanitarian negotiation may have another significant impact on armed groups beyond legitimacy. Toros insisted that engagement with so-called terrorist entities can transform the conflict away from violence into nonviolent forms of resistance. She claims this occurs by potentially providing the group a legal outlet for their grievances, by strengthening the faction most disposed towards nonviolent engagement, and by encouraging the group to pursue nonviolent change.<sup>62</sup> Diplomacy theorist Paul Sharp similarly described the “socialising power of diplomacy” that can transform its participants to become more inclined towards civility and humanity.<sup>63</sup> Or as Forsythe suggested, humanitarian efforts may “lay the foundation for political agreements,” building trust between parties and improving the chances for political mediation by others.<sup>64</sup>

But the reverse also appears to be true. Diplomatic isolation of the Houthis in Yemen and Angola’s UNITA rebels fostered disdain by each group for international norms, souring relations with humanitarians and undermining negotiated outcomes (see chapters 4 and 6). This socialising

<sup>59</sup> Cutts in discussion with author (#17/059406).

<sup>60</sup> See for example Security Council, S/2001/331, para 48-50.

<sup>61</sup> See S/2001/331 Security Council, S/2001/331, para 54; General Assembly, A/RES/46/182, para 35(d).

<sup>62</sup> Toros, “Legitimacy and Complexity in Terrorist Conflicts.”

<sup>63</sup> Paul Sharp, “Mullah Zaeef and Taliban Diplomacy: An English School Approach,” *Review of International Studies* 29, no. 4 (2003).

<sup>64</sup> Forsythe, “Humanitarian Mediation by the ICRC,” 241.. See also Whitfield, *Engaging with Armed Groups: Dilemmas & Options for Mediators*; Abild, “Creating Humanitarian Space,” 70; Akol, “Operation Lifeline Sudan,” 55.

power of humanitarian negotiation is thus another avenue through which humanitarian organisations shape the political contexts in which they work, I contend, and thereby play a diplomatic role.

The significance of humanitarian action is rarely more evident than the central (if inadvertent) role played by humanitarian actors in the reconstitution of Hutu militia following the Rwanda genocide of 1994.<sup>65</sup> As Calhoun warned, “doctors worried they were patching up *genocidaires* who would return to killing,” destabilising the region for decades to come.<sup>66</sup> But humanitarians can have an even more direct impact on the environments in which they work. In the former Yugoslavia, humanitarian organisations led the charge for intervention, paving the way for an international military operation that radically changed the geopolitical landscape of central Europe. Indeed, following humanitarian intervention in Somalia in 1991, Rieff noted, “the NGOs had seen for the first time soldiers, whose presence they had called for, killing in their name.”<sup>67</sup>

Humanitarian negotiations may also become the primary conduit between states and the leadership of armed groups. In Yemen, the absence of state diplomats left humanitarians as the lone faces of the international community through which the Houthis passed messages and signalled their interests and objections. Humanitarian personnel thus became the primary emissaries of the international community in Sanaa, taking on a function

<sup>65</sup> Terry, “The Paradoxes of Humanitarian Aid.”; Madalina Elena Nan, “New Humanitarianism with Old Problems: The Forgotten Lesson of Rwanda,” *The Journal of Humanitarian Assistance* (2010); Walker and Maxwell, *Shaping the Humanitarian World*, 62-72; Ian Martin, “Hard Choices after Genocide: Human Rights and Political Failures in Rwanda,” in *Hard Choices: Moral Dilemmas in Humanitarian Intervention*, ed. Jonathan Moore (Lanham, MD: Rowman & Littlefield, 1998); Rieff, *A Bed for the Night*, 55.

<sup>66</sup> Craig Calhoun, “The Idea of Emergency: Humanitarian Action and Global (Dis)Order,” in *Contemporary States of Emergency: The Politics of Military and Humanitarian Interventions*, ed. Didier Fassin and Mariella Pandolfi (New York: Zone Books, 2010), 49.

<sup>67</sup> Rieff, *A Bed for the Night*, 279.

that, in the language of James der Derian, consisted of mediating estrangement – what he argued is the central function of diplomacy.<sup>68</sup>

Humanitarian action is no longer a marginal event on the periphery of world affairs. In the conflicts in which humanitarians operate, their actions can engender profound and enduring political change. The ability of humanitarians to establish the international narrative of a crisis, the legitimising (or *de*-legitimising) effects of their engagement with armed groups, the provision of material support, and their potential to serve as a bridge to the outside world, cement the political importance of humanitarian personnel. Humanitarian negotiation is therefore a central feature of humanitarian diplomacy, I suggest, just as negotiation is central to traditional diplomacy.<sup>69</sup> Moreover, humanitarian negotiators are becoming increasingly potent diplomatic actors, even if they do so somewhat reluctantly.

## 2.2 RE-POLITICISING HUMANITARIANISM

I argued above that humanitarian diplomacy can be understood as an important tool through which the power asymmetry inherent in humanitarian negotiation can be overcome (or at least reduced). In essence, however, the use of humanitarian diplomacy entails what Campbell described as the ‘re-politicisation’ of humanitarianism in recognition of its inherently political nature.<sup>70</sup> I argue that humanitarianism requires that those involved on the frontlines of its practice operate in the morass between altruistic concern for humanity and the pragmatic interests of states and other interested parties. Indeed, as Greenaway noted, “the legal clothing of humanitarianism has always been determined by states... [The practice] arose historically through traditional diplomatic methods, and has

<sup>68</sup> Der Derian, *On Diplomacy*.

<sup>69</sup> Zartman, "Diplomacy and Negotiation," xiv; Constantinou and Sharp, "Theoretical Perspectives in Diplomacy," 14.

<sup>70</sup> Campbell, "Why Fight."

always been Westphalian in form.”<sup>71</sup> Moreover, Natsios (who himself moved between humanitarian organisations and the US foreign service throughout his career) argued for greater integration between humanitarians and diplomats. He claimed, “the international humanitarian agenda cannot be sustained outside of the politics and foreign policy of the great powers.”<sup>72</sup> Further, Jonathan Goodhand argued that “humanitarianism is too important to be left to humanitarians.”<sup>73</sup> Thus, however much its practitioners may hope to exclude political considerations from their work and cling to principle, I contend that humanitarianism is an inherently political endeavour.<sup>74</sup>

But this pragmatic embrace of the political dimension of humanitarianism need not be the Faustian bargain that the more idealistic or fundamentalist proponents of humanitarianism contend. Greenaway suggested the potential for states to pursue humanitarian interests and promote humanitarian values within the international diplomatic system should not be rejected out of hand. Humanitarian principles, he claimed, are “in line with principles on which the international system is already based and ambitions which it has long held.”<sup>75</sup> Slim similarly maintained that there is nothing inherently unethical about politics.<sup>76</sup>

Nevertheless, as detailed in the preceding chapters, humanitarianism frequently loses out to political and security imperatives. As Hyder cautioned, “the game of humanitarian diplomacy does not take place on a

<sup>71</sup> Greenaway, "Post-Modern Conflict and Humanitarian Action."

<sup>72</sup> Natsios, *Humanitarian Relief in Complex Emergencies*, 32.

<sup>73</sup> Goodhand, *Aiding Peace?*, 190.

<sup>74</sup> See also Weiss, "The Politics of Humanitarian Space," xxviii; Sending, "Diplomats and Humanitarians," 268; Fabrice Weissman, "Crisis and Humanitarian Containment," in *International Organisation and Global Governance*, ed. Thomas G. Weiss and Rorden Wilkinson (London: Routledge, 2018), 547.

<sup>75</sup> Greenaway, "Post-Modern Conflict and Humanitarian Action." See also Abild, "Creating Humanitarian Space."

<sup>76</sup> Hugo Slim, "Is Humanitarianism Being Politicised? A Reply to David Rieff", presented at *The Dutch Red Cross Symposium on Ethics in Aid*, The Hague, The Netherlands, 8 October 2003.

level playing field.”<sup>77</sup> Many humanitarian scholars and practitioners consequently oppose the politicisation of their field, claiming politics and power jeopardise the acceptance of humanitarians as the third actor on the battlefield and undermine the impacts of their work (see chapter 1).

But humanitarians can't have it both ways: they cannot lament the neglect of humanitarian issues by political actors whilst bemoaning their involvement when they do engage. Moreover, an alternative account of the growing opposition to humanitarian norms is not their perceived weakness or ineffectiveness, but rather, specifically *because* they have the potential to be effective and powerful. As development scholar Laura Hammond proposed, it may be that the very power of humanitarianism and the humanitarian ideal that places humanitarian interests at risk.<sup>78</sup> Or as Abild similarly claimed, “agencies might not be targeted because they are ineffective or unprincipled, but exactly *because* they are effective and make a difference in people's lives”<sup>79</sup>

Indeed, it is not clear that humanitarianism is facing the widespread rejection that some suggest (see chapter 1). Data indicates that attacks against aid workers are increasing in absolute terms. But this does not account for the growing numbers of aid workers operating in conflict.<sup>80</sup> Further, nearly three-quarters of all attacks in 2017 occurred in just five countries – South Sudan, Afghanistan, Syria, the DRC, and Somalia.<sup>81</sup> And many of these attacks are reportedly related to banditry or politically-motivated actions rather than explicitly targeting humanitarians.<sup>82</sup>

<sup>77</sup> Hyder, "Nurturing Humanitarian Space in Sudan," 246.

<sup>78</sup> Hammond, "The Power of Holding Humanitarianism Hostage and the Myth of Protective Principles."

<sup>79</sup> Abild, "Creating Humanitarian Space," 100.

<sup>80</sup> See Abby Stoddard, Adele Harmer, and Monica Czarwno, *Aid Worker Security Report 2017*, (Humanitarian Outcomes, August 2017), 3.

<sup>81</sup> See Stoddard et al., *Aid Worker Security Report 2017*, 2-3.

<sup>82</sup> Taylor et al., *The State of the Humanitarian System*; Stoddard et al., *Providing Aid in Insecure Environments*; Stoddard et al., *Aid Worker Security Report 2017*.



Despite the overt rejection of humanitarianism by some fundamentalist groups, there nevertheless remains strong evidence of its broad support.<sup>83</sup> Belliveau, for example, insisted that in spite of efforts by al-Shabaab to project its adherence to global jihad, the Islamist group nevertheless remained committed to the Somali population, giving humanitarian organisations negotiating leverage.<sup>84</sup> Moreover, as detailed in part II, humanitarians have frequently had limited successes negotiating with groups such as IS and AQ, despite their radical political orientation.

Hammond further emphasised the performative aspect of violence against aid workers, in which attacks have meaning precisely because of the potency of humanitarianism itself. Indeed, she claimed that violence has always been perpetrated against aid workers.<sup>85</sup> These findings undermine the acceptance strategies on which many agencies predicate their operational access.<sup>86</sup> They also reinforce the importance of negotiation to overcome the opposition to humanitarian action that is inherent in many contemporary contexts.

The newfound role of humanitarian personnel in the heart of conflict and the effectiveness of humanitarian action may therefore better explain the increase in violence than an outright rejection of the endeavour itself due to its instrumentalisation.<sup>87</sup> Indeed, whether humanitarian action was ever apolitical at all is a question worthy of deeper reflection. Mills noted that 'classical' humanitarianism of the 'Dunantist' variety was seen as an act of compassion, not of politics, but nevertheless conceded, "there was always

<sup>83</sup> Donini, "Humanitarianism, Perceptions and Power," 39; Walker and Maxwell, *Shaping the Humanitarian World*, 13-16.

<sup>84</sup> Belliveau, *Red Lines and Al-Shabaab*, 7.

<sup>85</sup> Hammond, "The Power of Holding Humanitarianism Hostage and the Myth of Protective Principles."

<sup>86</sup> Baconnet, *Humanitarian Negotiation in International NGOs*, 8-9.

<sup>87</sup> See in particular Brassard-Boudreau and Hubert, "Shrinking Humanitarian Space? Trends and Prospects on Security and Access," 20.

an element of ‘myth’ to this idea.”<sup>88</sup> Moreover, Slim rejected the notion that humanitarianism has *become* political, insisting that it has forever been so: “humanitarianism is always politicised somehow. It is a political project in a political world.”<sup>89</sup>

The re-politicisation of humanitarianism therefore holds promises and risks for both states and humanitarians.<sup>90</sup> As detailed in chapter 3, humanitarian interests often loose out when they conflict with foreign policies. But humanitarianism also increasingly pervades national interests, as I argued in chapter 1. Indeed, Constantinou claimed that humanist aspirations remain within traditional diplomacy. Whilst he conceded that these ideals are often repressed, it nevertheless appears feasible and natural, he claimed, for diplomats to serve both humanity and the state concurrently.<sup>91</sup> It is perhaps this dialectic that Didier Fassin also observed when he noted, “politics is being redefined through its increasing incorporation of the language of humanitarianism,” which thereby “reformulates what is at stake in politics.”<sup>92</sup> Moreover, whilst evidence suggests that humanitarian interests suffer when they confront political imperatives, this is perhaps partly due to the reticence of humanitarians to engage in politics and diplomacy. Re-politicising humanitarianism may therefore help to overcome the structural disadvantages faced by humanitarian negotiators and thereby lead to more balanced outcomes.

### 3. PARADOXES

This section explores some of the paradoxes or dilemmas that recur throughout this thesis that apply to power relations within a negotiation

<sup>88</sup> Mills, "Neo-Humanitarianism," 164.

<sup>89</sup> Slim, "Marketing Humanitarian Space: Argument and Method in Humanitarian Persuasion".

<sup>90</sup> O'Hagan, "Australia and the Promise and the Perils of Humanitarian Diplomacy."

<sup>91</sup> Constantinou, "Between Statecraft and Humanism," 149.

<sup>92</sup> Fassin, "Heart of Humaneness," 273 and 274.

and to humanitarian action, more broadly. I argue that these paradoxes constitute inevitable tensions that must be managed rather than avoided.

### 3.1 THE PARADOXES OF HUMANITARIAN ACTION

The tension or dilemma that has driven the discussion throughout this chapter concerns the seeming irreconcilability between politicisation and inaction, where the political support that is increasingly needed for effective humanitarian action threatens to undermine humanitarian values and thereby jeopardise humanitarianism itself. Humanitarian researcher Edwina Thompson described this as the tension between principles and pragmatism.<sup>93</sup> But other tensions permeate this research.

Tensions existed in Myanmar, for example, between improving humanitarian access and promoting the protection of civilians (see chapter 5). Tensions also exist between humanitarian actors themselves, where access strategies by one agency can undermine the strategies of another. Abild, for example, cautioned how an increase in armed guards by one organisation may lead to more violent attacks against another.<sup>94</sup> Indeed, agencies must frequently confront this dilemma between humanitarian needs and staff security. Similar tensions also preoccupy humanitarian negotiators over the trade-off between short-term and long-term access (see chapters 4 and 6).<sup>95</sup> Moreover, Do No Harm and the humanitarian imperative exist in tension with one another, where the only guarantor of doing no harm is to do nothing.<sup>96</sup>

Some humanitarian critics have expressed concern that humanitarian assistance may free up the resources of parties to a conflict (substitution),

<sup>93</sup> Edwina Thompson, *Principled Pragmatism: NGO Engagement with Armed Actors*, (World Vision International).

<sup>94</sup> Abild, "Creating Humanitarian Space," 91.

<sup>95</sup> See also Labbé and Daudin, "Applying the Humanitarian Principles."

<sup>96</sup> Abild, "Creating Humanitarian Space," 92-93.

thereby fuelling and prolonging violence, and leading to greater suffering.<sup>97</sup> Omaar and de Waal described this as the central dilemma of assisting people without assisting abusive authorities.<sup>98</sup> Rieff warned of a similar risk that “the humanitarian effort might actually fuel or help conceal from the outside world the true horror of the conflict.”<sup>99</sup> Or as described above, humanitarians face dilemmas around their role legitimising some parties to a conflict at the expense of others.

The multiple mandates of some humanitarian agencies are a further source of tension – particularly during integrated missions – where they may face a choice between addressing the humanitarian fallout of a crisis or resolving its underlying causes.<sup>100</sup> Weir described these competing interests as “two essentially irreconcilable forms of action.”<sup>101</sup> Ferris claimed this tension lies at the heart of the humanitarian enterprise.<sup>102</sup> And in some ways, even the concept of protection itself sits uneasily with humanitarianism – at least its more classical and fundamentalist manifestations. Protection activities frequently threaten to undermine an agency’s neutrality and impartiality.<sup>103</sup> Moreover, there is an inherent tension between humanitarian principles themselves. Neutrality, impartiality, and independence are frequently at odds with the principle of humanity.<sup>104</sup> Fassin recognised these dynamics as the tensions, contradictions, and aporia of humanitarian intervention.<sup>105</sup> Indeed, Rieff argued that relief is not morally uncomplicated: “when all is

<sup>97</sup> See in particular Omaar and de Waal, "Humanitarianism Unbound?"; Rieff, "The Humanitarian Trap," 9.

<sup>98</sup> Omaar and de Waal, "Humanitarianism Unbound?," 10.

<sup>99</sup> Rieff, *A Bed for the Night*, 303.

<sup>100</sup> For a discussion on UNHCR’s mandate dilemma see Michael Barutciski, "A Critical View on UNHCR's Mandate Dilemmas," *International Journal of Refugee Law* 14, no. 2/3 (2002).

<sup>101</sup> Weir, *Conflict and Compromise*, 45.

<sup>102</sup> Ferris, *The Politics of Protection*, 188. See also Labbé and Daudin, "Applying the Humanitarian Principles," 196.

<sup>103</sup> O’Callaghan and Pantuliano, *Protective Action*, 40.

<sup>104</sup> Labbé and Daudin, "Applying the Humanitarian Principles," 198-199.

<sup>105</sup> Fassin, "Heart of Humaneness."

said and done, humanitarianism is an impossible enterprise.”<sup>106</sup> But it is perhaps as much a paradox that the values of humanitarianism endure within today’s entrenched and protracted conflicts, and continue to find voice in the conduct of international relations between states.<sup>107</sup>

In short, the discourse and practice of humanitarianism is riddled with tensions, dilemmas, and paradoxes. Belliveau described these as brutal dilemmas between impossible choices that present a “profound existential dilemma.”<sup>108</sup> Moreover, this research has been animated in large part by the operational paradox facing humanitarian negotiators (see chapter 1). But this tension is perhaps not as paradoxical as it may have initially appeared. If humanitarian negotiators face ethical compromises simply by virtue of entering into negotiation, as I argue they do, then the only choice available to them to minimise these compromises rather than to avoid them. Indeed, by avoiding negotiations entirely, humanitarians would accept an ethical compromise by not living up to the principle of humanity.

Terry insisted these so-called ‘paradoxes of humanitarian aid’ are endemic to the sector.<sup>109</sup> Barnett and Weiss similarly claimed that “ethical and operational dilemmas are not making their maiden appearances in the last two decades.”<sup>110</sup> Nevertheless, I claimed that the expansion of the sector amid the changing nature of contemporary conflict has amplified these tensions. But there is nothing exceptional in the moral compromises that are inherent in negotiating humanitarian access and the protection of civilians. Nor does the embrace of politics in the furtherance of

<sup>106</sup> Rieff, *A Bed for the Night*, 86. See also Jonathan Moore, "Claiming a Humanitarian Imperative: Commentary," in *Human Rights and Conflict: Exploring the Links Between Rights, Law, and Peacebuilding*, ed. Julie A. Mertus and Jeffrey W. Helsing (Washington, DC: United States Institute of Peace Press, 2006), 182.

<sup>107</sup> See in particular Slim, "Relief Agencies and Moral Standing in War."

<sup>108</sup> Belliveau, *Red Lines and Al-Shabaab*, 5.

<sup>109</sup> Terry, "The Paradoxes of Humanitarian Aid," 138.

<sup>110</sup> Barnett and Weiss, *Humanitarianism Contested*, 6. See also François Bugnion, "Dialogue with the Past: The ICRC and the Nazi Death Camps [official translation from French]" (International Red Cross and Red Crescent Museum, 4 November 2002).

humanitarian ideals through humanitarian diplomacy differ fundamentally from many of the other ethical tensions that humanitarian organisations face daily. Embracing the moral ambiguity and ethical uncertainty of their chosen enterprise has the potential to free humanitarians to operate more effectively and ethically, I contend, and thereby better support those in need.

### 3.2 THE PARADOXES OF POWER

In addition to humanitarian paradoxes, it is worth briefly noting a series of paradoxes or seeming-inconsistencies that also concern the role of power within negotiation. Most conceptualisations of power justifiably assume that the stronger relative bargaining position of one party will equate to a higher likelihood that they can attain their preferred outcome. It follows, therefore, that negotiating parties seek to improve their relative power.

Yet Schelling recognised a central paradox in which relative weakness may actually be advantageous. If one party is able to reduce their ability to make concessions by publicly binding themselves to one course of action or by legally preventing themselves from pursuing another, then the other party must assume the cost of making concessions if they are to reach an agreement. Under such conditions, Schelling noted, “the power to constrain an adversary may depend on the power to bind oneself; that, in bargaining, weakness is often strength.”<sup>111</sup> Salacuse similarly suggested that the stronger side’s size and complexity can offer the weaker party opportunities for increasing its own power in the negotiation.<sup>112</sup> This resonates with humanitarian negotiation, in which humanitarian organisations publicly (and privately) espouse strict adherence to humanitarian principles that

<sup>111</sup> Schelling, *The Strategy of Conflict*, 22.

<sup>112</sup> Salacuse, "Lessons for Practice." See also Zartman and Rubin, "Symmetry and Asymmetry in Negotiation," 289.

limits that to which they can concede, thereby transferring the burden of compromise to their opponent (armed groups).

Further, conflict resolution expert Andrea Bartoli recognised what appears to be a similar contradiction regarding the role of non-governmental organisations in conflict mediation – a field that carries many of the hallmarks of humanitarian negotiation (see chapter 8). The inability of NGOs to exert coercive power over combatants makes them structurally ‘weak.’ But it is this very weakness, he claimed, that renders them more acceptable to parties to a conflict and thereby more able to realise their preferred outcome through negotiation.<sup>113</sup> Negotiated outcomes, therefore, do not often fully reflect the relative power positions of each party (the structuralists’s paradox).

Another paradox is that the exercise of power itself can be self-defeating. John Thibault and Harold Kelley claimed that the overuse of power by one party over another weaker party would degrade the relationship to the extent that the weaker party was no longer susceptible to the strong party. The dependency of the weaker party would thus decline, eroding the position of the stronger party. Thibault and Kelley concluded that power can thereby be ‘used up,’ meaning that the possessor can lose their ability to induce behaviour changes in their opponent.<sup>114</sup> Within humanitarian negotiation, this finding suggests that armed groups that brazenly exercise power to obstruct access and undermine civilian protection may reduce interdependence and thereby compel humanitarians to strengthen their alternatives to negotiation.

<sup>113</sup> Andrea Bartoli, "NGOs and Conflict Resolution," in *The SAGE Handbook of Conflict Resolution*, ed. Jacob Bercovitch, Victor Kremenyuk, and I. William Zartman (London: SAGE Publications, 2009). See also Martin Griffiths, *Talking of Peace in a Time of Terror: United Nations Mediation and Collective Security*, (Centre for Humanitarian Dialogue, March 2005).

<sup>114</sup> John W. Thibaut and Harold H. Kelley, *The Social Psychology of Groups* (New York: Wiley, 1959), 125.

Power asymmetry yields another paradoxical impact. Zartman claimed that perceived symmetry between negotiating parties tends to produce deadlock. Because each party is capable of keeping the other in check, each vies for a greater share of the value created from an agreement than the other, thereby jeopardising prospects for reaching an agreement. In situations of perceived asymmetry, however, parties are more likely to reach mutually-satisfactory agreements, he concluded.<sup>115</sup> There is, therefore, strength in weakness. Thus, the weak humanitarian bargaining position may not be as disadvantageous to a skilled negotiator as the literature assumes.

## CONCLUSION

Leveraging political and diplomatic structures to advance humanitarian issues can be understood as a distinct form of diplomacy, I argue, that strongly replicates existing modes of diplomatic action. Moreover, the ethical dilemmas associated with humanitarian diplomacy and humanitarian negotiation are inherent to the broader practice of humanitarianism itself. Failure to make some level of ethical compromise through humanitarian negotiation risks fetishising humanitarian principles at the expense of addressing humanitarian needs. These principles – fundamental and foundational, though they are – are a means to an end, and not an end in themselves. Compromise is thus not only entailed in humanitarian negotiation, but the complexities of contemporary humanitarian action frequently require humanitarian actors to choose between the very principles they uphold as inviolable. Such ethical dilemmas cannot be avoided, only minimised through careful and deliberate choices. And it is my hope that these tensions have the potential to function as productive energy, driving creative and efficient negotiated outcomes that advance humanitarian interests. Ultimately, it is these principled decision-making processes, I contend, that constitute principled

<sup>115</sup> Zartman, "A Skeptic's View."



humanitarian action in the murky and ambiguous moral landscapes of contemporary conflict, rather than blind and unwavering adherence to the tenets of international law.



# CHAPTER 8

## IMPLICATIONS FOR THEORY AND PRACTICE

Throughout this thesis I have argued that negotiations over access and protection have become increasingly central to humanitarian action. But those who negotiate these humanitarian norms face a weak bargaining position that often leads to unbalanced outcomes, to the detriment of the wellbeing of civilians affected by conflict. Yet, I suggest humanitarian negotiators also potentially enjoy an asymmetry of influence. Leveraging the humanitarian levers to which they have access can constitute humanitarian diplomacy, I contend – a concept that pushes the frontlines of diplomacy scholarship in terms of its core interests and actors.

In this chapter I explore the implications of my findings for theory and practice. First, I briefly detail the implications for negotiation analysis as they relate to power, power asymmetry, extra-negotiatory moves, structural analysis, justice and fairness, and non-negotiability. Second, I outline the implications of my work for humanitarian negotiators themselves. I identify nine key lessons for practice that range from collective bargaining to the role of third parties. These relate to both the tactics and strategies available to humanitarian negotiators. Third, I summarise the implications of my research for diplomacy theory, focusing on humanitarian diplomacy and its implications for diplomacy scholarship. Finally, I build on the findings of this thesis to propose a research agenda to advance the field, including negotiation linkages, precedents, and humanitarian mediation as an alternative analytical approach.

## 1. IMPLICATIONS FOR NEGOTIATION ANALYSIS

In this section I outline the main implications of my research for negotiation analysis. I highlight the theoretical implications related to power in negotiation; overcoming power asymmetry; extra-negotiatory moves; trust and perceptions; the impact of third parties; structural analysis; and negotiability.

### *Power in negotiation*

Through my discussion of the concept of power within negotiation in chapter 1, I rejected the traditional binary presented by various scholars that it must be either relational or possessed. I argued instead that within negotiation, power concerns both the relation between each party *and* the issue-specific resources that each party wields that affect the outcome. Power in a negotiation thus describes the structure *and* the process, and is evidenced by the tactics employed by each party as well as the shifting perceptions of each.

My work has been criticised for focusing on power in a field that emphasises integrative bargaining and the relational aspect negotiation.<sup>1</sup> But as I have demonstrated, power remains an implicit focus of much of the literature (see in particular chapters 1 and 3). Moreover, many humanitarian negotiators themselves frequently invoke assumptions of a marked power asymmetry to explain negotiated outcomes (see in particular chapters 4 and 5). And as I demonstrated in chapter 6, power relations and power asymmetry have explanatory value with respect to the outcomes of humanitarian negotiations. Further, approaching negotiation analysis from the position of power need not favour an exclusively distributive model, as I argued in chapter 2. On the contrary, a key finding of my research is that negotiated outcomes are partially dependent on leveraging shared interests and creating value. Particularly when interdependence is low, structural

<sup>1</sup> Clements, "Overcoming Power Asymmetry."

changes that alter power relations can improve prospects for reaching a negotiated agreement that creates value for both parties. Nevertheless, my empirical research also demonstrates the role of behaviour – and to a lesser extent culture – in influencing power relations. Future analyses of humanitarian negotiation processes may benefit from paying greater attention to each.

I adopted two concepts from negotiation scholarship that demonstrate the importance of power in analysing humanitarian negotiation processes. The first is ‘asymmetric dependence’ in which one party is heavily reliant on their counterpart to realise their interests. I claimed in chapter 3 that this element of power favours armed groups and is central to the weak bargaining position of humanitarian negotiators. The second is ‘asymmetry of influence,’ in which one party has a greater ability to influence their counterpart than the other. I argued in chapter 6 that this element of power potentially favours humanitarian negotiators. These dual concepts illustrate two central components of the relational aspect of power and are key to identifying viable tactics that humanitarian negotiators can deploy to overcome power asymmetry within their field of practice.

### ***Overcoming power asymmetry***

My empirical research confirms some aspects of negotiation theory concerned with power asymmetry whilst challenging others. Negotiation scholarship emphasises the importance of moves by weaker parties that include nuisance tactics, unpredictability, and delaying tactics (see chapter 2). Within humanitarian negotiation, however, I argued that these are likely to be counterproductive and may place humanitarian personnel and civilians at great risk (see in particular chapter 3).

This research also extends negotiation scholarship on power asymmetry beyond its focus on multilateral, rule-based encounters between states. By investigating (largely) bilateral negotiations between non-state actors (armed groups and humanitarian organisations), my research both confirms the relevance of much of this scholarship and identifies new tactical and strategic options for weaker negotiating parties. I emphasise the importance of persuasion that is grounded in relations between

negotiators and the strategic interests of armed groups (in particular, legitimacy, substitution, and side payments) rather than the emphasis placed on international norms or humanitarian principles within humanitarian policy.

I also revived and extended Mark Habeeb's work on power asymmetry to affirm the relevance of alternatives, commitment, and dependency in determining power relations within humanitarian negotiations. My findings built on each of these elements, as follows.

Negotiation scholarship assumes that parties in a negotiation can always withdraw if the terms of a settlement are worse than their best alternative. But as I demonstrated, this is not always the case within humanitarian negotiations. I also argued that coalitions can be an essential element to enhance commitment by humanitarians but may at times undermine negotiated outcomes when centralised negotiations fail, or the lead negotiator is unable to build trust. Another aspect of power asymmetry emphasised throughout my research is tacit bargaining. This becomes essential to foster commitment among negotiation counterparts within armed groups. Finally, I adapted Habeeb's concept of control as 'dependency,' whereby the weaker party can alter the perceptions of their opponent so that they see greater value in reaching an agreement. Negotiators, I claimed, can leverage these three elements of alternatives, commitment, and dependency, to shift power relations in their favour and thereby improve likely outcomes. But formal moves around the negotiating table are often insufficient to do so. Effective negotiators will also leverage extra-negotiatory tactics. These include both tacit bargaining to signal and change perceptions, as well as diplomatic tactics that change the value structure of a negotiation.

### ***Changing the game: The importance of extra-negotiatory moves***

With some notable exceptions, the game of negotiation is often implicitly considered to be fixed within negotiation scholarship.<sup>2</sup> It therefore follows that the search for causation within negotiation analysis emphasises bargaining tactics and behaviour around the formal negotiating table. Indeed, I identified some formal bargaining tactics leveraged by humanitarian negotiators (such as continuous multi-level bargaining, see chapter 6). But my research also emphasises the agency of negotiators to change the structure of a negotiation through purposive action. Moreover, a significant part of the negotiation game, I contend (perhaps *the* most significant aspect in some fields) is played away from the table.

As demonstrated in part II of this thesis, tacit bargaining constitutes an important aspect of extra-negotiatory moves within humanitarian negotiation. Humanitarians signal to their negotiation counterparts in an attempt to build trust and improve their reputation. Signals can also be directed at outside parties to pressure or induce movement in ones' counterpart – 'directed towards the gallery.' Tacit bargaining within this field is particularly significant due to the difficulty of holding direct negotiations due to distrust, the tendency of armed groups to be fragmented, and the frequent obstructions imposed by third parties. Direct communication is consequently often partial and limited, elevating the importance of tacit bargaining. The limited capacities within humanitarian organisations to negotiate also lends importance to tacit bargaining, as do the potential legal ramifications of engaging with listed entities, and the security and logistical difficulties of engaging with combatants during ongoing armed conflict. Tacit moves are thus primarily designed to alter perceptions and build trust (attitudinal structuring), thereby inducing greater interdependence.

<sup>2</sup> Sebenius, "Challenging Conventional Explanations."; Lax and Sebenius, "Dealcrafting."; Raiffa, *The Art and Science of Negotiation*; Odell, "Negotiating from Weakness."

A second aspect of extra-negotiatory moves within humanitarian negotiation are diplomatic moves. These tactics operate on many levels, including applying indirect coercive power through third parties, linking issues and creating potential side payments, and worsening the alternatives available to armed groups. These change the negotiation 'game' itself.

### ***Trust and perceptions***

Some degree of trust between negotiating parties is vital if any agreement is to be reached through negotiation. Trust and fairness become particularly important during negotiations in which interdependence is low, as with humanitarian negotiation (see chapters 3 and 6). Attitudinal structuring through tacit bargaining is an important means through which negotiators improve their reputation and enhance trust in an attempt to improve negotiated outcomes. Another way in which humanitarians improve trust is by channelling threats through third parties as an indirect exercise of coercive power, rather than doing so in a manner visible to their counterpart. This may come in the form of targeted sanctions imposed by the Security Council for obstructing access or violating international law. Or it may be bilateral, such as a threat from an armed group's sponsor to withdraw support. But this indirect exercise of power allows humanitarians to worsen the alternatives available to armed groups or foster the commitment within the leadership of these groups to reach an agreement without damaging trust by appearing to do exert coercive force.

But whilst a degree of trust is necessary to reach an agreement, it is not sufficient. Moreover, the relationship between actions and perceptions are not as clear-cut as negotiators may hope. Despite extensive attempts to alter the perceptions of humanitarians by armed group through tacit bargaining, humanitarian negotiations frequently collapse or fail. Indeed, unless armed groups perceive there to be sufficient incentives to reaching an agreement (or sufficient costs associated with failing to do so), no amount of trust will compensate for this lack of interdependence. Further, the relationship between the actions of a party and their reputation is ambiguous and often contested. Even the best attempts by humanitarians to enhance their reputation and improve trust with their counterparts by



adhering to humanitarian principles or employing tacit bargaining tactics may therefore still have little impact on negotiated outcomes.

### ***Structure and negotiation***

Despite its many detractors (see chapter 2), I argued that structural analysis retains analytical relevance and explanatory potential in particular fields of negotiation. As I confirmed through my cases studies, a structural analytic approach is particularly well-suited to negotiation processes that exhibit certain characteristics that may inhibit other types of negotiation analysis for two key reasons. First, structural analysis is useful when applied to cases in which only limited information is available to researchers from one or both negotiating parties. Second, structural analysis is particularly useful to explain why the outcomes of negotiations that are highly asymmetric and consequently may not mirror the relative power of each party.

My focus on structure within each case also proved useful for two further reasons that I did not anticipate. First, individual negotiators and their specific goals changed regularly throughout each negotiation process as the conflict evolved and the context changed, as did the strategies and tactics they deployed. Structural analysis accommodated these fluid elements as structural changes, where other analytical frameworks may not have been able to do so. Second, my research demonstrated the importance of extra-negotiatory moves within humanitarian negotiation. By emphasising structure, I was more easily able to accommodate such tactics within my analysis in ways that might not have been possible with other theoretical approaches, such as behaviour or culture-based analyses. Structural analysis – whilst limited in some respects – is therefore particularly well-suited to analysing certain types of negotiation processes.

### ***Justice, fairness, and formulas***

The intrinsic commitment of humanitarians to international law and humanitarian principles is presented within humanitarian policy as a formula through which negotiators should craft agreements. But few armed groups with whom humanitarians negotiated in the preceding cases adhered to these same norms. There is consequently a frequent tension

between competing (and potentially irreconcilable) conceptions of justice. Indeed, I claimed in chapter 3 that this is a distinctive characteristic of humanitarian negotiation that regularly undermines negotiated agreements. As Zartman and Berman cautioned, “a negotiator who becomes wedded to one formula has lost his ability to negotiate, since the formula itself becomes the non-negotiable demand.”<sup>3</sup>

Moreover, humanitarian negotiators often make concessions that are not strictly permissible under international law. Indeed, I have repeatedly argued that compromise is inherent in every form of negotiation and should therefore be accepted within humanitarian negotiation also (but should, of course, be minimised as far as possible). Further, whilst humanitarian negotiators regularly make concessions, they stop short of agreeing to alternative formulas or conceptions of justice. They cannot, for example, formally commit to distributive justice that requires them to provide assistance along population lines or exclude beneficiaries from a particular ethnic or religious group (although these outcomes may sometimes be entailed when agreements are particularly poor).

Two aspects of humanitarian negotiation appear to mediate this tension between irreconcilable formulas. The first is ambiguity. The boundaries of the negotiation process, the actors involved, and the agreements reached are often fluid and unclear. This provides each negotiating party significant latitude when conveying the terms of agreement to their constituents (thereby also reducing the impact of the two-level game and the boundary role conflict that can compromise negotiations). But this often leads to uncertainty that can ultimately endanger humanitarian personnel and civilians. Second, principle-level tensions are at times avoided by focusing on details rather than the formula itself. But without an underlying formula, parties must endlessly negotiate the details, meaning bargaining may recur for each and every convoy that humanitarians wish to send to a

<sup>3</sup> Zartman and Berman, *The Practical Negotiator*, 121.

particular town. This leads also to protracted negotiation processes in which the costs of transaction are magnified and the outcomes often sub-optimal (although preferable to failure).

### ***The myth of non-negotiability***

The putative consensus within negotiation scholarship and policy that one cannot negotiate with absolute terrorists is challenged by the findings of my research.<sup>4</sup> Humanitarian negotiators regularly engage (somewhat) successfully with groups that others have labelled ‘absolutist,’ as demonstrated in Yemen, Syria, Somalia, and elsewhere. This finding undermines attempts to ascribe the characteristic of ‘non-negotiability’ to an entire group. I argue that the complex and fluid nature of armed or ‘terrorist’ groups should deter theorists from assigning them such comprehensive and definitive labels as ‘absolute’ or ‘contingent’ terrorist with whom one either can or cannot negotiate. It may well be that such categories only have meaning with respect to specific issue areas at a given point in time – if at all – and that negotiability can evolve or be induced. And as I argued in chapter 6, the characteristic fragmentation of such groups offers both opportunities and challenges for negotiation.

Proponents of the non-negotiability maxim may contend that the groups to which I refer are not in fact ‘absolutist’ as intended by scholarship. Yet the assertion that these groups are not absolutist because they could be negotiated with is tautological and therefore of little analytical utility. Indeed, my research has demonstrated that negotiations over humanitarian norms with extremist religious groups such as AQAP and IS, among others, *can* yield limited successes. And if such groups are not considered ‘absolutist,’ then the category must be sparsely populated indeed.

<sup>4</sup> I. William Zartman, "Negotiating with Terrorists," *International Negotiation* 8, no. 3 (2003); Dean G. Pruitt, "Negotiation with Terrorists," *International Negotiation* 11, no. 2 (2006).

A second aspect of the myth of non-negotiability is the refusal by humanitarians to compromise. As I argued in chapter 7, humanitarianism itself is often the subject of contestation within contemporary armed conflict, rather than its specific proponents. All forms of humanitarian action must therefore be negotiated with parties to the conflict. And as all negotiation entails concessions, compromise is thereby required when humanitarians enter into negotiations. The challenge is then to minimise concessions and to maximise the value created from a negotiated agreement, rather than to avoid any compromise out of principle.

## 2. IMPLICATIONS FOR HUMANITARIAN NEGOTIATORS

I began this research hoping to unravel some of the challenges that confronted me and my colleagues when negotiating with armed groups. With that goal in mind, below are some of the key findings for practitioners. They suggest how humanitarian negotiators may deploy tactics in line with their strategic interests to redress the power imbalance they face. These options relate particularly to coalitions and collective bargaining, developing alternatives, leveraging third parties, using negotiation linkages, changing incentive structures, and when all else fails, finding strength in weakness.

### ***Humanitarians can improve outcomes by addressing both access and protection continuously at multiple levels***

My research suggests three strategic elements that should be considered by humanitarian negotiators beyond the specific tactics I identified in chapter 6. First, equal priority should be given to both operational access and protection concerns. Negotiation sequencing rarely works. Indeed, once negotiators attain a modicum of operational access, it becomes a point of weakness that they are wary of jeopardising, thereby undermining prospects for addressing protection. Instead, I argue that protection and access are mutually-reinforcing and both central to the field, and should therefore be addressed in parallel. This may require greater cooperation between humanitarians and human rights advocates, who have access to different levers and experience different value structures.

Second, humanitarian-negotiation processes should be continuous, meaning every effort should be made to maintain engagement with representatives of armed groups over the long-term. These processes require persistence and commitment to build trust and identify opportunities for creating value. Such an approach should reduce the likelihood of negotiations being ‘reset’ after contextual changes. Further, negotiations should be conducted directly with representatives of armed groups, where possible, rather than relying on tacit bargaining or interlocutors who may lose favour with the group in question or may not adequately convey messages.

The third strategic element suggested by my research is that humanitarian-negotiation processes should aim to engage at multiple levels within an armed group. Humanitarians should seek to negotiate both vertically and horizontally, engaging different elements that can support or spoil negotiated agreements. Fragmentation within armed groups has generally served as a point of weakness for humanitarian organisations and is held to undermine prospects for reaching a settlement.<sup>5</sup> But a multi-level approach of this kind may overcome this limitation or may even be to the advantage of humanitarian negotiators (see chapter 6). Even when humanitarians face a structural disadvantage relative to an armed group as a whole, power relations may differ at different levels within the group. And where progress cannot be made with one faction, other elements may be more amenable to negotiation. Humanitarian negotiators may thus persuade or coerce field commanders to facilitate access or protect civilians even when negotiations with leadership fail. This finding has relevance not only for humanitarian negotiation, but likely holds also for conflict resolution and process for mediating an end to violence.

<sup>5</sup> Jacob Bercovitch, "International Dispute Mediation: A Comparative Empirical Analysis," in *Mediation Research: The Process and Effectiveness of Third-Party Intervention*, ed. Kenneth Kressel and Dean G. Pruitt (San Francisco: Jossey-Bass, 1989), 289.

***Coalitions can strengthen the bargaining position of humanitarians but can undermine negotiations if agencies do not also engage bilaterally, when necessary***

Armed groups regularly succeed in playing humanitarian organisations off against one another, thereby worsening humanitarian outcomes. The innate tension between cooperation and competition that exists within the humanitarian sector easily lends itself to such exploitation by its adversaries (see chapter 1). Coalitions and centralised negotiation processes may overcome this challenge and can significantly strengthen the negotiating position of humanitarians – whether led by OCHA or another UN agency. Collective bargaining also minimises the transaction costs associated with negotiation for both parties, and streamlines the bargaining process to allow for more rapid decision-making. Moreover, collective approaches are the only viable route for smaller agencies that do not have the resources or skills to negotiate bilaterally.<sup>6</sup>

But there are limits to the effectiveness of coalitions. First, when perceptions of the lead negotiating agency are poor, negotiated outcomes may suffer. In some contexts, humanitarian interests may therefore be better served if agencies engage in parallel bilateral negotiations of their own that are informed by a shared strategic approach among humanitarian actors.

A second limitation with coalitions is the boundary role conflict (see chapter 3). Every institutional negotiator faces some degree of two-level game in which they negotiate both with their constituents and their opponents. But the diversity, fluidity, and lack of hierarchy within the international humanitarian sector exacerbates this tension. Humanitarian negotiators have no means to compel their constituents to accept an agreement they consider to be poor. Nor can they prevent humanitarian agencies from undertaking bilateral negotiations that may undermine a

<sup>6</sup> Steets et al., *Evaluation of Humanitarian Access Strategies*.

collective position. Walton and McKersie recommend negotiators reduce the impact of this boundary role conflict by restricting the participation of constituents in the process, limiting their ability to oversee negotiations, and obscuring concessions until an agreement is reached.<sup>7</sup> Such tactics, however, are likely to destabilise already-loose humanitarian coalitions. Third, coalitions and collective bargaining often discourage negotiators from strengthening alternatives that are nevertheless important determinants of negotiated outcomes and the durability of agreements.

Coalitions are thus an important though problematic lever through which negotiators can redress the power imbalance inherent in humanitarian negotiation. Indeed, I argued in chapter 6 that for most humanitarian organisations, it is prudent to maintain some level of bilateral relationship with armed groups for logistical and security reasons, at a minimum. But in so doing, humanitarian agencies may undermine coordinated negotiations, thereby restricting the impact of broader humanitarian action. A middle ground in some contexts may be to pursue alliances rather than more formal coalitions, in which humanitarians share information and coordinate strategies, but retain autonomy over their own dyadic negotiations and tactics.

***Alternatives to negotiation need to be strengthened for humanitarians and weakened for armed groups***

Alternatives are a critical determinant of relative power within a negotiation. But humanitarians generally have particularly poor alternatives. Whilst humanitarian organisations could collectively work to ensure withdrawal or conditionality are more permissible alternatives in future operations, these options are ethically problematic and will likely continue to be deeply contentious. Greater potential lies in strengthening alternative access modalities, such as improved mechanisms for using cash

<sup>7</sup> Walton and McKersie, *A Behavioral Theory of Labor Negotiations*, 283.

transfers or better partnerships with local humanitarian actors who experience fewer access restrictions. Indeed, both of these areas have seen significant operational investment and policy development over recent years and have been used to good effect in Yemen and elsewhere. Nevertheless, local partners often face limited capacities or enjoy a problematic relationship with combatants. And cash transfers are only likely to be effective under certain conditions that are often absent during armed conflict, such as adequate infrastructure, freedom of civilian movement, and functioning markets.

A norm may be emerging that diminishes the requirement of consent by high contracting parties (states), as established by resolution 2139 (see chapter 6). Whilst this has the potential to strengthen the negotiating position of humanitarians, this norm has yet to be tested elsewhere. Moreover, the cross-line missions of the type endorsed by resolution 2139, may have only a limited impact on the wellbeing of conflict-affected civilians, and likely still require a degree of access for distribution and monitoring. Further, these missions may take pressure off armed groups and national authorities to facilitate broader access and civilian protection. Similarly, humanitarian air drops may strengthen the position of humanitarian negotiators. But they are also costly and still require a degree of operational access to be effective.

Paradoxically, stronger alternatives may also undermine other sources of power for humanitarians. Third parties, for example, may be less willing to expend efforts to influence the outcome of negotiations if humanitarians can simply resort to alternative access modalities – even if less effective than negotiated agreements. It is therefore incumbent on humanitarians to ensure free and unfettered access remains the preferred option, and that third parties recognise that viable alternatives do not exist to negotiating with armed groups over the protection of civilians.



***Humanitarian negotiations should be grounded in international law and humanitarian principles but should accept that compromises are implicit***

The status of humanitarian personnel as neutral third parties on the battlefield is predicated on their principled conduct and adherence to international law. To eschew the core humanitarian principles is to embrace the most pragmatic and politicised aspects of humanitarian action and forgo much of the power derived from IHL that motivates third parties. Humanitarian principles should therefore continue to provide the foundation on which humanitarian strategies and decisions are built, I argued in chapter 6, for both normative and pragmatic reasons. But persuasion should rarely be grounded in these norms when negotiating with armed groups.

Moreover, humanitarian principles should not be seen as an end in themselves. They are a means to deliver effective assistance and to enhance the protection of civilians. They are consequently negotiable and can be traded off against one another (when necessary). Humanitarian principles should therefore be understood as hierarchical, in which humanity is the highest order principle, which takes precedence over instrumental principles (neutrality, impartiality, and independence). This hierarchical-approach to humanitarian principles also mitigates the operational paradox in which humanitarian negotiators are accused of trading away their very identity.

Adherence to humanitarian principle may thus limit the range of choices available to negotiators. But it should not prevent them from considering concessions in pursuit of access and civilian protection. Ultimately, a principled approach to humanitarian negotiation that informs strategy and tactics – rather than prohibits compromise – is likely to yield long-term benefits that reduce power asymmetry and yield more balanced agreements.

***Third parties are important sources of power but can also undermine negotiations***

Leveraging the power of third parties is an effective tactic that comes naturally to humanitarian negotiators. The integration of the international humanitarian system into the political structures of the UN and various multilateral diplomatic platforms provides opportunities for humanitarians to mobilise more powerful third parties into humanitarian-negotiation processes in support of humanitarian interests. Moreover, these tactics frequently prove effective, especially when armed groups rely on international backers or covert international legitimacy.

But the effectiveness of third parties in humanitarian negotiation is constrained by three key factors: their perceived bias, their limited influence over armed groups relative to states, and their pursuit of their own interests at the expense of humanitarian norms. First, third parties are naturally inclined to side with states over armed groups (see chapters 4 and 7). This can isolate or alienate armed groups and limits the effectiveness of third parties in brokering agreements. Second, the effectiveness of third parties is reduced by their limited influence over armed groups relative to states. Third parties often have inadequate communication channels with rebel movements or may have no direct contact with such groups at all. Moreover, third parties are usually unwilling or unable to satisfy the demands of these groups. A third factor influencing the impact of third parties on humanitarian negotiation is their pursuit of their own interests. The introduction of third parties can shift a negotiation from a dyadic to a triadic structure, meaning the interests of the third party become integral to the negotiation – often at the expense of humanitarian concerns.<sup>8</sup> In spite of these risks, my research suggests that third parties remain viable levers through which humanitarian negotiators can reduce their power asymmetry when negotiating with armed groups.

<sup>8</sup> Touval and Zartman, "Third-Party Intervention," 128.

***Contextual developments fundamentally alter the negotiating environment – for better or worse***

The context within which negotiations take place significantly conditions the outcome of humanitarian negotiations. Negotiation scholarship recognises that changes in the environment in which negotiations take place have a critical bearing on their outcome.<sup>9</sup> As Zartman and Berman noted, power positions are tempered by the “shifting fortunes of the moment.”<sup>10</sup> Hampson similarly claimed that “negotiations do not take place in a vacuum. They are shaped by their political environment.”<sup>11</sup>

Contextual developments can impact levels of interdependence, the values each party attaches to offers and alternatives, and the perceptions of each party, among other issues. But the impact of contextual change is possibly more pronounced in this field than for many other forms of negotiation (perhaps with the exception of conflict resolution and mediation).

Humanitarian negotiations take place during ongoing conflicts in which the issues and needs of each party are constantly evolving, as is the structure of the parties and the structure of the negotiation process itself. Months of negotiations can be reset when an armed group loses control of the territory in which humanitarian organisations seek to operate. Or an internal power struggle can result in new leadership with whom humanitarians have no prior relationship. This suggests humanitarian negotiators should invest heavily in contextual analysis and should remain nimble, able to rapidly adapt tactics, strategies, and messages to the evolving landscape, and make use of new opportunities as they arise.

<sup>9</sup> Walton and McKersie, *A Behavioral Theory of Labor Negotiations*; Druckman, *Human Factors in International Negotiations*; Walcott et al., "The Role of Debate in Negotiation."

<sup>10</sup> Zartman and Berman, *The Practical Negotiator*, 204. See also Antonia Handler Chayes who emphasises the importance of context and external political events for mediation, in Antonia Handler Chayes, "Sleeves Rolled Up on Peacemaking: Lessons from International Mediators," *Negotiation Journal* 23, no. 2 (2007): 188.

<sup>11</sup> Hampson, *Multilateral Negotiations*, 345.

***Linking humanitarian negotiations with other negotiation processes can be effective (but risky)***

Humanitarians often reject negotiation linkages out of principle. Linking humanitarian negotiations with political negotiations risks politicising humanitarian action, thereby eroding its distinctive character and endangering humanitarian norms and personnel. Linkages also risk turning a dyadic negotiating into a triadic or multilateral negotiation in which the importance of humanitarian interests are relegated by political and security concerns. Or humanitarians may be excluded from access negotiations entirely, left to accept whatever deal is reached by political actors. Such linkages are therefore usually met with well-warranted scepticism by proponents and practitioners of humanitarianism.

Consensus nevertheless suggests that negotiations to advance humanitarian issues can improve prospects for reaching a political settlement.<sup>12</sup>

Humanitarian issues are often less contested than underlying political tensions and may therefore require fewer concessions by the parties involved. Humanitarian issues can thereby serve as ‘low-hanging fruit’ during negotiations that build trust and reduce the drivers of violence. Moreover, engagement with parties to a conflict over humanitarian issues can also build their inclination and capacity to negotiate over other issues, offering them choices beyond violence (see chapter 7). But advocates of political solutions may also be wary of such linkages out of concern that humanitarian action may substitute for political change – what Rieff calls ‘the humanitarian trap’: a “political fig leaf for non-intervention”<sup>13</sup> – or may be used as a Trojan horse for political or military intervention.

Nevertheless, issue-linking remains an effective means through which weaker negotiating parties improve their relative position. And as I argued

<sup>12</sup> Claudia Hofmann, *Engaging Armed Actors in Conflict Mediation: Consolidating Government and Non-government Approaches*, (The Royal Institute of International Affairs, Chatham House, 11 May 2016).

<sup>13</sup> Rieff, "The Humanitarian Trap," 10.

in chapter 7, humanitarian action is inherently political. Leveraging political actors to further humanitarian interests should not, therefore, be rejected on principle. Whilst my research is inconclusive on the question of *how* and *when* to pursue such linkages, it has nevertheless demonstrated significant potential to further both humanitarian and political negotiations, and for humanitarians to leverage the greater power of political actors in pursuit of humanitarian interests through these linkages.

***Interdependence can be fostered by changing the incentive structures facing armed groups***

I have insisted throughout this thesis that negotiators should not accept the hand they are dealt. Indeed, they should seek to change the ‘game’ of negotiation itself – particularly when they face a weak bargaining position, as I argue they usually do within humanitarian negotiation. Many humanitarian negotiations fail because interdependence is low, meaning armed groups have (or at least perceive that they have) little to gain from negotiating access and civilian protection with humanitarians. On the contrary, armed groups may perceive far greater benefits from pursuing their interests in ways that violate international norms. But humanitarian negotiators can attempt to change this dynamic by fostering interdependence. In particular, they can use extra-negotiatory tactics to change the incentive structures facing armed groups in two main ways.

First, armed groups that are asked to make concessions to facilitate humanitarian access and enhance civilian protection must perceive benefits to doing so. Persuasion is often effective, I argued in chapter 6, but only if grounded in both relationships and a degree of self-interest. Armed groups derive value from humanitarian negotiation in three main ways: legitimacy, substitution, and side payments. Effective negotiation therefore requires a careful balancing on the part of humanitarian negotiators of these incentives with the risk of fuelling the conflict, the danger of being seen to take sides with one party over the other, or of breaking counter-terrorism laws that prohibit material support to listed entities. But humanitarian interests cannot be effectively met if negotiators begin from the assumption that armed groups will not benefit from the agreements they seek.

Second, armed groups often face insufficient pain from failing to reach a settlement on humanitarian issues. As I argued in chapter 3, compliance mechanisms within IHL are extremely weak – particularly as they relate to armed groups and NIAC. It is therefore critical that alongside generating greater incentives, conditions are created in which armed groups perceive their alternatives to negotiation to be poor. This may entail more systematic and effective use of targeted sanctions imposed on the leaders of armed groups for violating international norms. Existing compliance mechanisms such as the ICC could also be strengthened to ensure those who obstruct humanitarian access and violate the rights of civilians during conflict are publicly and systematically held to account. Member states could also expand the provisions of international law concerning international armed conflict to NIAC, particularly as they relate to humanitarian access. And stricter adherence to IHL by states themselves would provide fewer disincentives to armed groups to adhere to international norms.

A full examination of the mechanisms for increasing the costs to armed groups of obstructing access and violating the rights of civilians is beyond the scope of this research. Ultimately, however, a key to overcoming the asymmetry of humanitarian negotiations is to change the incentive structures in which armed groups often face (or perceive themselves to face) greater benefits from violating international norms than adhering to them.

***Humanitarians should attempt to reduce their power asymmetry where feasible but can leverage weakness where necessary***

Negotiating parties do not aspire to a relatively weaker position than their counterparts, with good reason. Weak negotiating positions are generally assumed to lead to less favourable outcomes. Yet, illustrating the structuralists's paradox that animated my research question, negotiated outcomes do not always reflect the relative power positions of each party. Not only is relative power mutable – subject to tactical manipulation by both negotiating parties and third parties – but a weak negotiating position can also be an asset under certain conditions, I argued in chapter 7. In

particular, the perceived weakness of humanitarian organisations makes them less of a threat to armed groups, thereby potentially affording opportunities to negotiate that would not be present if power was more evenly distributed. Indeed, the strong may be reluctant to engage with other parties of equal strength. And when they do so, they are likely to be hard negotiators that employ aggressive tactics and hold firm to their positions. When the strong confront the weak, however, there is at least a chance that they will do so more softly, increasing the potential for mutual value to be created from an agreement. Thus, the position of weakness from which humanitarians negotiate has the potential to lead to better outcomes than may initially appear possible, if leveraged effectively.

### **3. IMPLICATIONS FOR DIPLOMACY THEORY**

This thesis investigates negotiations that take place on the literal frontlines of conflict and the figurative frontlines of diplomacy theory. It pushes the boundaries of diplomacy scholarship in two principal ways. First, my research explores the emerging but under-theorised field of humanitarian diplomacy that has thus far largely been the preserve of practitioners rather than scholars. Second, the findings of this thesis challenge traditional notions of diplomatic actors, actions, and interests, undermining the state-centric nature of traditional diplomacy scholarship that I have claimed obscures insight into real world phenomena.

#### ***Theorising humanitarian diplomacy***

An essential (if under-appreciated) aspect of humanitarian negotiation, I contend, is the role of extra-negotiatory tactics that can reduce power asymmetry to reach more balanced agreements. In particular, humanitarians regularly (if inconsistently) operate at the diplomatic level to create alternatives for themselves, to worsen the alternatives for armed groups, to foster international commitment around humanitarian issues, and to mobilise third parties that alter the value of offers and threats. Traditional state diplomats are integral to these processes, facilitating or spoiling attempts to advance humanitarian norms through diplomatic

channels. These actions form part of the emerging but under-theorised field of humanitarian diplomacy.

Yet the concept of humanitarian diplomacy has largely been advanced by the limited efforts of practitioners, with few bridges built between scholarship and practice. This field of practice replicates many of the forms and functions of traditional diplomacy but is distinct in its altruistic objectives. It is not simply a new vernacular for a more agreeable form of *realpolitik* in which humanitarianism is used to protect and promote state interests (although national and humanitarian interests may at times be complementary or may be hard to distinguish from one another). Rather, humanitarian diplomacy seeks to leverage diplomatic actors and tools to advance the rights and wellbeing of individuals caught up in conflict – even at the possible expense of national interests (see chapter 1).

Humanitarian diplomacy is conducted by both states and a multitude of non-state actors, including humanitarians. Moreover, it interacts and overlaps with traditional diplomacy in complex ways that are largely un-theorised. International humanitarian organisations play a role both as channels of diplomatic communication and as agents of diplomatic action. The UN – and the Security Council, in particular – have similarly become both diplomatic actors and a venue in which various forms of diplomatic action take place (sometimes humanitarian, sometimes more traditional in form). Further, just as negotiation is central to traditional forms of diplomacy,<sup>14</sup> I argued in chapter 7 that humanitarian negotiation is central to humanitarian diplomacy.

The field of humanitarian diplomacy thus presents a new and rich area of intellectual and academic inquiry that has largely been neglected by scholarship. Not only does it have the potential to affect traditional

<sup>14</sup> Zartman, "Diplomacy and Negotiation," xiv.



diplomatic encounters, but it also represents a new form of diplomatic engagement that help to shape the world in important ways.

### ***Expanding the frontlines of diplomacy scholarship***

The marriage between diplomacy and the state is a relatively recent development. In previous eras, the practice of diplomacy was grounded in the interests of the church or the sovereign. Yet contemporary diplomacy scholarship has largely neglected this aspect of its history, treating its contingent relationship with the state as elemental and inseparable from its very nature. My research, however, describes a series of diplomatic encounters that I argue constitute a form of diplomacy that is not wedded to the state. The negotiations described in part II of this thesis constitute diplomatic engagements that can shape international relations and the global political landscape in important and fundamental ways. And the frontlines of these engagements are often populated by armed groups and humanitarian organisations rather than traditional diplomats. Within the state-centric approach of traditional diplomacy scholars, such negotiations and diplomatic engagements have largely been outside the scope of academic inquiry. My work aims to build on Constantinou's humanist conception of diplomacy and Wiseman's polylaterality (see chapter 1) to push the figurative frontlines of diplomacy scholarship beyond its Westphalian myopia to also consider the encounters described in the preceding chapters that increasingly constitute international relations.

Humanitarian diplomacy challenges traditional diplomacy scholarship in at least three ways. First, it raises questions around who constitutes a diplomatic actor, pushing the field to consider humanitarian officials and armed groups as more than mere auxiliaries to traditional diplomats. Second, humanitarian diplomacy undermines the notion of what constitutes diplomatic action, prompting greater attention to the actions and statements of humanitarian officials or the leaders of armed groups. Third, humanitarian diplomacy introduces a set of interests that are grounded not in narrowly-defined national interests, but originate instead in a universal morality to which states and other actors often voluntarily ascribe. This distinction between humanitarian diplomacy and

humanitarianism *as* diplomacy may be subtle and hard to distinguish in practice, but as I argued in chapter 1, it is significant.

But whilst these encounters are not inherently state-centric, they are frequently tied to states and multilateral fora, demonstrating the continued centrality of states within contemporary diplomacy. States continue to serve as mediators and third parties who alter incentive structures and affect negotiated outcomes. They also pursue humanitarian interests themselves, pressing parties to a conflict for access or promoting the protection of civilians (although, they cannot lead humanitarian negotiations, I contend in chapter 7). These engagements are therefore not inherently post-Westphalian, but instead appear to take place in parallel to more traditional state-centric forms of diplomacy. Moreover, whilst the interests that underlie humanitarian diplomacy are not strictly those of any single state, there is a complex interplay between humanitarian and foreign policy interests that is beyond the scope of this research to explore further.

#### **4. NEXT STEPS: A RESEARCH AGENDA**

Humanitarian negotiations have the potential to reduce the suffering of millions of civilians affected by conflict. This field of practice has nevertheless been characterised by the absence of theoretical attention. Other fields of negotiation may benefit from examining this distinctive field, such as conflict resolution and mediation. Greater scholarly attention is therefore warranted, I contend. For this to occur, however, humanitarian organisations must weigh their reputational and legal risks, and their need for secrecy and confidentiality, with the greater degree of transparency that analysis of humanitarian-negotiation processes requires.

For their part, would-be scholars will need to improve their ability to investigate complex phenomena in the midst of conflict, perhaps by increasing their tolerance for risk or refining their research methodologies in line with the challenges I discussed in chapter 2. Further, greater collaboration between scholars and practitioners could also build much-needed bridges between theory and practice, with substantial dividends for each. During the course of this study, however, important questions have

arisen to which my research does not provide answers. This final section establishes a future research agenda, briefly exploring seven principal areas that I suggest are deserving of further scholarly attention. These include negotiation linkages, negotiability, precedents, the relationship between protection and access negotiations, humanitarian mediation, and humanitarian diplomacy. I detail each below.

***Explore opportunities and threats associated with linking humanitarian and political negotiation processes***

There is an intrinsic intersection between humanitarian and political issues during conflict (see chapters 1 and 7). Humanitarian and political negotiation processes are consequently interlinked in complex but important ways. My research demonstrated that humanitarian issues can be advanced when they are included within political negotiations as more powerful third parties press for an agreement and armed groups are offered side payments. Moreover, negotiation linkages offer enormous potential for humanitarian negotiators to overcome their weak bargaining position (see chapter 6). But humanitarians are reticent to link the two processes for fear of politicising or instrumentalising humanitarian issues. They also fear being side-lined and left powerless within their own negotiations. For their part, political actors also remain concerned that humanitarian issues may substitute for political action or may undermine sovereignty by paving the way for intervention. In the face of these challenges and opportunities, there has been little research on when and how to effectively integrate humanitarian issues on the agenda of peace talks without compromising the outcomes of each. Further study is therefore needed to better understand this interplay.

***Challenge conventional negotiation scholarship concerned with negotiability and negotiating with so-called ‘terrorists’***

My research challenges the maxim that one cannot negotiate with absolute terrorists. Humanitarian negotiators have, on occasion, had success negotiating with groups that others dismiss as being beyond negotiation – particularly with fundamentalist religious groups. Further research is needed to understand how these successes (whilst undeniably limited) have

been possible. In particular, research should explore whether humanitarian issues are inherently more negotiable than political issues – whether the profile, power relations, and perception of humanitarian organisations allow them to negotiate when others cannot, or whether humanitarian negotiators employ tools and techniques that can be adopted by those seeking to negotiate other issues with such groups.

***Refine scholarship on negotiation precedents by looking at their impact on the practice and outcomes of humanitarian negotiations***

Negotiators are influenced both by future and past negotiation processes. Indeed, as Charles Iklé acknowledged more than four decades before this thesis:

An international negotiation is never a self-contained ‘game’ but is a phase vaguely related to a never-ending ‘super-game.’ Although each phase yields its own payoffs, the tactics used in it affect the opponent’s calculations in subsequent phases and hence influence subsequent payoffs.<sup>15</sup>

The tactics deployed, the concessions made, and outcomes to which humanitarians agree within this field are heavily influenced by precedent – perhaps more so than most other fields of negotiation. Compromises and concessions made by humanitarian negotiators may become public. The tactics, strategies, and details of an agreement may be shared between different armed groups, thereby setting a precedent that impacts future outcomes. Further, the fierce adherence to humanitarian principles presents an enormous challenge to reaching an agreement that can be analysed through the lens of precedents. Yet, negotiation scholarship on negotiation precedents is limited.<sup>16</sup> Studying this aspect of humanitarian

<sup>15</sup> Iklé, *How Nations Negotiate*, 77.

<sup>16</sup> Notable exceptions include Crump, "Toward a Theory of Negotiation Precedent."; Larry Crump and Don Moon, "Precedents in Negotiated Decisions: Korea-Australia Free Trade Agreement Negotiations," *Negotiation Journal* 33, no. 2 (2017); Fisher and Ury, *Getting to Yes*; Gerard P McMeel, "Prior Negotiations and Subsequent Conduct: The Next Step Forward for Contractual Interpretation," *Law Quarterly Review* 119, no. 3 (2003).

negotiations can therefore contribute to this field of practice as well as broader negotiation scholarship.

***Explore the complementary and competitive aspects of protection and access***

I argued in chapters 1 and 7 that both protection and access are inseparable, are central to humanitarian action, and are mutually-reinforcing elements of humanitarian negotiation. Nevertheless, the power relations and incentive structures associated with each set of issues can vary enormously. The tactics and tools available to humanitarian negotiators consequently also differ between the two issue areas. My research suggests that sequencing is ineffective, in which access is sought prior to pursuing protection. Negotiators nevertheless often face a zero-sum game, in which progress in one area will undermine the other. Further research is therefore needed to explore the complex relationship between access and protection and to suggest more effective strategies and tactics through which negotiators can pursue both.

***Investigate the mediational aspects of humanitarian negotiation***

My research has overtly and deliberately emphasised the negotiational aspects of the phenomenon at the centre of this research. Indeed, one of the assumptions underlying this research is that this field of practice constitutes a form of negotiation (see introduction). But other scholars have described the practice (or something very much like it) as ‘humanitarian mediation.’<sup>17</sup> Indeed, many aspects of what I have described as humanitarian negotiation resonate with mediation scholarship. Humanitarian negotiations bear strong similarities with mediation

<sup>17</sup> Jacque Freymond, "The International Committee of the Red Cross as a Neutral Intermediary," in *Unofficial Diplomats*, ed. Maureen R. Berman and Joseph E. Johnson (New York: Columbia University Press, 1977); Forsythe, "Humanitarian Mediation by the ICRC."; HD Centre, *HD Centre at a Glance*, (Centre for Humanitarian Dialogue, 2010).

processes, particularly as the UN often plays a central role representing a coalition of humanitarian actors. The role of humanitarian negotiators could alternatively be analysed as a form of mediation between conflict-affected civilians and the armed groups that control the territory in which they find themselves. And whilst humanitarian organisations certainly have vested interests in the outcome of humanitarian negotiations, all mediators are ultimately driven by self-interest in some way.<sup>18</sup> Moreover, the characteristics of power and power asymmetry that are central to my own research also feature heavily in mediation scholarship.<sup>19</sup> Important insights into this field could therefore be generated by instead analysing it from the perspective of mediation.

***Expand the boundaries of diplomacy scholarship through greater academic attention to humanitarian diplomacy***

Humanitarian diplomacy has received only limited scholarly attention.<sup>20</sup> Yet I have demonstrated throughout this research that the field has grown to become a significant phenomenon for both traditional diplomats and new diplomatic actors. Humanitarian diplomacy simultaneously replicates and diverges from traditional forms of diplomacy. Moreover, it helps to shape international relations and alter political and security dynamics in important ways. This field of practice therefore offers opportunities for learning from non-traditional diplomatic encounters to refine theory. It also offers enormous potential for diplomacy scholarship to grow to

<sup>18</sup> Touval and Zartman, "Third-Party Intervention."; Touval, "The Impact of Multiple Asymmetries on Arab-Israeli Negotiations."

<sup>19</sup> Saadia Touval, "Why the UN Fails: It Cannot Mediate," *Foreign Affairs* (1994); Touval, "The Impact of Multiple Asymmetries on Arab-Israeli Negotiations."; Jeffrey Z. Rubin, "International Mediation in Context," in *Mediation in International Relations: Multiple Approaches to Conflict Management*, ed. Jacob Bercovitch and Jeffrey Z. Rubin (London: St. Martin's Press, 1992); Chayes, "Sleeves Rolled Up on Peacemaking: Lessons from International Mediators."

<sup>20</sup> Notable exceptions include O'Hagan, "Australia and the Promise and the Perils of Humanitarian Diplomacy."; Weissman, "Crisis and Humanitarian Containment."; Sending, "Diplomats and Humanitarians."; Egeland, "Humanitarian Diplomacy."

accommodate actions, actors, and processes that take place beyond the state.

Ultimately, greater transparency and more critical analysis of humanitarian-negotiation processes are needed to refine both theory and practice. My research method for investigating this complex phenomenon in the midst of conflict provides a template for others who follow to adapt and refine. But I am also mindful of Halperin's Law that bureaucrats "are too busy to change their minds."<sup>21</sup> Or as McKersie and Walton cautioned, "it's one thing to write about theory, but it's a completely different matter to put it into practice."<sup>22</sup> Communicating the lessons of this research to those who negotiate with armed groups to bridge this divide between theory and practice is part of the challenge I now face.

<sup>21</sup> Halperin cited in Samuel F. Jr. Wells, "History and Policy," in *Diplomacy: New Approaches in History, Theory, and Policy*, ed. Paul Gordon Lauren (New York: Free Press, 1979), 274.

<sup>22</sup> McKersie and Walton, "Reflections on Negotiation Theory."





# CONCLUSION

Humanitarian organisations regularly negotiate access to and protection for civilians during conflict. Increasingly, they negotiate not just with states but also with armed groups, which have become central players in most contemporary armed conflicts. But humanitarians do so from a position of relative weakness, having few carrots or sticks to influence the behaviour of their counterparts. Negotiated outcomes are consequently often poor, and humanitarian organisations are regularly forced to make unpalatable compromises.

In Yemen, six-months of negotiations with the Houthis opened a two-month window in early 2016 within which assistance was allowed into the besieged enclave of Taizz, before access was again cut by the advance of pro-government forces. And in Myanmar's Kachin State, five years of complex multi-party negotiations over cross-line missions were derailed in mid-2016 when the government ended its support for the initiative in a bid to pressure ethnic armed organisations to sign a ceasefire agreement. In both cases, humanitarians were also largely unwilling or unable to meaningfully address protection issues with their counterparts within armed groups.

The objective of this research has been to investigate whether humanitarian negotiators can reduce this weak bargaining position to reach more favourable agreements when negotiating with armed groups. This question plagues not only negotiators in Yemen and Myanmar, but affects also the hundreds of millions of civilians living in conflict each year. Moreover, research into this field of practice is merited by its ability to enrich other fields of negotiation that have yet to benefit from this distinctive subfield.

Nevertheless, underpinning this research is an (untested) assumption that humanitarian negotiations with armed groups differ significantly from those held with states. Further empirical studies into state-oriented humanitarian negotiations and the interplay between the two processes (as described in chapter 5) is likely to be fruitful, but is beyond the scope of this doctoral research.

I have argued that negotiation has become a critical aspect of humanitarian operations in most contemporary crises due to the growth of the humanitarian system and the changing nature of conflict. Further, I claimed that the practice of humanitarian negotiation is central to humanitarian diplomacy and represents important changes in the nature of diplomacy itself. This field of practice simultaneously conforms to conventional modes of diplomatic action whilst challenging traditional notions of what constitutes a diplomatic actor within mainstream scholarship. This particular mode of diplomacy also separates diplomatic interests from foreign policies, allowing the two areas to converge at times or exist in tension with one another on other occasions.

In part II, I substantiated much of the literature that claimed negotiated outcomes tend to favour armed groups due to the weak humanitarian bargaining position. I concluded that humanitarians face an asymmetry of dependence and that their ability to negotiate suffers due to the decentralised consensus-based system within which they operate. Moreover, the lack of mechanisms with which to hold parties to an agreement undermines the value of these bargains. Armed groups can – and regularly do – flaunt international norms to which they have previously committed themselves. And divergent world views and low-levels of trust between humanitarians and armed groups also undercut prospects for reaching an agreement in accordance with these norms. Further, competing political and security interests often take precedence over humanitarian concerns, threatening to derail negotiations when third parties assert their role and pursue their own interests.

Based on a comparative analysis of the Houthi Movement and the Kachin Independence Army, and drawing also on case illustrations from across the limited literature on humanitarian negotiation, my research identified two

key strategies that humanitarians use to improve negotiated outcomes. First, given the fragmented and decentralised nature of the armed groups with which humanitarians typically engage, negotiators can systematically negotiate at multiple levels within their counterparts – both horizontally (with both political and military sections or with different factions within a single rebel movement) and vertically (with frontline units through to senior leadership). Second, effective engagement with armed groups is continuous (as far as possible), building relationships, improving trust, shaping perceptions, and identifying opportunities and tactics for negotiation.

My cases also emphasised six key tactics available to humanitarian negotiators: persuasion, commitment and coalitions, influencing trust and reputations, mobilising third parties, exploiting negotiation linkages, and changing alternatives. Among these tactics, persuasion is often a critical (but undervalued) determinant of negotiated agreements. Armed groups may perceive few benefits to negotiating with humanitarians or see little reason to make meaningful concessions. Nevertheless, negotiated agreements often create significant value for *both* parties, whilst entailing few costs to armed groups (sometimes literally requiring them to do nothing). Persuasion can therefore play a critical role in changing perceptions and the values that armed groups assign to promises and threats. And persuasion, I have argued, is particularly effective when it leverages the core interests of an armed group in terms of its legitimacy, offers of substitution, or side payments. Indeed, in challenge to much of the existing guidance in the field, I claimed that legal argumentation and humanitarian principles are generally of limited value when directly invoked.

Contrary to some scholars and practitioners, I contend that power within humanitarian negotiation is mutable. Moreover, I have argued that part of the ‘game’ of negotiation itself entails deliberately changing power relations to reach more favourable outcomes. Indeed, the parameters within which humanitarian negotiations take place are frequently nebulous and hard to define. They consist of extensive signalling and posturing, they rely heavily on intermediaries, and it is often unclear when formal negotiations are

taking place or what terms of trade have been agreed. These dynamics elevate the role of extra-negotiatory moves in reducing the power asymmetry faced by humanitarian negotiators.

I have also argued that despite the inherently weak bargaining position of humanitarian negotiators, they have the potential to enjoy an asymmetry of influence through which they are better able to influence the position of their counterparts than their counterparts are able to influence them. Further, whilst most literature concerned with power asymmetry advances tactics that are not viable for humanitarian negotiators, I recovered and built on Mark Habeeb's framework to contend that power relations are constituted by alternatives, commitment, and dependency. Humanitarian negotiators (as with others negotiating from a position of relative weakness) should therefore deploy tactics both within and beyond the formal negotiation to change these constituent elements of power.

They do so first by improving their alternatives to negotiation or weakening those of their counterparts. Humanitarian negotiators may do this by strengthening modalities for cash transfers in otherwise-inaccessible areas, for example, as with the World Food Programme in Yemen. Or they may do so by denouncing the conduct of an armed group to undermine its international standing and thereby increasing the costs of failing to reach an agreement. Second, humanitarian negotiators can improve their bargaining position by increasing their commitment to reach an agreement or that of the armed groups with whom they are negotiating. This may consist of forming coalitions to bargain collectively, or negotiators may foster linkages with political processes that generate side payments to motivate the leaders of an armed group to seek a settlement on humanitarian issues. Third, humanitarians can change their levels of dependency to become less reliant on armed groups for realising their objectives or to encourage armed groups to place greater value on reaching an agreement. Humanitarians may do this by using armed escorts to reach insecure areas or they may foster greater interdependence by engaging with the constituents of an armed group to press for a more favourable negotiated settlement. Nevertheless, these moves are often risky and can

endanger humanitarian personnel or place civilians at greater risk if poorly timed or poorly implemented.

It also became clear throughout this research that power alone does not determine outcomes. Not only can power relations be altered, as detailed above, but relative weakness can be leveraged as a negotiating strength (of sorts). Humanitarian negotiator's lack of coercive power makes them less threatening and potentially more acceptable to armed groups, often allowing them to claim a relatively greater share of an agreement than might otherwise be possible. Further, the straight-jacketing of humanitarian negotiators to humanitarian principles restricts their ability to offer certain concessions, thereby placing the burden of compromise on armed groups. Thus, while power plays a significant role in shaping humanitarian agreements, it is not the sole determinant of negotiated outcomes.

Humanitarians perpetuate a myth (either through self-delusion or self-preservation – or a little of each) that negotiation does not confer tangible benefits upon parties to a conflict. International law even enshrines the notion that negotiation does not impart legitimacy on armed groups. Moreover, humanitarians routinely reject the contention that humanitarian agreements are transactional and insist instead on the central role of relationships in reaching agreements. The evidence presented throughout this thesis, however, is consistent with other forms of negotiation that demonstrate that the interests and needs of each party underlie negotiated agreements. Whilst relationships and behaviour matter (particularly as they relate to trust, reputation, and perceptions of fairness), ultimately, I contend that humanitarian negotiators looking to overcome their weak bargaining position will need to address the interests of their opponents if they are to realise better outcomes – however unpalatable such concessions may seem. Further, I have argued that many of the tactics identified above are inherently political, as indeed is all humanitarian action.

Undoubtedly, this presents enormous ethical and principle-level challenges for humanitarians. Moreover, any process that yields positive dividends for armed groups is likely to be challenged by the state within which they operate, as well as other states and multilateral institutions that tend to be

negatively predisposed towards such groups. Inherent tensions therefore persist between the practice of humanitarian negotiation, state interests, and longer-term political and security concerns.

A final word of caution. Incentive structures in many contemporary conflicts continue to encourage armed groups to obstruct humanitarian access and violate the rights of civilians. Armed groups frequently derive value from pursuing their strategic interests in ways that violate legal and humanitarian norms. Moreover, the potency and continued resonance of humanitarianism is what has made it a frequent target in many contemporary conflicts, I have argued, not its outright rejection. Humanitarians must therefore be mindful that a zone of possible agreement may *not* exist in all cases in which they seek to negotiate their presence and promote the protection of civilians. Under such conditions, humanitarians will have to deploy appropriate and timely extra-negotiatory tactics and strategies, of the sort detailed in part II of this thesis. These initiatives will precede formal negotiations, aiming to foster interdependence and change the incentive structures that shape the behaviour, attitudes, and interests of armed groups.

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# APPENDICES





## APPENDIX I: GLOSSARY OF ACCESS TERMS

The table below outlines some of the key concepts related to humanitarian access that are regularly invoked in the negotiations analysed throughout this thesis. Some are grounded in international law whilst others are non-legal terms related to practice.

<b>Cross-line/border operation</b>	The delivery of humanitarian assistance across frontlines or international borders; reliant on de-confliction and humanitarian negotiations with parties to the conflict; generally considered to require the consent of all parties to the conflict, although waved in the case of Syria. <sup>1</sup>
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<b>De-escalation zones (DEZs)</b>	Geographical areas in which a cessation of hostilities is agreed between parties to the conflict; may be designed to facilitate humanitarian access, to allow population returns, or rehabilitation; often a political-military agreement rather than humanitarian; not formally defined under IHL <sup>2</sup>
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<b>Deconfliction</b>	The exchange of information between humanitarian actors and parties to the conflict to coordinate the time and location of relief activities; aimed at ensuring military operations do not jeopardise the safety of humanitarian personnel and aid recipients or impede
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<sup>1</sup> Gillard, "The Law Regulating Cross-Border Relief Operations."; Hugo Slim and Emanuela-Chiara Gillard, "Ethical and Legal Perspectives on Cross-Border Humanitarian Operations," *Humanitarian Exchange Magazine*, no. 59 (2013); Council, S/RES/2139.

<sup>2</sup> CCHN, "Limiting the Humanitarian Impact of De-Escalation Zones in Syria", presented at *Regional Roundtable on Limiting the Humanitarian Impact of De-Escalation Zones in Syria*, Ankara, Turkey, 15 February 2018.

the passage of relief supplies; may include temporary cessation of hostilities, ceasefires, or humanitarian corridors.<sup>3</sup>

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<b>Ground rules</b>	Conditions under which humanitarians are prepared to provide assistance, including guarantees of safety and protection; can be a formal agreement between humanitarian agencies and parties to a conflict or the basis from which humanitarians collectively or individually negotiate; often a locally-oriented restatement of fundamental humanitarian principles.
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<b>Humanitarian pause; days of tranquillity</b>	A suspension of fighting agreed by all relevant parties for a specific period that is undertaken for humanitarian purposes; usually confined to a specific area and period during which humanitarian activities can be carried out; not specified in international law. <sup>4</sup>
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<b>Humanitarian/relief corridor; corridors of tranquillity</b>	Specific routes and logistical methods (e.g. air bridge); agreed by all relevant parties to allow safe passage of humanitarian goods and personnel or displaced civilians. <sup>5</sup>
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<b>Humanitarian/relief personnel</b>	Humanitarian personnel enjoy protected status within international armed conflict; <sup>6</sup> are protected as civilians under NIAC; <sup>7</sup> must be impartial in character and provide assistance without adverse distinction; must have approval of the party to the conflict in whose territory they are operating; <sup>8</sup> may have their activities limited only in the case of imperative military necessity; <sup>9</sup> attacks on humanitarian personnel may constitute a war crime under international armed conflict; <sup>10</sup> attacks against medical
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<sup>3</sup> Egeland et al., *To Stay and Deliver: Good Practice for Humanitarians in Complex Security Environments*, xiv; OCHA, "Glossary of Terms: Pauses During Conflict," (infographic), June 2011.

<sup>4</sup> OCHA, "Glossary of Terms".

<sup>5</sup> OCHA, "Glossary of Terms".

<sup>6</sup> Additional Protocol I: Art. 71(72).

<sup>7</sup> Geneva Convention IV: Arts. 27-141.

<sup>8</sup> Additional Protocol II, Art. 18(2)

<sup>9</sup> See in particular Additional Protocol I: Art. 71(73).

<sup>10</sup> United Nations, *Rome Statute*.

personnel are specifically prohibited and may constitute a war crime.<sup>11</sup>

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<b>Humanitarian space</b>	Not specified within IHL; multiple interpretations include the physical access humanitarian agencies have to affected populations; the space humanitarians have to adhere to humanitarian principles; the ability of affected communities to safely access humanitarian assistance; the complex political, military, and legal arena within which humanitarians operate. <sup>12</sup>
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<b>Protected areas/zones</b>	Designated under IHL as areas in which fighting may not take place in which populations in danger are provided for; may include non-defended localities, hospital and safety zones and localities, neutralised zones, and demilitarised zones. <sup>13</sup>
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<b>Right of access; right to relief /assistance</b>	Parties to the conflict are obliged to allow and facilitate the free passage of impartial humanitarian assistance if populations are not adequately provided with essential supplies; applicable to all categories of conflict. <sup>14</sup>
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<b>Right of control</b>	Relief must be undertaken with the consent of parties to the conflict; parties to the conflict may not forbid or hinder relief but can impose technical conditions and monitor its distribution; relief can only be delayed for reasons of imperative military necessity. <sup>15</sup>
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<b>Right of initiative</b>	Humanitarian actors have the right to offer relief of an exclusively humanitarian and impartial nature and without any adverse
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<sup>11</sup> Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (I), 12 August 1949: Art. 18; Additional Protocol I: Art. 16; Additional Protocol II: Art. 10. See also Customary IHL Rules #25 and #26; United Nations, *Rome Statute*, Arts. 8.2.b.xxiv and 8.2.e.ii.

<sup>12</sup> Weiss, "The Politics of Humanitarian Space."; Collinson and Elhawary, *Humanitarian Space*; Humanitarian Policy Group, *Humanitarian Space: Concept, Definitions and Uses*, (Overseas Development Institute, 20 October 2010); Don Hubert and Cynthia Brassard-Boudera, "Is Humanitarian Space Shrinking?," in *Negotiating Relief: The Politics of Humanitarian Space*, ed. Michele Acuto (London: Hurst & Co., 2014).

<sup>13</sup> Additional Protocol I: Arts. 59 and 60; Geneva Convention IV: Arts. 23, 25 and Annex I.

<sup>14</sup> Geneva Convention IV: Art. 3 (common). See also Customary IHL Rule #55.

<sup>15</sup> See in particular Common Article 3; Geneva Convention IV: Arts. 10, 17, 23, 30, 59, 60, 61; Additional Protocol I: Arts. 70 and 81; Additional Protocol II: Art. 18. See also Customary IHL Rule #55.

distinction;<sup>16</sup> impartial humanitarian agencies may offer assistance without being regarded as interfering in the conflict; offers of assistance do not affect the legal status of parties to the conflict under NIAC.<sup>17</sup>

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**Safe haven/area;  
secure  
humanitarian area** Areas placed under UN protection in which hostilities and those taking part in hostilities are prohibited, and in which relief can take place freely;<sup>18</sup> often protected by UN peacekeepers; may not have the endorsement of parties to the conflict; do not meet the requirements set by international law of a 'protected area', although may be established under Chapter VII, thereby carrying some legal weight;<sup>19</sup> local permutations have included 'no-fire zones' (Sri Lanka), 'no-fly zones' (northern Iraq and Libya) and 'freeze zones' (Syria);<sup>20</sup> often criticised for reducing the responsibility of parties to the conflict for protecting populations.<sup>21</sup>

<sup>16</sup> For international armed conflict see Geneva Convention IV: Art. 70. For NIAC see Additional Protocol II: 18; Geneva Convention IV: Art. 3.

<sup>17</sup> Geneva Convention IV: Art. 3(2).

<sup>18</sup> Merimee, Jean-Bernard. "Note Verbale Dated 19 May 1993 from the Permanent Representative of France to the United Nations Addressed to the President of the Security Council." S/25800. 19 May 1993.

<sup>19</sup> For the establishment of 'safe areas' in Bosnia under Chapter VII, see for example United Nations Security Council, *Resolution 819 (1993)*, S/RES/819 (1993); United Nations Security Council, *Resolution 824 (1993)*, S/RES/824 (1993).

<sup>20</sup> HRW, "Sri Lanka: Stop Shelling 'No-Fire Zone'," Human Rights Watch, news release, 9 April 2009; Joe Dyke, "Briefing: Syria's 'Freeze Zones' and Prospects for Peace," *IRIN News*, 10 February 2015. Landgren, 1995 #1992}

<sup>21</sup> Bouchet-Saulnier, *The Practical Guide to Humanitarian Law*, 296.

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(Angola)** Richardson, Anna. "Negotiating Humanitarian Access in Angola: 1990-2000." UNHCR. Geneva: June 2000.

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(DRC)** Pottier, Johan. "Roadblock Ethnography: Negotiating Humanitarian Access in Ituri, Eastern DR Congo, 1999-2004." *Africa* 76, no. 2 (2006): 151-179.

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## APPENDIX III: LIST OF PARTICIPANTS DIRECTLY CITED\*

<b>BONGARD, Pascal</b>	Programme Director and Policy Advisor, Geneva Call. Geneva, June 2017 (#17/059105).
<b>CHEIKH AHMED, Ismail Ould</b>	Special Envoy of the Secretary-General for Yemen. Amman, June 2017 (#17/059225).
<b>CLERC, Philippe</b>	Regional Humanitarian Coordinator, Oxfam. Amman, June 2017 (#17/059216).
<b>CUTTS, Mark</b>	Head of Office, OCHA Myanmar, Yangon, August 2017 (#17/059406).
<b>GORGEAU, Raphael</b>	Policy Director, International Council of Voluntary Agencies. Geneva, June 2017 (#17/059109).
<b>GREGG, Tom</b>	Director, Humanitarian Programmes, Centre for Humanitarian Dialogue. Geneva, June 2017 (#17/059104).
<b>HIMMICHE, Ahmed</b>	Coordinator and Financial Expert, Yemen Panel of Experts. Remote interview, May 2017 (#17/059202).
<b>JACKSON, Ashley</b>	Independent researcher. Remote interview, May 2017 (17/059102).
<b>KHON JA</b>	Human rights worker, Kachin Peace Network. Yangon, August 2017 (#17/059413).
<b>MOODLEY, Soman</b>	Former Yemen policy lead, Oxfam. Amman, June 2017 (#17/059208).
<b>PHILLIPS, Sarah</b>	Senior Lecturer, Centre for International Security Studies, University of Sydney. Remote interview, May 2017 (#17/059204).
<b>PICHAIWONGSE, Piyamal</b>	Deputy Representative, Myanmar, International Labour Organisation. Yangon, August 2017 (#17/059406).
<b>TALAHMA, Tareq</b>	Senior Humanitarian Affairs Officer, UN. Remotely interview, June 2017 (#17/059206).

\* List includes only those participants directly cited. Interviews were held with other participants during the course of this research that are not directly cited above, usually at the request of participants themselves. Descriptions as agreed with participants.

<b>WITHHELD</b>	Aid worker familiar with Yemen. Remote interview, May 2017 (#17/059203).
<b>WITHHELD</b>	Diplomatic source working on Yemen. Amman, June 2017 (#17/059218).
<b>WITHHELD</b>	Human rights worker. Yangon, August 2017 (#17/059412).
<b>WITHHELD</b>	UN Humanitarian Affairs Officer. Amman, June 2017 (#17/059211a).
<b>WITHHELD</b>	Humanitarian official. Geneva, June 2017 (#17/059211b).
<b>WITHHELD</b>	Humanitarian security professional covering the Middle East. Remote interview, June 2017 (#17/059214).
<b>WITHHELD</b>	Humanitarian with experience working in Yemen. Amman, June 2017 (#17/059226).
<b>WITHHELD</b>	Humanitarian worker in Myanmar. Yangon, August 2017 (#17/059401).
<b>WITHHELD</b>	Humanitarian worker in Myanmar. Yangon, August 2017 (#17/059402).
<b>WITHHELD</b>	Humanitarian working in Myanmar. Yangon, August 2017 (#17/059406).
<b>WITHHELD</b>	Humanitarian working in the Middle East. Amman, June 2017 (#17/059209).
<b>WITHHELD</b>	Humanitarian-negotiation researcher. Geneva, June 2017 (#17/059103).
<b>WITHHELD</b>	Member of the diplomatic community in Myanmar. Yangon, August 2017 (#17/059404).
<b>WITHHELD</b>	Member of the diplomatic corps in Myanmar. Yangon, August 2017 (#17/059407).
<b>WITHHELD</b>	Member of the diplomatic corps in Myanmar. Yangon, August 2017 (#17/059409).
<b>WITHHELD</b>	Member of the diplomatic corps in Myanmar. Yangon, August 2017 (#17/059414).
<b>WITHHELD</b>	Member of the Yemen donor community. Amman, June 2017 (#17/059224).
<b>WITHHELD</b>	Senior UN official. Geneva, June 2017 (#17/059201).
<b>WITHHELD</b>	UN official working in Yemen. Remote interview, June 2017 (#17/059205).
<b>WITHHELD</b>	UN staff member working on Yemen. Amman, June 2017 (#17/059204b).
<b>WITHHELD</b>	UN staff member working on Yemen. Amman, June 2017 (#17/059212).
<b>WITHHELD</b>	Senior UN official. Location withheld, July 2017 (#17/059114).

# APPENDIX IV: PARTICIPANT INFORMATION SHEET



## PARTICIPANT INFORMATION SHEET

### THE FRONTLINES OF DIPLOMACY: ADVANCING HUMANITARIAN NEGOTIATION WITH ARMED GROUPS

#### RESEARCHER

My name is Ashley Jonathan Clements. I am a PhD candidate from New Zealand and the primary investigator for this project. I am based at the Asia-Pacific College of Diplomacy at the Australian National University (ANU) in Canberra, Australia. Before undertaking this PhD, I spent over a decade as an aid worker for international non-governmental organisations and agencies of the United Nations. Some of the countries in which I have worked include Jordan, Myanmar, the Philippines, Papua New Guinea, and Yemen.

#### PROJECT OUTLINE

##### *Description and methodology*

This project aims to identify the lessons relating to humanitarian negotiations in armed conflict from the perspective of all parties involved through interviews with key informants. The research will examine humanitarian negotiations in a variety of contexts, with a particular emphasis on negotiations in Yemen and Myanmar. The objective of this research is to fill a knowledge gap by better understanding how and why each party engages in humanitarian negotiations, what they seek to gain from this process, and when and why these negotiations are most likely to be successful. Ultimately, this research aims to improve humanitarian access and protection for conflict-affected civilians. It further aims to contribute knowledge on reducing the drivers of armed conflict, thus enhancing prospects for peace.

This project provisionally understands “humanitarian negotiation” to be 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.

##### *Participants*

Up to 80 participants are expected to be interviewed for this research from three main groups. These will include interviews with (1) humanitarian staff who are involved in or exposed to humanitarian negotiations; (2) members or representatives of groups with whom humanitarian actors have negotiated access in one or more case study country; and (3) observers and analysts who can offer insight into the negotiation process or the political dynamics in the context(s) being studied.

##### *Use of data and feedback*

The data from this research will be used as the empirical work in my upcoming PhD thesis on humanitarian negotiations with armed groups. It may also be used as a negotiation case study for journal articles. I may provide relevant draft sections of this research to interviewees for comment, clarification, and further input, if required or upon request.

*Project funding*

This project has been partially funded by the International Peace Research Association Foundation, <http://iprafoundation.org>.

**PARTICIPANT INVOLVEMENT**

*Voluntary participation & withdrawal*

Participation in this research is voluntary. There is no compensation or remuneration from taking part. You may decline to take part or withdraw from the research at any time before the work is prepared for publication without providing an explanation. You may refuse to answer part or all of any questions asked of you. If you do withdraw, all data collected directly from you will be destroyed.

*What does participation in the research entail?*

You are invited to undertake an interview as part of this research project in your personal capacity, rather than as an official spokesperson of any organisation, unless otherwise agreed. Interview questions will relate to your area of professional expertise. Your contribution may be audio recorded only if you agree to this. If not, notes will be taken during the interview. Information may be transcribed if the interview is audio recorded. Please advise the interviewer if you wish to receive the recording and/or transcript after the interview.

*Location and duration*

The location of interviews will be determined in consultation with participants on a case-by-case basis. Face-to-face interviews are preferred, although interviews by telephone may be necessary for participants in locations to which I do not travel as part of this project. Each interview is expected to last no longer than one hour.

*Risks*

Before participating in this research, please ensure that doing so does not jeopardise your current employment or breach any contractual obligations. The interviewer will, in consultation with you, endeavour to ensure that the locations in which interviews are held do not place participants at risk. If you have any concerns around your safety or are concerned that you may face any social stigma related to your participation in this research, please raise these concerns with me prior to the interview. Participants should be aware that I could be compelled under Australian law to provide details about my research, including handing over interview notes and records. Participants should therefore avoid disclosing overly sensitive information that might place themselves or others at serious risk, and should avoid disclosing details of illegal activities. Participants are not expected to discuss incidents or events that are psychologically distressing to them and should feel free to decline any questions that make them uncomfortable or might prompt distress. Participants looking for resources to support their psychological wellbeing may find useful materials at [www.headington-institute.org](http://www.headington-institute.org).

*Benefits*

This research is expected to have a number of benefits. It is hoped that through a better understanding of the dynamics of humanitarian negotiations, future negotiations will have better outcomes. In particular, this should lead to improved protection and security for humanitarian staff and conflict-affected civilians. It should also contribute to an improved understanding by parties to the conflict of international humanitarian law and of the humanitarian sector, and should identify more effective ways in which to bring together international actors and armed groups in mutually-beneficial negotiations. This research may also contribute to a better understanding of the interests and dynamics within parties to the conflict, thus providing opportunities for reaching a peaceful settlement to the conflicts being studied. Finally, this project seeks to contribute the findings of the unique practice of humanitarian negotiations to broader negotiation theory. It therefore has the potential to improve negotiations in a range of fields, such as conflict resolution and hostage negotiations.

**CONFIDENTIALITY***Confidentiality*

Participants will be asked to confirm their consent to participate in this research, either verbally or in the form of a written, signed form that will be retained by the interviewer. Audio recordings of interviews will only take place with the consent of participants. For interviewees not wishing to be identified by name, the researcher and the interviewer will agree on a suitable form of reference (e.g. “a UN official working on Myanmar”). Participants may also request to be identified by pseudonym or may request not to be attributed within published materials. The names of participants will only be recorded upon agreement, whereupon notes and transcripts will be identified with a code only, and will not identify the interviewee by name. Hard copy records of interviews will be destroyed once digitised and stored securely. Every effort will be taken within the law to ensure the confidentiality of participants and of data collected during this research. Only my supervisor and I will have access to this research data. Nevertheless, confidentiality provisions are limited in their extent by Australian law (see above under risks) and participants should avoid disclosing overly sensitive data that might place themselves or others at serious risk, and should refrain from providing details about illegal activities.

**PRIVACY NOTICE**

In collecting your personal information within this research, the ANU must comply with the Privacy Act 1988. The ANU Privacy Policy (available at [https://policies.anu.edu.au/ppl/document/ANUP\\_010007](https://policies.anu.edu.au/ppl/document/ANUP_010007)) contains information about how a person can:

- Access or seek correction to their personal information;
- Complain about a breach of an Australian Privacy Principle by ANU, and how ANU will handle the complaint.

#### **DATA STORAGE**

Data management procedures will be in compliance with the Australian Commonwealth Privacy Act 1988 and the ANU Code of Research Conduct. All electronic data gathered as part of this research will be encrypted and password protected. Consent forms will be digitised and stored separately from interview notes and transcripts, and a separate database will be maintained securely that links interviewee details with their coded transcripts. In accordance with ANU guidelines, all data will be stored securely on the ANU server for five years following publication of this research, and may be used by the Primary Researcher in future projects beyond this date.

#### **QUERIES AND CONCERNS**

*Contact details for more information*  
For further information or queries regarding this study, please contact the primary investigator or supervisor:

**Mr. Ashley Jonathan Clements**  
Doctoral Scholar (primary)  
Asia Pacific College of Diplomacy  
Australian National University  
T: +61 422 150 615  
E: [ashley.clements@anu.edu.au](mailto:ashley.clements@anu.edu.au)

**Prof. Geoffrey Wiseman**  
Director, Asia-Pacific College of Diplomacy  
ANU College of Asia and the Pacific  
T: +61 2 6125 5216  
E: [geoffrey.wiseman@anu.edu.au](mailto:geoffrey.wiseman@anu.edu.au)

#### *Ethics committee clearance*

The ethical aspects of this research have been approved by the ANU Human Research Ethics Committee (Protocol 2017/059). If you have any concerns or complaints about how this research has been conducted, please contact:

**Ethics Manager**  
The ANU Human Research Ethics Committee  
Australian National University  
T: +61 2 6125 3427  
E: [human.ethics.officer@anu.edu.au](mailto:human.ethics.officer@anu.edu.au)

# APPENDIX V: PARTICIPANT CONSENT FORM



## WRITTEN CONSENT FOR PARTICIPANTS

### THE FRONTLINES OF NEGOTIATION: ADVANCING THE UNDERSTANDING OF HUMANITARIAN NEGOTIATION IN ARMED CONFLICT

I have read and understood the Information Sheet you have given me about the research project, and  
I have had any questions and concerns about the project (listed here

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_)

addressed to my satisfaction.

I agree to participate in the project YES  NO

I agree to this interview being audio-recorded YES  NO

I agree to be identified in the following way within research outputs:

Full name and position/title YES  NO

General form of reference YES  NO

Pseudonym YES  NO

No attribution YES  NO

Signature: .....

Date: .....