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# Talking to the other side
## Humanitarian engagement with armed non-state actors

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### Key messages

- Engagement with armed non-state actors (ANSAs) on assistance and protection is integral to any effective humanitarian response to conflict-related needs.
- This engagement appears to have declined since the end of the Cold War, and the UN is no longer taking the lead.
- Counter-terror legislation and donor funding restrictions have discouraged, if not criminalised, dialogue, and there appears to be limited collaboration among humanitarian actors in engaging with ANSAs.
- Greater study and support is required in order to understand how humanitarian actors can successfully sustain productive humanitarian dialogue with ANSAs.

In conflicts, it is essential that humanitarian actors engage with all belligerents. Dialogue is required to facilitate access to affected populations for the provision of humanitarian assistance, as well as to promote protection. As the majority of conflicts in which humanitarian actors operate are intra-state in nature, engaging with armed non-state actors (ANSAs) has become increasingly important. Yet the vast majority of humanitarian and multi-mandate agencies fail to engage strategically with ANSAs – with detrimental consequences for aid workers and those in need of their assistance.

This HPG Policy Brief explores the obstacles to and opportunities for humanitarian dialogue with ANSAs. It begins with the rationale for such engagement and the applicable legal frameworks. It then provides an overview of the challenges that humanitarian actors face when engaging in dialogue with ANSAs on issues of access, assistance and protection. This analysis is based on an extensive literature review and interviews undertaken as part of a two-year project on humanitarian engagement with ANSAs.

## Negotiating with armed non-state actors

In situations of armed conflict, humanitarian organisations rely on the principles of independence and impartiality to facilitate acceptance of their work by belligerents. Engagement with ANSAs is required in order to explain these principles, obtain security guarantees and facilitate the free movement of affected populations. It is also integral to promoting international humanitarian law (IHL) and the protection of civilians – key components of any humanitarian response to conflict.

In both international and internal armed conflicts, IHL imposes minimum obligations on belligerents with regard to humanitarian assistance. Article 18 of Protocol II of the Geneva Conventions stipulates that humanitarian access cannot be arbitrarily denied, and obliges belligerents to allow impartial organisations to provide materials essential for civilian survival. The Geneva Conventions also provide special protection for humanitarian workers. These provisions have been incorporated in the African Union

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Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention), adopted in 2009, which prohibits the obstruction of protection and assistance to internally displaced persons as well as attacks on humanitarian workers. IHL does however allow belligerents to take certain measures to control the content and delivery of assistance.

Awareness of and respect for the legal provisions governing humanitarian assistance vary considerably across the environments in which humanitarian actors operate.[1] IHL and other streams of international law, such as international human rights law (IHRL), can be important negotiating tools, but the extent to which they can be utilised is dependent on the interests and structure of the ANSAs involved.[2] ANSAs have any number of reasons for denying humanitarian access – from strategic advantage through control of resources to suspicion that humanitarian actors are allied with their enemies.[3] Some ANSAs lack sufficient command and control to enforce leadership-level agreements. Additionally, the interests and structure of ANSAs, and their perceptions of humanitarian actors, are not static; they evolve over time in response to myriad internal and external factors.[4]

Even when ANSAs determine that allowing humanitarian action is in their interest, access is rarely granted unconditionally. Negotiations frequently require compromise on core humanitarian principles, whether it is ANSAs seeking to divert aid for their own purposes or imposing restrictions on ideological grounds (for example preventing girls from attending school). This tension often manifests itself around protection issues, and humanitarian actors have been criticised for not speaking out about human rights abuses committed by belligerents in the belief that doing so would compromise their access.[5] In some instances, humanitarian actors may determine that agreement is simply not possible under the prevailing conditions, and may withdraw from areas under ANSA control. Negotiations present difficult ethical dilemmas and often require concessions, with negative repercussions irrespective of choices particular agencies make.

1 Olivier Bangerter 'Reasons Why Armed Groups Choose To Respect International Humanitarian Law or Not', *International Review of the Red Cross*, vol. 93, issue 882, 2011.
2 There is considerable legal debate on the applicability of IHRL to ANSAs. See Andrew Clapham, 'The Human Rights Obligations of Non-State Actors in Conflict Situations', *International Review of the Red Cross*, vol. 88, issue 863, 2006.
3 Bangerter 'Reasons Why Armed Groups Choose To Respect International Humanitarian Law or Not'.
4 Stathis N. Kalyvas, *The Logic of Violence in Civil Wars* (Cambridge: Cambridge University Press, 2006).
5 Sarah Collinson and Samir Elhawary, *Humanitarian Space: A Review of Trends and Issues*, HPG Report 32 (London: ODI, 2012), p. 16.

Despite the high stakes involved, humanitarian actors are generally ill-prepared for engagement with ANSAs.[6] Many aid workers feel that access is best gained by delivering high-quality programming that is valued by communities and therefore less likely to be rejected by ANSAs looking for civilian support.[7] However, humanitarian organisations, with some notable exceptions, rarely invest enough in the capacities required for effective engagement, such as training and guidance for field staff. This lack of capacity is exacerbated by rapid staff turnover and weak management systems, particularly in emergencies and protracted crises. Few humanitarian organisations have institutional policies explaining what humanitarian engagement is and why it is necessary, or consistently approach these situations in a structured manner. There is little high-level support for these negotiations and leadership within the international community is lacking. Confronted with the urgency of the situation at hand, humanitarian actors are often forced to negotiate as best they can, in what time they have, using whatever leverage they are able to bring to bear.[8]

## Humanitarian negotiation after 9/11

Since 9/11, Western humanitarian actors have found themselves under increasing pressure to contribute to 'stabilisation' and 'counter-insurgency' efforts in environments where their donor governments' foreign policy interests are involved. This 'politicisation' of aid in countries such as Afghanistan and Iraq has meant that the majority of funding for humanitarian and multi-mandate agencies is provided by belligerents on one side of the conflict, who view this assistance as integral to achieving their military objectives. This tension has also been felt in Yemen and Pakistan, where donor governments may not be directly engaged in conflict, but nonetheless view aid as a means of achieving their foreign policy aims.

Such pressures are hardly new; donors have long pursued strategic political and military objectives through their foreign aid budgets. However, the post-9/11 focus on stabilisation and counter-insurgency marked a distinctly new attempt to co-opt humanitarian action into broader political and military strategies aimed at militarily defeating

6 Daniel Toole, *Humanitarian Negotiation: Observations from Recent Experience* (Cambridge, MA: Harvard University Humanitarian Policy and Conflict Research Program, 2001).
7 Jan Egeland, Adele Harmer and Abby Stoddard, *To Stay and Deliver: Good Practice for Humanitarians in Complex Security Environments* (New York: OCHA, 2011).
8 Deborah Mancini-Griffoli and Andre Picot, *Humanitarian Negotiation: A Handbook for Securing Access, Assistance and Protection for Civilians in Situations of Armed Conflict* (Geneva: Centre for Humanitarian Dialogue, 2004).

specific ANSAs. The link between stabilisation and the politicisation of aid on the one hand, and the ability of humanitarian actors to engage with ANSAs for humanitarian objectives on the other, is widely debated.[9] Nonetheless, the perception of being allied with the 'other side' in a given conflict has made it difficult for humanitarian actors to operate – as experiences in Afghanistan, Pakistan and Somalia illustrate.[10]

In addition to emphasising stabilisation and counter-insurgency, Western donor governments and many host governments have aggressively sought to criminalise engagement with specific ANSAs through counter-terror legislation. This includes 'direct travel bans, sanctions, and asset freezes' and tightening 'the restraints on proscribed groups by criminalizing "material" support to the groups by private individuals, charities and humanitarian organisations anywhere in the world'.[11] These restrictions have created confusion and anxiety amongst humanitarian actors, often resulting in self-regulation and timidity with regard to engaging with ANSAs that may be considered 'terrorists'.[12]

Although humanitarian organisations have long been pressured by states not to engage with ANSAs, in part because they fear that doing so may lend them legitimacy, the current regime of counter-terror restrictions is distinctly damaging to humanitarian action. ANSAs are often listed as terrorists in situations where humanitarian engagement is most necessary, as in Al Shabaab-controlled areas of Somalia.[13] The consequences of 'talking to terrorists' are poorly defined and understood, but can be regarded as criminal. For example, the US Supreme Court ruling in *Holder vs. the Humanitarian Law Project* deemed that the provision of expert advice or assistance to a Foreign Terrorist Organisation (FTO) could be unlawful, as could providing much of what constitutes humanitarian goods and services in areas where FTOs are believed to be active.[14] A further concern is that this kind of antagonistic alienation may lead ANSAs to resist engagement and deny humanitarian access to areas under their influence.[15]

## The role of the UN

The UN played a lead role in negotiating with ANSAs on behalf of the wider humanitarian community throughout the 1990s. Under these 'negotiated access' agreements, such as Operation Lifeline Sudan and the Special Relief Programme for Angola, the UN led efforts to secure collective agreement among belligerents to allow humanitarian actors to provide assistance to civilians under agreed conditions.

Since 9/11, however, UN leadership of humanitarian negotiations has significantly diminished. While UN bodies and representatives at various levels continue to publicly acknowledge the importance of engagement with ANSAs, little contact actually occurs. A recent study of UN missions in Afghanistan, Somalia and the Democratic Republic of Congo found that engagement with ANSAs was 'limited, particularly at a senior level', and concluded that this lack of engagement 'has undermined efforts to obtain the security guarantees necessary for accessing populations in need, and has limited opportunities to undertake humanitarian advocacy, including on protection of civilians'.[16]

The UN is no longer necessarily seen as an appropriate body to coordinate or lead engagement with ANSAs. Many humanitarian actors feel that it has become too politicised and can no longer serve as an 'honest broker'. The debate around UN integrated arrangements, which were introduced in 1997 to improve the coherence of multidimensional missions in conflict and post-conflict situations, is illustrative of this trend. Although integration is now the official policy of the UN, many humanitarian actors, including members of the UN family, oppose it in principle. They are concerned that integration blurs the line between humanitarian and political action, erodes the perception of humanitarian actors as neutral and leads to the subordination of humanitarian concerns to political imperatives.[17]

Humanitarian actors see separation from state and UN political agendas as critical to the safety of aid workers and vital to maintaining their access, particularly in insecure contexts. In Somalia, NGOs have argued that the UN's overly political stance and support for the Transitional Federal Government has

9 See *Disasters* Special Issue, 'States of Fragility: Stabilisation and Its Implications for Humanitarian Action', vol. 34, no. 3, 2010.
10 Sarah Collinson, Samir Elhawary and Robert Muggah, *States of Fragility: Stabilisation and Its Implications for Humanitarian Action*, HPG Working Paper (London: ODI, 2010), p. 14.
11 Claude Bruderlein et al., *Humanitarian Action Under Scrutiny: Criminalizing Humanitarian Engagement* (Cambridge, MA: Harvard University Humanitarian Policy and Conflict Research Program, 2011), pp. 2–3.
12 Sara Pantuliano et al., *Counter-Terrorism and Humanitarian Action: Tensions, Impact and Ways Forward*, HPG Policy Brief 43 (London: ODI, 2011).
13 Laura Hammond and Hannah Vaughn-Lee, *Humanitarian Space in Somalia: A Scarce Commodity*, HPG Working Paper (London: ODI, 2012).
14 HPG, 'Event Report: Humanitarian Space in Afghanistan/Pakistan', 13 May 2011; Pantuliano et al., *Counter-Terrorism and Humanitarian Action*, 2011.
15 Bangerter, 'Reasons Why Armed Groups Choose To Respect International Humanitarian Law or Not', p. 378.
16 Victoria Metcalfe, Alison Giffen and Samir Elhawary, *UN Integration and Humanitarian Space: An Independent Study Commissioned by the UN Integration Steering Group*, (London/Washington DC: ODI/Stimson Center, 2011), p. 1.
17 Metcalfe et al., *UN Integration and Humanitarian Space,* p. 31; Eric Stobbaerts, Sarah Martin and Katherine Derderian, 'Integration and UN Humanitarian Reforms', *Forced Migration Review*, no. 29, 2002, pp. 18–20.

undermined their ability to negotiate access with Al Shabaab and other anti-government groups; in Afghanistan, NGOs have formally rejected collective access negotiations proposed by OCHA on similar grounds.[18]

## Don't ask, don't tell

The perceived challenges and risks in engaging with ANSAs mean that humanitarian actors in volatile environments tend to avoid contact by subcontracting work to national NGOs, operating remotely or simply withdrawing to government-controlled areas. In Somalia, many aid organisations have reverted to remote programming, and in Pakistan the majority of organisations have been unable or unwilling to engage with the Pakistani Taliban and have withdrawn to more secure government-held areas. There is little information-sharing or coordination between organisations, and even within organisations coordination and transparency is limited. With the exceptions of the International Committee of the Red Cross (ICRC) and Médecins Sans Frontières (MSF), few humanitarian actors pursue structured negotiations; in Afghanistan there are signs that international staff within UN agencies and NGOs tacitly accept that national staff are engaging with the Taliban at the local level, but without 'the explicit authorisation or support of their organisation'.[19]

Many humanitarian actors interviewed felt that such practices worked effectively for them, especially when dealing with fractured or network-based ANSAs such as those in Afghanistan and Somalia, and that greater coordination or information-sharing among humanitarian actors was neither feasible nor desirable given legal concerns and distrust of or dissatisfaction with UN-led or other coordination mechanisms. However, without a common agreement on minimum standards of operation or 'ground rules' there is a risk that humanitarian agencies will be played off against one another by ANSAs aiming to obtain arrangements that best meet their objectives. In Somalia, varying practices among agencies with regard to accepting demands to pay 'tax' to Al Shabaab have made it exceedingly difficult for individual actors to refuse to do so, and the lack of effective coordination has led to a collective failure to advocate effectively on protection issues.[20] A recent study on humanitarian space warns that such 'agency autonomy risks encouraging an anarchic free-for-all that will favour limited and fragmented tactical engagement … to secure individual agency space, rather than any joint principled and strategic engagement to influence humanitarian space more broadly'.[21]

There are also ethical implications, especially when responsibility for negotiating access is delegated entirely to the local level. Without clear guidance and adequate protection, such engagement is inconsistent, precarious and even dangerous to the (often local) humanitarian workers with the de facto responsibility for engaging with ANSAs. Ad hoc negotiation is also contrary to proven best practice. Humanitarian dialogue has the greatest chance of success when it is preceded by extensive research and consultation, is explicitly long-term and is established at multiple levels within an organisation.[22]

## Conclusion

Establishing effective humanitarian dialogue with ANSAs has unquestionably become more difficult since 9/11. Counter-terror legislation and donor funding restrictions have discouraged, if not criminalised, engagement. The UN, which often plays an explicitly partial role in these conflicts, has lost credibility and has even been targeted for attack by ANSAs. These and other factors have undermined the perceived impartiality, independence and effectiveness of humanitarian response, and limited the ability of humanitarian actors to engage with ANSAs. Nonetheless, negotiations with ANSAs are taking place, albeit with varying degrees of sustainability and success. In extremely hostile operating environments such as South Kordofan in Sudan and Al Shabaab-controlled areas of Somalia, humanitarian actors are utilising dialogue with ANSAs to alleviate suffering, improve the protection of civilians and even begin to address the underlying drivers of crises.

This engagement is fragmented, fragile and often covert. As a result, there has been little reflection by humanitarian actors on these processes of negotiation. Greater study is required in order to understand how humanitarian actors are engaging with ANSAs at different levels, in different places, at different times and for different purposes. More work must be done to understand the role that the UN, donors and other actors can play in providing political leadership and support for effective engagement. Finally, a more comprehensive understanding of how and why ANSAs themselves choose to engage with humanitarian actors – the ultimate aim of HPG's forthcoming research in this area – is imperative.

18 Hammond and Vaughn Lee, *Humanitarian Space in Somalia: A Scarce Commodity*, p. 9; HPG interviews, October 2011.
19 Metcalfe et al., *UN Integration and Humanitarian Space*, pp. 31–32.
20 Hammond and Vaughn-Lee, *Humanitarian Space in Somalia: A Scarce Commodity.*
21 Sarah Collinson and Samir Elhawary, *Humanitarian Space: Trends and Issues*, HPG Policy Brief 46 (London: ODI, 2012), p. 4.
22 HPG interviews; *Humanitarian Access in Situations of Armed Conflict: Field Manual* (Bern: Federal Department of Foreign Affairs, 2011); Mancini-Griffoli and Picot, *Humanitarian Negotiation*; Annyssa Bell and Stuart Casey-Maslen, *Rules of Engagement: Protecting Civilians through Dialogue with Armed Non-State Actors* (Geneva: Geneva Academy of International Humanitarian Law and Human Rights, 2011).