



MINISTRY OF
DISPLACEMENT

NGO 1

NGO 2

Mercy Corps: Jon Novakovic / Dushanbe, Tajikistan 2018

PLAYBOOK

Negotiating for Humanitarian Access

NOVEMBER 2018





To our fellow emergency responders, development professionals, and peacebuilders:

Mercy Corps defines access negotiations as back-and-forth communication with state and non-state actors in which humanitarian agencies aim to gain safe access to vulnerable populations while ensuring staff safety, integrity of operations, and adherence to humanitarian principles, donor requirements, and laws.

This Negotiating for Humanitarian Access “playbook” is a multimedia, interactive guide for you: humanitarians, development professionals, and peacebuilders around the world. We believe that more effective access negotiation enhances the ability of humanitarians to reach vulnerable populations, strengthening emergency response efforts and laying the groundwork for longer-term development and peace. We hope that our peer agencies and civil society partners around the globe make good use of this resource, and come to us with questions, feedback, and ideas.

We’d like to recognize the valuable contributions to this playbook by Vantage Partners, a consulting firm spin-off of the Harvard Negotiation Project. A special thank-you to Vantage’s Kristal Thomas for tireless and exceptional video editing; Mercy Corps staff in the Caucasus, Central and South Asia for their participation in video filming; Jon Novakovic and Christopher Allbritton for enhancing video production; and Heather Cummings for superb graphic design.

Thank you!





Navigation

INTRODUCTION

1
Overview of the Seven Elements and the Circle of Value



WATCH: OVERVIEW OF CIRCLE OF VALUE

ACCESS NEGOTIATION PREP TOOL

QUIZ ON THE CIRCLE OF VALUE

2
Dealing with Hard Bargainers

QUIZ ON RESPONDING TO DIFFICULT STATEMENTS

3
General Do's and Dont's from Mercy Corps Country Teams

4
Stakeholder Mapping for Multi-Party Negotiations

Video Tips on Using Each of the Seven Elements

INTERESTS OPTIONS LEGITIMACY ALTERNATIVES

COMMITMENT RELATIONSHIP COMMUNICATION

ANALYSIS OF ACCESS NEGOTIATION CHALLENGES AND GUIDANCE FOR OVERCOMING THEM

DIFFICULT TACTIC #1:
GOVERNMENT DEMANDS EXCESSIVE INFORMATION

DIFFICULT TACTIC #2:
PEER AGENCIES WITHHOLD ACCESS

DIFFICULT TACTIC #3:
GOVERNMENT RESTRICTS ACCESS TO MOST VULNERABLE IDPS

DIFFICULT TACTIC #4:
SECURITY OFFICIALS RESTRICT ACCESS AT CHECKPOINTS



ADDITIONAL GUIDANCE ON ENGAGING WITH ARMED GROUPS



Introduction

Need for Playbook

Aid agencies that operate in the midst of emergencies often need to negotiate with a range of actors to ensure humanitarian access. Primary objectives include gaining access to target populations or locations, providing assistance to the most vulnerable households, adhering to humanitarian principles such as impartiality and operational independence, and ensuring the safety and integrity of agency staff and operations.

Given the range of environments in which aid agencies work, negotiations take place with a wide variety of actors, state and non-state, local and national, informal and formal authorities and leaders. Non-state armed groups operate outside the formal military structures of states (and therefore include paramilitaries and vigilante groups) and may use arms to achieve political, ideological, or economic objectives.

Insecurity in many hot conflict zones makes access all but impossible; however, in other areas, access depends on the outcomes of efforts to influence and negotiate with state and non-state actors that restrict access. In other words, successful access negotiation efforts enhance aid agencies' abilities to assist vulnerable populations with life-saving assistance. Unsuccessful access efforts may undermine humanitarian response efforts.

Purpose of Playbook

This Negotiating for Humanitarian Access playbook provides guidance on how to achieve the results we need in humanitarian access negotiations. We define access negotiations for aid agencies as back-and-forth communication with state and non-state actors to gain safe access to vulnerable populations while adhering to humanitarian principles, donor requirements, and laws.

The context described in the playbook is grounded in common access challenges experienced by international NGOs. The

guidance leverages the interest-based approach to negotiation that first gained widespread prominence with the 1979 publication of the bestselling *Getting to Yes: Negotiating Agreement Without Giving In*, written by Professor Roger Fisher, who founded the Conflict Management Group (CMG) that Mercy Corps merged with in 2004. The Boston-based consulting firm Vantage Partners, like CMG a spin-off of the Harvard Negotiation Project, pioneered the application of this approach to complex business relationships and advanced the tools and processes necessary to put it into practice. Incorporating lessons from the first-hand experiences of Mercy Corps staff who negotiate for humanitarian access, the playbook provides a framework to help you prepare for, analyze, understand, and conduct access negotiations to maximize the likelihood of success.



Mercy Corps: Jon Novakovic 2018

How the Playbook is Organized

The first part of the playbook provides an overview of our collaborative negotiation approach, including in multi-party negotiations. The heart of the playbook is structured to enable you to find the dynamic you are facing (see page 3), and then click on the relevant link to find guidance for approaching that situation. Each section consists of the following five sub-sections:

- › Key Negotiation Counterparts
- › What your Counterparts Might Say
- › Analyzing these Tactics with the Seven Elements of Negotiation
- › Understanding the Tactic: Why might your Counterparts be Doing This?
- › Guidance on Responding to the Tactic: What to Do and Say

How to Use the Playbook

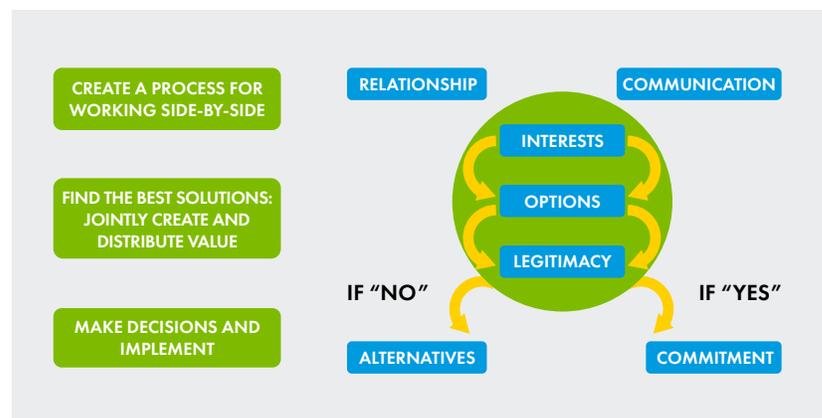
We encourage you to do the following:

- › Review the negotiation framework described below.
- › Find the dynamic(s) in the [Table of Contents](#) links that best describes the humanitarian access challenge you face. Read the analysis and guidance on how to deal with that challenge.
- › Watch the videos that depict potential negotiations you might engage in, challenges that may arise, and strategies you can use to overcome the difficult tactics.
- › Practice! We encourage you to engage in your own role-plays and practice responding to such scenarios with your teams. Adapt the different dynamics to your own unique context, as needed. By identifying similar experiences, actors, and challenges, you can better prepare for your own negotiations and more successfully engage in humanitarian access negotiations.

Overview of the Seven Elements of Negotiation and the Circle of Value

The Seven Elements of Negotiation (Relationship, Communication, Interests, Options, Legitimacy, Alternatives, and Commitment) describe everything that happens in negotiation. The Seven Elements can be used to define success, prepare for negotiation, conduct negotiations, and review the process. When the Seven Elements are used collaboratively through joint problem-solving with your negotiation counterpart to both get the substantive results you want by creating value and improve the Relationship, we call that approach the Circle of Value.

CIRCLE OF VALUE: SEVEN ELEMENTS OF NEGOTIATION



The Circle of Value approach (see graphic) is also known as the Interest-based approach because **Interests** (our underlying motivations—goals we want to achieve and concerns we want to address) are the bedrock of the framework. We want to share our Interests and uncover our counterpart’s Interests so that we can generate

a range of **Options** (possible solutions or pieces of an agreement) to satisfy the Interests of both sides. When Interests conflict, we want to turn to standards of **Legitimacy** (objective criteria such as market or industry standards, or precedents) to determine whether an Option is fair. The ability to explore Interests, develop Options, and discuss Standards of Legitimacy depends on a trusting, open **Relationship** and efficient two-way **Communication**. We want to spend as much time as possible focusing on Interests, Options, and Legitimacy before making a decision: either to pursue our **Alternatives** (what we can do to satisfy our own Interests away from the table and absent an agreement) or make a **Commitment** with the other party that specifies what both parties will or won't do.

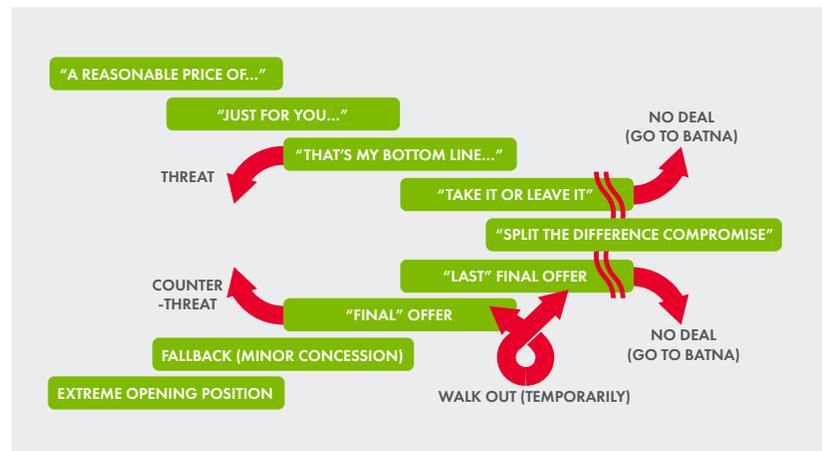
The Circle of Value approach is very different from what we call the **Positional Bargaining approach** (see graphic), in which the parties lock into (often extreme) positions and then haggle back and forth by making the smallest possible concessions and occasional threats.

That familiar approach often leads to suboptimal, arbitrary, lowest common-denominator negotiated outcomes, as well as damaged relationships. That approach might make sense in one-off deals where there is little value at stake and the relationship with the other party is not important. **The Positional Bargaining approach doesn't make sense in negotiations for humanitarian access with state and non-state actors.**

STANDARDS OF LEGITIMACY:

are especially important in humanitarian access negotiations because international humanitarian law represents a powerful objective criterion in support of emergency assistance. Effective references to the international norms and standards that govern emergency aid, as well as to humanitarian work in similar contexts (i.e. precedent), can persuade state and non-state actors to grant you access.

POSITIONAL BARGAINING: DANCE OF CONCESSIONS



Positional Bargaining in Action



Click video to watch in browser.



Negotiation Prep Tool

1. Related parties (counterparts, constituents, and others who may affect the situation.)
Consider drawing a diagram.

2. Important topics (subjects that need to be addressed)

Interests

3. List your and your organization's Interests, needs, concerns, hopes, and fears

4. List your counterpart's and their organization's Interests, needs, concerns, hopes, and fears

Options

5. List possible Options for each topic or major interest, looking specifically for solutions that could meet both parties' interests acceptably.





Legitimacy

6. Identify objective standards that could help you and your counterpart resolve conflicting Interests and choose among possible Options.

Your Alternatives

7. Identify your alternatives to a negotiated agreement (i.e. things you can do without their consent to meet your needs). Circle your BATNA (i.e. the Alternative that satisfies your Interests the best).

8. How can you improve your BATNA?

Their Alternatives

9. Identify their alternatives to a negotiated agreement (i.e. things they can do without your consent to meet their needs). Circle their BATNA (i.e. the Alternative that satisfies their Interests the best).

10. How can you test or, if appropriate, worsen their BATNA?

Commitment

11. What level of commitment do you want in your upcoming meeting(s)?

12. Do you and they have the authority to deliver that level of commitment? If not, who does?





Relationship

13. Consider your current working relationship and your ideal working relationship. If there's a gap, diagnose why it exists.

14. What can you do in your next meeting(s) to address that gap?

Communication

15. What questions can you ask to gather more information (for example, about their Interests) that would be helpful?

16. What information do you plan to share with them and how?





Consider the following general Do's and Don'ts for your humanitarian access negotiations:

Do the following

Do cultivate relationships and invest time with stakeholders by demonstrating respect to those in power, sharing useful information, showing familiar faces and consistent faces (sending same people instead of rotating), and leveraging local contacts and networks

Do coordinate with other NGOs to align on a negotiation strategy

Do maintain close coordination, in particular, with [ICRC](#)

Do cooperate and share information via third parties like [INSO](#) or local authorities so that key actors understand your mandate and mission

Do provide frequent updates to local government officials, as they'll be more likely to share information with you

Do use the [Stakeholder Mapping Tool](#) to both 1) identify members of your negotiation team and their roles, and 2) develop an optimal strategy for influencing

Do consider age, ethnicity, religion, sex, and ability—and how those intersectional identities are likely to be perceived by your counterparts—in the make-up of your access negotiation team

Do get multiple armed groups to agree to exactly the same terms (as a Standard of Legitimacy when negotiating with Group A, you can reference that Group B has agreed to these terms)

Do ensure that any agreement with armed groups is well-known within the group, and have staff carry a copy of the agreement with them and the phone number of the person in authority who made the agreement

Do work with a commander who has authority and is present in the operational area

Don't do the following

Don't try to go around / above the military to state authorities

Don't try to skirt around official channels by "sweet talking" soldiers at checkpoints on an ad hoc basis

Don't drive around in flashy 4x4s

Don't avoid engaging with the military, when it may be necessary to do so (directly or indirectly) to achieve your objectives

Don't attract attention by maintaining a large presence of expats, especially any nationalities that are generally unpopular

Don't rely on the UN to forge a path of access for all humanitarians, as the UN may rely on armed escorts, even for joint assessments

Don't show up late to meetings with government agencies, even if those meetings are just preliminary discussions

Don't assume that cultural norms would prevent women from being effective humanitarian negotiators. In practice, there is less documented resistance to the presence of women front-line humanitarian staff from traditional societies and more from institutional staffing biases

Don't disregard traditional and customary norms

Don't make promises you can't keep

Don't assume that appealing to religious beliefs or political views will generate a positive reaction



Dealing with Hard Bargainers

Lead the Way!

The vast majority of negotiators choose their approach to negotiation based on the approach you use. In other words, they react to you. You therefore have enormous power to lead the way and establish the method for how you, and they, will negotiate. In instances where you are in the position to do this, take a tough, “on-the-merits” approach to the **substance** of the negotiation (i.e. use the element of Standards of Legitimacy to explain why your organization deserves humanitarian access), while simultaneously building the **Relationship** with your counterpart by being trustworthy, transparent, and reliable.

Step Back and Diagnose What is Going On

Do not simply react. Figuratively step out of the negotiation for a moment to assess the dynamics. What “game” are they playing? Are they making threats? Are they demanding **Commitments** prematurely? Which of the Seven Elements are they using (and how), and which are they not using? Whenever a negotiation seems not to be going as well as you’d like, stop. Before reacting, try to understand the source and the nature of the problem. Then consider possible approaches to bring the negotiation back on track.

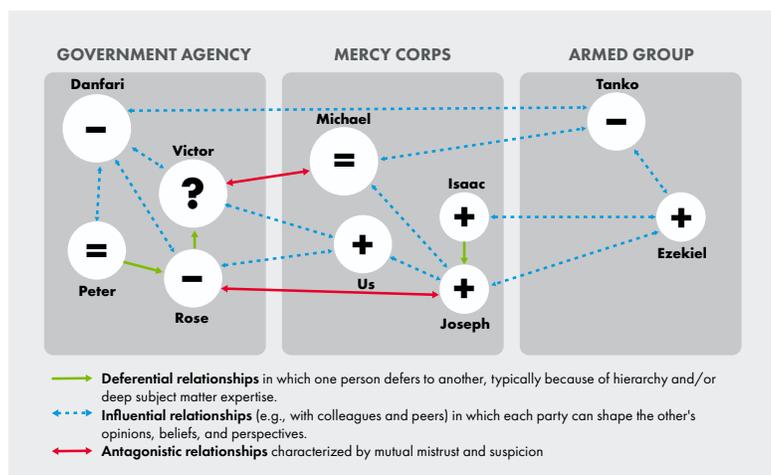
Make a Decision - Tolerate the Tactics or Change the Dynamic

Ask yourself if you want to play their game or change it. If you think you may simply need to go along with them for a while—to get their attention, to call their bluff, show them how unhelpful their tactics are, or meet their interest in negotiating that way—go ahead and do so. Just keep in mind that once you have achieved your objective (e.g., getting their attention), you may then want to change the dynamics.

Stakeholder Mapping for Multi-Party Negotiations

Humanitarian access negotiations are complex and involve many actors. Gaining the buy-in of the greatest number of stakeholders maximizes the likelihood that the implementation of negotiated agreements will be successful. However, consulting with every person affected by a negotiation can become an interminable process. Stakeholder Mapping is a preparation tool you can use at the start of your humanitarian access negotiations to analyze relationships and then determine how best to invest your limited time with stakeholders in what sequence. By mapping your sphere of influence and analyzing the relationships that exist, you can determine the optimal sequence of conversations to maximize the likelihood of getting approval for access.

STAKEHOLDER MAPPING





Here are the steps:

- 1. Identify the stakeholders.** Write the names of all key stakeholders within your team and within each entity with which you are negotiating. Consider the potential benefits and drawbacks of asking national or partner staff to try to help advance negotiations with armed groups by leveraging personal contacts. Decide on an approach and roles of each negotiation team member, and communicate them broadly so that the entire team is aligned. Remember to identify who within the counterpart entity could veto or derail a decision and whose support will be essential for implementation.
- 2. Assess where power resides.** Draw circles that correspond to the level of power or authority possessed by each actor. Consider those with informal power (based on expertise, experience, reputation, etc.). For your team, identify which staff are best positioned to influence your counterparts. Consider their identity, their home town / village, their experience, their skills, etc.
- 3. Analyze support and opposition.** Use a + sign if an actor is in favor of your proposal related to access. Use a – sign if they are opposed. = means they are on the fence. ? indicates that you don't know where they stand. To understand stakeholders' actual or likely opposition, consider the consequences the proposal would create for them.
- 4. Analyze relationships among stakeholders.** Draw lines between the parties to indicate relationship patterns of Deference, Influence, and Antagonism.
 - › Deference, marked by a one-way solid green arrow, describes a relationship pattern where Party A will almost certainly do what Party B does, or at least do what Party B advises, asks or directs Party A to do. In these cases, Party A defers to Party B's opinion or interest. There are many sources of deference, including power and authority, personal respect or admiration, mentorship, sponsorship, political power, strength, institutional seniority, expertise, status, reputation, etc. Ask the question: "Who, if anyone, defers to whom?"
 - › Influence, marked by a two-way dotted blue arrow, is a relationship pattern where Party A is likely to follow Party B's lead, or is likely to do what Party B advises, asks or directs Party A to do. There are many sources of influence, such as trust in judgment, good intentions, a successful track record, or shared interests. Patterns of influence can be identified on your map by posing the question: "Who, if anyone, can help secure agreement with others?"
 - › Antagonism, marked by a two-way solid red arrow, is a relationship pattern where Party A will not follow Party B's lead, or is likely to refuse what Party B advises, asks or directs Party A to do. There are many sources of antagonism, including mistrust of judgment, an unsuccessful track record, or conflicting interests. A question that can be asked to identify patterns of antagonism among the mapped players is: "Whose agreement, if anyone's, would prevent or preclude agreement with others?" Patterns of antagonism can also be tied to tensions that exist between parties. Identify these tensions and their relative strength as these could impact how parties interact with each other.

Consider the specific context as you analyze the relationship patterns.

- 5. Develop an influence strategy.** Implement a sequence of negotiations that helps you improve your influence and achieve your negotiation goals. Avoid blindsiding or working around someone who should be consulted. Use the following criteria to set up your strategy for achieving buy-in:



Efficiency

- › Look at the patterns of influence and deference to determine whose buy-in would lead many others to follow suit.
- › Identify a sequence of conversations that would create the most buy-in in the least amount of time and effort.
- › Be conscious of whether the influential parties are supporters.
- › Consider the most antagonistic relationships and how you can mitigate their impact on the negotiation.

Predisposition

- › Determine who will most likely support or hinder your negotiation plan.
- › Consider how these actors will impact other parties' decisions (e.g., an actor to which many defer who is antagonistic to your plan will cause an obstacle to overcome). In this case, consider other actors who can influence them.
- › Based on the three relationship types, consider how different actors will react to the negotiations and create a plan to mitigate negative relationships.

Accessibility

- › Identify whom you can realistically engage with to build support for the negotiation. Note that while there may be an ideal sequence of conversations, it may not be feasible due to political or relationship barriers. Brainstorm ways to circumvent a situation like this by leveraging other relationships with influential stakeholders.

› CONSIDERING GENDER:

Sex refers to the biological differences between men and women. Gender is a social construction that differentiates the distinct experiences of men, women, boys, and girls. Taking a gender perspective means asking how situations will differently affect men, women, boys and girls.

In situations of humanitarian crisis and armed conflict, it is sometimes assumed that men are primarily combatants and women are primarily victims or peacebuilders. This generalization overlooks that women often support armed conflict (e.g., combatants, cooks, informants, spies) and that men are often the targets of sexual violence. Avoid making such generalizations when mapping stakeholders and determining your influence strategy to ensure you're engaging with the right people for the right purposes.

Dynamic #1:

Government Officials Demand Information on Humanitarian Assistance as a Prerequisite for Access

Summary of tactic: State officials and/or bureaucrats sometimes deny authorization of assistance that does not adhere strictly to their specifications. For example, an INGO might be required to re-register when a government revokes registrations, citing the need for tighter control and coordination of humanitarian response within its jurisdiction. In these instances, officials may be motivated by a desire to maintain control or gain support within the local area by influencing your agency's projects. They may also be acting out of frustration because of a lack of understanding of INGO projects or a belief that INGOs haven't fulfilled



their commitments. The challenges of negotiating for access in this context include gaining access to the right officials, building support for access within a bureaucracy, and persuading actors to give up control.

I. Key Negotiation Counterparts

- › Senior officials (e.g., Vice Prime Minister in charge of coordinating humanitarian response)
- › National ministries (e.g., Ministry of Interior, Ministry of Foreign Affairs)
- › Crisis or Disaster Management Authorities (e.g., Provincial Disaster Management Authorities)
- › Officials from National Intelligence Services or police
- › Mayors and local government officials

II. What your Counterparts Might Say

“You must share with us the details of your beneficiaries, your plans, and align them with our priorities.”

“Any organization operating in the country must follow regulations outlined by the government.”

“The government has a right to know what you are doing and how you are spending funds.”

“We are trying to get an idea of who is doing what and we must coordinate humanitarian activities.”

“Before we grant access, we want to ensure activities do not compromise or threaten the state.”

“We are concerned about the safety and security of local populations; your presence could affect that.”

III. Analyzing these Tactics with the Seven Elements of Negotiation

This is a statement about what you must or must not do. They are therefore using **Commitment** to try to dictate the outcome by making demands without sharing why they are making them. We have to infer that they want to maintain control, exercise their authority, and obtain recognition of their legitimacy.

Here the government attempts to use **Legitimacy** by citing “regulations” and its “right to know” about your activities and spending. However, the government doesn’t share any objective criteria, so it is using one-sided Legitimacy that may not be persuasive to you.

These statements reveal that the officials are concerned about coordination of humanitarian efforts and the safety and security of the state and local populations.

This is a rare use of **Interests** in this context. Here they are sharing why they are concerned about your presence. Unlike many hard bargainers who lock into positions (i.e. Commitments) and make threats if you don’t comply (i.e. Alternatives), here the government is rather open about why they are restricting access to territory unless their demands are met.

IV. Understanding the Tactic: Why might your Counterparts be Doing This?

- › They may want to take credit for assistance provided by NGOs (which is easier to do if they have more control over NGO activities) and use it to their advantage in gaining community support and winning elections.
- › They may fear that NGOs support groups that are opposed to the government.





- › They may have a genuine concern with program quality because they realize they have little idea about who is doing what and where.
- › They may have issues with your approach to implementation/coordination (i.e., working too closely at town level rather than central government). Your assistance may focus on work with refugees, whereas the government may prioritize host community support instead.
- › They may want to increase their control over an area over which they do not currently have control (i.e., formerly dominated by insurgents).
- › Government staff turnover may be so high that the decision-makers are always changing.
- › They may assume that you are not familiar with government regulations and need to educate you.

V. Guidance on Responding to the Tactic: What to Do and Say

1. Share your **Interests** and ask about theirs to better understand the government's desire for regulation and detailed information.
 - › State clearly that your primary interest is accessing those in need, not accessing territory.
 - › Say, "Responding efficiently to this emergency is our highest priority. How would information about our plans and beneficiaries be helpful?"
 - › Say, "Help me better understand your concerns about compromising or threatening the state."
 - › Ask, "What are your goals when it comes to coordinating humanitarian activities?"
2. Move the conversation to **Options** that would satisfy your Interests as much as possible while satisfying theirs enough so that they want to say Yes.
 - › Ask a question that could bridge your and their Interests: "How can we work together so that you have the information you need to promote effective coordination and we are able to move quickly to assist people desperately in need?"
 - › Share some of your Options and ask for theirs, making clear that you're brainstorming before deciding: Say, "Let's brainstorm for a couple minutes before deciding what makes sense. I could imagine various ideas for how we might move forward. One option could be for us to provide the requested information as soon as the humanitarian crisis begins to ebb. Another option could be for a member of your team to accompany us on an upcoming trip to the field. What other ideas do you have?"
3. Use **Standards of Legitimacy** such as past successes and international humanitarian law (IHL) as a "sword" to support your argument:
 - › Refer to your track record and mission of providing life-saving assistance to vulnerable populations.
 - › In instances where you're asked to re-register, share the rationale (and any documentation) for why your registration was approved initially.
 - › If governmental interference prevents the free flow of relief services, remind officials that customary law guarantees access for humanitarian relief to civilians in need, as codified by [ICRC in rule 55](#). You may note that the parties to a conflict must allow and facilitate the rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control.



Watch a brief demonstration of Mercy Corps staff implementing this guidance.



Click video to watch in browser.

Dynamic #2:

Peer Agencies in Operating Location Withhold Access

Summary of tactic: Expanding operations or beginning programs in new areas can require negotiation with peer agencies to ensure access to target populations. Your agency might also need to collaborate with other organizations to ensure effective implementation or adhere to broader policies that dictate the provision of humanitarian assistance. For example, Program Managers that seek access to respond in a new geography and that arrive after peer agencies have defined areas of responsibility may need to negotiate with other agencies that claim to cover the area.

I. Key Negotiation Counterparts

- › Country Directors, Senior Program Managers, and Project Officers at peer agencies
- › UN Representatives and Coordinators
- › Committees / consortia of humanitarian aid actors

II. What your Counterparts Might Say

“We have already allocated areas of responsibility between organizations.”

“Changing the structure is difficult. We’d have to coordinate with all the other actors and organizations.”

“We don’t have the authority to coordinate with you. You have to go through senior managers.”

III. Analyzing these Tactics with the Seven Elements of Negotiation

While your agency may have institutional relationships with most of the humanitarian actors with whom you need to coordinate, that does not mean that you always have the individual **Relationships** that support strong collaboration. In this particular case, your peer agency counterparts are using difficult **Communication** by referring to a lack of authority but declining to play a coordination role to help you get to the decision-maker. They are therefore making the process of negotiation (i.e. Communication) challenging.



“We must follow procedures. We do not make decisions here on the ground; it has to come from the head country office.”

They are also using one-sided **Standards of Legitimacy** by citing a precedent (i.e. “We have already allocated areas of responsibility”) and referring to procedures that suggest an element of fairness, but without explaining what the procedures are and why they should apply to humanitarian decision-making in this instance.

IV. Understanding the Tactic: Why might your Counterparts be Doing This?

- › Peer agencies may fear that they will be held accountable for failures in others’ implementation.
- › Peer agencies may have had negative experiences in the past when multiple organizations have provided relief in the same location.
- › Peer agencies may fear that their ability to get positive attention for their work may diminish with another actor added to the mix.
- › Decision-making related to coordination with other NGOs may not actually take place in the field, and field staff may be afraid to make decisions that may have implications for the country program.

V. Guidance on Responding to the Tactic: What to Do and Say

1. Using the [Stakeholder Mapping tool](#) to draw our sphere of influence, identify which **Relationships** your agency already possesses with peer agencies, which you can leverage, and which you need to establish.

Explore their **Interests** to understand their possible concerns about coordination.

- › Ask, “What are your concerns about our involvement in this area?”
- › Ask, “What are your key goals over the next several months?”

3. Anticipating their concerns, share a couple of your key **Interests**: to contribute to effective coordination and avoid duplication of effort.

4. Move the conversation to **Options** that would meet their concerns and satisfy your Interests. Share some possible Options and ask for their ideas. Satisfy our Interests as much as possible while satisfying theirs enough so that they want to say Yes.

- › Say, “Let’s brainstorm some ideas to ensure effective coordination without committing or evaluating anything right now. One option could be regular meetings among peer agencies. Another could be to set up a working group. A third might be to conduct a joint assessment. What other ideas do you have?”

5. Use **Legitimacy** as a “sword” by sharing your success in similar contexts.

- › Describe how you’ve coordinated with other agencies in the past, and what has worked and not worked—both when you’ve been established in a location and other agencies have arrived later and when you’ve arrived after others had been established.
- › Ask other agencies how they’ve coordinated with their peer agencies in the past, and what has worked and not worked.



Watch a brief demonstration of Mercy Corps staff implementing this guidance.



Click video to watch in browser.

Dynamic #3:

Government officials restrict access to most vulnerable IDPs

Summary of tactic: In many emergency contexts, authorities restrict who NGOs can serve. For example, the government may prevent your agency from providing cash assistance to the most vulnerable IDPs or may try to limit aid to refugees who are registered with migration bodies or relevant authorities. Your agency likely wants to conduct your own assessments of vulnerable populations and meet their needs without restriction. Unfortunately, local authorities sometimes regard displaced populations as a problem and want to dictate how they can be treated, rather than giving NGOs the flexibility to help the most needy.

I. Key Negotiation Counterparts

- › Head of IDPs committee
- › Civil affairs manager
- › Governor representative for NGO affairs
- › Ministry of Displacement and Migration

II. What your Counterparts Might Say

“You must use the Ministry’s list of beneficiaries.”

“We’re going to take these IDPs to the formal IDP camp.”

“You are not allowed to interact with IDPs without the presence of the military/representatives.”

“At least 30% of beneficiaries should be from the host community.”

III. Analyzing these Tactics with the Seven Elements of Negotiation

All of the statements are demands about what you must do or not do. You are not given a sense of why they want these things or why it would be fair to agree to them. They are therefore using **Commitment** to try to dictate the outcome.



“You can’t carry out your own assessments or work with new arrivals. If you do, we’ll stop your cash transfer program.”

This is a move to their Best **Alternative** to a Negotiated Agreement (BATNA). They can do this to meet their Interests without your consent.

IV. Understanding the Tactic: Why might your Counterparts be Doing This?

- › Government officials may be unfamiliar with an NGO assessment and worry about what will be communicated to displaced persons.
- › Government officials may fear that NGOs will become more knowledgeable about the displaced persons situation than they are.
- › Authorities may believe they can best maintain control over the humanitarian situation by enforcing strict rules about what NGOs can and cannot do.
- › A government official may have been instructed by their boss to make these demands and be “tough” on NGO activities.
- › Authorities may want to maintain control and demonstrate that control. They may fear that information collected through assessments could jeopardize that control.
- › Government officials may not like that humanitarian assistance goes to displaced persons instead of host communities, which may be dissatisfied with the lack of services provided by government and therefore support the opposition.
- › Government officials may fear that assessments heighten community expectations without delivering tangible benefit.
- › Government officials may want to ensure you are not duplicating their efforts.
- › Government officials may want to ensure you are not carrying out any activities that they or their allies may perceive as anti-state.

V. Guidance on Responding to the Tactic: What to Do and Say

1. Share your **Interests** related to access to displaced persons and seek to better understand their key Interests.
 - › Share your Interests, such as identifying the most vulnerable populations, understanding the magnitude of humanitarian assistance needed, and ensuring you’re providing social support and health services to those who need them most.
 - › State clearly that your primary interest is accessing those in need, not accessing territory.
 - › Say, “Help us understand what is problematic about identifying new displaced persons not on the ministry list” or ask, “What are your concerns about our proposed approach?”
 - › If they threaten with their BATNA (Best Alternative to a Negotiated Agreement), move the conversation back to **Interests** by asking, “What would you achieve by suspending the cash transfer program?”
2. Move to **Options** to explore what might be possible.
 - › Ask, “What assurances would you and your colleagues need to feel comfortable with our assessment?”



- › Ask a question to bridge their Interests and yours: “How can we meet our needs of helping the most vulnerable with your need to ensure you receive relevant information about the displaced person population?”

3. Use **Legitimacy** to demonstrate the benefits of conducting an assessment of new displaced persons and/or continuing the cash transfer program without interruption.

- › Say, “In province X, our assessment enabled us to reach Y vulnerable displaced persons and provide them with much-needed assistance. Why would preventing such an assessment make sense here?”
- › Say, “Based on our experience with displaced persons, the cash transfer program will deliver X results. The consequence of not meeting the needs of new arrivals has been Y. What would be the rationale for not assessing and meeting their needs?”
- › Refer to internationally-accepted humanitarian guidelines such as the [UN OCHA’s Guiding Principles](#) on Internal Displacement, which “set forth the rights and guarantees involved in all phases of displacement, providing protection against arbitrary displacement and protection and assistance during displacement and during return or resettlement and reintegration.” Remaining open to persuasion, ask if there would be a rationale for not applying that international standard here.
- › Say, “Our targeting of beneficiaries is based on assessments of the most vulnerable populations. What criteria is the Government using to make recommendations on beneficiaries?”

4. Build the **Relationship** by noting that your agency respects the ministry’s laws and intends to obey them.

- › Say, “We have great respect for the ministry’s laws. We have a track record in this country since X of always following state directives, and we intend to continue doing so.”

Watch a brief demonstration of Mercy Corps staff implementing this guidance.



Click video to watch in browser.

Dynamic #4:

State Security Officials or Armed Groups Try to Restrict Safe and Free Access to Vulnerable Populations

Summary of tactic: To access vulnerable populations, your agency may need to negotiate with armed state security officials or armed groups to ensure secure passage for staff when moving through territory. Such security might rest upon discussions with specific individuals present that day or the formal agreement of armed actors in the territory. Spontaneous restriction of safe access to territory through security checkpoints can be implemented



by police, security forces, military officials, civilian task forces, informal leaders, or non-state armed groups. These actors may want to maintain control over a civilian population and fear the involvement of third parties. It's possible that they restrict access of NGOs to consolidate their power as the sole local authority. They may also distrust NGOs if they believe past interventions have not achieved their objectives.

I. Key Negotiation Counterparts

- › Military officials
- › Police
- › Armed groups

II. What your Counterparts Might Say

"We cannot ensure the safety of you or your staff."

"You can't go into this area without military escorts."

"You can only go on days and times of our choosing."

"We do not need any humanitarian support here."

"You must follow our protocols in this territory and clear all activities and actions with us."

"I don't have the authority to grant you access or ensure your safety."

"You must provide us with something in return for access and/or protection."

"We are working with the UN; you need to coordinate with them on access and/or protection."

"We do not want to be responsible for your safety."

› USING PERCEPTIONS TO YOUR ADVANTAGE:

*Your sex impacts how you're perceived in access negotiations. Women may be seen as less threatening and more legitimate. Women's use of non-threatening **Communication** and supporting arguments for access with **Standards of Legitimacy** can therefore bolster perceptions that play to their advantage while men's use of those skills may offset any tendency by their counterparts to view them as threatening and less legitimate.*

III. Analyzing these Tactics with the Seven Elements of Negotiation

The statements are positions or demands about what your agency must do or not do. They are therefore using **Commitment** to try to dictate the outcome because they are making demands without sharing why they are making them. Since they are armed and your agency likely is not, their implicit **Best Alternative to a Negotiated Agreement** is to harm or detain you. The only Interest disclosed here is the final statement about their desire to avoid being held responsible for our safety.





IV. Understanding the Tactic: Why might your Counterparts be Doing This?

- › They want to maintain control and demonstrate that control through armed force. They may fear that involvement of NGOs could jeopardize that control.
- › They may fear that you support groups opposed to them.
- › They may fear that your agency is in some way affiliated with the state apparatus.
- › They may not be familiar with international humanitarian laws.
- › They may see little benefit to the intervention and instead may believe that it will heighten community expectations without delivering tangible benefit.
- › They may want to increase their control over an area over which they currently have limited control (i.e., formerly dominated by insurgents / government forces).
- › Turnover within their organization may be so high that the decision-makers are always changing. These new individuals change policy regarding your agency's access.
- › Poor counterpart communication may mean that individuals guarding the checkpoint have incomplete information from superiors regarding access authorization granted to your agency.
- › Authorities may believe that the best solution for displaced persons is return and resettlement, rather than prioritizing NGO assistance to displaced person communities.
- › They may believe they can best maintain control by enforcing strict rules about where NGOs can go and what they can and cannot do.

V. Guidance on Responding to the Tactic: What to Do and Say

1. Explore the **Interests** and concerns behind any of their requests so that you can consider whether it might be possible for you to satisfy those interests without compromising humanitarian principles, endangering staff, and violating material support statutes.
 - › Ask, "What is your concern about us entering without military escorts?"
 - › Ask, "Why would be the benefit of restricting the times of our access?"
 - › Ask, "What do you hope to achieve by preventing us from moving through the checkpoint?"
2. To increase the likelihood that they share their Interests, share yours, including adhering to humanitarian principles, assisting those who need it most, and ensuring the safety of your staff.
3. Discuss a range of possible **Options** to meet their **Interests** and satisfy yours. While these options may sometimes include 'agreements' or 'conclusions' about your engagement process, they also include messages you communicate to meet their concerns while enabling you to achieve your goals. For example:
 - › They could grant unhindered access to areas under the control of parties to the conflict
 - › You could provide publicly available information about your agency
 - › You could share information on planned humanitarian activities in areas under the control / influence of a party to the conflict





- › You could create a joint protocol (carefully translated into relevant languages to ensure no uncertainty regarding meanings) by which your agency and the armed group agree to terms, such as:
 - They ensure access and free passage (laissez passer) through checkpoints. (Make sure you know when and where the laissez passer will work and where it is a problem.)
 - You forego armed escort or other accompaniment that would place at risk your impartiality
 - They agree not to request beneficiary lists or otherwise interfere with beneficiaries’ participation in your activities
 - Both your agency and the armed group create a mechanism to re-engage to solve problems
- › You could agree to return later, perhaps when another armed group decision-maker you’ve communicated with in the past will be present.
- › You could involve community representatives as observers to negotiations.
- › Say, “Entering only on days and times of your choosing is one option. Another option is for us to jointly arrange a schedule that we would stick to. A third option is for us to send you a schedule of our planned visits, and you could communicate whether there are any issues with that. What other ideas do you have?”

4. Share objective **Standards of Legitimacy** about your agency’s policy and precedent that might persuade them to agree to the options above:

- › Inform them that your agency applies a standard approach globally, and that you never **barter humanitarian principles, donor requirements, or laws in exchange for access.**
- › If you’ve been granted access to this area in the past, remind them of that and the rationale for giving access, and ask what has changed.
- › If you are able to access a nearby area that seems similar, inform them of that and ask why this area is different.
- › Inform them about your standards for delivering aid, specifically how you select beneficiaries in consultation with local communities.
- › Share the mission of your agency.
- › Share your track record of success in this country.

5. If you believe the armed groups maintain a political agenda and/or care about their public image, moral authority, and sources of legitimacy, then share objective **standards of legitimacy** related to IHL.

- › Inform them that where lack of relief would result in starvation, refusing relief in territories they control would violate IHL.¹
- › Inform them that the following customary law applies in all situations of armed conflict: “The parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in

¹ Article 54§1 of Additional Protocol I (AP I) to the Geneva Conventions (GC) of 12 August 1949: “Starvation of civilians as a method of warfare is prohibited.” See also rule 53, ICRC Customary IHL Database, http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule53 (via “Humanitarian Access in Situations of Armed Conflict: Handbook on the International Normative Framework”, Version 2, December 2014)



need, which is impartial in character and conducted without any adverse distinction, subject to their right of control.”² Ask if there’s any reason that standard wouldn’t apply in this situation.

- › If the armed group has signed a [Deed of Commitment](#) stating that it adheres to universal humanitarian norms (for example, unimpeded passage of humanitarian relief), consider reminding them of that. However, it is important to keep discussions about signing Deeds of Commitment separate from discussions about negotiating access. Especially in asymmetrical environments where you are engaging with more than one group or operating across frontlines and in territory controlled by opposing groups, it is important to seek the minimum necessary outcome from engagement.
6. Consider your **Alternatives** to an agreement with the relevant armed group.
- › Consider whether you can come back later, even if you don’t discuss this explicitly.
 - › Consider whether there is someone else on your team who might be better-positioned to persuade the armed group.
 - › Consider whether there is an external actor (e.g., community leader, respected and neutral person in the community, other NGO representative) who knows and values your work and might be able to advocate on your behalf. For example, in South Sudan, an active member of the UN OCHA Access Working Group leveraged its relationship with UN OCHA mediators to convince them to persuade rebel groups to stop imposing illegal taxes.
 - › Consider whether there is someone else within the armed group who you can talk to at another time who might be more sympathetic to the plight of beneficiaries and to your mission.
 - › If gaining access here seems overwhelmingly unlikely, consider whether you can redouble your relief efforts in another critical geography where access is less constrained.



Click video to watch in browser.

² See Rule 55 of the ICRC International Customary Law Study. http://www.icrc.org/customary-ihl/customary-ihl/engdocs/v1_rul_rule55. For information on what is a customary rule, see Chapter 2. (via “Humanitarian Access in Situations of Armed Conflict: Handbook on the International Normative Framework”, Version 2, December 2014)



Testing Knowledge: Negotiating for Humanitarian Access Quiz

1. What are the Seven Elements of the negotiation framework?

- a. Competing, Accommodating, Compromising, Collaborating, Exploring, Pursuing, Delaying
- b. Interests, Options, Legitimacy, Alternatives, Commitment, Relationship, Communication
- c. Preparation, Motivations, Conduct, Solutions, Agreement, Success, Review

2. Which of the following is NOT good advice for using Options?

- a. Take advantage of different Interests to explore possible solutions that are high value for you and low cost to them and others that are high value for them and low cost to you
- b. Commit to an Option as soon as you find one that's good for you and that they are willing to accept
- c. Share multiple Options and ask for their ideas
- d. Generate as many Options as you can without evaluating them

3. The following are examples of which Element: International humanitarian principles, Sphere standards, and precedents such as the previous grant?

- a. Interests
- b. Options
- c. Legitimacy
- d. Alternatives

4. Which of the following is a key guideline on Relationship?

- a. Separate relationship from the substance (e.g., price, volume) of what you're negotiating
- b. Demonstrate understanding of your counterpart's perspectives, even if you don't agree
- c. Do what you say you're going to do
- d. All of the above

5. What should we remember about Alternatives?

- a. Always try to reach an agreement before considering your Alternatives to an agreement
- b. Threaten to go around them if they keep saying "No" to what you're asking
- c. Never agree to something that doesn't satisfy your Interests as well as your BATNA satisfies your Interests
- d. If they're over-estimating the strength of their BATNA, there's no value in continuing the negotiation.

6. Pleasing your manager, saving face, and getting a promotion are examples of what?

- a) Individual Interests
- b) Organizational Interests
- c) Individual Alternatives
- d) Organizational Standards of Legitimacy





Testing Skill: Using the Circle of Value to Respond to Difficult Statements

Practice responding to difficult statements you might hear from a government counterpart, a member of a non-state armed group, or a peer agency. See how your responses compare to our “model responses,” which are designed to move the conversation “into the Circle” where the discussion is most likely to produce a good outcome.

Moving to Interests

Interests 1/5

Difficult statement: “You must share the details of your project with the government.”

Type your concise response that moves the conversation to Interests here.

Interests 2/5

Difficult statement: “No one is permitted to move beyond this security checkpoint.”

Type your concise response that moves the conversation to Interests here.

Interests 3/5

Difficult statement: “You must strictly adhere to the list of beneficiaries provided by this ministry.”

Type your concise response that moves the conversation to Interests here.

Interests 4/5

Difficult statement: “I want 500 kits for distribution.”

Type your concise response that moves the conversation to Interests here.





Interests 5/5

Difficult statement: “I’ll revoke your permission to access this territory if you do not share your sources of funding.”

Type your concise response that moves the conversation to Interests here.

Moving to Options

Options: 1/5

Difficult statement: “The only way I can let you past this checkpoint is if you go with a military escort.”

Type your concise response that moves the conversation to Options here.

Options: 2/5

Difficult statement: “You cannot conduct an independent vulnerability assessment here.”

Type your concise response that moves the conversation to Options here.





Options: 3/5

Difficult statement: “We have already designated spheres of responsibility between peer humanitarian aid organizations. There is no space left for your agency’s activities.”

Type your concise response that moves the conversation to Options here.

Options: 4/5

Difficult statement: “Given this issue, the only solution is for you to cease the current cash transfer program in this region.”

Type your concise response that moves the conversation to Options here.

Options: 5/5

Difficult statement: “You can access this territory only on dates and times of our choosing. Stop being pushy!”

Type here a concise response that moves the conversation to Options here.





Moving to Legitimacy

Legitimacy: 1/5

Difficult statement: “You cannot conduct an independent vulnerability assessment here.”

Type your concise response that moves the conversation to Legitimacy here.

Legitimacy: 2/5

Difficult statement: “Our government has prohibited the operation of all humanitarian aid organizations indefinitely.”

Type your concise response that moves the conversation to Legitimacy here.

Legitimacy: 3/5

Difficult statement: “You cannot move beyond this checkpoint now because it is unsafe. A motorcade was attacked five days ago.”

Type your concise response that moves the conversation to Legitimacy here.

Legitimacy: 4/5

Difficult statement: “The list of acceptable beneficiaries provided by this office is sufficient.”

Type your concise response that moves the conversation to Legitimacy here.





Legitimacy: 5/5

Difficult statement: “Your agency has more than enough access to vulnerable populations; this is just like Mercy Corps to make unreasonable demands. It’s time to allow our organization the opportunity to work here.”

Type here a concise response that moves the conversation to Legitimacy here.

Respond with a three-element move into the circle: Relationship, Interests, and Options

Difficult statement: “If you really cared about the Ministry, you’d double the percentage of cash transfers going to host community households. If you don’t, find another governorate to work in.”

Type here a concise response that makes a three-element move into the circle here.





Additional Guidance on Engaging with Armed Groups

NGOs often need to conduct access negotiations with non-state armed groups (NSAGs), which operate outside the formal military structures of states (and therefore include paramilitaries and vigilante groups) and may use arms to achieve political, ideological, or economic objectives. Unlike traditional bargaining, such negotiations do not imply a “give and take” or even an agreement, but rather a discussion of underlying motivations and ways to satisfy them. Our guidance for engaging with armed rests on the following five pillars:

Pillar 1: Adhere to Humanitarian Principles, Donor Requirements, and Laws

The overarching principle for engagement with armed groups is to **never barter humanitarian principles, donor requirements, or laws in exchange for access.**

Humanity, neutrality, impartiality, and operational independence are fundamental principles that guide agencies in carrying out humanitarian activities. We need to ensure that we, as well as those who negotiate on our behalf, uphold these principles when engaging armed groups. The principles below are also endorsed by the [ICRC Code of Conduct](#).

- › **Humanity:** Human suffering must be addressed wherever it is found, with particular attention to the most vulnerable populations, such as children, women, and the elderly. The dignity and rights of survivors must be respected and protected.
- › **Neutrality:** Humanitarian assistance will be provided without participating in hostilities or taking sides in controversies of a political, religious, or ideological nature.
- › **Impartiality:** When humanitarian assistance is provided, it will be without discrimination on the basis of ethnic origin, political opinion, gender, nationality, race, or religion. Provision of assistance is guided solely by needs, and priority is given to the most vulnerable cases.
- › **Operational Independence:** Humanitarian activities must be autonomous from the political, economic, military or other objectives that any actor may hold with regard to areas where humanitarian activities are being implemented.

These longstanding principles are the cornerstone of humanitarian operations, and are derived in varying degrees from international humanitarian law (IHL), human rights law, and a UN General Assembly Resolution (Resolution 46/182 (19 December 1991)). These principles are part of codes of conduct (see “The Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief” in Annex 2, page 368, of the SPHERE Project: Humanitarian Charter and [Standards](#)) and organizational mission statements guiding humanitarian organizations.

While NSAGs in internal armed conflicts are required by common Article 3 of the 1949 Geneva Conventions to respect humanitarian obligations, many clearly don’t feel compelled to adhere to such protocols. If framing the discussion around humanitarian standards yields little progress, consider noting that the principles are based on ethics and morality, and have roots in all monotheistic religions (for example, Islamic law differentiates between combatants and non-combatants, and explicitly requires all Muslims to protect civilians in war zones), while recognizing that such a move may trigger a strong negative reaction in some contexts.





All countries that have signed on to the Geneva Conventions are required to structure their laws to protect principled humanitarian action. While the Geneva Convention may be little known or understood in many countries where we work, strict adherence to these principles is often the best defense against hostile action by donor governments, host countries, and foreign states.

Specifically, you should not accept armed actors' requests to:

- › **Obtain taxes, duties, or any other form of payment** or benefit related to aid deliveries or humanitarian services to beneficiaries. If authorities legally require payment of taxes and duties, the formal procedures and requirements for doing so should be publicly available. (If they're not available, ask why not). Even if such fees are imposed by law, if the armed group is a designated terrorist organization or a sanctioned entity, you cannot make such payments unless you are specifically authorized to do so by a U.S. Office of Foreign Asset Controls license.
- › **Obtain personal information about beneficiaries.** You should protect the privacy and dignity of recipients of humanitarian assistance.
- › **Influence the selection or management of your staff, local partners, vendors or other key stakeholders.** You should ensure your independence is respected by all parties. You should not allow any armed group to influence who you hire (e.g., a family member) or with whom you transact. We should not, for example, hire a company owned by a close associate of an armed group if you are aware of the association and there is any indication that the armed group would view the hiring/firing of the company as a factor in its decision-making regarding access. Allowing an armed group to have that influence could violate criminal material support laws, anti-bribery laws such as the [UK Bribery Act](#), donor requirements, and anti-fraud laws. Allowing an armed group to have this influence would also violate the principle of impartiality. Practically speaking, once this influence is gained, it can quickly become impossible to undo.

Such influence would pose ever-increasing security risks to staff and may result in full agency withdrawal from an area. In the past, the loss of donors' trust has resulted in their withdrawal of funding from all organizations for a particular area.

- › **Provide armed or other escorts** for humanitarian vehicles or personnel that would compromise your impartiality. The presence of such escorts could create a misperception that your agency is a part to the conflict and/or aligned with a key actor. Similarly, you should not transport the group's staff, friends, and/or relatives — regardless of whether they are armed and/or uniformed — via your vehicles or convoys. Doing so could endanger your safety and/or compromise your impartiality.
- › **Influence the content or findings** of needs assessments or other questionnaires. You should maintain independence and assess needs impartially so they are credible and acceptable to the international community and beneficiaries.
- › **Receive humanitarian assistance.** Under IHL, only wounded combatants without weapons are considered hors de combat ("outside the fight") and may be treated by medical agencies.
- › **Take control of humanitarian stores,** commodities or warehouses.

If you instead uphold humanitarian principles, you enhance a reputation that will help you gain access in the future.





Adhere to Donor Requirements and Laws

There are no donor government legal restrictions on communicating with armed groups. Under international humanitarian law (IHL), discussions about access do not confer recognition or legitimacy on any party. However, there are many legal restrictions on give-and-take bargaining between humanitarian agencies and armed actors. **Providing anything of value to an armed group, or allowing an armed group to influence who you hire, contract with, or assist** could violate terms of your grant agreements, criminal prohibitions, and material support statutes. If you are not honest about what is provided, you might also be engaging in fraudulent activity. You should pay particular attention to these restrictions when engaging an armed group that violates human rights. Under the U.S. "Leahy Law," there is a prohibition on material support to foreign military units or individuals suspected of committing "gross human rights violations" such as extrajudicial killing, rape, torture, and forced disappearances. You should not provide assistance to a foreign military unit unless the State Department has vetted it to ensure it has a clean human rights record. You should also consider these restrictions when engaging an armed group that is a designated terrorist group or a sanctioned entity, or is affiliated with, uses its resources to support, or is owned or controlled by such a group. In the United States, acts that are "material support" of terrorism include the provision of lodging, training, expert advice or assistance, communications equipment, facilities, personnel, and transportation.

To protect against this outcome, take the following steps when operating in areas where NSAGs are present:

- › Understand and document the various means by which resources could fall into the hands of such a group. For example, could they control the bakery where you are sending flour? Do they control the local council that assists with identifying beneficiaries? Will they require approval for whom and how you conduct distributions? Do they require tolls at checkpoints?
- › Document the comprehensive methods used to understand who we are working with (sub-grantees, partners, vendors, communities, etc.). Think holistically about all of the various information streams to understand how we know who an entity or organization is, who they are owned or controlled by, and whether the entity or its owners / key personnel in control are tied to an armed group.
- › Understand and document all other risk mitigation measures (such as program monitoring, community acceptance efforts, formal and informal reference checks, security information, and avoidance of checkpoints where tolls are required) to prevent diversion to or transactions with an NSAG.
- › Work with your legal, finance, and compliance teams to develop a document that lays out the risks and mitigation measures -- this will be a key document that donors will request. Ensure that you follow an established plan, and that you regularly review and update the plan as the situation changes.

Pillar 2: Analyze the Reduced Access Context

Contexts where negotiations with armed groups are necessary are often characterized by heightened risk, and in many cases, reduced access to locations and program participants. Understanding the constrained context is a good starting point for developing an engagement strategy. A thorough analysis of the context should include an assessment of needs, threats, and vulnerabilities. You want to answer several key questions:

- › What are the risks you face in the specific geographic area?
- › What are the trends (political, conflict, ethnic, socio-economic, and ecological)?
- › What actors constitute a direct threat? Do you know all actors (armed and not) in this environment and understand their motivators, benefactors, and profiles?





- › How can you mitigate this threat, taking into account acceptance, protection, and possible support from other actors? What is your security strategy?

In highly insecure areas, convene frequent meetings of senior management and security management teams that are well-positioned to analyze the context and explore the impact of your actions on the political and military landscape.

Pillar 3: Analyze the Context of Engagement with Armed Groups

Should your agency engage with armed groups? It depends. Systematically analyze whether it makes sense by analyzing the context with external stakeholders and then analyzing dynamics that involve your armed group counterparts:

1. Analyze Context with External Stakeholders, Including Key Risks

Before deciding to engage an armed group, consider whether these discussions could damage key relationships with external stakeholders such as donors, local authorities, and program participants. Would it be problematic if external stakeholders found out about your communication with the armed group? Would there be reputational damage to your agency, or would this negatively impact your programs? If you are operating in an area controlled by one armed group and want to gain access to an area controlled by an opposing armed group, consider how negotiations with the opposing armed group might affect your operations in the original area. Consult the [Stakeholder Mapping](#) section for guidance on analyzing key actors and their relationships to determine who to communicate with and in what sequence.

2. Analyze Dynamics that Involve your Armed Group Counterparts

The Seven Elements of Negotiation framework (see table below) provides a useful guide to determining whether engaging armed groups makes sense.

Element of Negotiation	Considerations to Take into Account
Relationship	<ul style="list-style-type: none"> › Do you have enough of a relationship that you can reasonably expect to influence them? › If not, do you believe that such a relationship can be built?
Communication	<ul style="list-style-type: none"> › Do you have a pathway to open, regular, and honest communication? › Would it be problematic if other armed actors found out about your communication with the armed group? › Do you have reliable contacts of the top leader and know how to reach him /her directly if needed?





Element of Negotiation

Considerations to Take into Account

Interests	<ul style="list-style-type: none"> › What do they want and could you satisfy those needs without running afoul of humanitarian principles? › What are the potential upsides for you (e.g., access to vulnerable populations)? › What are the potential downsides (e.g., putting your staff and/or reputation at risk)?
Options	<ul style="list-style-type: none"> › How likely is the group to be open to exploring creative options that would result in a better outcome for you than the status quo?
Legitimacy	<ul style="list-style-type: none"> › Do you have an opportunity to persuade them using standards such as core humanitarian principles and international law?
Alternatives	<ul style="list-style-type: none"> › What are the negative consequences if you don't negotiate with them (i.e. what is your Best Alternative to a Negotiated Agreement, or BATNA, and theirs?) › What are the negative consequences for you (e.g., endangering your staff) if they go to their BATNA after you start negotiating?
Commitment	<ul style="list-style-type: none"> › What does the chain of command look like? › Do they have the authority to do what you want them to do, and are they present in the operational area? › Are they likely to do what they say they're going to do?

Based on these analyses, you can develop security strategies and make program adjustments to reduce risk while ensuring access. Teams within your agency should identify who will manage these relationships and ensure that the designated team is well-informed regarding their legal, ethical, and humanitarian principle obligations. The team responsible for the relationship, meetings, and communication with the armed group should, to the extent possible, always involve two agency team members.

Pillar 4: Use a Principled Approach to Negotiate for Access

View the guidance [here](#).





Pillar 5: Coordinate with Peer Agencies to Adopt a Unified Approach

When the International Committee of the Red Cross is not present and when many actors are simultaneously providing assistance and interacting with armed groups, work with peer agencies to ensure a coordinated approach to engaging armed groups. Otherwise, one or many agencies may be more likely to barter humanitarian principles, donor requirements, or laws in exchange for access, setting a dangerous precedent and potentially violating the law. For example in Syria, some agencies allowed armed groups to serve as escorts and allowed ISIS to access their agency operations in exchange for humanitarian access.

One of the best ways to ensure other agencies adopt your approach to strict adherence to humanitarian principles, donor requirements, and laws is to develop joint operating principles or protocols to be signed by all humanitarian actors operating in an area and interacting with armed groups. Consider seeking agreement first from organizations most inclined to support such an effort so that entities likely to be resistant may be persuaded by the number of groups that have signed on to the protocols.

For example, the humanitarian community in Yemen outlined an agreement for the principled delivery of humanitarian assistance in Yemen, [“Joint Operating Principles of the Humanitarian Country Team in Yemen.”](#) The humanitarian country team also agreed a common approach for sharing beneficiary information with national authorities.



CONTACT

JOE BUBMAN

Technical Lead | Peace and Conflict

jbubman@mercycorps.org

ERYNN CARTER

Senior Director | Humanitarian Leadership & Response

ecarter@mercycorps.org

JENNY VAUGHAN

Peace and Conflict Director

jvaughan@mercycorps.org

About Mercy Corps

Mercy Corps is a leading global organization powered by the belief that a better world is possible. In disaster, in hardship, in more than 40 countries around the world, we partner to put bold solutions into action — helping people triumph over adversity and build stronger communities from within. Now, and for the future.



45 SW Ankeny Street
Portland, Oregon 97204
888.842.0842

mercycorps.org