

NEGOTIATED ACCESS

HUMANITARIAN ENGAGEMENT WITH ARMED NONSTATE ACTORS

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Executive summary

This essay analyzes the meaning of the term ‘negotiated access’ in the context of the provision of humanitarian aid in war zones and its transformation over the time in the changing context of conflicts. It concentrates in particular on humanitarian engagement with Armed Non State Actors (ANSA) in the context of collapsed, failed or weak states, and analyses the various modes of control ANSA exercise over population to sustain their survival strategies. The essay identifies the dynamics of humanitarian engagement and the minimum criteria for negotiations as well as various techniques and methods to assess and evaluate the effectiveness of humanitarian engagement and negotiated access . A risk –benefit model indicates when humanitarian engagement is conducive, doubtful or unwarranted. It concludes with the recommendation that enhancement of analytical skills of humanitarian practitioners are prerequisite for any successful negotiation.

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GLOSSARY OF TERMS

ACF	Action Contre la Faim (Action Against Hunger)
ADF	Allied Democratic Front
AFRC	Armed Forces Ruling Council (Sierra Leone)
ANSA	Armed Non State Actors
AUC	Autodefensas Unidas de Colombia
DRC	Democratic Republic of Congo
ELN	Ejército de Liberación Nacional (Colombia)
EPLF	Eritrean Popular Liberation Front
FARC	Fuerzas Armadas Revolucionarias de Colombia
GoS	Government of Sudan
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
LRA	Lord Resistance Army (Uganda)
MDC	Movement Démocratique de Congo
MPLA	Movimento Popular de Liberação de Angola
MSF	Médecins Sans Frontières
NGHA	Non Governmental Humanitarian Agencies
NGO	Non Governmental Organization
NRM	National resistance Movement (Uganda)
OLS	Operation Lifeline Sudan
PMC	Private Military Corporations
PSC	Private Security Companies
RPF	Rwanda Patriotic Front
RUF	Revolutionary United Front (Sierra Leone)
SG	Secretary General
SPLA	Sudan Popular Liberation Front
SPLM	Sudan Popular Liberation Movement
TPLF	Tigrean Popular Liberation Front
UN	United Nations
UNSC	United Nations Security Council
UNSG	United Nations Secretary General
UNITA	União Nacional de Independência Total de Angola

Introduction

In October 1996, at the height of the Congolese ADFL-rebel offensive in Kivu, humanitarian agencies attempting to access the refugee camps in Goma were prohibited by Rwanda's military at the Giseny border crossing. According to the representative of a humanitarian agency speaking to an Ambassador of a European country, the latter had asked Paul Kagame, leader of the Rwanda Patriotic Front (RPF), why he was denying passage to humanitarian agencies. According to the account, Kagame replied as follows: When we fled Rwanda to Uganda in 1959 we knew the NGOs very well, we used their logistics and means of communications to our advantage. Why should I assume that they (Interahamwe and the ex-Rwandan Army) will not do the same? Kagame, a crafty strategist and charismatic commander of a former armed opposition turned state leader, was experienced both in warfare and politics, but obviously familiar with the dynamics of humanitarian action in conflict zones. His remark, however blunt, frankly expresses the interaction between humanitarian agencies and Armed Non-State Actors (ANSA), inclusive of the function aid can play in the goals of (political) opposition.

Though the Geneva Conventions prescribe the right of humanitarian access as an obligation to warring parties, such access is thus far from guaranteed. Contacts with warring parties to negotiate humanitarian access are therefore necessary. In general such contacts aim to satisfy a single purpose: to obtain safe access to civilians for the provision of humanitarian aid in accordance with rules of International Humanitarian Law (IHL). While securing such access with states and governments has proven to be problematic, the rise of ANSA in the context of weak, failed or collapsed states adds new challenges to humanitarian access with a particular concern for the protection of civilians.

ANSA often deliberately breach the principles of IHL as a distinctive part of their strategy, mainly by the deliberate targeting civilians and the blurring of the fundamental distinction between combatants and non-combatants. These characteristics in themselves render IHL dysfunctional in such contexts. This does not mean that IHL lost its meaning, setting the principles for the provision of humanitarian aid, but that its application has become particularly problematic given the way civilians are implicated in conflicts. Negotiation with armed groups to comply with IHL rules seems to be rather pointless as the logic of conflicts is often driven precisely by breaking IHL principles. As IHL and its underlying humanitarian principles of impartiality and neutrality are regarded as non-negotiable this raises the question what 'negotiated access' precisely means.

Is negotiation to be regarded as bartering? If so, what can be exchanged or ceded? Which mechanisms characterize negotiated access? Are there general criteria and principles to guide engagement with ANSA and access negotiations, and are there situations when negotiated access is to be considered as unwarranted?

This essay identifies negotiation as a balancing act between the internal interest of respectively ANSA and humanitarian agencies, expressing a mutual interest to accommodate respective (internal) pragmatic goals, such as security for aid workers by humanitarian agencies; or control and credibility by ANSA. The dynamics of negotiated access are hence formed by these interests on basis of which the decision of engagement is taken. Negotiated access is thus not the product of principled-driven bartering but rather a dynamic process, implemented under the imperfect conditions of conflict, where the interaction between humanitarian actors and ANSA itself feeds and forms the system of negotiation.

Conceptually, negotiated access can be understood as an antonym to access by coercive means. Thus viewed, 'negotiated' suggests a notion of agreement or consent. Traditionally such agreements are made between opposing warring parties, but as will be shown, the receding interest of states in so-called 'non-strategic' conflicts and the rise to dominance of ANSA in such conflicts, left Non-Government Humanitarian Agencies (NGHA) to negotiate access with ANSA directly. As consequence, (informal) access agreements are made between ANSA and NGHA - both non-state actors, rather than between belligerents. Recently, in the wake of the 'War on Terror', new types of ANSA emerge which are not inclined to engage with NGHA at all. Quite the contrary, they regard humanitarian agents as deliberate targets in their strategy of destabilization. A reversal of the former situation looms. In contrast with 'non-strategic' conflicts, where NGHA were largely left to deal with access on their own, contemporary conflicts are saturated with strategic interests of intervening states. As result, NGHA are drawn into the heart of the political dimensions of these conflicts which effectively undermines any engagement or negotiation possibility with involved ANSA.

Seen from the operational perspective, access is contingent on two fundamental preconditions: the safety and security of aid workers, and respect of warring parties for the rules of IHL. In the latter, two guiding principles are of importance: the principle of *impartiality*; stipulating that aid is provided on the basis of need criteria, devoid of religious, racial, ethnic or political distinction; and the principle of *neutrality*: stating that aid should not advance the interests of any party to the conflict. Over the last decade a third precondition surfaced, concerning the protection of civilians in the context of genocide and ethnic cleansing and deliberate abuse of civilians by warring parties.

The operational reality has proven hard to fulfill these preconditions, in particular in conflicts where control over civilians forms the key objective and even the rationale of war. These conflicts occur mainly in the context of internal wars in weak, fragmented collapsed or failed states featuring a dominant role of ANSA. Hence, ANSA are also determinant actors in the dynamics of humanitarian access and thus main counterparts in negotiated access. More than just inevitable, engagement with ANSA has become crucial to the successful operations of humanitarian aid. Humanitarian engagement with ANSA prompts the question whether engagement will fulfill the above mentioned fundamental preconditions of humanitarian access. The key to this question is to identify the openings which can influence the behavior of ANSA and their combatants. These openings seem to hinge to a high degree on the attitude ANSA hold towards civilians concerned; their overall objectives and the degree and mode of control and command of ANSA.

Negotiating access, seen as the informal agreement between ANSA and NGHA, therefore means 'influencing behavior' of combatants with regard to the security of aid workers and their respect for basic rules of IHL, in particular respecting the protected status of civilians. In the last, the distinction between combatants and non-combatants, fundamental to the Geneva Conventions, is of particular importance. Since the degree of reliance of ANSA on civilians (support) varies significantly in different conflict situations, it indicates the importance of studying the various types of relations between ANSA and civilians, since reaching the last is the main cause for humanitarian operations.

Approach and method

Since ANSA have become dominant actors in contemporary conflict they are also crucial in the dynamics of negotiated access. As stated above, in ‘non-strategic’ conflicts, the negotiation of access is left to the care of humanitarian actors such as the UN, ICRC and NGHHA, rather than involving (third) states . In contrast, in strategic conflicts such as in Iraq and Afghanistan, the abundance of strategic interest of intervening states prompt ANSA to include humanitarian agents as strategic proxy -targets. Both situations highlight the divergent dynamics of humanitarian access and engagement options with ANSA.

Duffield, stresses the methodological importance of taking a systemic rather than a mechanic approach in terms of ‘root causes’ and effects in the analysis of (new) conflicts, stating that the last should be viewed as ‘living systems’ (Duffield, 2002). In Duffield’s view, humanitarianism has developed a particular response which he brands as ‘new humanitarianism’. By negotiating access with warring parties, aid agencies are able to provide humanitarian aid directly to populations within war zones. Negotiating access provided a neutral language through which humanitarian needs can be addressed without appropriating blame (Ibid, pp.4-5; 89).

Following this argument suggests approaching the dynamics of negotiated access - that is the interaction between humanitarian agents and ANSA, as a living system rather than barter, offer-response mechanism. The hypothesis of this approach thus assumes that engagement between ANSA and humanitarian actors itself feeds and forms the system of negotiated access, and therefore requires a thorough understanding of ANSA, their underlying interest in engagement, and the manner by which humanitarian actors can influence these interests to achieve safe and effective access to civilians in war.

Layout of the essay

The essay will open with a short historic review of the context of negotiated access. The OLS agreement in Sudan is taken as point of departure, symbolizing the prototype of negotiated access in the context of internal war. Ethnicity driven wars in Bosnia and Rwanda and the international response to the Great-Lakes crisis in 1996 in Zaire, demonstrated how negotiated access with ANSA in such context can be highly detrimental to aid. “Resource driven” wars in Angola, Sierra Leone and elsewhere introduced a new type of ANSA economic motives rather than ideology, abusing aid to their own self-interested goals. Chapter two will identify and define minimum qualifying criteria for humanitarian engagement with ANSA, given as characteristics of the latter, which can give an indication when engagement with ANSA is thought to be possible, though not as sufficient criteria for successful negotiated access. The underlying importance of the degree and mode of control of ANSA over population, will be evaluated in chapter three, reviewing the major dynamics of such control, such as membership criteria, need for fighters and legitimacy, which will culminate in the formulation of four typologies of ANSA -Civil relations in political terms. Chapter four will review the three main operational concerns of humanitarian concerns, security of aid workers, respect of IHL by combatants and the protection of civilians in terms of actual techniques to influence the terms of these. Finally, in chapter five, various methods and techniques to evaluate and assess the effectiveness of humanitarian engagement and negotiated access will be discussed, including a risk benefit-analysis of humanitarian engagement and concluding with the observation of various situations where negotiated access is deemed to generate high risks or is considered as unwarranted.

1. NEGOTIATED ACCESS IN HISTORICAL PERSPECTIVE

The term ‘negotiated access’ found root with the initiation of Operational Lifeline Sudan (OLS) launched by the United Nations (UN) in Sudan in 1989. OLS constituted a tripartite agreement between the UN, the Government of Sudan (GoS) and the Sudan Popular Liberation Army (SPLA) rebel faction to provide humanitarian aid in the context of an ongoing war¹. The agreement effectively split Sudan in a Northern government-held and a Southern rebel-held sector. By accepting OLS, the GoS ceded the *de facto* governmental sovereignty in the rebel-held South to the UN, which reflected the actual situation as GoS effectively had no control over the South. However, by ceding the administrative sovereignty, GoS avoided that it forfeited its claim on territorial integrity, while effectively handing over the problems of administrating the humanitarian needs and accommodation of the rebel factions in these needs to the UN. While over the years OLS secured the survival of tens of thousands of Sudanese civilians, the agreement did not prevent the gross manipulation of aid and human rights abuse, such as massive forced migration, military targeting of civilians and massacres, perpetrated by both rebel as well as GOS forces (Deng, 1992; Minear, 1991).

The OLS agreement was supported by so-called ‘Ground Rules’ laying out the operational rules, including reference to IHL, human rights and security of aid workers (Bradbury, 2000). Though the Ground Rules included direct reference to the Geneva Conventions and the Convention of the Right of the Child, the inclusion of IHL and International Human Rights Law (IHRL) only nominally increased the accountability of

¹ OLS consists of 5 main UN agencies and over 40 NGOs. The annual budget averages around US \$ 150 mill. It covers roughly 2.5 mill people in both South and North Sudan, sources: Reliefweb and ICG

rebel authorities². Though the ground rules were clear in the respective responsibilities, the problem was not only enforcement by rebels but also their uniform interpretation by humanitarian actors as they were progressively interpreted by NGHAs as a mechanism to protect their operations (Bradbury, 2000). Similar observations were made in experiments adopting Ground Rules like approaches, such as in Liberia (Atkinson, 2000). In absence of sanctions against warring parties short of suspension of aid, adherence of warring parties to IHL and IHRL through a Ground Rules approach seemed impossible to be attained, whereas they contributed to the security of aid workers to certain degree.

The manipulations by the warring parties were clearly marked in the OLS -review, a comprehensive evaluation conducted in 1996, which concluded that OLS itself went through recurrent crises as its emergency response mode did not match the actuality of the protracted political crisis (Karim et al, 1996). It also questioned the role of NGOs with respect to ignoring human rights violations by warring parties, with reference to the (intention of) Ground Rules. Another evaluation stated: “(...) the effectiveness of aid remains profoundly compromised so long as the underlying crisis of human rights and political legitimacy [of rebel factions] (...) remains unaddressed”³.

In other words, the situation in Sudan was approached as an ongoing humanitarian emergency whereas the resolution of war demanded political solutions. The OLS agreement, intended as mechanism of negotiated access to provide aid to civilians, could not address the issues of political legitimacy. Quite the contrary, OLS seemed to

² As nonstate entities, rebel factions cannot enter the Geneva Conventions as High Contracting Party but may recognize them as the Conventions are open for acceptance by nonstate parties.

³ *Sudan: Unintended consequences of Humanitarian Assistance, A field Evaluation summary*, a report to the European Humanitarian Office (University of Dublin, Trinity College, April 2000).

have been designed precisely in such a way to *circumvent* the issue of legitimacy – which would be cause for rejection of such an agreement, to enable the provision of aid.

The conditions which enabled the establishment of OLS were unique and have proven hard to be implemented elsewhere though a similar approach was attempted in Angola. In contrast with GOS, the Angolan government refused to accept the rebel UNITA movement as equal partner. It insisted that all contacts with the latter should be done by lower ranking UN agents and that all documents reiterate the legitimacy of the MPLA government, its sovereignty and territorial integrity and the illegality of UNITA (Richardson, 2000). Angola, hence, took a fundamentally different stance on issues of sovereignty and legitimacy, expressing the totally different tactical situation prevailing in Angola, where government's territorial control was confined to the coastal zones and the perimeters of major besieged cities and UNITA rebels relatively secured with military supplies and external support. The OLS agreement, accepted at the time when an overall peace agreement seemed to be looming, was increasingly undermined when the prospects for peace faded and fighting increased. In Angola the conditions of an erupting and increasing violent civil-war hindered the embracement of an OLS type of approach.

This brief examination of OLS-type negotiated access indicates that the manner in which access to aid can be negotiated largely depends on belligerents' interests and their tactical position. The OLS type of negotiated access actually means the agreement on access conditions for humanitarian purpose by (opposing) belligerents into the territory controlled by the rival. The interests of the belligerent parties underlying the acceptance of these access conditions are thus decisive in setting the parameters of negotiated access. But as the tactical situation of belligerents and rationale of war shift - the manner in

which aid is configured in the war context shifts along and the presence of aid agencies (and effect of aid provision) will potentially clash with belligerents' interests. Therefore, as warring parties progressively manipulate the conditions of the achieved agreement, the latter itself becomes a decisive factor in shaping the war dynamics, and paradoxically obstructive to its intention and aim. Hence, as time and conflict progress the dynamics and opportunities of negotiated access will change along. The reason for this apparent paradox appears to be that negotiated access of the OLS type can only be reached when compatible with the political-tactical considerations of warring parties. This aspect of shifting phases in war and warfare, hence is crucial in the evaluation of (responsible) negotiated access and of changing access dynamics, possibly distinguishing between phases of erupting conflict, ongoing and deteriorating conflict, looming resolution (cease-fire), post-conflict (rehabilitation) and possibly, post-post conflict (reconstruction) when the expectations generated by peace agreements appear to disappoint involved parties⁴.

1.2 Genocide and ethnic cleansing: from humanitarian to protection crises

Negotiated access thus seemed to bounce into its own limits due to the inherent conditions on which such access can be agreed – the mutual agreement of both sides in conflict. This became painfully clear when humanitarian action faced the conditions of ethnic cleansing in the Balkan, the Rwanda genocide and the crisis in Zaire, all featuring the increased abuse of humanitarian aid for political objectives and thus undermining its purpose. In Bosnia this led to the bitter conclusion that as much as humanitarian aid assisted in the survival of thousands of civilians it unintentionally facilitated ethnic cleansing as well. The post-Rwanda genocide produced the Hutu refugee-camps in Goma in which humanitarian agencies were grossly manipulated by Interahamwe militia and

⁴ The upsurge in demonstrations and violence in Kosovo in 2004 indicate such change and deterioration.

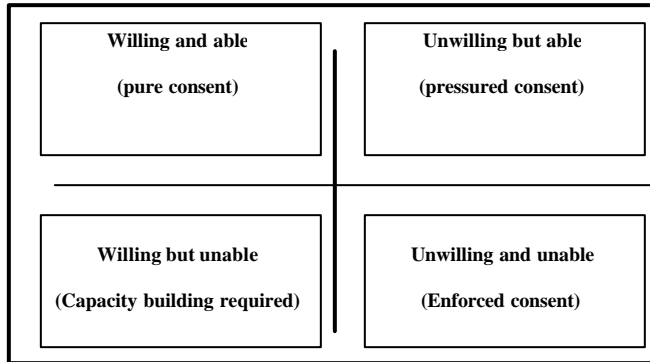
former Rwandan army, thereby unintentionally feeding their combat capabilities (Terry, 2002:155-215). The humanitarian response increasingly seemed to serve the international community as an excuse to avoid involvement in war but producing a plethora of unintended consequences, thus causing alleged ‘messy humanitarian relief’ (Rotberg, 2003:1). Humanitarian aid was increasingly regarded as the response, replacing necessary political responses. This was shamefully obvious in the stance taken by the United States during the Rwanda genocide, to avoid the term ‘genocide’ at all costs to prevent to be forced “to do something”⁵. Humanitarian actors found themselves in a position where they increasingly responded to human rights crises necessitating effective protection rather than relief. Capable to provide the last aid agencies were not only poorly equipped with ideas how to address human rights but also largely incapable to prevent severe human rights abuse. The humanitarian imperative proved to be a double edged sword - it appealed as a logical and necessary response but as result got implicated in the dimensions of ethnic cleansing and genocide and was consequently accused of fueling conflicts and worse of being accomplice as silent bystander (de Waal, 1994).

The evaluation of the international response to the Rwanda crisis led to the unsurprising conclusion that humanitarian action in itself is not capable to address human rights crises and should be accompanied by parallel political action by competent political authorities⁶. The challenges encountered in ethnicity-driven conflicts demanded a coordinated approach to match humanitarian operations with political action. This was precisely the conclusion of the Great Lakes Evaluation, suggesting the ‘strategic coordination’ of access - defined as *negotiating access to affected populations* and

⁵ This would be necessary to invoke the stipulations of the Genocide Convention. See: Power (2002:359)

⁶ See: The International Response to Conflict and Genocide: Lessons from the Rwanda Experience

advocating respect for humanitarian principles (Duffield et al, 1998: par 6). Negotiating access was viewed as the interaction between the UN system, local military and political actors and ‘in some instances rebel authorities’ (ibid: par 7). Local military and political actors (and rebel authorities) were deemed essential in the ‘acceptance of a *framework of consent* for humanitarian action’, viewed as a function of their willingness and ability⁷:



The evaluation thus identified four types of consent: (Ibid par. 34): *pure consent*, where warring parties accede to humanitarian access; *pressured consent*, where actors are able but unwilling - achieved with external pressure; consent achieved through *capacity building* (belligerents assumed willing but unable); and ‘*enforced consent*, where actors are both unable and unwilling, which should be considered as a military option and hence does not qualify as ‘negotiated access’. Though clearly defined, the assumptions underlying the framework of consent do not apply to most contemporary conflicts. The latter involve several (not some), or even *mainly* nonstate actors, which undermines the possibility for external political pressure by (third) states. Diplomatic or pressure to enforce consent in such situations is not only harder, it may even be impossible due to the fact that many states do not wish to become involved - in particular in ‘non-strategic’

⁷ The framework of consent is an elaboration of a model developed by ICRC.

crises, i.e. those which do not compel action out of third states' (national) interest. But much more important, local military actors of states contingent to conflicts often *are* in fact directly involved with 'rebel authorities', as was the case in the DRC, invaded by Ugandan and Rwandan forces in 1998 (UN S/2001/357). In these cases external pressure will not yield positive results so long as the interest of the involved states to support rebel factions outweigh their interest to give in to pressure of the international community.

The consequence of the above is that the acceptance of a 'framework of consent' to achieve negotiated access, is left to NGHAs and ANSAs, both nonstate actors. This implies a fundamental change in the meaning of negotiated access. Defined above as agreement between belligerents on access conditions, the new situations imply that negotiated access is regarded as agreement between belligerents and humanitarian actors.

1.3. The rise of new ANSA –identity driven conflicts

During the Nineties humanitarian aid thus went through a dual and contradictory development. The end of the Cold War allowed aid agencies to operate within war zones rather than on the fringes of conflict, but in particular in so-called collapsed and failed states, humanitarian actors were increasingly facing ANSA. The last, by and large, disrespected IHL-rules as they had no interest to comply with the latter in view of their objectives. Though the distinction of post Cold War conflicts does not fully explain the phenomenon of collapsed, weak or failed states, its end contributed to the rise of new ANSA in two principal manners. First, as support to client-states and proxy forces dried up and ANSA sought alternative financial sources, mostly in illicit trans-border trade in mineral resources, arms and narcotics. Second, the abundance of small arms through (semi-) illicit channels sustained the combat capabilities of ANSA. As virtually all

contemporary conflicts are intrastate⁸, ANSA play a dominant role in shaping conflict dynamics and hence as well as the acceptance of a 'framework of consent', i.e. the dynamics of humanitarian access.

Those intrastate conflicts, described as 'new wars', contrasted with 'old wars' in terms of aspired goals, war methods and financing (Kaldor, 2001:2-12). New wars were seen to be driven by identity-politics as opposed to geo-political or ideological motives. Warfare methods shifted to emphasize guerrilla tactics and counterinsurgency where terror and fear tactics are core strategies. Consequently most of the war effort is directed against civilian population rather than armies, explaining the dramatic increase in internal displaced persons compared to refugees and an increasing ratio of civilian casualties compared to military (ibid : p.8)⁹. New wars have also been characterized as being driven by economic rationale or 'war-economies', where war offers economic opportunities which otherwise remain beyond reach. This characteristic been as 'the continuation of economy by other means' alliterating Clausewitz's dictum of war as 'continuation of diplomacy by other means': "winning may not be desirable; the point of war may precisely be the legitimacy which it confers on actions that in peace time would be punishable as crimes" (Keen, 1998:12). In approaching these conditions, Keen points out the importance of analyzing which groups take advantage of war situations for their own sake, reversing the conventional view of war being an 'end' and abuse of civilians a 'means' - abusing civilians become an 'end' as war offers access to economic rewards.

⁸ In 1998 there were 25 deadly conflicts (> 100 war related death per year) of which 23 qualified as internal. In 2001 there were 19 conflicts, all of them internal, Source: SIPRI Yearbook.

⁹ The ratio shifted from 8:1 to 1:8 for respectively military and civilian casualties.

1.5. Value driven conflict: the War on Terror and ‘total spoiler forces’.

Whereas self-enriching economic motives characterized the tactics of ANSA in ‘new wars’, presently another generation seems to be emerging in the wake of the War on Terror. The appearance of these new types of ANSA coincides with the revival of political Islam, the rise Al-Qaida and related transnational (Islamic) extremist groups. Rather than identity or ideology these groups are value-driven; or rather the former are regarded as integral to the latter. Common to these ANSA is that they do neither aspire winning a war nor extracting economic gains for their own sake. Their immediate aim is to deny winning options to the opponent; disrupt a prevailing or emerging status quo through terror attacks; and the spread of general insecurity. Groups such as neo-Taliban forces and Al-Qaida are therefore frequently referred to as ‘total spoiler forces’¹⁰. The Iraqi Fedayeen is another variant of a spoiler force, albeit that this group is not value-driven or religiously oriented.

Humanitarian agents, in particular those deployed in activities significant to rehabilitation (and thus, normalization and stability) are included on their target list, as well as high profile and recognized agencies (such as ICRC) as assaults on such agencies trigger political reactions¹¹. The attacks in Iraq on the UN and ICRC demonstrate how aid agencies are utilized as proxy-targets in a campaign of destabilization and delegitimization, in this case US-led Coalition Forces¹². The effect of these attacks is emphasized by the exclamation of a senior ICRC delegate: “As of now, we are identified

¹⁰ See for example Manuel-Singer, (2002)

¹¹ Attacks include national and international aid workers. In Afghanistan for example 11 aid workers of international agencies have been killed in more than 160 attacks. Source: Afghanistan NGO Security Office (ANSA); see: Afghanistan policy brief (April, 2004) CARE/Center on International Cooperation, NYU

¹² The UN was attacked on August 19th and September 22nd, the ICRC on October 27th, 2003

as the enemy”¹³. Humanitarian actors are thus regarded as synonymous to ‘western interests’. As they act in the battle fields of the ‘War in Terror’ such agencies are configured by default in conjunction with Coalition Forces or nascent regimes that are being supported by the Coalition¹⁴. In stark contrast to ‘non-strategic’ conflicts such as the DRC or Liberia, the wars in Afghanistan and Iraq are saturated with strategic interests of intervening states. As consequence, humanitarian aid is not merely seen as substitute to political action, but drawn to the very heart of political strategy, aimed at winning the hearts and minds of civilians. The successful negotiation of access with spoiler forces, to accept a framework of consent, hence seems to be improbable as the latter’s aims and tactical interests do not coincide with needs for humanitarian assistance or access.

At this junction, Clausewitz’s concept of ‘trinatarian warfare’ is of interest. In the latter’s classical view, war is established as a trinity between a government, its army and the support of the people¹⁵. This was highly applicable during Clausewitz’ times when conscription drafted armies were on the rise. In ‘non-trinitarian’ warfare the relation between various elements of the trinity are distorted (van Creveld, 1991:35-42). This is the case in current intrastate conflicts where central governments are challenged or undermined by one or more ANSA. As these conflicts tend to be about control over population (or denial of such control to adversaries) rather than territory, the specific relation between ANSA and civilians to establish such control is of crucial importance.

¹³ From a personal interview in Geneva, November, 2003

¹⁴ After the attack on the UN offices in Baghdad the ICRC decided to ‘suspend’ its activities rather than evacuate. This prompted the U.S Secretary of State Colin Powell to state that this demonstrated ICRC’s support to the Coalition Forces and the aims of normalization in Iraq.

¹⁵ Mark Ungars (eds.) *Violence and Politics Globalization’s Paradox* (New York: Routledge, 2002), pp. 32-33 cited in Andreopoulos

2 DEFINING ARMED NONSTATE ACTORS

The variety of groups qualifying as armed nonstate actors is very broad and includes liberation fronts, insurgents, guerrillas, warlords, trans-national organizations (e.g. Al-Qaida), paramilitary, mercenaries and private military companies¹⁶. The phenomenon is certainly not new as resistance and liberation movements have been known throughout history. Some of these eventually establish themselves as incumbent regimes such as the EPLF and TPLF in respectively Eritrea and Ethiopia, the NRM in Uganda, the RPF in Rwanda or the Sandinistas in Nicaragua (Clapham, 1998). This variety in ANSA mirrors an equal array of motives and objectives, ranging from secession and liberation to undiluted crime, financial gain or political destabilization. Some ANSA operate by virtue of (financial or political) rewards from third states or act in their political interests; so-called proxy forces¹⁷. Dealing with such a variety of ANSA for the purpose of humanitarian access therefore calls to define and identify minimum criteria which should serve as a guide to humanitarian engagement and negotiation.

A definition that comes closest to describe ANSA in the least subjective way was formulated by the International Council for Human Rights Policy: “Groups that are armed and use force to achieve their objectives and are not under state control” (Petrasek, 2002:5). The deliberate choice for such a neutral definition was inspired in order to avoid politically coined terms such as ‘terrorist’ on the one hand and partisan terminology as ‘liberation fighters’ on the other. It also leaves out the question if these armed groups are opposing a state and governments or engaged in mutual battles amongst each other. However, such a generic definition does not appreciate the above mentioned variety of

¹⁶ For example Military Professional Resources Inc. (MPRI) or Dyncorp. See also: Singer, 2003

¹⁷ The anti-Sandinist ‘Contra’s are a clear example of proxy forces (against the rise of communism).

ANSA. Some principal characteristics have been suggested, serving as minimum criteria to qualify humanitarian engagement with ANSA. These are: (a) effective control over territory and population; (b) a degree of basic command structures; (c) independence from state control and (d) the use of violence for political objectives¹⁸.

(a) Effective control over territory and population

ANSA should have effective control over territory and population. Effective control does not necessarily mean clearly defined frontlines or borders, but that ANSA dominate a given territory by virtue of their operations and tactics. Such dominance is not necessarily achieved by permanent presence or occupation either, as it can be exerted through intermittent presence, hidden or 'remote-control'; i.e. through ANSA agents embedded amongst civilians. Control over population is not synonymous to 'good treatment', or to popular support of civilians to ANSA. Quite the contrary: control is often forced through abuse, terror and intimidation. The importance of this characteristic is that there is little use to engage with ANSA for the purpose of humanitarian access, if they do not exercise effective control over territory or population. The various modes of control and ANSA-Civil relations are therefore crucial in the evaluation of humanitarian engagement with ANSA and will be elaborated further in the next chapter.

(b) A degree of basic command structure

ANSA must demonstrate a degree of basic command structure though not necessarily a unified one. Command can be centralized, expressing a higher degree of organization, or decentralized often applied by ANSA operating in guerrilla style. Coordinated control and command structure is expressed in a higher or lower degree of discipline of combatants – a crucial precondition for the ability of ANSA to fulfill the

¹⁸ Characteristics b-d are adapted from: Bruderlein, 2000

security requirements of aid workers, but also of importance in terms of the ability to abide to IHL rules. In some situations various ANSA, although distinct, collaborate and coordinate their actions, thus forming a common front. However, once the reasons for collaboration disappear the reliability of such fronts for humanitarian access vanishes as mutual rivalries may develop. Such was the case in Afghanistan during the early Nineties: once the common enemy of the *Mujahideen* evaporated with the Soviet departure in 1989 various *Mujahideen* groups fell into internecine fighting. Even though individual factions possessed over their own command structures, the rivalry between them led to increased insecurity for NGHA who formerly depended on the same *Mujahideen* for cross-border missions (Terry, 2002:79-80). Similarly in Sudan, once the Southern rebel movement effectively split, the parameters of negotiated access shifted dramatically as the GoS managed to outplay one faction against the other. The latter (southern factions) followed suit by similarly outplaying humanitarian actors amongst themselves.

(c) Independence from state control

ANSA should not operate as extraneous facility or extension of a government or its armed forces. Groups which do not match with this qualification often operate as paramilitary, death squads or local vigilante militia. As such groups do not possess over an independent authority to decide on their actions, engagement for the purpose of protection or humanitarian access will be highly ineffective. Their practices are often extremely violent and their connection to the state disqualifies them as negotiating party as the state remains accountable for their actions. This is for example the reason why contact with the AUC paramilitary in Colombia is complex, as their relation with the Colombian military is often evident but officially denied. The most extreme form of

proxy forces are death-squads such as Arkan's infamous paramilitary in the Balkans or the Interahamwe in Rwanda. Evidently, there is little point contacting such groups, either in complying with IHL rules or seeking security guarantees for aid staff.

(d) The use of violent means prevalent for political objectives

A last qualifying characteristic for humanitarian engagement with ANSA is that they utilize violence solely for political objectives. This characteristic is the hardest to define given the obscurity in which many ANSA are shrouded. Many ANSA do not necessarily aim at regime-change or total control, but rather the denial of control to the adversary (governments) by causing insecurity and instability. Some analysts identify these tactics as attempts to redefine the social and political context by violent means¹⁹. However, more extreme forms of violence such as massacres, mass physical mutilations and abductions and (systematic) rape, cross the line of human rights abuses to such extent that engagement for the purpose of access under these conditions become highly doubtful, detrimental and probably unwarranted. The case of ethnic cleansing in the Balkans highlighted the risks attached to engagement of ANSA on access in such situations. Humanitarian engagement with 'spoiler forces' in Iraq and Afghanistan should also be marked as dubious even though ultimately it can be maintained that the goals of such groups qualify as being political. The deliberate strategy of such groups however annuls any positive outcome from engagement since they include aid agencies as proxy targets in their campaign of political destabilization.

¹⁹ This forms the core of thinking of e.g. Reno, Keen and Duffield, who consider the possibility of war as the process of redefinition of the state.

2.1. Excluded categories

The above characteristics exclude three categories: criminal groups, terrorist organizations and private commercial actors. The exclusion of criminal syndicates is not so much due to their illegality but rather their lack of aspiration to control people or territory and the use of violence for financial gain. Humanitarian engagement with such groups serves no clear purpose in aiding or protecting civilians and may expose humanitarian staff extreme risks such as abduction and extortion. Likewise, ANSA, mainly involved in parallel criminal activities (drug and arms trade, human trafficking, abduction, extortion and assassination) also raise the stakes of engagement with such groups²⁰. The terms terror- or terrorist-organization are much more ambiguous. Terror should be seen as a tactic aiming at undermining the morale and/or legitimacy of adversaries through infliction of excessive suffering, mutilation or death to a few in order to intimidate a collectivity and is equally deployed by ANSA and state armies. The terms terrorist- or terror-group mainly serve the political purpose of de-legitimization or the legal function of litigation. This does not preclude the fact that ANSA (and for that matter state actors as well) deploy terror tactics.

A last exclusion concerns private sector subcontractors usually operating on behalf of contracting states. There is a growing trend in this group comprising of mercenaries, private security companies (PSC) and private military companies (PMC) (Singer, 2003). Some criteria to circumscribe mercenaries have been suggested, though their distinction from military advisors as well as PMC and PSC is not as clear cut²¹. The

²⁰ The ICRC experimented with the idea of engagement with underground criminal groups in Albania in the beginning of the nineties. The influence of these syndicates in the political realm was undeniable but the risk to engage with them and to be contained by their criminal character of operation was deemed to high.

²¹ See UN E/CN.4/1999/11

effect of private sector contractors cannot be discounted as the involvement of Executive Outcomes and Sandline in Angola and Sierra Leone have demonstrated (Shearer, 1998). PMC are increasingly engaged in the conflicts in Afghanistan and Iraq, involving support in military objectives such as maintenance security of roads and buildings and de-mining, which by default also serve the purpose of access for humanitarian agencies (Singer, 2003:82-83). This mixing of objectives and utility of operations by PMC and PSC is a serious contentious matter for humanitarian agents²². However, since private contractors operate as sub-contractor for states, *if* humanitarian access is contingent on their activities, it is the contracting state (or military forces) which should be scrutinized in this respect²³.

The above mentioned characteristics may serve as *minimum criteria* qualifying humanitarian engagement with ANSA, but not as *sufficient criteria* to successful negotiated access. The characteristics help in the assessment whether engagement with ANSA is *potentially* useful in terms of their propensity to deliver security to aid workers and respect IHL rules. Critical in this assessment is that the characteristics should indicate openings to influence combatants' behavior. To operationalize engagement to successful and (responsible) negotiated access necessitates a closer examination of specific ANSA modes of operation, in particular the manner by which they implicate civilians in conflict.

²² The utilization of PSC for the purpose of the security of aid agency staff is relevant by beyond the scope of this essay. See for example: *Security Sector Reform: The challenges and opportunities of the privatization of security*, Lily, Damian (ed.), (2002) (International Alert, London)

²³ Some are not sub-contracted by states but by the UN, e.g. UNAMA- United Nations Assistance Mission in Afghanistan

3. ARMED NON STATE ACTORS - CIVILIAN RELATIONS

Given the fact that many contemporary conflicts are dominated by ANSA they have become a crucial element in the dynamics of negotiated access. Both the degree and the mode by which ANSA exercise control over civilians, are key to the operationalization of negotiated humanitarian access. As stated above ‘control’ is neither synonymous to good treatment nor to active support or identification of civilians with ANSA aims. Control can be exerted through repression, force-fed by propaganda or due to lack of choice, through intermittent hostile activities in specific areas, denying control to ANSA opponents. The mode by which control is exercised is of crucial importance as it can be generated through actions sympathetic to and supported by civilians or conversely, by specific patterns of abuse. Support of population to ANSA is thus far from given and notions such as ‘identification with aims’ or ‘popular support’ of civilians for armed struggle are not straightforward. Civilian support (or lack of support) for ANSA can therefore be invisible due to the prevailing conflict conditions often encountered in subversive guerrilla warfare. In Colombia or Sri Lanka for example, public opinion on ANSA is stifled by the risk of being identified as supporter (or opponent) of insurgents²⁴. Such identification may result in political stigmatization, stripping of economic assets and legal prosecution or in extreme cases physical penalties, expulsion, physical abuse or even execution. Civilians’ support to ANSA can thus be latent and existent or expressed but false. Equally, the lack of civilian support, criticism on, or opposition to ANSA’s dominance or control may remain invisible or unnoticed.

²⁴ From interviews with various aid staff-members and civilians in Colombia and Sri Lanka

3.1. An ANSA-Civil economic relations typology

The analysis of ‘war economies’ in which civilians are of utilitarian importance to ANSA’s income (through the conduct of war) has produced a general classification of civil-militia economic relations in four main typologies (Zahar 2001) ²⁵.

- **Symbiotic economic relations** – militia aim at restructuring some social order in exchange for support and revenues which resembles the function of states.
- **Parasitic economic relations** – protection to civilians is offered in exchange for collaboration, much resembling ‘mafia -rackets’ – in fact extortive in character.
- **Independent sources of revenue** – militia not dependent on population for income purposes, civilians partake in trans-border trade or extraction of resources.
- **Predatory economic relations** – militia careless of the fate of population, rule through fear and intimidation and predate on population to increase their power.

The above typologies indicate different opportunities for humanitarian negotiation, that is; the possibility to change the behavior of combatants regarding the treatment of civilians. Clearly these are the hardest in case of predatory economic relations where ANSA may have no apparent interest in improving the fate of civilians, and relatively the easiest in case of symbiotic economic relations. But a crucial question remains what drives the interest of ANSA to engage with humanitarian actors to accept the conditions of negotiated access? In other words, what are the advantages or rewards for ANSA to engage with NGHA or conversely, the disadvantages or penalties for non-engagement?

²⁵ Zahar prefers the term ‘militia’ to as generic term to denote the various categories of armed groups

To answer this requires the investigation of the potential of aid or aid agencies to sustain, enhance or impair the capabilities of ANSA. As the above civil-militia relationships are defined primarily in economic terms, this tends to overlook the more political dimensions of conflict, such as ANSA aims and objectives, the need for fighters and the function of adversaries – fundamental elements to conflict dynamics.

3.1. Membership criteria: in – and out-group

In response to the last, the concept of militia membership criteria maybe useful, distinguishing between ‘*in-group*’ and ‘*out-group*’ (Zahar, 2001). In- group membership can be demarcated by ideological, political; ethnic, nationality, tribal or clan delineation, by shared common economic objectives or through economic grievances (ibid, p.46). Membership is seen as ANSA’s constituency which influences the treatment of civilians. The hypothesis states that the wider the constituency (and the higher the dependency of ANSA on civilians) the more responsive ANSA may be to arguments to improve the fate of civilians. Consequently, civilians may possess over more leverage to negotiate better treatment, suggesting negotiated access opportunities for humanitarian actors.

Identifying ANSA dependency on in-group membership as a facilitating element for humanitarian access may however be a dangerous exercise: it obliterates the (political) dynamics of conflict. Precisely when humanitarian access is least-challenged it risks to fuel conflict dynamics as it factually enhances ANSA capabilities. Adversaries may perceive the assistance as partisan and possibly launch attacks on aided civilians or on aid agencies themselves. To remedy this evenhandedness is commonly advised, translated as working on both sides of the conflict. However, conflicts generating asymmetric needs, i.e. where one side objectively has more humanitarian needs than the other, or worse,

where only one side is in need, aid is drawn into the political dynamics of conflict by default.

In-out group analysis thus, contains some serious pitfalls. The treatment of the 'out- group' is particularly important as the latter often are the most in need of protection. The out-group often represents the adversary which is not necessarily synonymous to 'enemy' as it can also be attributed by being perceived as potentially supportive to opponents. This is for example the case in Colombia, Liberia, Sierra Leone, Sri Lanka and the DRC where massacres of population occur in retaliation of alleged support to opponents or as deterrent to such support. The treatment of the out-group therefore does not follow the same rationale of in-group. Whereas the latter may simply be ignored or neglected, the former will be treated much harsher. This is markedly the case when the attitude towards the out-group is not only excluding but particularly negative, the ultimate examples of the last being ethnic cleansing and genocidal intent.

The danger of attempting an evenhanded approach to neutralize in-out group differentiations was demonstrated when negotiating access in Bosnia where Serb militia insisted on equal distribution of aid (50-50 basis) rather than on basis of independent needs assessment (which would be in favor of non-Serb Bosnians) (Cutts, 1999a and 1999b). Accepting the Serb demands enhanced popular support for the Serb leadership by in-group civilians while sustaining ethnic cleansing of the out-group. In-out group membership analysis is thus useful in the determination of the varying relations between ANSA and civilians but can be misleading when utilized to establish the opportunities for humanitarian engagement. The last must be carefully evaluated in the specific political context and prevailing conflict dynamics to avoid unintended consequences.

3.2. The need for fighters

The need for fighters should be regarded as key issue to ANSA's survival. The correlation between the capacity to raise fighters and ANSA -civilian relations follows both an economic and political rationale. ANSA combat capacity may serve the interest of civilians in search of their protection and security. Prerequisite to the civilians' support to enhance the combat capability of ANSA is that the latter truly represents the civilians' concerns and acts accordingly. This is more likely to be the case when ANSA are supported by civilians (in-group) as opposed to ANSA who can act independently of such support. Economic needs such as access to food or income have proven to be strong pull-factors to recruitment. In conditions of low income, instability and lack of economic and social opportunities it is relatively easy to attract unemployed young men. Consequently, the fighter has increasingly become to be seen as a vocation where fighters easily switch from one 'employer' to the other. This has been demonstrated by Interahamwe who during the later nineties dispersed all over Africa, extending to Angola and Congo-Brazzaville, as well as in West Africa where ex-fighters of various factions are continuously crossing-over to competing groups²⁶. Loyalty may no longer be expressed in terms of tribal or ethnic lineage, and patronage-financing is taking over as recruitment mechanism of fighters. This dimension is also seen in Colombia where ex-guerrillas are integrated into paramilitary ranks once they denounce their support to the last (Center for Humanitarian Dialogue, 2002:28). Personal needs for survival and the prevailing market forces of recruitment increasingly overarch in- out- group affiliation.

²⁶ See: *Chaos in West Africa: Unending Wars*, New York Times May 5th, 2003, and: *Ivorian Rebels say allies killed their leader*, International Herald Tribune, April 29th, 2003

Whereas the decisive role aid can play in raising fighters in refugee communities has been addressed elsewhere (Terry, 2002; Rufin, 1993), this aspect should not be overlooked in the setting of internal conflicts where 'employment conditions' offered by ANSA can include the eventual benefits of having engaged humanitarian agencies, such as medical services, food, shelter and even transportation.

3.3. Legitimacy, credibility and recognition

Legitimacy is a crucial component in ANSA's quest for recognition or credibility. Even where recognition is not the expressed aim, legitimacy plays a crucial role. This can be expressed in efforts to de-legitimize opponents - other ANSA and/or governments or conversely the denial of ANSA's legitimacy by state actors. Legitimacy can also be a crucial factor in mobilizing civilians' support. Humanitarian actors may play a role in this primarily given their capability to draw international (media) attention. Terry identified various ways in which humanitarian aid can bestow (undue) legitimacy. International and local legitimacy can be conveyed by: "(...) negotiations with faction leaders and local commanders that aid organizations undertake to gain access and security guarantees implicitly recognize those groups' authority over territory and population" (Terry, 2002:44-47). She cites Smith who observes that legitimacy can be increased not because claims or demands have been met but just because ANSA become active players in international relief (Smith, 1993:108). Similar observations have been made above as to the status of the SPLA in Sudan. In Sierra Leone leaders of the RUF stated the importance aid agencies' presence for the sake of legitimacy and credibility²⁷. Presence of aid agencies in itself can thus induce legitimacy disregarding if aid agencies engage in public advocacy or remain silent.

²⁷ See hereunder when discussing the aspects of protection in the next chapter.

The establishment of war tribunals increased the vulnerability of ANSA leaders to indictment on war crimes and as shown by the ousting of Charles Taylor from Liberia, also affected their (international) basis of legitimacy. However, utilizing the witnessing of NGHAs in indictments of perpetrators of war crimes may translate in insecurity against aid workers by other actors supportive to or dependent on the indicted leader. This may therefore have serious implications on the opportunities for humanitarian access. This was clearly demonstrated by the recent calls of the Sierra Leone Tribunal for MSF to stand witness on the atrocities of RUF in Sierra Leone, the last who were actively supported by Charles Taylor. This call to witness, led to vehement discussions within MSF considering the possible implications this could have on humanitarian access in West Africa²⁸.

This correlation between humanitarian access and witnessing implies that the considerations made by MSF are possibly and likely also made by ANSA leaders and included in their approach to negotiated access with humanitarian actors. Access thus appears to be based on pragmatic considerations of ANSA (leaders) as well as of NGHAs. ANSA leaders aiming at (international) legitimacy may be receptive to humanitarian arguments, but once this fails to support recognition can easily nullify this inclination. This can therefore translate in the obstruction of access to humanitarian agencies, or conversely, facilitate access for agencies to demonstrate good intentions. As observed above, NGHAs may be inclined to prefer the preservation of actual access opportunities, to fulfill immediate short-term humanitarian goals, rather than addressing long-term goals such as impunity and justice and jeopardize this access.

²⁸ See: *In the Shadow of 'Just Wars', violence, politics and humanitarian action*, MSF, (2004). MSF-staff did witness before the Yugoslavia and Rwanda tribunals on personal basis. The ICRC is exempted from standing witness in tribunals and ICRC staff is held to confidentiality.

3.4. A political typology of ANSA-civil relations

On the basis of the above observations, a classification of ANSA-civilian relations based on political rather than socio-economic dynamics can be constructed, comprising of the following elements: ANSA function to civilians; in- and out-group dynamics, recruitment of fighters, search for legitimacy and sensitivity for human rights (protection) concerns. Four categories are thus defined:

- **Protective :** ANSA play an active role in protection of civilians and the promotion of civil organization. ANSA and civilians share common values and interests and civilians are not defined by in- and out-group divisions. Civilians support ANSA aims and volunteer fighters. ANSA actively seek recognition and are sensitive for human rights concerns (*Liberation movements, movements, symbiotic*).
- **Competitive :** ANSA act in competition with state or non state actors, rallying for the support of civilians, or the denial of such support to opponents. Civilians may be implicated with ANSA through labor (illicit) trade or contracted as fighter, but do not necessarily share ANSA's interest. ANSA seek to enhance credibility and legitimacy but not recognition per se. (*war economies, predation, parasitic*).
- **Antagonistic:** ANSA driven by self-centered identity based on ethnicity, religion; supported by and raise fighters solely from 'in-group' and act on their behalf; highly antagonistic against out-group and insensitive to human rights concerns of the latter. Seek recognition for their function of defending the in-group rights. (*Genocidal and ethnic cleansing dynamics*)

- **Sectarian - spoiler forces:** ANSA driven by extremist ideology or nationalism based on values. Civilians and fighters mobilized through the promotion of extreme views on out- groups or opponents e.g. “the West”. ANSA do not seek legitimacy or recognition but emphasize credibility by hostile actions, and are insensitive to human rights concerns (*War on terror*)

In the next, these typologies of ANSA-Civil relations will be evaluated in the context of the practices of NGHHA in the negotiation of access conditions with ANSA, to address the provision of security, respect for IHL and protection. The typologies will also be utilized to propel a general risk-benefit analysis of humanitarian engagement in chapter 5 below.

4. NEGOTIATED ACCESS IN PRACTICE –CHANGING ACCESS CONDITIONS

As stated at the outset of this essay humanitarian access is contingent on two fundamental preconditions: the security of aid workers and the respect of warring parties for IHL rules. A third important aspect which has taken prominence in the last decade concerns the protection of civilians, which actually is implicit to IHL (the protected status of civilians in conflict), but refers to the active protection of civilians against war crimes and human rights abuses such as atrocities, ethnic cleansing, genocide, systematic rape and physical abuse. Various practices have been applied to enhance security, respect of IHL and the protection of civilians. Hereunder, these practices will be reviewed on their appropriateness and major pitfalls compared to the various typologies of political ANSA-Civil relations.

4.1. Security of aid personnel

One of the mechanisms to increase security of aid workers is suggested by increasing the acceptance for the presence of aid agencies by civilians and armed actors, the so-called- acceptance strategy (Van Brabant, 2000:57-67). Once established, the acceptance strategy will provide a high degree of security as civilians are supportive to the presence of aid agencies and form a trustworthy source of information and liaison capacity to warring parties. However, such acceptance inevitably necessitates the agreement of (commanders) of ANSA. Hence, contacts with those commanders directly, or through civilians are necessary elements in the application of this strategy.

Direct contact however is often constrained as ANSA often operate in clandestine manner, as for example the LRA and the ADF in Uganda or Interahamwe and other armed groups in the DRC (UN OCHA 2000). In other situations direct contact is complicated due to legal restrictions as for example in Colombia where contact with guerrilla groups is prohibited by law. In order to achieve positive results in direct engagement with ANSA (commanders), the latter must be convinced that such agreement will not act against their interests, which is direct-relational to ANSA's dependence on civilians. An alternative to direct contact is the indirect approach of armed actors through the civilian population, which can be effective but is prone to similar complexity as it still necessitates the endorsement of ANSA. The success of the acceptance strategy through the involvement of civilians therefore needs the fulfillment of two preconditions: first, that civilians effectively have (direct) access to ANSA commanders and are capable to rally their support, and second; that the interest of civilians and ANSA in the presence of aid has to somehow concord in order to reach consensus.

The acceptance approach inevitably produces a paradoxical situation - negotiating for acceptance with warring parties (directly or through civilians) may bring up specific demands and strengthen the capacities of warring parties, undermining the principles of neutrality and impartiality. The experience in Ituri district in North-East Congo is a clear example where the strategy proved to be fatal. The Hema leadership objected against the assistance provided to Lendu population. They stated it would consider aid impartial only if the Lendu would not be aided, in spite of the observation by humanitarian agents that the fact that the civilian suffering amongst Lendu was much higher than amongst Hema. After several security incidents and threats, MSF left Ituri in 2000, despite attempts to demonstrate impartiality by working on both sides²⁹. The ICRC pulled out after the killing of six staff-members in April 2001, circumstances of which have not been fully clarified till date (Human Rights Watch, 2003). This example demonstrates that the acceptance strategy (on basis of humanitarian principles) is not only hard to obtain, but that strenuous application of impartiality may in fact be the detonator of security incidents. Strict adherence to impartiality can thus be detrimental to the security of aid agencies as much as acceptance of access by ANSA may be physical: it will facilitate access to civilians but dilute the neutrality rules of IHL.

In Colombia, the hostility and competition between paramilitary and guerrilla militia as well as rivalry amongst guerrilla factions themselves are complicating factors, demanding contact with all parties or none at all, which is a standard practice of the

²⁹ The Hema published a photograph which appeared in the Canadian press of an MSF aid worker handing over medicines to a Lendu warrior armed with traditional weapons (spear and bow) claiming MSF was distributing arms to Lendu militia, thus enticing insecurity and incidents against MSF

ICRC. (Gassman, 2001:67-92)³⁰. Such approaches, maintained by many humanitarian agencies can also cause confusion amongst civilians in particular when caught between two opposing ANSA: paramilitary and guerrillas³¹. In conflicts where ANSA-civilian relations are of competitive character, the acceptance strategy is prone to attacks by one group, suspect of the civilian attempts to contact a competing group. A particular downside in the indirect approach is that it transposes the burden of negotiating access to the shoulders of civilians and exposing them to risks if their involvement is misinterpreted or disqualified. This can result in accusations by opponents of the respective ANSA - government or military authorities or competing ANSA, blaming involved civilians of support to groups deemed illegal or illegitimate.

The various types of ANSA-civil relationship are of qualifying importance to establish the opportunities and risks of the acceptance strategy. In case of protective ANSA-Civil relations acceptance is likely but risks breaching the neutrality and impartiality of aid. If ANSA-Civil relations are antagonistic the chances to maintain security guarantees, either through direct or indirect contacts, become controversial. This as highlighted in Bosnia, where Serb militia obviously approached access to Serb favorably, but access to Muslim held areas extremely negative. In situations where various ANSA are in competition with each other, the success of the acceptance strategy depends mainly on their tactical position relative to the civilian support basis. The most severe conditions occur in the sectarian setting where the chances of acceptance by ANSA is probably non-existent as their interests and aims do not depend on civilians' support, as the actions of spoiler forces in South Afghanistan and Iraq, demonstrate.

³⁰ See also: *Humanitarian Engagement with Armed Groups: The Colombian Paramilitary*, Center for Humanitarian Dialogue, Geneva, October 2002

³¹ Experiences of a humanitarian agency in Colombia kept confidential due to security considerations

4.2. Promotion of IHL

The acceptance strategy is usually accompanied with the dissemination of the aid agencies' mandate and operational principles to civil and military authorities and civilians. In addition to this, the promotion of IHL amongst is a parallel approach to alter access conditions. This approach, the hallmark of ICRC, has been adopted by many other NGHA, and aims to provide information on the basic principles and rules of IHL to belligerents and civilians. The approach can be considered as an effort change the conflict dynamics by promoting adherence of combatants to IHL principles, or alternatively as an attempt to generate protection capacities of civilians, to negotiate or demand better terms of treatment with ANSA's commanders and combatants.

The results of dissemination activities amongst ANSA are however ambiguous. A study on ICRC dissemination activities of IHL to paramilitary forces in Colombia observed that it indeed increased the knowledge of paramilitary (senior commanders) on IHL, but did not change the actual behavior of paramilitary towards civilians³². This last is of course hard to prove since absence of incidents cannot be attributed to any particular mechanism. The best that can be said is that without dissemination the situation would have been much worse as one paramilitary member was quoted to say³³. Similarly, Human Rights Watch (HRW) documented that knowledge of IHL by guerilla leaders was quite profound but translated by the latter into practical terms IHL principles lost their meaning (HRW, 1998).

Another major dissemination exercise of IHL was performed by Action Contre la Faim (ACF) in Eastern Congo amongst Mai-Mai militia leaders. As ACF stated, referring

³² Supra fn.24

³³ Ibid

to increased insecurity: “ACF-USA has initiated a major dissemination campaign to help all armed groups understand the principles and life-saving importance of humanitarian aid” (Action Against Hunger-USA, 2000). Similar to the Colombia case, the results suggest that belligerents’ knowledge of IHL perhaps has increased but the practice has not necessarily changed. It may have increased tolerance of ACF itself, although the brief abduction of an expatriate of ACF even casts doubt on this.

The difficulty in applying respect for IHL has also been observed in the attempts to influence the behavior of the LRA, a bizarre opposition group operating in Northern Uganda (which targets mainly, if not solely, its own ethnic stock, the Acholi tribe) as documented by the International Council for Human Rights Policy (Mawson, 2001). It demonstrates the tension between the accountability of ANSA leadership vis -à-vis human rights violations and the need for reconciliation and peace with the need for immediate humanitarian assistance and effective mechanisms of protection.

These experiences highlight the limited effect of dissemination with the exception of ANSA leaders integrating IHL language in their jargon and lexicon. The latter can be seen as a dimension of ‘the learning belligerent’ – ANSA leaders who rationally calculate their interests and aims and include this in the ‘marketing’ of IHL by humanitarian actors³⁴. IHL promotion campaigns may generate tolerance by particular (targeted) ANSA for some time but changes in tactical positions or the appearance of new actors will progressively undermine the effects. The immediate effects of such campaigns therefore temporarily increases ‘agency space’, as opposed to promotion of ‘humanitarian space’ - general respect for IHL.

³⁴ The use of ‘marketing’, referring to Hugo Slim’s comparison of Humanitarian negotiation with marketing principles, Slim (2003)

This leads to the observation of another paradox: when promotion of IHL is most necessary it is probably the least effective –mostly in case of antagonistic ANSA-Civil relations and to lesser extent in competitive ANSA -Civil relations. This in itself does not mean that dissemination of IHL as such is senseless, as increase of usage a common IHL-language can be profitable on the longer term, but rather that its effect on immediate access conditions and security remains limited in the most demanding situations.

4.3. Protection of civilians

The most difficult and politically most challenging precondition for responsible humanitarian access is the integration of protection of civilians. Protection as generic term is complex and multi-faceted, comprising both IHL and human rights principles - primarily the right to life and the right to food. The UN Secretary General (SG) identified three areas which concern the protection of civilians; secure humanitarian access, the separation of fighters from non-combatants and re-establishment of law and order³⁵. As observed above, secure access humanitarian access is related to the capability and willingness of warring parties to separate combatants from non-combatants, i.e. respect IHL-rules, which is directly related to their tactical position. However, it is precisely in situations where ANSA are unwilling or unable to keep to the above that civilians are most in need of humanitarian relief and protection.

An inflamed issue demonstrating the complexity of integrating protection and human rights in humanitarian action concerned the operations conducted in Sierra Leone. In Sierra Leone the UN introduced the implementation of the Strategic Framework (SF) following earlier adoption of this approach in Afghanistan. The SF aimed at integration of the humanitarian and political responses to crises, inclusive of human rights and

³⁵ S/2002/1300, par. 15; S/2001/331, par. 5

protection. In this aim, humanitarian actors also held a specific responsibility to ensure respect for human rights by armed actors. This raised an outcry from various NGHA commenting that this effectively introduced human rights conditionality to the provision of humanitarian aid, deemed unacceptable:“(…) [making] protection of the population concerned subject to the specific agenda of human rights diplomacy. (…) relief operations become a pawn in a power game that is perilous for humanitarians. By participating in this process, humanitarian organizations become prey to the weakness and failures of the entire system” (MSF, 2000:6-8).

Yet, various aid workers confirmed that humanitarian agencies presence did not address the protection issues in RUF territory, and added that aid agencies were in fact unable to influence RUF or its combatants to comply with human rights. They also noted the importance the RUF leaders attached to presence aid agencies for the purpose of their own credibility and legitimacy, according to one of the leaders of the RUF: “to prove to the world we are not the beast we are held to be”³⁶. Though the SG pointed out the inability of aid agencies to make contacts with the RUF as an illustration of the difficulty to engage rebel groups in a ‘structured dialogue’, this was certainly not true for all agencies³⁷. In particular MSF and ACF maintained contacts with RUF all along and were consequently virtually ostracized by the UN and other agencies which operated solely out of Freetown. The RUF leaders admitted this manipulation, mentioning their dislike of the UN and agencies following the UN and preference for agencies that did not follow the UN approach³⁸. Aid agency staff conceded to admit that access ceded by RUF thus served the purpose of ‘agency space’ rather than ‘humanitarian space’. The SG remarks

³⁶ From personal interviews conducted with various senior staff of involved agencies

³⁷ S/2001/331, par 16

³⁸ As mentioned by Foday Sankoh and Sam Bochary (top RUF) according to aid workers interviewed

referring to fragmented, piecemeal or parallel negotiations by which rebel groups outplay one agency against another are thus not as imaginary as it seems³⁹.

Thus, in spite of the high-pitched comments on ‘human rights conditionality’ there is perhaps some room for criticism on the lack of aid agencies to take comply with a common stance, in case of ANSA responsible for serious war-crimes such as perpetrated by RUF. Still, humanitarian aid was also most needed in RUF controlled areas precisely due to these atrocities. For completeness sake, it is necessary to mention that war crimes, such as physical mutilation, systematic rape and alike were not only perpetrated by RUF as soldiers of the national army of Sierra Leone as well as Kamajohs, the traditional local vigilantes, equally resorted to these gruesome practices. It therefore remains highly debatable if presence of (some) aid agencies in RUF territory prohibited a ‘constructive dialogue’ as argued by the UN or, as maintained by NGHHA, at least provided life-saving humanitarian aid, and perhaps some protection by talking to the armed actors.

Hence, there are fundamental doctrinal and moral but also operational reasons for the tension between a humanitarian and human rights approach. While the latter refers to general obligations of states vis -à-vis citizens it is highly political (Ignatieff, 2001 :9), the former refers to collective rights and duties under the specific conditions of war and (should be) a-political. This is not only the point of view of humanitarian agencies as a joint delegation of FARC and the Colombian Government concluded: “we have advanced significantly with the discussion [on] IHL and Human Rights (...).with the President of the ICRC, we have reached a consensus (...) that the defense of Human Rights is the duty exclusively of States, while IHL is a norm that must be respected by all" (Gassman, 2001:78).

³⁹ S/2001/331 par. 26

Following the typologies of the various political ANSA-Civil relations, protection of civilians is clearly most challenged in the antagonistic and competitive setting. It also appears that the choice of NGHAs to engage with ANSA is driven by the aims of NGHAs: the degree and severity of suffering and immediacy of necessary action and not by considerations if engagement with ANSA is morally acceptable or derisive. As stated: “(...) the ICRC follows a pragmatic approach. The key issue that determines whether the ICRC will attempt to persuade armed groups to abide by national standards is not their moral qualification, (...) rather: Are there large numbers of victims? To whom do ICRC staff have to talk to get access to them and to be able to protect them from the worst excesses of hostilities and heavy-handed justice?” (Gassman, 2001:85-86). Many NGHAs subscribe to this approach. It therefore seems fair to conclude that in humanitarian operational terms the emphasis in ‘negotiated access’ seems to be on access requiring primarily ‘agency space’ and not necessarily on negotiation which should promote and ensure the respect for of principles and create general ‘humanitarian space’.

Slim draws a comparison between humanitarian negotiation and marketing principles (Slim, 2003). He distinguishes between the ‘products’ humanitarian agencies ‘sell’; legal obligations and humanitarian norms of IHL and the actual programs; thus – a moral idea, a form of behavior and practical services. Crucial, in this is to recognize that the ‘client’ (population) is not the immediate counterpart, which are the commanders, warlords and so forth, identified as ‘interlocutors’, who actually do not need the product for themselves but are in control of the market structure, i.e. they have the power to distribute. Hence, negotiation seen as marketing become persuasion.. Persuasion is a viable option but also risks to confer undue legitimacy, and strengthen conflict dynamics.

5. HUMANITARIAN ENGAGEMENT– EFFECTIVENESS AND RISK ASSESSMENT

The lead question in the evaluation of humanitarian engagement with ANSA is whether engagement with ANSA will be effective to satisfy the fundamental operational preconditions: i.e. security for humanitarian staff and respect for IHL. Concretely this concerns the possibilities to influence ANSA (combatants) behavior. In this, two crucial aspects can serve as guide to establishing the effectiveness of engagement:

- **Willingness:** Why is the group receptive for humanitarian engagement?
- **Reliability:** How will the group adhere to the expected preconditions?

These dimensions will be discussed hereunder, after which the optional available modes of engagement will be reviewed. This will be followed with a general risk-benefit analysis of humanitarian engagement with ANSA and conclude with a checklist to indicate those situations and conditions when negotiated access with ANSA is considered to be most challenged or unwarranted.

5.1. Willingness and reliability

Willingness of ANSA to engage with NGHAI is directly relational to the aspired aims of ANSA and the utility of humanitarian presence in these aims, depicted by the dynamics of the prevailing type of ANSA-Civil relations. The fundamental hypothesis to willingness therefore is: the more supportive humanitarian presence is to ANSA's aims the higher the willingness of ANSA to engage and oblige the negotiated conditions. The question hidden in this hypothesis concerns whether the motive for this willingness also matches the objectives humanitarian agencies aim at. Hence, ANSA's motive for willingness needs to be tested to each of the four typologies of ANSA-Civil relations, to reveal the possible drawbacks and effectiveness of engagement.

In an antagonistic ANSA-Civil typology the presence and provision of aid can be manipulated by ANSA to such extent that humanitarian aid fuels conflict dynamics rather than protect civilians, which may be need in the highest demand as the experiences in Bosnia and the DRC demonstrate. Willingness of ANSA to engage should therefore be approached with great prudence and suspicion. In a protective ANSA-Civil relation the motive for ANSA willingness to engage is clear, as the interests of civilians and ANSA coincide to high extent. As engagement in such situations may therefore strengthen the capacities of ASNA it undermines the required neutrality of NGHHA and risks to result in undue recognition of ANSA. In case ANSA's aims and interests are independent from humanitarian presence, i.e. ANSA do not depend on civilian support, engagement possibilities may be conducive but will be vulnerable to abuse by ANSA. This is clearly the case in the competitive setting of ANSA-Civil relations, where access opportunities for aid agencies can be manipulated by both competing ANSA, for example, by generating security incidents or by raising objections on aid agencies' presence on 'the other side'. The most extreme and impossible case, occurs in the sectarian setting where presence of aid is irrelevant for the stance of such ANSA to humanitarian access or worse, where attacks on aid agencies are an effective mechanism in the destabilization campaigns of such ANSA. Obviously, in these cases there will be little willingness of ANSA to engage with NGHHA.

Reliability, defined as the propensity of ANSA combatants to adhere to the terms of negotiated access, is mainly shaped by ANSA's command structure (internal discipline) and the overall objectives of ANSA. Zahar has defined the conduciveness for negotiation by differentiating between ANSA *command structure* (loose-clear) and ANSA *objectives*

(narrow-broad) (Zahar, 2002). Cross referencing these two factors, indicate that ANSA pertaining over a loose command structure and narrow (self interested) objectives create the most challenging conditions to humanitarian negotiation - which translates in low reliability of ANSA to adhere to preconditions. ANSA with a clear command structure and broad objectives (aiming at improving general civil conditions) create the least challenging conditions, producing a higher degree of reliability as depicted in Table 5.1.

Table 5.1.

	Loose structure	Clear structure
Narrow objectives	Most challenging (unreliable)	Moderately challenging
Broad objectives	Moderately challenging	Least Challenging (most reliable)

ANSA reliability to adhere to the preconditions of negotiated access is clearly relative to the degree of command structure, essential in internal discipline and crucial to the ability to influence combatants' behavior. However, whereas the above identifies when engagement is most and least challenged, it does not follow that in the least challenged situation ANSA will be able to comply with the conditions of negotiated access. The last is highly dependent on the capability to comply in more technical sense. To the largest part this technical capability is demarcated by the degree of respect and organization of command structure and the degree of discipline of combatants. Another major dimension to be considered in this respect is the tactical position, as ANSA who find themselves in a disadvantageous combat position may simply not be able to comply

with the required preconditions. Changing tactical conditions in war situations, for example when external actors intervene (e.g. peace-enforcing missions or invading foreign forces) or the introduction of new, competing ANSA, will heavily affect the eventual agreements on access as the offensive needs of ANSA increase. Continuous monitoring of the possible effects of such changes are therefore necessary to assess the capability of ANSA to keep to agreed conditions of humanitarian access.

5.2. Options for humanitarian engagement

To evaluate the various options of NGHHA for humanitarian engagement with ANSA it is useful to consider the theoretical positions of respective ANSA and NGHHA depicted as follows in table 5.2.:

Table 5.2. Options for engagement for ANSA and NGHHA

	Negative	Conditional	Positive
ANSA	Decline	Obstruct	Co-operate
NGHHA	Abstain	Suspend	Engage

In the *positive* setting, engagement on access may take place, though the access *conditions* (e.g. security) are not necessarily guaranteed or free from potential negative side effects. Again, the possibility of engagement in itself does not clarify the specific motive for ANSA's willingness. It may for example express tactical (military) advantages, in case of which the NGHHA involved in access negotiation should reconsider its strategy. ANSA willingness by itself can thus even indicate a risk for unintentional consequences.

In the *negative* setting engagement is undesired by both or one of the parties. Non-willingness may represent the fact that the ANSA sees no advantage in allowing aid or worse, has an advantage in the absence of external aid actors. Denial of access by ANSA (or blocking of such by supportive states), may eventually necessitate pressurized or enforced acceptance, i.e. the use of diplomatic pressure or the use of military force. Such situations pose tremendous moral and operational dilemmas to NGHAs. Once such conditions have been reached, the logic for engagement with ANSA will have become highly politicized and will therefore have consequences and ramifications beyond the immediate context, as for example occurred during the Kosovo war. Abstention of NGHAs from engagement (whereas ANSA may be open for such) is most likely to be due to principled reasons or to severe political implications. Such was for example the case in Sierra Leone where the willingness of RUF to engage was discernible but the context of the motive was dubious and controversial.

The *conditional* setting actually represents the application of pressure techniques and sanctions, resembling a confrontational negotiation style. Aid agencies can apply pressure on ANSA by suspending aid activities, for example to force them to comply with security guarantees and/or IHL rules. Conversely, ANSA may cause obstructions to access (or cause security incidents) to pressurize NGHAs and manipulate aid efforts. Both situations in fact express the inherent weakness of NGHAs to alter access conditions, in particular in case of deliberate abuse of civilians, typical to antagonistic and the sectarian typology of ANSA-Civil relations. The negotiation of obstructions applied by ANSA is highly susceptible to generate negative consequences as was demonstrated in the Balkans.

Willingness of ANSA to relax on imposed obstructions should be approached with great suspicion as the results of imposed conditionality by ANSA in identity-driven wars testify. Willingness of ANSA to give in to NGHAs pressure is to be considered a great achievement but is not always yielding. The most likely case for success is suspension of aid due to security incidents, caused by weak command structures and lack of combatant's discipline and where the ANSA-Civil relationship is of protective character. In case of deliberate (tactical) abuse by ANSA, which is typical in the competitive setting, such suspension may produce results, but also complicate the relations of NGHAs with competing ANSA. In case of strategic abuse (of civilians or humanitarian agencies) by ANSA, typical for the sectarian setting, suspension is not likely to produce any results, as demonstrated by the recent attacks on aid agencies in Iraq and Afghanistan, and the consequent withdrawal of many aid agencies.

5.3. Modes of engagement.

Once the effectiveness of engagement is evaluated, three questions emerge as to the modalities of engagement: *first*, should engagement be done in a direct or indirect manner, *second*, should it be performed on high or low level and *last*, should engagement be conducted in an open or confidential style.

a) Direct –Indirect The question of direct or indirect engagement hinges mainly on how approachable the ANSA in question is. Engagement with more accessible groups should be scrutinized in the motive for such and the potential negative consequences such engagement may imply. The direct contact with ANSA may be hampered by legal and political objections by an incumbent government and/or competing ANSA. In these cases, indirect contact, either through facilitation by the ICRC (which has a mandate to do so),

or through civilians may be contemplated. In the last, however, the possibility and capacity of civilians to approach and convince ANSA commanders must be evaluated, as well as the vulnerability of civilians to accusations from competing ANSA or (military) authorities. Lastly, the consequences of indirect engagement through the respective target population must take into account specific in- out-group dynamics, as in competitive or antagonistic settings engagement with ANSA may generate suspicion from competing groups, resulting in insecurity for aid workers, or worse, the civilian population itself.

b) High-Low Generally it is suggested to establish contacts as high up as possible in the line of command (Toole, 2001). However, this may not always be the best approach in particular when command lines are long and de-centralized, and oriented on sub-regional self-sufficiency of ANSA (as often is the case in the organizational structure of paramilitary and guerrilla). In Central and West Africa similar characteristics are encountered as various ANSA operate side-by-side and often in competition, though forming a loose common front (e.g. Liberia and Ivory Coast). In these contexts, a high level contact with one side must be reciprocated with a similar level with all other actors (which may not always be possible) least the neutrality of the organization is to be safeguarded. However, high level contacts never replace low-level contacts as the local command levels interact much more directly with the actual humanitarian operations. Nonetheless, in some situations only low level or only high level contacts may be sufficient to address the preconditions of humanitarian access. Thus, whereas it is wise to maintain contacts at both levels, the relevant operational question is which contact level is sufficient, to be established according to the prevailing command structure.

c) **Open –Confidential** In the broadest sense, transparency is always to be preferred above confidential engagement, or even stronger: it is desirable that contacts are advertised to promote recognition and respect of the conditions agreed upon . Sooner or later, once contacts are established, the engagement with ANSA will be known anyway. Confidentiality on initial contacts or the content of engagement should however not be confused with *secrecy* which last is impossible to sustain. In Sierra Leone, for example, the intention of MSF to engage the RUF were deliberately given high public profile and even broadcasted by radio, precisely in order to generate trust and respect for the intended engagement, both amongst the population as well as the RUF and the incumbent government⁴⁰. In Colombia, in contrast, direct engagement with paramilitary and guerrilla groups are generally done in a confidential manner, reflecting both the sensitivity for such contact by the government as well as opponent ANSA.

5.4. Risk benefit analysis

The general threats encountered by NGHAs in the context of each typology of ANSA-Civil relations, and the possible negative consequences humanitarian engagement with ANSA generate in each case are depicted below in table 5.3. Evaluating the risk-benefit of humanitarian engagement with ANSA is primarily guided by the question of effectiveness. Gauging the motive for willingness of ANSA to engage with NGHAs can also indicate ANSA's motive to comply with the conditions of negotiated access. The reliability of this inclination can be further assessed by evaluating the objectives of ANSA relative to the interest of the latter to promote civilians' needs (aid and protection). The capability of ANSA to comply with the agreed preconditions (security for aid staff and respect for IHL) can be assessed by analyzing the command structure, internal

⁴⁰ From interviews with involved humanitarian staff

discipline and the tactical position of ANSA in the context of the prevailing conflict dynamics.

Table 5.3. Threats encountered and risks generated in by humanitarian engagement

	THREATS GENERATED BY TYPE OF ANSA-CIVIL RELATIONS	RISKS GENERATED BY HUMANITARIAN ENGAGEMENT
Protective	Accusations against NGHHA by incumbent regimes	Loss of neutrality of NGHHA Undue legitimacy of ANSA
Competitive	Accusations against NGHHA by competing ANSA	Retaliation on civilians Threats against NGHHA Undue recognition of ANSA
Antagonistic	The (political) abuse of aid Utilization of aid to war efforts	Loss of neutrality /impartiality Unintended consequences (e.g. aiding ethnic cleansing)
Sectarian	Destabilization campaigns Insecurity of aid workers and attacks on NGHHA	Accusations from governments and international bodies against NGHHA

The evaluation of all these factors will at least feed informed decision taking by NGHHA to establish if engagement may be effective. This evaluation, however, does not preclude eventual risks of humanitarian engagement. As indicted by table 5.3., there are various negative consequences for the different parties concerned with negotiated access: the various ANSA, humanitarian agents and the civilians. A general risks-benefit analysis of humanitarian engagement has summarized these risk- benefits as follows (table 5.4.)⁴¹:

⁴¹ Adapted from: *Humanitarian Engagement with Armed Groups*, Center for Humanitarian Dialogue (2002:33)

Table 5.4. Risk – benefit from humanitarian engagement

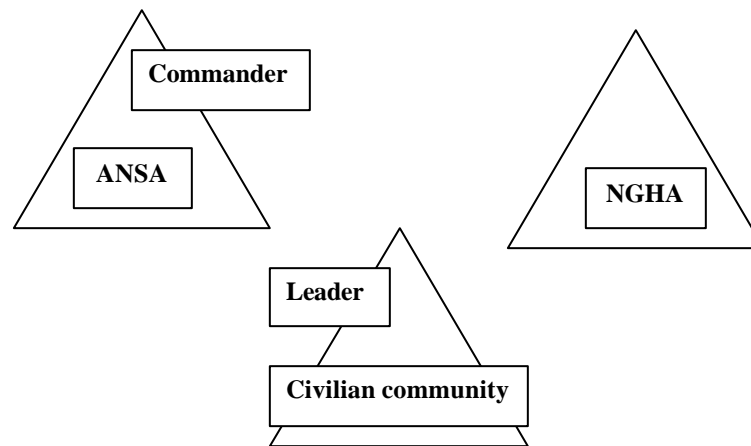
	Positive effects BENEFITS	Negative effects RISKS
To population	Access to humanitarian aid Increased protection	Perceived as sympathetic to ANSA Attacks or retaliation by rivals of ANSA (other ANSA)
To NHGA	Fulfilling mandate, meet needs, staff security	External accusations Internal NHGA division Attacks by competing ANSA
To ANSA	Access to dialogue Influence behavior	Confer undue legitimacy Increase of conflict dynamics

The most important indication of this risk-benefit model is that the analysis of humanitarian engagement and negotiation should be performed for all parties concerned, inclusive of the intended beneficiaries hence; NHGA, ANSA and the civilian population. Obviously, the degree to which engagement affect each party's position and interests, influences the degree of willingness to comply or support negotiated access, based on the eventual risks (or benefits) such engagement generates. The main issue to address then is how to assess the various positions and interests of the above mentioned participants.

It should be relatively easy to have at least basic ideas on such positions and interests by taking sample opinions from informed sources, for example community leaders, country experts and journalists or even encountered combatants or commanders. Such sampling needs to be done on regular basis and as a continuous activity rather than a one-off exercise, as the conditions of conflict change, the variety and quality of ANSA changes and as consequence, the position (vulnerability) of civilians change along. The

role and function of aid agencies in these contexts is therefore continuously exposed to varying challenges.

A theoretical model to assist in such assessment is to plot the position (statements made by actors), their interests (underlying arguments feeding the position) and the needs (the basic requirements represented by the interests) for each of the participants as a triangular model and compare the positions, interests and need of each of them, relative to the position, interests and need of the other, also known as the 'Ice-Berg' model. The Ice-Berg model expresses the fact that positions are often known (the tip) whereas the interests and needs keeping the Ice-berg afloat are often hidden from the external viewer.



The application of the Ice-berg to model to the above theoretical situation may produce the following results as standard assumptions in undistorted situations :

For ANSA: Position: allow aid; interest: strengthen position; need: control

For NGHA: Position: demand security; interest: access; need: provide assistance

For civilians: Position: request aid presence; interest: humanitarian aid, need: survival

This basic simplified situation is often distorted by other respective needs, such as: the need for fighters or interest in recognition for ANSA; the need for alternative income or the need for protection (rather than aid) for civilians, or the interest in agency space rather than humanitarian space for NGHHA. This variation in needs and interests obviously affects the respective position taken towards others (i.e. civilians-ANSA, Commander-Community leader, Commander-NGHHA or NGHHA-ANSA). The respective role of the commander and the community leader should eventually be evaluated as construing an independent triangle as their position, interests or needs may not necessarily be synonymous to those of respectively the combatants or the civilians they claim to represent. Obviously, such analysis will be much more complicated when plotting a model of two or more ANSA, competing for civilians' support or in the denial of such support to their opponents. Such cases necessitate a more elaborate multi-dimensional position-interests-needs model.

Lastly, as major and important conclusion to the evaluation of risk and benefits of humanitarian engagement, it can be observed that in situations where the Ice-Berg model indicates no convergence of underlying interests or needs between NGHHA and ANSA, negotiated access will not yield positive results and is most likely to produce unintended consequences, serious loss of impartiality of aid and possibly detrimental effects on the civilians concerned as well as severe security conditions for humanitarian aid workers.

5.5. Unwarranted conditions for negotiated access

From the various typologies of ANSA-Civil relations and the above risk-benefit analysis, various border-line cases can be identified. Where ANSA are particularly keen and dependent on civilian support, access negotiation will be conducive but risks to undermine the neutrality and impartiality principles of aid. In the following conditions indicate high risks in the application of negotiated access, demanding extreme care in the approach and thorough evaluation of conflict dynamics as well as requiring additional measures to address the insufficient conditions. Weak ANSA command structure and lack of internal discipline of combatants

- ANSA in weak and highly defensive tactical positions
- Competitive dynamics between various ANSA

Measures to address these conditions can involve IHL dissemination campaigns and the reiteration of NGHHA operational mandate, principles and objectives though the effects of such campaigns will not always be effective. Suspension of aid may offer solutions (conditional approach) if such ANSA have high reliance on civil population (protective relation). If competitive ANSA represent two different stocks of civilians marked by religious, ethnic or other identity qualifications the suspension of aid is not likely to produce positive results as in-out group dynamics dominate their mutual hostility.

Where ANSA interests in civilian protection is particularly negative, in particular in genocidal conflicts or ethnic cleansing, negotiation will produce highly negative and detrimental effects for the civilians population and/or involved aid workers, and consequently negotiated access is highly discouraged and recommended to be avoided:

- Antagonistic ANSA primarily driven by in-group dynamics
- Sectarian ANSA oriented on destabilization campaigns and spread of insecurity

To remedy situations of antagonistic ANSA-Civil relations will require the restoration of the protective element for civilian population, independent from the control and protection eventually offered by ANSA. This will demand the use of force and strong action by competent political agents, in particular the UN, the Security Council and UN member-states.

In the case of spoiler forces, such action is evidently not adequate as demonstrated in Iraq and Afghanistan, where the operations of Coalition forces against such forces obviously are ineffective to quell the involved ANSA and appear to strengthen civil resentment. These latter conditions mark a watershed in the function and role of humanitarian agencies in conflict zones, and it remains to be seen whether humanitarian agencies will be able to redefine their role and enhance their relations with spoiler forces. The last is not only contingent on the willingness of the latter. If a successful approach could be established it would most likely be disqualified and condemned by states supportive to the 'War on Terror'. This last seems to pose humanitarian agents before an impossible choice – to be 'with us or against us', which by definition is not the role humanitarian aid was aimed to fulfill. This last also means that NGHAs are not only left to negotiate access with ANSA on their own (in contrast with the negotiated access achieved with the OLS agreement) but effectively are being barred from negotiating access on their own when such is considered to be at odds with the strategic interests of intervening states.

6. CONCLUSIONS

The fundamental operational preconditions for humanitarian access as indicated at the outset of this essay; security for aid workers and respect of IHL by belligerents and protection of civilians could be regarded as primary objective of negotiated access. In reality these have proven hard to be fulfilled in various conflicts in which humanitarian agencies seek access. A clear-cut calculus of these preconditions is rather senseless as they are in fact non-negotiable. A valid observation to be made however is that under circumstances of severe suffering some NGHAs may be inclined to accept higher risks for the security of staff or bypass the most political considerations of protection (human rights) in favor of alleviation of immediate suffering. Negotiation of access, initially meaning agreement between belligerents to allow the access of aid agencies, eventually altered to agreements between warring parties and humanitarian agents themselves - both non-state actors, which placed the concept of negotiated access beyond the involvement of states and international politics. Recently, with the erupting conflicts in the wake of the War on Terror this alteration reverted to become dominated by international actors, which severely undermines the possibilities of humanitarian engagement with ANSA.

The dynamics of humanitarian engagement and negotiation therefore are shaped by the interest of ANSA in engagement, given the possible advantage they can generate by allowing humanitarian aid agencies and the interest of NGHAs in access to population. The specific typologies of ANSA-Civil relations, expressing the objectives, interests and position vis-à-vis civilians, indicate the options of humanitarian responsible access, meaning: access free from negative and unintended consequences resulting from eventual negotiated access conditions.

Engagement is not due only to inevitability as such, given the fact that ANSA are *de faction* control but rather as result of possible advantages calculated on the basis of respective internal interests of ANSA and humanitarian agencies. This engagement is driven by a compromise on respective internal concerns, for example, security concerns versus the degree of urgency of aid by NGHHA or concerns of legitimacy and recognition versus the degree of control by ANSA. Thus observed, negotiation is not a bartering process based on humanitarian principles, but rather a dynamic process of pragmatic balancing rational interests of ANSA and humanitarian actors.

The deliberate war strategies of ANSA and implication of civilians in conflict renders the application of IHL in these conflicts dysfunctional. Concretely this means that ANSA are often unwilling to dissociate their activities from civilians, or alternatively are unable to enforce the distinction between combatants and non-combatants as this forms the core of their survival. In such cases promotion of IHL or negotiation to convince ANSA to comply with IHL will be ineffective. Yet, the implicit objective of negotiated access is to seek opportunities to influence ANSA (combatants) behavior with respect to IHL and the security of aid workers. In this sense, negotiation tends to become persuasion rather than agreement. ANSA's objectives, strategy and tactical position are crucial to the effectiveness, that is: reliability and capability of ANSA to comply with such persuasion,

The multiplicity of actors, state and non-state humanitarian actors and ANSA, contributes to the complexity of negotiated humanitarian access, one which is acceptable to all (state and non-state) actors and which fulfills all three preconditions. The diversity in objectives and means of state and non-state humanitarian actors limit the possibility of a common response in the approach towards ANSA. This is also the reason why the often

recommended appointment of skilled negotiators is not estimated as offering a realistic solution to the observed ‘piecemeal’ negotiation and outplaying of humanitarian actors against each other by ANSA⁴².

Increasing the negotiation skills of humanitarian staff however remains important. These skills do not primarily concern formal training as negotiator. Rather it should focus on the techniques aid workers can utilize to identify the opportunities to influence ANSA (combatants) behavior or effective mechanisms that may convince the latter to comply with access conditions. The above described analytical methodology serves this purpose, underlining the importance of contextual understanding in the broadest sense. This should include the analysis of ANSA structures, the specific typologies of ANSA -Civil relations and the dynamics of ANSA control over population. In this analysis, the interests of civilians have to be explicitly pronounced as well as an estimation of the *function* and *role* presence of humanitarian agencies and aid play in the specific conflict dynamics.

In the context of collapsed, failed and weak states, negotiation of access is problematic in view of concerns of legitimacy, either from opposing state actors or other competing ANSA. Legitimacy is also a contentious issue considering the accountability of ANSA for human rights violations, as access can only be achieved through agreement with ANSA, whereas the last may be perpetrators of crimes and even the very cause of humanitarian needs. The so-called War on Terror raises new obstacles in this respect as various states branded ANSA illegitimate as international terrorist groups.

The critical objective of assisting civilians caught in war hence is to identify methods enabling the dissociation of civilians from combatants. As such methods can undermine the support basis of ANSA or considered as hostile to their aims, they will

⁴² S/2001/331 par. 26 ; S/2001/331 par. 15;

tend to be highly political. Effective strategies should focus on the observed distinctive connections between ANSA and the population under its control, considering the specific conditions of protective, abusive or antagonistic attitudes towards civilians, or stated in other words: identifying the specific patterns of abuse or the utility of civilians in ANSA's strategies.

The ultimate challenge would then be: how to capacitate civilians themselves to negotiate the required separation between combatants and non-combatants and separate their interests from those of ANSA leaders (the interlocutor). Capacitating civilians to negotiate with ANSA leadership (the interlocutors) could be a prime strategy to achieve the above mentioned objectives of human security. However, this last highly depends on the interests ANSA have in civilians constituency; the relative importance of civilians for ANSA survival and the respective manner in which ANSA generate civilian support, through protective mechanisms or abusive methods.

The critique delivered by Donini (on coordination in Afghanistan) commenting that "(...) humanitarian space instead of actively promoting humanitarian space and respect for humanitarian values", in fact underscores all the above (Donini, 1996:79). War *is* a political space. The promotion humanitarian values is the main modality to create humanitarian space but the question perhaps is not how humanitarian space can be achieved while promoting humanitarian values, but the opposite: how to respect humanitarian values while providing humanitarian aid in the available (imperfect and non-compliant) politicized humanitarian space? This seems to be the core essence of the term 'negotiated' in contemporary negotiated access.

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