



# 2

**ANALYSIS**

THE FIRST PHASE in any negotiation is in many ways the most important. Good preparation is critical to a successful negotiation. The analysis phase allows you to take a closer look at the negotiation scenario that you face. Careful assessment helps you evaluate how difficult it will be to reach a successful agreement and provides the basis for a suitable negotiation strategy.

Any pre-negotiation analysis includes four activities.

- Define your objectives, including positions, bottom lines and interests.
- Select appropriate counterparts who have the power to deliver what you need.
- Gauge how compatible the interests of you and your counterparts are.
- Determine the leverage available to you to understand how likely you are to influence your counterparts.



## CHAPTER 4 DEFINING YOUR NEGOTIATION OBJECTIVES

The first and perhaps most important task during the analytical stage is to set clear negotiation objectives. The latter define *what you want* as a result of the negotiation. For humanitarians, negotiation objectives will always reflect the needs of the affected population.

Experienced negotiators all say that having clear objectives and then communicating them effectively is crucial to achieving good results. If you are confident about what you want, you are less likely to make concessions and reach an agreement that is not in the favour of the population you are trying to assist. And, of course, having clear objectives from the start will also provide a benchmark against which to evaluate the eventual success of any negotiations.

Experienced humanitarians stress the importance of setting objectives as the first step in any negotiation:

“ We often forget that defining our objectives is the basis for any negotiation. Our objectives determine our choice of counterparts, the negotiation strategy we will adopt and the arguments we will make.”

*(Aid worker reflecting on experiences in Eastern Europe and the Horn of Africa)*

Clarity about objectives and your own room for manoeuvre also help your counterparts determine what they can realistically expect from you. This is important, because in many situations, those on the other side of the table may make extreme demands that your organisational mandate or mission would never allow you to fulfil and which can effectively derail the talks early on. For example, a frontline negotiator told us that being clear about her organisation’s goals and abilities greatly facilitated her negotiations by setting reasonable boundaries for them. She made it clear that her organisation could help collect and transport luggage that refugees had left at the side of the road but that it would not be able to

pick up and deliver tools for the construction of a new road. Stating her limits clearly made for faster, realistic negotiations with the government about the use of her organisation's trucking fleet.

### Positions, Bottom Lines and Interests

Negotiation specialists and practitioners divide objectives into positions, bottom lines and interests. Understanding these various elements and using them to design your strategy is vitally important as you examine your own objectives and attempt to read those of your counterparts.

#### Positions

A position is a specific statement summarising what you would like to achieve with the negotiation. For example:

*"I want to carry out monitoring visits to 15 villages in the district in which groups of IDPs have recently arrived."*

Usually, negotiators take deliberately extreme positions, especially when making opening offers. They hope that starting out high will guarantee them their expected outcome, which may be slightly lower than the initial offer.

#### Bottom Lines

Bottom lines define the worst acceptable outcome for you if you fail to achieve your position. They represent a final offer before you walk away from the table.

Having an explicit bottom line shields you from being pressured into an extremely unfavourable agreement. In this sense, bottom lines serve as a sort of risk management device for negotiators. Working out a bottom line helps you to understand which aspects of an agreement you are willing to concede on if the negotiation becomes very difficult. In the examples above, you may be flexible on the total number of villages visited, but may definitely want to visit villages A, B, and C, because this is where the internally displaced have suffered the most abuse.

Be ready not simply to concede to a bottom line but to demand something in return for any concession. For instance, you may agree only to monitor villages A, B and C on condition that your counterpart agrees to more regular, scheduled visits. In other words, you will trade *fewer* villages for *more* visits.

Consider these recommendations on bottom lines from two experienced humanitarian negotiators:

“ Before conducting a negotiation, it is important to know:

- On what we are willing to make concessions and in exchange for what;
- What concessions we are willing to make for nothing if the situation becomes very unfavourable; and
- On what we will never make any concession, even at the risk of letting the entire negotiation process break down. For a negotiation to succeed, one must be ready to let it break down.”

*(Aid worker sharing experiences in Eastern Europe and the Horn of Africa)*

“ Often we fail to decide the point beyond which we will not go beforehand. But if we do not know our bottom line right from the start, we run the risk that during the negotiation, we will be exploited and lose our credibility. We will accept an agreement for the sake of an agreement but afterwards will realise that we did not really achieve our objectives. It seems essential to me that negotiators know what they can accept and what they cannot accept.”

*(Aid worker reflecting on experiences in South Asia)*

#### Interests

Interests are the deeper needs that both sides in a negotiation are trying to satisfy in accordance with the various positions they articulate publicly. Depending on the level of trust between the negotiators, these interests may not always be expressed openly, but they nevertheless motivate any position that a negotiation party may take. Several interests can feed into a single position. Negotiator X, for example, may want to obtain access to the villages of district Z in order to perform monitoring visits. This position may be motivated by his agency's moral interest in helping people in need or a legal interest in protecting the human rights of IDPs in the villages. Humanitarians are primarily responsible for representing the needs of the affected population and such people's best interests should always be the overriding impera-

tive for any humanitarian objective. But, realistically, negotiator X may also be representing other individual or institutional interests in any negotiation. For example, he/she may also have an interest in executing the mandate of his/her organisation or in enhancing its reputation. On top of this, negotiator X may have an individual interest in advancing his/her career.

The same is true for the other party. A counterpart may endorse a repatriation programme for unaccompanied minors in the area of his/her control. This position could be motivated by his/her desire no longer to bear responsibility for the welfare of these children.

### Box 3: The Three Elements of a Negotiation Objective

It is useful to think about positions, bottom lines and interests in the following way.

- **Positions** – what you say you want
- **Bottom lines** – the least you are willing to accept
- **Interests** – why you want what you say

Interests are usually the broadest element of an objective. Often, several interests lie beneath a single position or bottom line. Keeping these elements separate will permit the holding of more creative discussions and lead to more effective agreements. See Chapter 6 for more information on how interests can help you achieve mutually satisfactory agreements.

### How to Define Objectives

When defining objectives, humanitarians formulate specific positions and bottom lines while always being conscious of the underlying interests. In general, humanitarians say that their positions and bottom lines adhere to the following three basic points:

- they meet the needs of the affected population;
- they are compatible with your organisational mandate or mission; and
- they complement the aims of other humanitarian bodies.

Positions and bottom lines are never best developed in isolation. Make time to discuss them with colleagues in the field, at headquarters, and in other organisations. Actively seek the advice of local employees in your organisation. They usually know the political situation and personalities in their country better than you and may be more familiar with potential counterparts. The holding of a full discussion within your organisation will be an invaluable experience that will generate much good advice, while preventing duplication of effort.

In-house consensus on objectives is crucial. If your positions and bottom lines are not consistent with those of your colleagues, any agreement that you reach is unlikely to be implemented. Your inability to honour an agreement will severely damage your credibility and reduce the chances of future dialogue.

An open dialogue with members of other organisations will allow you to benefit from their experience and possibly even to engage in mutually reinforcing negotiations.

An aid worker reflecting on experiences in West Africa stressed the importance of in-house and inter-agency coordination:

“It is crucial to keep in mind that we have a mandate. [When defining their objectives] humanitarians must remember that they represent organisations which have very specific missions and that these organisations also have obligations towards other agencies.”

### Prioritising Your Objectives

Negotiators are likely to have several objectives for each negotiation. It is important to prioritise some of them. Having too many goals can make your position unclear and allow demands to be dismissed as vague or excessive. It may help to organise your objectives around the aspects of process, relationship and substance.

- **Process and relationship** Effective procedures for the holding of meetings and making contact, as well as a minimum level of trust, are preconditions for any substantive, results-oriented discussion with your counterpart. If you feel that these factors are not yet well established, work on them first, as they will be easier to agree on

than substantive questions. Smaller process objectives like venue, ground rules, participants and shared field visits can, for example, be agreed and met relatively easily. Agreement on these points can sometimes work quickly in helping to create an effective working relationship.

- **Substance** Prioritising the substance of any discussions means that you will have to make a judgement call between your priorities and the receptiveness of your counterpart to a particular issue. Substance can be prioritised either by *sequencing* and *linkage*.

Sequencing means that you set aside the hardest topics until last. Sometimes such a deferral is fatal to a negotiation – a potential agreement unravels at the last moment when negotiators finally get around to addressing the truly difficult questions.

Linkage requires the making of similar judgement calls. While it is useful to link some topics, others are best kept apart. In a refugee situation, for instance, you may make it clear that you will only discuss future repatriation programmes with a reluctant host government if it simultaneously discusses and addresses the immediate security needs of refugees. But while linkage can work well in some cases, it can also backfire, resulting in failure on counts. And, of course, if you introduce this tactic into a negotiation it can also be used against you later.

as unachievable objectives. At a given moment it may be wiser to suspend your efforts with respect to certain demands and to concentrate instead on what you can definitely secure. But no objective that concerns people's lives and protection should be abandoned completely. Always keep coming back to it to test the waters again or try to find a way of approaching the same problem through another channel.

- **Hidden objectives** Sometimes it is tempting to try to conceal some of your real objectives from the other party if you believe that it is unlikely to agree with them. For instance, if your counterpart has constantly denied incidents of rape in IDP camps and blocked your efforts to work with women on this issue, there may be nothing to be gained by continuing your discussions on the abuse of female IDPs. Instead, it might be better to focus on another objective that may have some degree of overlap with your problematic objective. Negotiate instead for a public health programme in the IDP camps, which would allow close contact with women, without having to spell out their personal protection as one of the key aims. Pursuing hidden objectives may be useful but it has to be done very carefully in order not to create suspicion and distrust in the mind of your counterpart and hence endanger all of your programmes and the safety of personnel.

- **Negotiating for imposed objectives** Sometimes humanitarians find themselves defending objectives with which they do not agree. These can be goals set by your superiors, donors, or multilateral bodies like the UN. In such a situation, you may feel inclined to distance yourself from these objectives during the negotiation, especially if you feel that the other party is resistant to them. For example, you may argue:

*"Well, I know this is a bad idea, but my boss is really keen on it, so I have to tell you ..."*

While this may allow you to build or maintain a good relationship with your counterpart, it can also backfire. You may lose your credibility if you overuse this argument, since your interlocutor will either think you are weak (because you cannot convince your boss of what is actually right) or a manipulator (because you try to exploit your good relationship with him/her to please your boss).

#### Box 4: Common Problems When Defining Objectives

The following list outlines common problems when defining objectives and suggests possible solutions.

- **Changing objectives** It is likely that your objectives will alter over time depending on changes in the conflict, in the international situation and in your own organisation. In particular, objectives often change in prolonged negotiations that take place over several months or even years. Changing objectives is not a problem in itself as long as you remain clear about what your objectives are at any given moment.

- **Unrealistic or unachievable objectives** Sometimes some subjects may just not be worth negotiating and must be recognised

### Checklist for Defining Your Objectives

- Are you clear about your positions, bottom lines and interests?
- Are your objectives aligned in-house, are they compatible with your mandate and mission, and do they complement those of other organisations?
- Have you prioritised your objectives? It may be useful to write down your objectives in order of importance, as this will help you to become fully aware of them.
- Share your objectives with your colleagues and superiors.
- Are you prepared to use hidden objectives and have you decided on how to manage the risks that this may involve?
- Are you continuing to revisit and review apparently impossible objectives?

## CHAPTER 5 IDENTIFYING THE RIGHT COUNTERPART

Talking to the right person is one of the key factors for ensuring the success of any negotiation. If the opposite number is highly resistant to humanitarian values, has little implementation power and does not get along with you on a personal level, negotiations are unlikely to produce useful results.

Before starting any negotiation, skilled negotiators always assess which person in a particular conflict will be their most appropriate counterpart – the person most likely to deliver what they want. Often, humanitarians do not get to negotiate directly with top-level counterparts – the ultimate decision-makers in a government or armed group. Instead, they have to reach them by negotiating with others. And even then, humanitarians normally do not enjoy the luxury of choosing their opposite numbers in a negotiation. This means that, in most cases, the person in front of you is not your definitive negotiation partner but your intermediary. You will usually need to convince the ultimate decision-makers *through*, or sometimes *despite*, your negotiating counterpart.

But in all situations, it is crucial to understand how, and if, the person in front of you can help you to achieve your objectives by looking at the following factors.

### Who is the Right Counterpart?

#### Receptiveness to Humanitarian Values

Ideally, it is best to negotiate with people whose interests are compatible with your own, so that a mutually satisfactory agreement is more likely. Assess how receptive your counterparts are to humanitarian values by performing research and by taking the time to get to know them (also see Chapter 6).

#### Implementation Power

Implementation power is a primary determinant for the success of any negotiation. No matter how sympathetic he/she is, if your counterpart lacks the power, authority and capacity to garner institutional support for your agreement, the agreement will be void in practice or will constantly have to be re-negotiated. Safe passage at checkpoints is a notorious case

in point. Often, you may agree with a high-level authority on free passage for humanitarian vehicles. But at certain checkpoints, guards who oppose the humanitarian presence and the higher authority that had given you permission to pass may block your trucks.

A quick way of assessing the implementation power of your counterpart is to gauge his or her power in four key areas.

- **Power to do something** – the actual capacity to implement what has been agreed. For instance, being able to grant access to an IDP population or to provide a fleet of trucks.
- **Power over other people** – the authority to give instructions. For example, the seniority to command people within and outside of his or her immediate geographical sector or ministry.
- **Power through other people** – being able to profit from a dense network of friends and colleagues in government who greatly admire, listen to and cooperate with him/her. For instance, someone who may not hold a senior position but has significant moral authority across a wide constituency.
- **Power from a very specific source** – being able to make or shape decisions due to holding a powerful position in the national hierarchy or a unique advisory post. This might be someone with little influence over constituencies or little official authority but who enjoys exceptional access to power through being a guru or confidant or spouse of a leader.

But, remember, power changes. Changes to the political situation or local command structures may suddenly increase or decrease the implementation power of your counterpart. As a humanitarian with experience in South Asia put it:

*“You need to position yourself widely because you never know who will be in power in a month from now.”*

It is important always to maintain as broad and diverse a range of counterparts or potential counterparts as possible.

### Personal Rapport

The way you relate to, or *click* with, your counterpart on a personal level is obviously important. Negotiations are likely to yield better results if you both get on well. It is thus crucial always to introduce yourself, so that

your counterpart can get a sense of who you are. For example, say who you work for, how long you have been in the country, whether you are married and have children. This can be done briefly and concisely. It is not necessary to expect your counterpart to do the same. In fact, it may be a sign of increasing trust, if he/she starts sharing information about him or herself at a later date.

The following three factors are likely to shape relations between humanitarians and their counterparts.

- **Culture** There is, of course, no general rule as to what impact elements like nationality, religion, group identity, gender and age will have on your negotiation. But, as seen in Box 5, many humanitarians report them as being highly significant depending on a given context. It is essential to judge which social and cultural factors have positive or negative ramifications in your own setting.

An aid worker reflecting on experiences in South-West Asia pointed out the advantages and disadvantages that gender can have during negotiations:

“Being a woman can be a factor that both facilitates and blocks a negotiation. In certain countries where men are highly sensitive to female charms, there may be a greater readiness to listen to a woman than a man. With a man, you tend to arrive at difficult moments in the discussion sooner. With a woman negotiator, there will be more distance and an issue can be discussed in a more roundabout but no less effective way.”

- **Personal conflict styles** Negotiation theorists distinguish between four attitudes, or styles, with which individuals approach conflict: avoiding; attacking; yielding; and collaborating.<sup>1</sup> These styles are often part of our basic character or the product of our education. Be aware which of these come most naturally to you and gauge how this fits with the attitude of your opposite number. Although we instinctively adopt a style we can be trained to adopt all four.
- **Personality types** Psychologists employ numerous distinctions when it comes to personality types, but the one feature that is likely to influence a negotiation most is the extent to which the

other party is predictable. It will be much easier to negotiate with someone whose next move can be anticipated than with a highly manipulative or unpredictable character. Understanding certain characteristics of a counterpart's personality helps in anticipating what they will do next.

### Box 5: Examples of How Culture and Social Roles Can Influence a Negotiation

#### Example 1

In a country in Southeast Europe, weapons were found in the assistance packages that a humanitarian organisation delivered to affected civilians in an area occupied by rebels. The government ordered the organisation to leave the country. The organisation decided to send one of its national employees to the government to negotiate a continued presence. According to this employee, the members of the government perceived him as much more trustworthy than his international colleagues. They repeatedly asked him to confirm that he was a patriot and that his allegiance had not been bought by international humanitarian organisations. Having convinced them of his loyalty and given other reasons for the presence of the weapons, the government eventually agreed that the organisation could stay.

#### Example 2

During the civil war in the same country, members of an armed group continuously asked to negotiate with international staff only. They were afraid that national employees would be too partial or have divided loyalties.

#### Example 3

A national employee in Southeast Europe described high staff turnover as the real factor accounting for the difference in the quality of

negotiating relationships that national and international staff are able to develop with counterparts.

“The international will leave the country and may never see these counterparts again, but we will remain here and must therefore pay much more attention to the relationships we establish.”

#### Example 4

When negotiating humanitarian assistance with a certain military commander, an international humanitarian worker in Eastern Congo always used to take a young female member of the national team with her. This young woman was able to appeal to, and convince, the commander in an emotional way, while also knowing how to keep the distance that this kind of highly personalised approach required. In contrast, when discussing sexual violence against women with the same commander, the negotiator always took a 'very macho' national male staff member with her who could speak 'man-to-man' with the commander.

#### Example 5

“I once went with another female colleague to negotiate with a general who welcomed us with the words: 'Well, this is excellent, two lovely ladies. I have finished my working day and now we will be able to move on to more pleasant matters.' So, the negotiation got off to a very bad start. During the discussions it was almost impossible for us to be taken seriously. The general also had a series of gadgets on his desks including small toy soldiers that, if wound up, started walking while shooting with machine guns. His great delight during the 45 minutes of our negotiation was to turn the key of these little soldiers and make them advance towards us with their machine guns pointed while he burst out laughing. He gave us no chance of entering into a serious discussion. Had we been men, the discussions would have taken a very different turn.”

*(Aid worker sharing an experience in Central America)*

There are two types of counterparts who may not be very helpful.

### Powerless Counterparts

Humanitarians can find themselves negotiating with someone who is relatively powerless, and admits it, or with someone who pretends to have power but does not. In such situations, a well-intentioned counterpart may point you towards somebody else, someone further up the hierarchy, or in a different department. By contrast, a pretender may be too afraid of losing face and thus continue to string you along. If this is the case, look for ways to go around them. Knock on additional doors and diversify your contacts until you identify people who have real power. But be careful not to offend a first contact. He or she may become more powerful one day or could spoil your wider efforts now.

### Phoney Counterparts

Sometimes, particularly resistant authorities will deliberately set you up with phoney counterparts – negotiators who are told to take your time and energy but are instructed to stall you with charm, evasion or obstinacy. If you have the feeling that you are running up against a brick wall in this way, try to find a way around it, diplomatically or forcefully. But take the hostility and obstruction seriously. Use your wider network to uncover the precise origin of, and the motive for, such obstruction, so as to understand it and to address it appropriately.

### How to Identify the Right Counterpart

Whether you are able to choose a counterpart or have them forced on you, it is essential to know as much about them as possible. This involves important research to identify and understand your opposite number (the person with whom you will negotiate) and their relationship with your ultimate counterpart (the person you most need to influence). All of this will help you to appreciate the kind of person you are dealing with and the extent of their power.

### Gather Information

Find out as much as possible about your negotiating counterparts as well as about the group of individuals that surrounds them. They will probably be doing the same with respect to you. The following sources and contacts should prove useful.

- Books, newspapers and the Internet.
- Experts like academics, journalists and diplomats.
- Colleagues who have negotiated with your counterpart before.
- Employees of other humanitarian organisations who have had contact with your counterpart.
- Any possible contact you can make who knows the person or is aware of their reputation – such as people in the street, taxi drivers, hotel owners, waiting staff or people under the person's command.

### Analyse Your Information

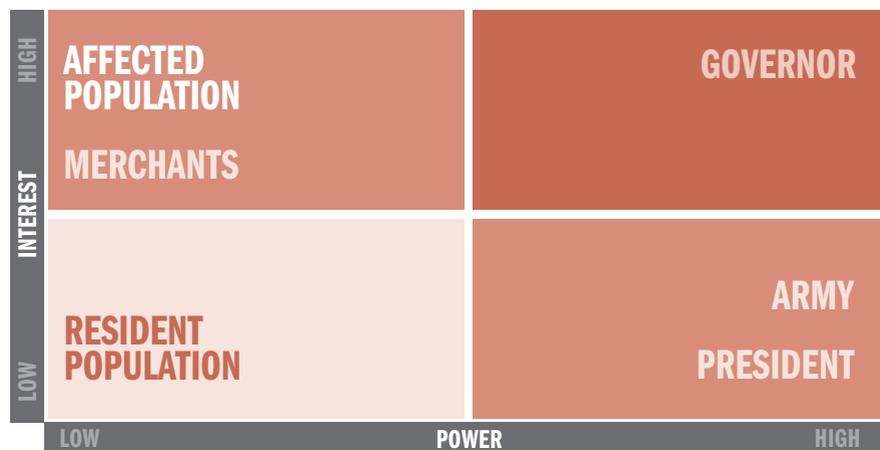
Ask yourself the following questions about each of your counterparts.

- What role do they play in the overall conflict?
- What relationships do they have with other key individuals and groupings?
- What is their conflict style? Are they antagonistic, or do they collaborate?
- What is the hierarchy (official and unofficial) among the various people with whom you are dealing? Who influences whom?
- What kind of attitude do they have towards humanitarian values/international law/your institution/you as a person/the specific subject matter you want to discuss with them?
- At which level are they placed? How much and what kind of responsibility do they have? Is the substance you are discussing with them part of their mandate?
- Do their employees hold them in high esteem? Are their orders taken seriously? Are they feared?

### Map Your Findings

Putting together a *stakeholder map* is a good way of helping you to establish who you should approach. Such a map helps you to understand which of your possible counterparts has the most interest in your negotiation objectives and the most power to help you realise them. The diagram below shows an example of a generic stakeholder map.

Ideal counterparts are listed in the top right corner of the matrix (high interest and high power). Negotiators can also draw a more detailed



version of this map that shows more nuanced levels of power and interest. A more detailed stakeholder map can also indicate who the counterparts know and have the strongest connections with and who, therefore, can be approached to influence them. See Annexe III for an example. Stakeholder maps can be regularly updated, as negotiators learn more about their counterparts and the conflict.

### Pre-negotiations

It is rare that negotiators will go straight into direct talks. Instead, they are likely to have one or more preliminary meetings. These pre-negotiation discussions allow negotiators to get to know their counterparts and to find out whether they are as receptive and have as much implementation power as your research suggests.

#### Box 6: Common Problems When Identifying Counterparts

- **Changing counterparts** Dramatic or subtle changes in the conflict may suddenly transform the receptiveness, availability, implementation power and even personal attributes of your counterparts. In an extreme case, your most powerful counterpart may, overnight, become an insignificant actor. From one day to another, you may be faced with a whole new team of potential counterparts. This will require renewed research and counterpart identification.

- **Knowledge and time constraints** International employees will have limited time to unearth information on counterparts and to learn how to move within the dense web of actors in a given country. They will have to depend even more, therefore, on the information that national colleagues and other contacts can provide.

### What if Your Counterpart is not Accessible?

You may find yourself in a situation where the most powerful potential counterpart is not possible to reach in person. Most often this will be because the individual does not want to see you, does not trust you or is simply too senior.

### Negotiating Through a Third Party

When access to your counterpart is denied, it is important not to spoil your chances of making direct contact with him/her by pestering him/her inappropriately. The best way to convince a counterpart of your good faith, honesty, trustworthiness and significance is to have someone who can testify on your behalf.

According to a *Wolof* proverb from Senegal, 'the soap cannot wash itself'. Just as the soap needs an external element against which to be rubbed, you need a third person that can highlight your qualities and underline your credibility. As an intermediary, this person will facilitate indirect discussions and mollify possible differences between you and your counterpart.

### How to Choose an Intermediary?

Stakeholder mapping should reveal a series of key people who are close to your counterpart. If not, it may be useful to think about recruiting more informal friends or common acquaintances as middlemen.

Whoever you select, it is vital that their identity or capacity does not damage the image of independence and impartiality that you are trying to project. It is often because such people are difficult to find that humanitarians cannot outsource negotiations. The person must be able to put the needs of victims first. National employees in your organisation may sometimes be well placed to do this, but be careful not to expose them and their families to new dangers in the process. As a general rule, it is recommended that you choose an intermediary who is viewed in a friendly, not hostile, light by your counterpart.

### Checklist for Identifying Counterparts

- Have you gathered together, analysed and mapped enough information to identify several appropriate negotiation partners?
- Have you tested your counterpart's receptivity to humanitarian values, his/her implementation power and the personal rapport that you can expect to develop with him/her during pre-negotiation talks?
- Have you considered using an intermediary to approach your counterpart?

## CHAPTER 6 MEASURING COMPATIBILITY

Two important steps in preparing for your negotiation are now complete. You should now know what your negotiation objectives are and with whom you need to deal in order to achieve them. However, this is not yet enough to develop a successful negotiation strategy.

The next key step in any analysis is to assess the other party's interests, positions and objectives and to determine how compatible they are with your own and how much leverage you have to make up any difference. Judging this well is important, as it will reveal how confrontational any negotiation strategy needs to be. If there is no compatibility and little leverage, you will find yourself in a win-lose situation and you will be forced to adopt a rather hard-line and coercive approach. By contrast, high compatibility and strong leverage will allow you to be less adversarial. These strategies will be developed more in Chapter 8.

### What are the Interests of the Other Party?

Use the information already gathered to examine carefully the objectives of the other party and to identify the interests that underlie his/her position and, if it is obvious already, his/her bottom-line.

### How to Identify Their Position

Positions are often easy to determine because parties will usually state explicitly what they are. They are concrete offers, demands or limits that they specify early on. For example: *"we cannot permit you to enter that area"* or *"we need food too"*.

### How to Detect Their Bottom Line

Bottom lines are more difficult to spot. Some parties may stipulate explicitly what they are, while others may keep them secret in order to achieve better outcomes. Usually, one can detect bottom lines by making a very low probing offer (or a very high initial demand) and signalling that one is not able to offer more (or accept less). For instance, when buying a carpet at a bazaar, you may initially offer to pay a very small amount for it. The shopkeeper's reaction will be indicative of how close this offer is to

his/her bottom line. However, humanitarians should be careful using this technique when their counterparts are not very receptive to humanitarian values. They may simply quit the talks if they find the probing offer unacceptable.

### How to Recognise Their Interests

Interests are the most important things to identify, since they are the ultimate motive for negotiating and thus inform any final decisions that negotiators make. However, interests are also the most difficult things to read. They are often not stated explicitly. Sometimes they may even remain obscure to the party who is motivated by them. Conflict theorists distinguish between interests, such as desire for recognition, economic gain, personal advancement or military victory, and more basic needs, which are essential for survival, including physiological needs and personal security needs.<sup>2</sup>

The other party will, therefore, have a multiplicity of interests, some personal and some shaped by the organisations and social groups they belong to or the wider groups that surround and influence them. Any negotiating is also likely to reflect the conflicting interests that always exist within any group whether it is a government, armed entity or an affected community. And, of course, there will often be a mismatch between the interests of civilian populations and those of a government or armed group. For example, hungry people in a war zone may greatly welcome and desire the arrival of food trucks, whereas government officials will want to deny them access because they do not want humanitarians to see the military preparations they are making in the area, particularly forced conscription of young men. In many negotiations, people will be trying hard to hide their real interests because they know they will be unacceptable to those on the other side of the table.

Discerning people's needs and interests requires real empathy for the situation of the other party, as well as good information on what they are doing. As a civilian in West Africa observed:

*“Humanitarians have to abandon their shell of regulations and get under the skin of those who are in front of them. They must be receptive ... and put aside their prejudices.”*

Asking yourself the following questions may help you to stand in their shoes.

- Why can they not agree to our position?
- What position would satisfy them and why?
- What consequences will they face as a result of accepting our position?
  - Will they lose political support?
  - Will they incur economic damage?
  - Will they be forced to defy some of their moral values?
  - Will they be militarily disadvantaged?
- Who will criticise and condemn their acceptance of our position and why?

### How Compatible are the Interests of the Parties?

Being clear on the other parties' interests enables negotiators to judge how compatible they are with their own. Understanding compatibility requires that you compare your own interests as identified in step one of the analytical phase with those of your interlocutor and that you identify possible points of convergence. The more compatible your interests are the more likely that you will reach a successful agreement.

Measuring compatibility is an important step in every humanitarian negotiation:

“It always seemed very important to me to listen to the counterparts and understand their state of mind; that means – before entering the negotiation – to evaluate and try to clearly understand their interests and the room for manoeuvre that we have given them ... always keeping in mind that we have interests. Very often, their interests and ours are completely opposite or contradictory. Sometimes they do not differ significantly, sometimes very much and sometimes dramatically so. But I have never been in a situation in which our interests and theirs coincided exactly. We always have to ask ourselves what the opposite party wants and what we want. Where do we position ourselves in comparison to them? What are the initial points of convergence where we can meet?”

*(Aid worker sharing experiences from Central America)*

Compatible interests are not necessarily identical interests. Although both parties may well share some interests, they may also have divergent interests that can be dovetailed creatively. Remember the example of the orange, where the two parties have divergent interests: one wants the juice, the other the peel. These divergent interests are compatible; both sides are satisfied: the orange can be grated and squeezed.

Time, understanding of your opposite number, and flexibility to develop mutually satisfactory options are essential factors in increasing the compatibility of interests, but humanitarians often have can rarely draw on all of these factors. It may only be possible to get a clear sense of how much compatibility exists when negotiations are already underway. Especially when dealing with a group of counterparts that has diverging or contradictory interests, compatibility may be difficult to measure. Nonetheless, it is crucial to think about and shape a middle ground where the interests of both parties may overlap and meet.

### Using Interests to Achieve Principled Agreements

Investing time and energy in thinking about compatibility and overlap may help you to come to a principled agreement. As discussed in Chapter 2, ideal agreements can often not be concluded through win-lose or compromise negotiations. In a win-lose negotiation, humanitarians and civilians may end up as total losers and in a compromise situation – humanitarians usually have to make concessions that remain have tragic ramifications for some people.

Some humanitarian negotiators think that compromises are inevitable:

“It is important that we create compromise situations. If we only demand concessions from the other side, we will not go very far.”

(Aid worker talking about experiences in Southeast Europe)

In their classic negotiation manual *Getting to Yes: Negotiating Agreement Without Giving In*, Roger Fisher and William Ury show how these imperfect scenarios can be transformed into a principled negotiation that makes it possible to conclude wise agreements that offer maximum satisfaction to both parties.

Put simply, Fisher and Ury claim that most win-lose or compromise negotiators neglect interest analysis and focus too much on positions. Since positions are narrower than interests they hinder the design of creative agreements that would satisfy both parties. Instead, negotiators are advised to concentrate on interests, rather than positions, and to develop as many options as possible for agreements that would satisfy both parties until a wise and effective solution can be identified that requires neither to compromise.

Table 3 illustrates how, in a humanitarian environment, an apparent win-lose outcome could be transformed into a principled and mutually satisfactory agreement.

**Table 3 Transforming Win-Lose into Compromise or Principled Agreements**

	YOU	THEY
<b>POSITION</b>	“I would like to carry out an assessment in three villages in your district.”	“I do not want you to visit these villages”
<b>OPTIONS FOR WIN-LOSE OUTCOMES</b>	You visit the villages. [Win] You do not visit the villages. [Lose]	
<b>INTERESTS</b>	“I am concerned about reports that IDP women living in these villages have been gravely abused and are now destitute with their children.”	“I would not like humanitarians to interfere with the military exercises currently taking place in the area.”
<b>OPTIONS FOR PRINCIPLED OUTCOME</b>	The assessment is conducted two days later (mutually satisfactory without compromise)	

It would be ideal, if every win-lose negotiation could be transformed into a principled situation by looking at interests. Both parties would always feel like winners and never have to make compromises. In humanitarian scenarios, though, this will often not be possible. The interests of the negotiating parties are often highly irreconcilable and there are few options for principled outcomes. Although humanitarians should always try to achieve a principled agreement they must remain aware of the ethical risks involved.

Negotiating for humanitarian access, assistance or protection should not enable or even encourage interlocutors to fight wars or to engage in a

campaign of genocide. The fact is that interest compatibility may be very low in humanitarian environments, forcing humanitarians to adopt more hard-line and adversarial approaches to negotiation.

### Box 7: How to Use Interests to Create Compromise Solutions

According to Fisher and Ury, one can build on interests either by trading differing interests or by turning shared interests into common goals.<sup>3</sup> Below are two examples in which their ideas are applied in a humanitarian context.

#### Example 1: Trading Interests

You want to assess the situation in an area where a group of IDPs has fled after a government offensive. These people are members of a different ethnic group to the armed entity that controls the area. The latter has a keen interest in increasing its international credibility but has no capacity to assist the IDPs. You may work together on the protection of the IDPs, agreeing that you can visit all villages in the area, while also agreeing a public declaration of principles with the rebel group that formalises its commitment to international humanitarian law.

#### Example 2: Common Goal

Armed incursions across a border into refugee camps and villages under the authority of your counterpart is endangering refugees and the host population and escalating inter-group conflict in the region. Both of you agree that something should be done to prevent the raids and to protect refugee and civilian populations. Your different primary interests in national security and humanitarian protection mean that you can share a common goal of increased protection for people along the border.

### Managing Perceptions

Every experienced negotiator knows that each side's perception of the other is enormously significant in any negotiation. If one side decides

that it has nothing in common with the other and refuses to see things differently then the negotiation is in big trouble. In certain situations, interests are actually quite compatible, yet, nonetheless, both sides can maintain a strong impression that an unbridgeable divide separates their objectives.

If it becomes obvious that you face a problem based on perception rather than reality, you need to find out why and communicate effectively to alter the view of your counterpart. Problems of perception usually arise out of misunderstanding, prejudice or history.

#### Unclear Interests

There may be occasions when each side's objectives are misinterpreted because they were not communicated clearly enough. Widespread rumours may often cloud the way the parties interpret each other's objectives. As a humanitarian explained when talking about experiences in West Africa:

*"In every negotiation, there are communication problems. In our case, negotiating for the integration of refugees into a remote village, information about our plans penetrated only very slowly amongst the host population, which led to the spread of rumours. For example, there were rumours that the refugees destroyed villages. This made the population even more reticent. It was also a population with very low levels of education. Communication is very important. Your objectives must be sufficiently clear and transparent. If our counterparts understand our objectives well, their suspicion weakens."*

#### History

In any negotiation, your view of one another may be affected by past events. Your predecessors may have had bad experiences negotiating with a given individual, while he or she may have been disappointed with the programmes that your organisation carried out. Such experiences can lead people to assume that both sides are fundamentally incompatible with no common interests. A military representative in West Africa, for example, was deeply disappointed by humanitarians who had allowed armed refugees into the territory under his control. He concluded that 'all humanitarians are intelligence agents of the other side', and stressed that he would not deal with them again. Gathering as much information as

possible on past negotiations with your counterparts beforehand will help you to appreciate the image that they have of humanitarians and the points that you need to challenge.

### Checklist for Measuring Compatibility

- Can you identify your counterparts' positions and bottom lines?
- Have you performed analysed their interests in-depth?
- Do you have a sense of how compatible your interests are and hence what the chances are to reach a principled agreement?
- Are you sure that your counterpart has a clear idea about your negotiation objectives, especially your interests? Is there anything you can do to communicate them more clearly?
- Are you aware of any historical, cultural or personal factors that may lead your counterpart to perceive you in way that is different from how you would like to be viewed?

## CHAPTER 7 ASSESSING YOUR LEVERAGE

After setting objectives, identifying the right counterparts, analysing their interests and exploring levels of compatibility and overlap, the final step is to assess the leverage that you will have in the negotiation.

Leverage is the power you have to influence the other party. The higher your leverage, the more likely you are to reach an agreement that is in your favour. The analytical phase enables you to get a sense of the levers at your disposal and the risks and opportunities associated with each.

Humanitarians can rely on several types of leverage. The first and most obvious type is incentives and threats.

### Incentives and Threats

Humanitarian action is typically characterised as having five main modes: persuasion; denunciation; substitution; support; and mobilisation.<sup>4</sup> Beneath each lies a specific source of power that humanitarians can utilise either as an incentive or a threat in order to increase their influence when negotiating for respect of international law. For example, humanitarians may be able to offer their counterparts possibilities to better support the people they are responsible for or they may threaten to heighten diplomatic pressure.

Which mechanism is employed depends to some degree on the organisation that the humanitarian represents. A UN agency, for instance, may, in some instances, be reluctant to use the media for the purpose of public denunciation, but it may well have a significant network of state allies and a fair amount of humanitarian expertise that strengthen its leverage. By contrast, Human Rights Watch will have significant media power but few material goods to help counterparts assist members of the affected population. During the analytical phase, you should spend time on, and give careful thought to, each incentive and threat available to you and understand which will appeal most to your counterparts.

One caveat about threats: experienced negotiators and negotiation theorists generally do not encourage their use because of the high risk that they may prove counterproductive and increase levels of antagonism. Instead they recommend that you rely on incentives.

Below we discuss the different incentives and threats available to humanitarians and examine some of the disadvantages.

### **Quiet Advocacy (Persuasion)**

Humanitarian law, human rights law and refugee law legitimise humanitarian action. In cases where counterparts fail to fulfil the obligations set out in these standards, humanitarians can try to persuade them to take action of their own free will to end the violations. Recognition by counterparts of international legal standards and their willingness to adhere to them can constitute a *'powerful humanitarian lever'*.<sup>5</sup> Counterparts may take their international legal commitments seriously, either because they are impelled by the formal recognition that this may afford them within the international community, or because they feel are concerned about the prospect of international isolation or condemnation and, in applicable cases, even criminal prosecution. Many humanitarians, however, feel that international legal authority is not a very effective source of power, especially in difficult negotiations, when counterparts lack political will or are reluctant to acknowledge international standards.

### **Loud Advocacy (Denunciation)**

A more effective lever is usually use of the media, particularly public and official reporting of violations. Denunciation and targeted long-term advocacy campaigns may often put counterparts under pressure with respect to maintaining their international image and avoiding action being taken against them by states and multilateral bodies. But the application of media pressure can easily backfire and thus has to be handled very delicately in humanitarian negotiation situations. Often media representatives have their own idea of what they want to report and thus convey a message that is different from the one you wanted to communicate. This can cause irrevocable damage to a humanitarian negotiation; once a wrong message has been publicised, it is almost impossible to take it back.

### **Material Assistance (Substitute)**

The aid items that humanitarians distribute can often serve as a key asset in the negotiations. Counterparts may often be interested in material assistance because it can help them secure popular support; civilians are interested in it because it can save their lives. Using aid items as a lever in a negotiation, though, can pose some ethical problems. Especially in

day-to-day frontline negotiations, it can prove fatal to negotiate your way by distributing sacks of flowers just for the sake of getting a commitment. You will soon tarnish your reputation and, even more gravely, you will put the reputation of other humanitarian agencies on the line.

### **Professional Expertise (Support)**

Aid agencies provide specific professional services based on their technical, agricultural or medical expertise. The availability of these services and the possibility of working with humanitarians in a strategic partnership can often encourage counterparts to cooperate with humanitarians and to agree to some of their objectives.

### **Allies (Mobilisation)**

Many humanitarians say that rallying allies around their cause has often proved a very useful way of influencing their counterparts. Allies can be other states, multilateral bodies, such as regional organisations or the UN, international bodies, NGOs, important public figures, the media or any other group that has some bearing on counterparts' decisions. Allies can speak in favour of humanitarians and convince counterparts to accept their demands and proposals. Allies can also implement threats. For example, humanitarians may appeal to governments to introduce sanctions against counterparts or to isolate them diplomatically.

There are two main risks associated with employing allies. First, the neutrality and independence of humanitarians can be called into question if they work too closely with non-humanitarian bodies. Even if it is only by chance that powerful regional or international actors have adopted the same position as a humanitarian organisation, the latter is likely to be suspected of having collaborated covertly with them. In more extreme cases, humanitarians may run the risk of being co-opted by their ally, either consciously or unconsciously. All of this could severely damage the reputation of their organisation and of all other humanitarian actors and will provide counterparts with a good excuse not to work with humanitarians. It is important, therefore, always to keep the political agenda and interests of your ally in mind.

The second danger manifests itself when allies put too much pressure on your counterparts. This may evoke strong counter-reactions that make further negotiation impossible. A humanitarian worker with experience in Southeast Europe told us, for example, that, at some point, his counterparts felt bullied and put against a wall by the diplomatic allies of humanitar-

ians and refused to enter into any further talks. Working with allies thus requires careful thought and preparation. More details on how to gather allies are supplied in Chapter 10.

Humanitarians often search for allies in order to be able to influence counterparts:

“We try to involve a maximum number of organisations which we know are active in the area and interested in the problem. We then also look for allies within the community with which we would like to work – this might be the prefecture or the police commissioner. We are always looking for allies.”

*(Humanitarian talking about his experience in West Africa)*

### Threat of Withdrawal

If negotiations are very difficult, humanitarians may threaten to terminate certain programmes or to withdraw from the country altogether in an effort to get their counterparts to agree to their demands. To be credible, though, humanitarians must execute their threats, a move that may leave the affected population without assistance. This is why many humanitarians recommend never issuing such threats without having given careful thought to the consequences, and being willing to accept them. An aid worker with experience in South Asia told us, for example:

*“I would never threaten to withdraw. Because once you leave, how are you going to come back? In most cases, you need to come back in order to satisfy humanitarian needs, but if you say you are going to leave, you put the advantage in their hands.”*

As with all other form of coercion, threats of withdrawal are likely to backfire and escalate the situation, rather than help you to meet your objective.

In many humanitarian situations, the incentives and threats listed above will only yield limited results. Often, humanitarians feel that they are not in a position to propose incentives or to issue threats. Their counterparts control the territory that and the people who humanitarians would like to assist or protect and hence they can deny access. Also, counterparts may frequently show a willingness to use force against humanitarians, making

the latter feel extremely vulnerable and powerless. Finally, counterparts may often simply not be attracted by humanitarian incentives or put off by humanitarian threats.

Given the limits of humanitarian power, it is even more important to consider alternative sources of leverage, such as fallbacks, credibility and a good sense of timing. Although these are less specific to humanitarian environments, one should not underestimate the impact that they can have on interlocutors.

### Fallbacks

If they are good, fallbacks will enable you to keep your footing during the push and shove of negotiations. Thinking about the fallbacks available to both parties is one of the most effective ways of increasing your leverage.

Fallbacks determine what you are going to do if you fail to reach an agreement or if the other side asks you for concessions that you are not willing to make. For example, you have been trying to persuade the Minister of Defence for several months to allow your organisation to deliver food to a group of rebels assembled in a demobilisation camp, but the Minister insists that the troops have to remain in isolation as long as demobilisation is ongoing. However, you know that the Minister of the Interior and a significant number of parliamentarians support your request and are willing to back you. These people are your fallback in case the Minister of Defence does not change his or her position.

How do fallbacks provide leverage? Knowing what you are going to do if no agreement is reached gives greater confidence. You are likely to present your position with more conviction and composure. More important, the other party may realise that you are not afraid to suspend talks and pursue your interests without it, which, in certain situations where interdependence is high, will put it under pressure to reach an agreement. It is important, therefore, to spend time developing fallbacks.

Leverage can also be gained by knowing the fallbacks of the other party. If it has weak fallbacks, it will not want to break off the negotiations and may even be more willing to make concessions. But if it has a very attractive fallback, you will need to convince it that its fallback is not as attractive as it thinks. Where you both have attractive fallbacks it may not be worth negotiating.<sup>6</sup> As a humanitarian, though, you may often find it difficult to develop viable fallbacks.

There are dangers associated with fallbacks. If they depend on others – supportive governments or allies within the authority concerned – fallbacks always run the risk of widening the conflict and the negotiations drawing in more actors. Sometimes conflicts need to be widened to be resolved. At other times, widening a conflict can necessitate changing its terms. What was central to your negotiation may suddenly become peripheral in a conflict between your fallback group and that of your counterpart. You may move from being an active protagonist to being the grass between two fighting elephants. Once again, good judgement is required.

### Credibility and Consistency

Many negotiators agree that one of the best ways to win people over is to act consistently, so that they can always trust that you will do what you say. Consistency bestows significant credibility and means that people tend to deal with you. Credibility as a negotiator emerges from consistency in three key respects.

- Ensuring that counterparts understand what your organization can do and what your limits are. Do not raise expectations that you cannot live up to.
- Keeping your word. People want to be able to rely on you, so keep your promises. Do not make promises that you cannot keep and do not make threats if you are not willing to implement them.
- Being careful with bluffs. You only need to be found to be bluffing once and your entire credibility is lost. Bluffing may be most effective in one-off negotiations with a person whom you know you will never see again, but it is not advisable in long-term negotiating relationships.

Humanitarians often point out the importance of setting realistic expectations:

“Humanitarians should never promise anything, especially not potential positive effects that they cannot control, because

in political environments nothing is certain. They should never generate illusions.”

*(Aid worker reflecting on experiences in South Asia)*

And counterparts appreciate consistent behaviour:

“We have very good memories of the negotiations with one staff member of a humanitarian organisation. He was a man of his word and we knew that if he said something, he would do it.”

*(Civil servant in Southeast Europe)*

### Box 8: Negotiating by Example to Gain Credibility

Sometimes the best way to argue your case is by doing yourself what you are asking others to do. At a terrible moment in an African famine, tens of thousands of refugees experienced a misguided food aid distribution of imported yellow maize when they had been used to eating white maize since childhood. They had only heard of yellow maize in the context of something used as cattle fodder in Europe and did not imagine that humans could also eat it. From the start of the distribution the refugees became frightened and angry and refused to accept it. Understandably, perhaps, they had doubts similar to those a French person might have if asked to eat pig food. Aid workers tried to calm the situation by saying that:

*“The colour difference isn’t serious, the maize is the same.”*

But reasoned argument did not help. Aid workers only managed to restore people’s confidence by eating the maize themselves in front of a row of trusted representatives of the refugee community.

## Timing

Timing has a crucial impact on every negotiation and often influences leverage.

### Time Pressure

Humanitarians will often be negotiating under significant time pressure on behalf of people caught in extreme circumstances. They have to initiate operations as swiftly as possible to save lives. At such moments, their counterparts may often try to force them to make concessions that, usually, they would not make. It will often be easier for humanitarians to influence the negotiation process if they do not feel under pressure to have to commit to something. When assessing their leverage, negotiators try to gauge whether they still have a lot of time to reach an agreement (high leverage) or whether they are under pressure to conclude an agreement as quickly as possible (low leverage).

### Frequency of Contact

Leverage will also depend on how often you can meet with the other party. Whether there is more or less leverage in a one off encounter than in a long-term negotiation process is not always clear. On the one hand, you could enjoy more leverage when you know that you will never see your counterpart again. You may be able to make threats and put pressure on him/her that you would not have dared to if the long-term relationship between you was important. On the other hand, you could have more leverage during prolonged and repeated negotiations, since you can assume that your counterpart has a sustained interest in negotiating with you. This may be because his/her fallbacks are weak or because the trust he/she has in you is very strong – both indicate that your leverage is high. Either way, the analytical phase helps you to think through and assess how much leverage you possess to influence your counterparts.

### Ripe Moments

If the timing of a negotiation is not right, you will have limited leverage. More than most, humanitarians may often be forced to negotiate when the moment is not ripe. But it is a hard call as to whether to wait for a better moment when faced with the immediate prospect of a starving population. The competitive nature of the humanitarian environment – with other agencies on your heels – can also pressurise staff into starting negotiations too quickly or too early.

In conflict and negotiation theory, ripe moments arise when both parties have an incentive to negotiate because they have reached a *mutually hurting stalemate* or are presented with *mutually enticing opportunities*.<sup>7</sup> In other words, they have nothing to lose or everything to gain from negotiating a deal. For instance, there may be a change in the local government and the new chief of the district is eager to attract popular support and thus is willing to engage with you. At the same time, you have just arrived in the country and are keen to start operations. The trick during the analytical phase is to recognise these moments that provide you with maximum leverage and to exploit them.

### Checklist for Assessing Leverage

- Identify the sources of humanitarian power that are likely to provide you with leverage over your counterpart and think carefully about the risks and opportunities that each presents with respect to the success of your negotiation.
- Develop good fallbacks and discuss them with your colleagues.
- Understand what makes you credible in the eyes of your counterpart.
- Try to get a sense of how well you can control time within the negotiation.

## SUMMARY PART TWO

In summary, the analytical phase of a negotiation involves the following steps.

- 1 Defining clear negotiation objectives and distinguishing between positions, bottom lines and interests.
- 2 Identifying counterparts who are open to these objectives, have implementation power and with whom a good working relationship can be established.
- 3 Measuring how compatible these objectives are with those of the other side and trying to maximise the degree of compatibility by identifying possibilities for mutually satisfactory agreements.
- 4 Assessing how much and what kind of leverage – in the form of incentives or threats, fallbacks, credibility and control of timing – is available to influence the counterpart.

## NOTES

- 1 Lewicki, Roy, Litterer, Joseph and Minton, John. *Negotiation. Op. cit.*, p. 10.
- 2 See, for example, Burton, John. *Conflict: Human Needs*. London: Macmillan, 1990, p. 91.
- 3 Fisher, Roger and Ury, William. *Getting to Yes: Negotiating Agreement Without Giving In. Op. cit.*, pp. 70–76.
- 4 Bonard, Paul. *Modes of Action used by Humanitarian Players: Criteria for Operational Complementarity*. Geneva: ICRC, 1999.
- 5 *Ibid.*, p. 19.
- 6 Fisher, Roger and Ury, William. *Getting to Yes: Negotiating Agreement Without Giving In. Op. cit.*, pp. 70–76.
- 7 Zartman, I. William. *Preventive Negotiation: Avoiding Conflict Escalation*. New York: Rowman and Littlefield, 2001, p. 4.