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FOLLOW-THROUGH

THE PURPOSE OF any humanitarian negotiation is to secure good results for people who are in need of access, assistance and protection. Throughout any negotiation, concentrating on results needs to be as much a priority as concentrating on the detailed matters of substance, relationships and process. During negotiations, humanitarians should constantly be asking themselves:

"Is this negotiation leading to the results we want?"

Subsequently, with an agreement in place, the question should be:

"Is the agreement being implemented and producing the desired results on the ground?"

This part of the manual looks at how to record negotiations as they are going on and how to follow-through on an agreement once they are complete. Both require effective monitoring.

Central to monitoring in both respects is good internal communication, a clear paper trail and a continued relationship with all of the parties, ensuring that any agreement made verbally or in writing is implemented on the ground.

CHAPTER 17 MONITORING ONGOING NEGOTIATIONS

Noting progress in negotiations as they proceed is very important. Producing regular *aides-mémoires*, notes for the file, minutes of meetings and situation reports all help the negotiation team to think aloud, to make sense of what it is doing, to hold the other party to its promises and to inform others in the organisation and beyond of advances that have been made.

Improving Internal Communication

Effective negotiation requires good in-house communication between all levels of your organisation. The right hand must know what the left hand is agreeing to. The left hand must know if the right hand is able to implement the agreement on the ground. Communication between negotiators and operational teams needs to be a two-way process. Field workers must be in a position to explain both to the authorities and the affected population what has been negotiated and agreed. Any changes need to be communicated immediately. All of this requires careful recording and dissemination.

Leaving a Paper Trail

Rapid staff turnover in humanitarian agencies is a constant challenge. Humanitarians seldom spend long in one place, while negotiations can be protracted. Members of the different parties to a dispute watch humanitarians from the same organisation come and go and often remark on the inconsistencies that manifest themselves in their arguments and positions. Newcomers do not know who they are dealing with and what has gone before.

The only way to remedy this state of affairs is to ensure that there is an effective paper trail – records of meetings, arguments and key incidents, for instance. These records need not be long and taxing to put together, but they should be carefully chronicled and archived. Responsibility for recording the minutes should not toile with the person who is conducting the meeting, but rather with a colleague or a shadow to the negotiations. Minutes should include the following information:

- the date of the meeting;
- family names, first names and functions of the counterparts present;
- family names, first names and functions of the humanitarians present;
- the location of the meeting;
- who asked for the meeting, why and who chose the setting – process;
- matters raised during the meeting and priority accorded to them – substance;
- what was the spirit of the meeting and how did the relationship evolve in relation to previous meetings – relationships;
- successful and unsuccessful arguments – arguments;
- points of agreement and disagreement – results; and
- follow-up required.

Regular monitoring of this kind helps in creating an invaluable record of events, discussions, dates and personalities for future negotiators and those who eventually evaluate the programme. More importantly, and controversially, such records may also contain useful evidence for any national or international criminal inquiry pursued through domestic courts or the International Criminal Court after the conflict. Each agency needs to decide on its own position with respect to allowing organisational records and staff testimonies to be used in such proceedings. Records of negotiations could prove very useful to prosecutors and defendants alike.

Personal Reflection

Finally, minutes and longer *aides-mémoires* or file notes enable members of the negotiating team to reflect and analyse actively. For many people, the opportunity to put things on paper offers the chance to think through what has happened and to assess how it relates to the objectives they set

and the results they desire. Reflection is a critical part of negotiation and helps negotiators to re-evaluate their strategy and to go into the next set of talks with a greater sense of clarity.

CHAPTER 18 MONITORING AN AGREEMENT

Once negotiations have reached an agreement, its implementation needs to be monitored vigorously to guarantee that it yields results and has an impact on people's lives. Wherever possible, details of the monitoring mechanism are included in the treaty text to ensure that all parties are equally committed to follow-through.

Broadly speaking, there are two strategic questions that require monitoring after an agreement is concluded.

- Does the action on the ground correspond to what you agreed on?
- Does the action on the ground fulfil the humanitarian objectives that you set for yourself at the beginning of the negotiation?

If the implementation do not correspond to what was agreed or are not helping to advance the original humanitarian objectives, it may be necessary to revisit the agreement and to restart negotiations.

Monitoring Specific Measures of Success

Chapter 3 outlined the five main characteristics of a good agreement. Any monitoring mechanism needs to seek out indicators that will show progress for each of these criteria.

- It meets the needs of the affected population.
- It can be implemented, highlighting specific obligations and responsibilities.
- It is sustainable.
- It nurtures relationships that will be of value with respect to future negotiations.

These criteria need to be at the heart of any humanitarian agreement. Specific measures with respect to implementation and success need to be built into any agreement. This can be done by setting out key milestones, clearly allocating responsibility and specifying impact targets of some kind that indicate progress with regard to access, assistance and protection for the population concerned – see Box 14 for an example.

Box 14: Monitoring a Food Security Agreement

An international agency had been negotiating with a government to secure permission to provide food and agricultural inputs to a badly affected district in the middle of the country where the government was fighting a well-organized insurgency that enjoyed significant popular support. Government military action had created many thousands of IDPs and significant levels of fear in the district's villages, which discouraged people from working in the fields. After five weeks of negotiation, during which time the government had stepped up its counter-insurgency activities dramatically, a verbal agreement was reached. This was then summarised in a letter of understanding from the agency to the government negotiator, confirming '*good regular access*' for agency vehicles and staff as part of a programme to provide emergency food aid '*to raise immediate nutrition levels*' and seeds and tools to improve '*agricultural preparation*' in time for the rainy season. A government commitment to '*ensure the safety of farmers*' was also acknowledged. The agreement was to take immediate effect.

Although ostensibly concerned with food, this agreement contained important commitments by both sides with respect to access and protection, as well as assistance. However, it did not include specific indicators of success or detailed monitoring mechanisms and the programme got off to a slow start, as government authorities showed little willingness to help implement it. Food convoys were being delayed and permission for the distribution of food in villages and IDP camps was sporadic and frequently postponed. It was also quite clear that agricultural activity for the new planting season was still extremely low. As a result, the agency decided to include a range of specific indicators in three key areas that could be a fair measure of successful implementation of the agreement.

Access – agency staff interpreted '*good regular access*' in quantitative and qualitative terms. Quantitatively, on the basis of numbers of people affected, it set a tonnage target for levels of food aid and agricultural inputs that it thought would have to enter the district each week. Qualitatively, it estimated reasonable trucking times between destinations in order to gauge how much unnecessary down time convoys were experiencing while waiting for government permission at checkpoints and in town centres.

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Assistance – agency negotiators chose quantitative measures to indicate the impact of the agreement on people's lives. The agreement's commitment to increasing 'immediate nutrition' was measured by carrying out regular anthropometric sample surveys in various villages and IDP camps throughout the district. These figures were reported weekly to the parties of the agreement, along with access data.

Protection – with fear and insecurity being the main factors hindering agricultural preparations, agency staff interpreted 'farmer safety' in quantitative and qualitative ways. Quantitatively, they collaborated with local Ministry of Agriculture officials to estimate the percentage of land now under cultivation, gauging the increase in proportion to the seed and tools they had distributed and the resulting number of hectares they might reasonably expect to prepare using these inputs. Qualitatively, wherever possible, they questioned villagers and IDPs about their level of fear and how long they were spending in the field each day.

Because these indicators and their specific measures of the agreement's impact had been introduced, agency negotiators were able to keep talking to their counterparts in government about progress on implementation of the agreement. Increasingly, they were able to agree reasonable, concrete targets for access, assistance and protection with the government negotiators and to monitor advances in implementation of the agreement on the ground.

Who Can Serve as a Monitor?

There are several possibilities regarding who can monitor a humanitarian agreement – each with its own set of advantages and disadvantages.

- You.
- Your counterparts.
- You and your counterparts together.
- An independent third party.
- The affected population.

There is no ideal monitoring combination and the best choice will be determined by what is possible and desirable in a given situation. It is always important, though, to try and find some way of representing the views of the affected population in any monitoring initiative.

Verbal or Written?

In their eighteenth century *Encyclopaedia*, Diderot and D'Alembert observed that:

> *"As a general rule it is better to negotiate by word of mouth than by the written word. Written words are good when we want to receive a written response or when it is useful to keep copies of what we have said, to produce them at a later date or in another place, or else when we fear being interrupted in mid-flow. On the other hand, when the presence of the person negotiating exudes respect and he is dealing with an inferior, it is far better to talk. It is better still when someone wants us to read in his eyes what he does not want to say."*

The ambivalent role of the written word in eighteenth century negotiations remains just as true in the context of the humanitarian negotiations of the twenty-first century. There is no clear rule as to whether written or verbal agreements are preferable.

Written agreements are normally seen to contain a stronger, more reliable and binding commitment, because they are more official. In many situations, it is also more practical to circulate written documents when briefing others. Two additional advantages of written agreements are derived from the UN's experience in Afghanistan.[1]

- The process of writing increases mutual understanding by requiring that the parties adopt a problem-solving approach as they develop a written text.
- The written product can protect an agreement from other officials in other ministries who may be inclined to breach the terms of a verbal agreement but not a written one.

However, many authorities in a fast-moving war situation are reluctant to commit themselves politically in writing. Plus, it may not be culturally appropriate for them to do so. For example, the Taliban refused to give written permission for certain humanitarian projects out of fear that they might contravene ideological precepts set by authorities higher up the power ladder of which they were unaware.

But written agreements do not ensure compliance and are not automatically seen as binding. In Afghanistan again, both the Taliban and the UN regularly ignored agreements that had been concluded earlier in written form.[2] Nor are written agreements necessarily more permanent than verbal ones: they also have to be re-negotiated every time there is a change in events or of key personnel in a ministry.

This all suggests that it is unwise to see written agreements as the final product of a negotiation. It makes more sense to see them as a possible tool that might help you reach a permanent settlement. Certainly, a humanitarian negotiator cannot sit back and relax when he or she has secured a written agreement. But if you do decide to conclude a written agreement, make sure that both you and your counterparts have understood the meaning of the text in its entirety and that there is no fine print that will make it impossible for either party to adhere to the accord.

Language can often aggravate potential misunderstandings. It is essential, therefore, that you and your counterparts agree on the meaning of the terms in the agreement. Work with a mutually trusted interpreter where necessary.

Common Problems During Implementation

Many different factors can hamper implementation of a humanitarian agreement. In some cases, it may be possible to make adjustments to address these problems while the implementation process continues. In other instances, it will be necessary to negotiate anew and reach a better agreement. Good relationships built with counterparts during the previous phase will greatly facilitate any re-negotiations and help to prevent or resolve any implementation problems as they emerge.

Below we examine some of the more typical obstacles that negotiators encounter during the follow-through phase and offer some suggestions on how to address them.[3]

- **Lack of ownership** This arises when one or more of the parties are essentially disinterested in, or hostile to, the agreement and thus do not feel bound by it. This is usually due to the fact that the agreement ignores or contradicts their real interests or is simply low down on their list of priorities. Sometimes a party may feel that the negotiation process was too one-sided and that it did not present it with enough opportunities to participate. To remedy this, and to instil a new sense of ownership, it may be necessary to go back to the analytical phase and re-examine the interests of the party carefully and devise a new strategy for reaching an agreement that it can accept. Alternatively, it may be possible to identify new and pressing reasons why they need to own the existing agreement.

- **Waning commitment** A party may start to distance itself from an agreement that it was initially committed to because of a change in interests. Many experienced negotiators say that the most important challenge in the follow-through phase is to keep all of the parties interested in the agreement. If counterparts are losing interest, it may be wise to retrace your steps and to look again at levers, tools and arguments so as to re-stimulate their interest and address their current concerns and fears.

- **Implementation delays** Setbacks during implementation can impact negatively on morale among all of the parties involved and can initiate the start of a breakdown in the process. Delays are not always caused by the negotiating parties themselves; they may be caused by factors that are beyond their control – like the weather, the donor's cash flow, new fighting or slow recruitment. If delays are beginning to dominate the process, it is important to monitor them closely and to understand why they are happening. If the causes are connected to the parties it may be possible to address them and to get back on schedule. If not, it is important to emphasise that it is not the agreement that is at fault, so that all of the parties target their frustration at the right source.

- **Corruption and abuse** In some situations, various parties may try and abuse an agreement and take advantage of the resources that it releases – at the expense of the population that you are trying to assist or protect. This can do great damage to the status of the agreement itself and to your own reputation as a party to it. Hard decisions will be required regarding whether it is possible to stop the abuse or if it is wiser to withdraw from the process. With extrication comes the issue of defining the terms under which re-engagement is possible.

- **Bad management** Bad management is different from corruption, because the abuse that occurs is not necessarily intended. Sometimes certain parties may lack the experience or skills needed to implement the agreement. This may be a difficult failing to address directly without those concerned losing face. But the problem will need to be remedied if the agreement is not to suffer similar damage to its credibility as it would in the event of corruption.

There may well be other factors that endanger the success of a humanitarian agreement. Every attempt needs to be made to anticipate them in advance or to tackle them as soon as they emerge.

SUMMARY PART FIVE

In the final part of the manual, we discussed the key activities involved in successfully monitoring an agreement. Some of the most important are set out below.

1 Monitoring ongoing negotiations by: continuously informing colleagues and counterparts of any new developments; keeping written records of the negotiation, creating evidence and enabling successors to take the negotiation history into account when devising their strategy; and taking time to re-evaluate your negotiation strategy.

2 Monitoring implementation of an agreement by defining specific indicators of success, choosing the right monitoring mechanism, and addressing possible problems like waning commitment and corruption.

NOTES

1 Leader, Nicholas. *Negotiation and Engagement in Afghanistan*. Report prepared for the UN Coordinator's office. Islamabad, May 2001, p. 13.

2 *Ibid.*

3 The listed problems are taken in part from discussions involving the Centre for Humanitarian Dialogue's Humanitarian Negotiator's Network (HNN) and in part are adapted from: Harris, Peter and Reilly, Ben. *Deep-rooted Conflict: Options for Negotiators*. Stockholm: International Institute for Democracy and Electoral Assistance (IDEA), 1998, pp. 352–367.

KEY POINTS

ANALYSIS

1. DEFINE YOUR OBJECTIVES P43

- Distinguish between positions, bottom lines and interests.
- Make sure your objectives correspond to, and are consistent with:
  - ☐ the needs of the affected population;
  - ☐ your organisational mandate or mission; and
  - ☐ the work of other agencies.

2. IDENTIFY THE RIGHT COUNTERPART P51

- Find a counterpart who is receptive to humanitarian values, has implementation power and with whom you can build a good personal rapport.
- Identify the right counterpart by plotting the findings of your research on a *stakeholder map*.
- If your counterpart is inaccessible, consider negotiating through a third party.

3. MEASURE COMPATIBILITY P61

- Identify the other party's positions, bottom lines and interests.
- Compare his/her interests to your own to establish how compatible they are.
- Concentrate on how interests can be reconciled (principled agreements). Techniques that can be employed to reconcile interests include:
  - ☐ trading interests; and
  - ☐ focussing on common goals.

4. ASSESS YOUR LEVERAGE P69

- Identify which of the following levers you may use to influence your counterpart:
  - ☐ quiet advocacy;
  - ☐ loud advocacy;
  - ☐ material assistance;
  - ☐ humanitarian expertise;
  - ☐ allies, such as other states or multilateral organisations;
  - ☐ fallbacks;
  - ☐ credibility; and
  - ☐ timing.

STRATEGY

5. PLAN OPTIONS TO MAXIMISE COMPATIBILITY P81

- Consider as many options as possible for satisfying your negotiation objectives. Techniques for developing creative options are:
  - ☐ looking at the problem through the eyes of your opposite number;
  - ☐ modifying the strength of an agreement; and
  - ☐ altering the scope of an agreement.

6. ACTIVATE YOUR LEVERS TO MAXIMISE LEVERAGE P84

- Take all steps necessary to activate your humanitarian levers.
- Consider options for expanding your fallbacks, improving your credibility and gaining control over time.

7. FORM A NEGOTIATION TEAM TO MAXIMISE LEVERAGE P88

- Choose a negotiation team that is the same as that of your counterpart in terms of level of authority, expertise, cultural background, personality type, and facilitation skills.
- Consider utilising a *shadow person* to advise your team.

8. DEFINE YOUR STARTING POINT AND APPROACH P91

- Take a step back: identify where you are situated within the compatibility and leverage matrix (C-L Matrix) and adopt an approach that suits your position.

9. CHOOSE THE RIGHT TACTICS P93

- Think about how you will counter some of the other party's more aggressive tactics, such as:
  - ☐ take it or leave it;
  - ☐ hands tied;
  - ☐ bulldozer/shotgun;
  - ☐ good guy/bad guy;
  - ☐ deception;
  - ☐ blackmail; and
  - ☐ guilt trip.

10. PREPARE YOUR ARGUMENT P102

- Consider the objective and subjective elements that your argument may contain:
- Objective elements
  - ☐ International law
  - ☐ Your organisational mandate or mission
  - ☐ Your organisational expertise
- Subjective elements
  - ☐ Fear
  - ☐ Authority
  - ☐ Self-interest
  - ☐ Reflection
  - ☐ Universal values
  - ☐ Culture
- Make sure your arguments correspond to, and are consistent with:
  - ☐ your organisation's mandate or mission and your personality;
  - ☐ your counterparts' institution and personality;
  - ☐ the larger negotiation context; and
  - ☐ the affected population.

FACE-TO-FACE NEGOTIATION

11. BUILD THE RIGHT RELATIONSHIP P117

- Remember that in a good relationship:
  - ☐ disagreement is acceptable; and
  - ☐ substance and relationship have to be kept separate.
- In order to manage emotions effectively:
  - ☐ help your counterpart to express his/her emotions;
  - ☐ know when to express your own emotions;
  - ☐ focus on listening;
  - ☐ distinguish and find the right balance between empathy and sympathy; and
  - ☐ build on humour to create a good rapport.

12. MANAGE CULTURAL DIFFERENCES P125

- Be aware of, and respect, the horizontal and vertical aspects of culture and the ten common areas of cultural difference.
- Identify and build on cultural commonalities.

13. LANGUAGE AND INTERPRETERS P132

- Follow some general rules for working with, or as, an interpreter.

FOLLOW-THROUGH

14. MONITOR ONGOING NEGOTIATIONS P139

- Improve internal communications.
- Leave a paper trail.
- Take time for personal reflection.

15. MONITOR AN AGREEMENT P142

- Identify specific measures of success and the right monitoring mechanism to ensure that your agreement produces results and has an impact on the life of the people you are trying to protect.