

Access – Principles – Do No Harm: Compromising on Principles



(Jenin. ICRC delegate negotiating with Israeli military authorities about problems linked to the earth wall built by Israeli Defense Forces. Photographer: Carina Appel. Copyright: ICRC)

How far are we willing and able to compromise on humanitarian principles to obtain access to victims of armed conflict and what are the short- and long-term consequences of such compromises? In this sub-group, we asked ourselves this very question and developed a framework designed to support humanitarian practitioners to think about this question in a structured way.

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The views expressed by the contributors to this sub-group and working paper are those of the individuals and do not necessarily reflect the official opinion of CCHN, any of its Strategic Partners nor the members' organisations.

Introduction

Anyone negotiating in the humanitarian field knows the dilemma between trying to uphold all humanitarian principles during a negotiation and making compromises to obtain access to people affected by conflict in a timely manner – oftentimes, reaching both is not possible. While making compromises is part of any successful negotiation, compromising on humanitarian principles may have severe negative long- and short-term consequences on our own organization and operations, other organisations, and the wider humanitarian effort in a region. Through discussions with humanitarian practitioners, it became apparent that, to date, and in most organisations, there is no structured approach towards making such impactful decisions and evaluating the

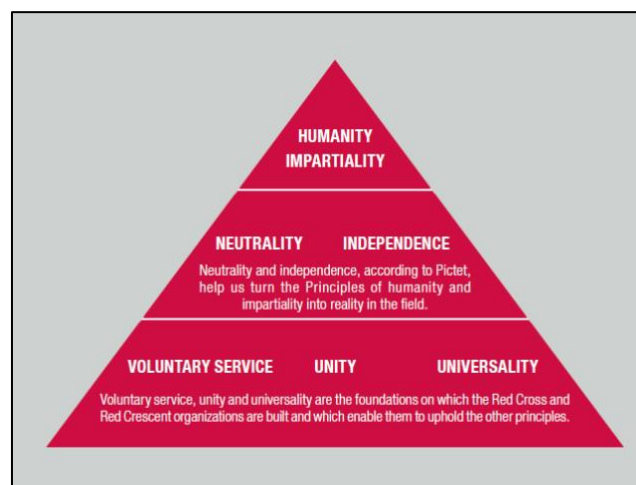
consequences. In this sub-group, we reflected on how such a decision could be approached in a structured way and which variables need to be considered. The sub-group proposes a simple framework to support such discussions in humanitarian teams.

The reflections in this sub-group have been inspired by 12 interviews with humanitarian practitioners, discussions among senior humanitarian workers who are part of the Think Tank and guests, a Peer Circle Discussion, the insights of a Public Health student from Harvard University, and an expert in humanitarian policy-making.

Current debate on compromising in principles

What are humanitarian principles: Pyramid of principles, history, and legal base

Humanitarian action is guided by four humanitarian principles: humanity, impartiality, neutrality, and independence. The Red Cross Red Crescent Movement applies three additional principles: voluntary service, universality, and unity. These principles are often portrayed in a pyramid whereby humanity and impartiality, at the top of the pyramid, are substantive principles and the core of humanitarian ethics, while neutrality and independence are derived principles that are instruments to achieve humanity and impartiality. Humanitarian principles are an essential tool for humanitarian organisations to obtain political acceptance and humanitarian access and guarantee staff security (Daudin, Presentation, 2019). Adherence to these principles is what distinguishes humanitarian action from other actors with political, military, or other objectives (OCHA, 2012).



Source: ICRC

The Red Cross proclaimed these principles in 1965 to legitimise and support the movement's engagement in conflict situations. This framework reflected obligations already recognised under international humanitarian law (IHL) — including the Fourth Geneva Convention 1949 and sections of Additional Protocol I 1979 — to protect civilians affected by armed conflict and to provide them with assistance and medical care with humanity and impartiality. Even though neutrality and independence are not explicitly mentioned in the Geneva Conventions, the concept of non-participation in hostilities is at its core. This concept was later reaffirmed by the International Court of Justice in its 1986 judgment on Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), (Labbé & Daudin, 2016). To date, the humanitarian principles are based on commitments made by states and institutions; they have been repeatedly reaffirmed via national policies, the UN Security Council, and the UN General Assembly through its resolutions 46/182 (1991) and 58/114 (2004) (Macdonald & Valenza, 2012). Further, there is solid institutional adherence to the principles; over 600 organisations have signed the Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organisations (NGOs) in Disaster Relief, whose first four articles reflect the four humanitarian principles. Also of note is the Humanitarian Charter and Minimum Standards in Humanitarian Response developed by the Sphere Project (OCHA, 2012).

Even though there is strong general awareness of the principles, it is often difficult to observe all of them to the same standard at the same time, and many practitioners struggle to balance or prioritise them in a consistent and transparent manner. In particular, the principle of humanity — the imperative to save lives — may sometimes be incompatible with impartiality and the other principles. Some form of balance or prioritisation will normally be required, and this is often influenced by the context and the stakeholders involved (Macdonald & Valenza, 2012).

What are the challenges to principled humanitarian action?

Humanitarian actors argue that being perceived as neutral, impartial, and independent is even more important than abiding by humanitarian principles and is particularly essential in being able to gain and maintain access (Challenges to Principled Humanitarian Action, 2016). However, in negotiations with parties to the conflict, humanitarian principles are constantly challenged: among other requests, counterparts may ask that humanitarian actors be escorted by the military, provide beneficiaries lists, assist certain population groups, pay taxes for goods to get through checkpoints, etc. Among additional aspects that put pressure on humanitarian principles are: the reaffirmation of state sovereignty, the prominence of a security agenda among donor agencies, anti-terror legislations, donor policies, states' use of humanitarian action as a form of foreign policy, and the emergence of new humanitarian actors such as faith-based organisations, to name only a few (Labbé & Daudin, 2014).

Among the principles, humanity is the least controversial, as it is widely accepted as the foundation and common ground of humanitarian action. Upholding it, however, sometimes requires compromising the other three and presents many challenges: the biggest one relating to the equality and inequalities of humanity, of valuing certain lives over others (e.g., refugees over IDPs, those affected by

natural disasters over those affected by conflict) according to donor requirements for the granting of funding, which also affects the organization's independence (Fast, 2014). Furthermore, the compelling nature of the principle of humanity has served to justify military action pursuing foreign policy and political interests, which has made actors on the ground wary and suspicious of humanitarian actors, thus hugely affecting access. Furthermore, impartiality is a very difficult principle to operationalize; humanitarian actors and affected populations might have different views on who requires aid more urgently, and access, be it geographical or social, might make areas impossible to reach or impede chronically vulnerable people's access to needs assessments (Shetty, 2007). Similarly, the risk of aid diversion is a big setback on the perceived and actual impartiality of organisations, as it results in aid not being directed to those most in need but according to power dynamics. Finally, the principle of neutrality has probably been the most controversial, acting as a straitjacket for multi-mandate organisations and limiting their activism and advocacy efforts (Schenkenberg, 2016). Certain organisations may have chosen to remain quiet regarding government atrocities in order to be able to maintain access, which may have led the local population to question their independence or distrust the organization. Designation of armed groups as terrorist groups has resulted in aid organisations avoiding areas controlled by them, which leaves the people living there devoid of assistance and affects the organization's perception of neutrality by the designated group (Belliveau, 2015). Similarly, increased use of private military or security firms for the organization's protection can result in the loss of their perceived neutrality by being associated with one or other side of the conflict (Singer, 2006).

Cases where humanitarian organisations have been torn between respecting principles and humanitarian implications

There are numerous cases where humanitarian actors have been accused of violating humanitarian principles, as well as cases where

organisations have had to suspend engagement due to extreme pressure on their principles. Humanitarian organisations have been long blamed for using aid as an excuse to further their political agenda.

As an illustration of how multi-mandate or advocacy-focused organisations are perceived as lacking neutrality, in 2009, after the International Criminal Court's indictment of then Sudanese president Omar al-Bashir for war crimes, 13 organisations were expelled from the country due to allegations of collaborating with the ICC and foreign powers (BBC, 2009). The feeling that these organisations were there to destabilise the country was well-rooted and resulted in the banning of another seven organisations in 2012 by Sudan's Humanitarian Aid Commission for failing in their planned projects (BBC, 2012).

Another example is from late 2016. After Jordan sealed off the area known as the "berm" due to an Islamic State attack, with thousands of Syrian refugees being left stranded in the Jordanian-Syrian border, World Vision opted for getting assistance into the area with the support and armed protection of a logistics contractor affiliated with a militia run by a Syrian businessman and approved by the Jordanian Armed Forces. The organization was heavily criticised by other humanitarian actors, if only because the businessman rerouted part of the assistance to his militia and suffered the repercussions of association with the militia when two of its warehouses were burned down through ISIS attacks targeting Tribal Army staff. World Vision's country director and deputy resigned shortly after ("Jordan and the Berm Rukban and Hadalat 2017-2018," 2017).

Allegations of connections with terrorist groups like Boko Haram and ISIS and of sabotaging counterterrorism efforts have been used several times by the government of Nigeria to close the offices of UNICEF, Mercy Corps and Action Against Hunger (Mumbere, 2019). Most recently, the authorities in Niger also ordered ACTED offices to shut down because of "questionable and subversive connections with

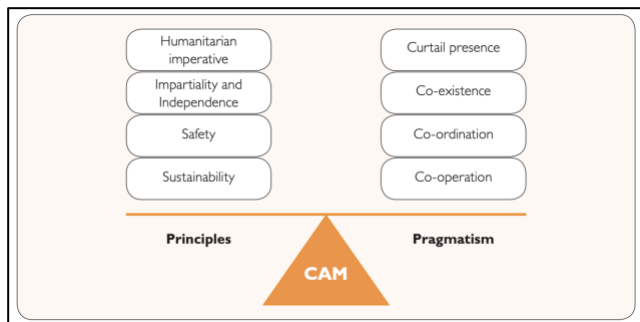
a terrorist organization" (Chahed, 2021). Nevertheless, these cases, which are numerous, are not usually framed as accusations of lack of neutrality, but as falling under prohibitions of engaging with designated terrorist groups.

As a last example of the stress put on these principles concerns a tough decision that WFP had to make in Yemen in 2019. After realising that part of the food was being diverted and not reaching its intended recipients, WFP attempted to establish a biometric registration system to solve this problem. The Houthis rejected the idea, which led to a partial suspension of food distribution, leaving 850.000 people affected (Welsh, 2019).

Between principles and pragmatism: Tools for a structured approach from different organisations

In the field, the frontline negotiators have to strike a balance between adhering to humanitarian principles and pragmatism to get access to implement humanitarian action. World Vision designed a [tool](#) to help its staff members structure such decisions while engaging with military and armed actors. The tool, developed in 2008, weighs World Vision's key operating principles, or HISS (Humanitarian Imperative; Impartiality and Independence; Security and Protection; and Sustainability), against the different levels of engagement with armed actors, or the four C's (Curtail presence; Co-existence; Co-ordination, and; Co-operation.) Once the principles that are placed more at risk by engaging with the military are identified, such engagement can only take place if a three-part test (the CAM process) is answered positively:

- Is there a Compelling aim?
- Is the engagement Appropriate, Adapted, and Adequately informed?
- Is there a Minimal negative impact on the principles and have all other means been exhausted?



Source : World Vision

Similarly, the UNHCR Protection Cluster in Iraq produced in 2020 a [Do No Harm Guidance Note](#) for defining humanitarian engagement when serious humanitarian and protection concerns are present. The document aims at guiding actors in analysing these complex situations through the identification of risks, the development of risk mitigation measures, and the definition of how humanitarian assistance should be provided, unpacking humanitarian principles through guiding questions.

While many organisations use risk management tools and matrices, so far, we have not found a tool that would support a structured thinking and decision-making process when it comes to compromising on humanitarian principles.

Current practices

On our quest to find tools to facilitate the decision-making process around compromising on humanitarian principles and understanding current practices, we held 9 discussions and 12 in-depth interviews with senior humanitarian officials. Unsurprisingly, all interviewees confirmed that to have humanitarian access and uphold the principle of humanity, at times being pragmatic and making serious compromises on other principles and procedures is inevitable.

Examples of such dilemmas mentioned were:

- Deciding to prioritise an ethnic group in an emergency response, hoping to get access to the other ethnic group in the subsequent days after a show of goodwill
- Deciding to implement a health project that will also benefit soldiers of one side of the conflict
- Deciding to implement only a reduced health programme for GBV victims (removal of contraception drugs)
- Deciding to sign an agreement with a designated terrorist group.

The alternative in all listed situations was getting no access at all; the humanitarian workers had to make very difficult decisions.

In discussion with practitioners and among ourselves, we found that humanitarian negotiators are flexible in applying humanitarian principles, donor guidelines, and procedures if they have to save lives. **All of them agreed that humanity is the overall guiding principle that cannot be compromised**, whereas the others can be negotiated. We found a tendency toward greater readiness to make compromises that have a long- rather than short-term negative impact on operations. Several practitioners said that they might choose to temporarily compromise on principles to build rapport with the counterpart with the hope that this will allow them to operate in full respect of all principles in the future. Furthermore, and of no surprise, practitioners said that the more leverage the counterpart has, the more likely they are willing to compromise on principles. Interestingly, one factor of leverage mentioned for the counterpart, apart from pressing needs, time constraints, etc., was competition between humanitarian actors, with several humanitarian organisations offering the same or similar services. In such situations, the counterpart could think or say, “If you don’t compromise and implement, someone else will.” Such competition among organisations was mentioned as being a driving force for compromising on principles.

While all practitioners we talked with said that compromises on principles are thoroughly discussed in the team, with management, and sometimes HQ, only one of them said that they have a structured approach to these discussions and evaluate the short- and long-term impact. As such, there is little transparency and accountability in this decision-making process.

How can we evaluate the impact of compromises?

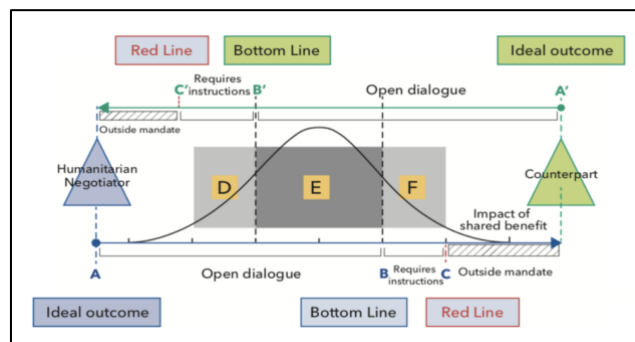
Based on the findings, the sub-group decided to develop a framework that can support a structured thinking process around evaluating the impact of compromises and:

- Help humanitarian negotiators and mandators to make an informed decision about a serious compromise on humanitarian principles
- Help to carry out a 360° evaluation about the long- and short-term impact of a decision
- Help the reflection about mitigation strategies that can be included in the positioning during a negotiation
- Intends to improve the accountability of the decisions made
- Can be used as a reporting tool for HQ, donors, and other actors to justify the decision made in the field
- Can be used as an evaluation tool of past negotiations
- Invites to look at negotiations from retrospective to inform the engagement strategy and red lines in the future.

However, the framework should not be seen as an algorithm for making good decisions.

A continuation of the CCHN Designing Scenarios and Bottom Lines Tool

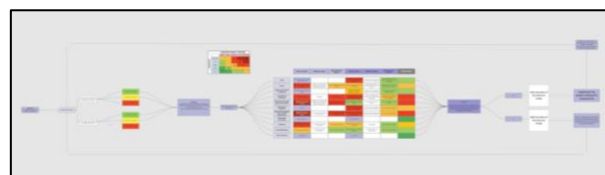
We see the framework we propose as an add-on to the CCHN tools to design scenarios and bottom lines (CCHN Field Manual, 2019: 277-313).



It can be used after we have reflected about the bottom- and redlines in the negotiation and realize that we will take considerable risks when finding an agreement within the bottom line or our mandator even considers adjusting the redline.

A framework to reflect on compromises

To guide the reflections in the team, we created the simple flowchart below. Each part of this flowchart will be explained in the following. The interactive template can be made available upon request.



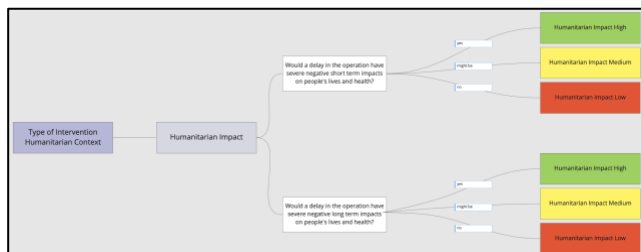
Establishing the context and humanitarian impact of the planned project or intervention

As a point of departure, we propose a brief outline of the humanitarian context and nature of the planned intervention before reflecting on the humanitarian impact it would have. To establish the humanitarian impact of the planned intervention, two questions can be asked:

- Would a delay in the operation have severe negative short-term impacts on people's lives and health?
- Would a delay in the operation have severe negative long-term impacts on people's lives and health?

If the answer to these questions is no, we would argue that the humanitarian impact of the planned intervention would not justify taking

considerable risks in the negotiation. If one or both questions are answered with yes or maybe, the humanitarian impact of the planned intervention may justify taking risks in the negotiation and therefore we would move ahead with the analysis of the impact of a compromise.

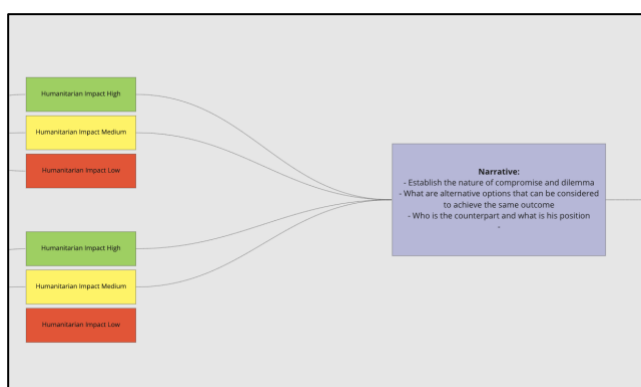


Establishing the dilemma

As a next step, we propose reflection on:

- The nature of compromise that is being considered and the dilemma
- Alternative options that could be considered to achieve the same outcome
- The counterpart (position, reasoning, values, personality, negotiation style, trustworthiness, etc.)

References to the minutes of previous meetings and Negotiation Position Papers (see chapter 3) can also be added here.



Identify indicators

The next crucial step is to identify the indicators that the impact is measured against with the team. These indicators are context specific.

Examples for such indicators may be:

- **Access:** Does the compromise have a positive or negative impact on access?

- **Security of field team:** Are there security implications for the team in the field (positive or negative)? What are the overall security implications for the operations in the country or region?
- **Relationship with counterpart:** How does the compromise impact the relationship with the counterpart?
- **Leverage of counterpart:** Does the compromise give the counterpart leverage in future negotiations that will be difficult to handle?
- **Relationship with other parties to the conflict:** How does the compromise affect the relationship with other parties to the conflict?
- **Continuation of operations:** Does the compromise have a positive or negative impact on the continuation of other operations in a country or region? Does it affect other offices as well?
- **Collective responsibility/ Impact on other organisations:** Do you expect the compromise to negatively impact on the negotiations of other organisations?
- **Beneficiaries/ Communities:** Does the compromise have a negative impact on beneficiaries or communities? Is the imperative of Do No Harm granted?
- **Reputation:** What is the compromise impact on the reputation of the organization both locally and globally?
- **Donor relationship:** Does the compromise impact the donor relationship (positive/negative)?
- **Authorities:** Is there an impact on the relationship between different bodies within the authority with which you are negotiating? May it lead to rivalries, for instance?

Evaluate the impact of a compromise

Once the indicators are established, the team can reflect about the short- and long-term impact (positive and negative), possible mitigation strategies and – if the impact is a risk – also about further risks for each indicator.

Risk matrix

To further qualify potential risks, a simple risk matrix can be used to colour code the identified risks in the framework, evaluating them against likelihood¹ and expected impact/severity².

		Expected Impact / Severity				
		Negligible	Marginal	Moderate	Critical	Catastrophic
Likelihood	Almost Certain					5
	Likely				4	
	Possible			3		
	Unlikely		2			
	Rare	1				

Mitigation measures of a risk are to avoid, prevent, transfer, or reduce the impact. For instance, the risk of an attack on a humanitarian convoy can be **avoided** by cancelling a mission, **prevented** by obtaining security guarantees by all parties to the conflict, or **transferred** by transporting the goods with local private companies; and the **impact can be reduced** by using bulletproof vehicles.

Let’s consider an example to fill in the framework after discerning that the humanitarian impact of the planned project is high.

Example:

In country A, there has been a long civil war between the government and opposition forces. A recent escalation has left thousands of people displaced and without food and shelter. For a few days, temperatures have fallen below 0° and community health care workers report an alarming number of deaths due to the cold and starvation. It is essential that humanitarian assistance is provided immediately. The humanitarian organization Food for All (FfA) is requesting access to distribute food and NFI to 300 households. The military commander in charge said that he will only grant access if they distribute to members of ethnic group A first.

FfA has been negotiating with the commander for days, and efforts to mobilise his hierarchy and the Ministry of Humanitarian Affairs have been in vain. While the situation of the IDPs of ethnic group A justifies the intervention, it is against the principle of impartiality to prioritize them over members of ethnic group B, who face the same dire circumstances. The management is facing a difficult decision.

Previously, the team agreed that prioritizing one group over another is a red line, but against the backdrop that dozens will not survive another night, they are considering adjusting the red line with the hope that if they start with ethnic group A, they would be able to provide support to ethnic group B in the coming days.

The field team evaluates the impact in a team meeting with the management by identifying the indicators that need to be considered and detailing the impact/risks and mitigation strategies. They highlight positive impacts in purple and risks according to the colour code of the risk matrix. In the end, they estimate the colour code of the rest of the risks based on the previous analysis.

¹ **Rare:** This will probably never occur or happen / **Unlikely:** Not expected to happen or recur, but possible/ **Possible:** Might happen or recur occasionally / **Likely:** Will probably happen or recur, but it is not a persisting issue or circumstance / **Almost certain:** Will happen or recur, possibly frequently

² **Negligible:** Routine issues that are to be expected. Objects of standard contingency plan / **Marginal:** Minor disruption or delaying factor. Has an

impact that cannot always be planned but can easily be addressed / **Moderate:** Reversible, has a significant impact that involves key assets resulting in short suspension of activities / **Critical:** Hard to recover. Severe injuries, interruption of activities, destruction of assets, slow recovery / **Catastrophic:** Irreversible. Lethal, permanent disability, destruction of assets, massive loss. Long-term inability to operate.

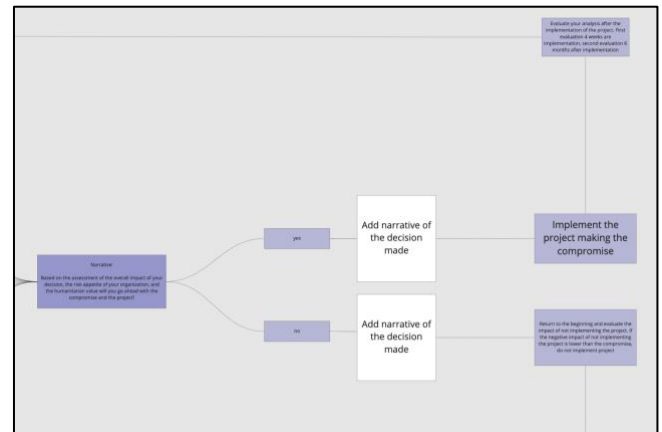
	Short Term Impact	Mitigation Strategy	Risk/ Impact after Mitigation	Long Term Impact	Mitigation Strategy	Risk/ Impact after Mitigation	Overall Rest Risk
Access	Access to opposition areas granted for partial distribution			Most likely access to ethnic group B become even more difficult in the future	Submission of note verbale about exceptional nature of agreement.	The regular dialogue with the authorities indicates that this can be mitigated.	
Security	Opposition forces might threaten the field team.	Establish a communication with the opposition to explain and obtain security guarantees.	Good relationship with opposition command	Opposition might become hostile in the long term.	Establish parallel projects for ethnic group B in other parts of the country	Balancing assistance country wide will have a positive impact	
Relationship with the Counterpart	Positive will help to build trust and rapport.			Counterpart may question organization's respect for principles and legitimacy	Submission of note verbale about exceptional nature of agreement.	If the case is not repeated mitigation possible.	
Leverage of the Counterpart	Counterpart in power	No mitigation	Risk remains	Counterpart might use precedent to force further agreements.	Favour can leveraged over counterpart as a show of goodwill to his people.	The risk persists but positive leverage for organization could play to advantage.	
Relationship with other parties to the conflict	Opposition will be question organization's legitimacy and impartiality.	Establish a communication with the opposition to explain and obtain security guarantees.	The risk can be reduced but it will be difficult to re-establish trust, .	Opposition might use precedent to force similar agreements in other areas.	Communication and parallel projects	Risk can be mitigated to a large extent	
Continuation of Operations	Positive			Operations in other areas might become more difficult as similar agreements may be asked.	Submission of note verbale about exceptional nature of agreement.	Risk can be partially mitigated	
Collective Responsibility/ Impact on Other Organizations	Negotiations with other organizations may be severely impacted	Discussion and coordination with other organizations	Can only be mitigated to a certain extent but joint effort might give leverage.	Humanitarian action and principles will be questioned in the long term due to precedent.	Submission of joint statement about exceptional nature of agreement.	Risk can be partially mitigated	
Beneficiaries/ Communities	Lives can be saved.			Lives can be saved.			
Reputation	The organization may be criticized by civilians, authorities and the media	Pre-emptive strike in public communication.	The risk might be reduced	Organization's impartiality may be questioned.	Communication	Risk can be partially mitigated	
Donor Relationship	Donors may request justification	Provide explanation and communication	Risk can be partially mitigated	More reporting may be required in the future.	Provide justification and communication	Risk can be partially mitigated	
Other authorities	none expected			none expected			

The example above is naturally oversimplified and aims to give the reader an idea of how such reflections could be structured and documented. Also, a narrative has to be added about the weight of each indicator. Security, for instance, might be more important than the donor relationship, depending on the circumstances.

As mentioned earlier, the indicators used in the example are suggestions that, if used, require adaptation to the context and priorities of the organization. The colours are designated by evaluating the likelihood and expected impact. Purple is used if the impact is positive.

Decision

Once the matrix is complete, the team will have to evaluate the rest of the risks against the risk appetite of the organization and the humanitarian impact to make a decision as to whether it wants to proceed with the agreement. The decision should be added in a narrative, also for documentation purposes. If the decision is to move forward with the compromise, we would recommend that the team revisit the matrix 4 weeks after the implementation to evaluate the short-term impact, and 6 months after the implementation to evaluate the long-term impact of the compromise and see if the assumptions they have made were correct. If the decision is not to move forward with the compromise and not to implement the programme/project, we would recommend that team return to the matrix and evaluate the impact of not making the compromise to come to a final decision. If, in that case, it becomes evident that the risks of not compromising are higher than the risk of the compromise, the decision may have to be re-evaluated.



In our example, it may be that the team decides that the negative impact of making the compromise is too high and that they prefer not to implement the food distribution for the time-being until they manage to negotiate more favourable terms. They may hope to gain more leverage if the needs among ethnic group A become more pressing and the commander himself may be held accountable.

In this case, the team will have to evaluate what it would mean for them in the short- and long-term if they refused to distribute immediately and, as a result, more people die.

Conclusion

Despite the strong commitment of humanitarian negotiators to uphold humanitarian principles, there are times when these principles come under pressure, especially when negotiating access for humanitarian projects with a high humanitarian impact. The power imbalance between parties to the conflict and humanitarian actors, pressing humanitarian needs that require urgent intervention, competition among humanitarian actors, regulations of target and donor countries, etc., can force humanitarian negotiators to compromise on humanitarian principles. If this is the case, the short- and long-term

consequences of compromises need to be thoroughly considered. In this chapter, we proposed a framework to guide these reflections and evaluate past decisions with the objective of helping humanitarian negotiators to evaluate and justify their decisions and make humanitarian action more accountable.

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Annex: Framework Template



Please refer to Fiorella Erni, CCHN Negotiation Support Specialist Middle East, for the interactive version of the tool.