

**Humanitarian Access Negotiation in Ukraine:
How Aid Workers Navigate the Politics of
International Relief**

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Introduction

Over the course of 2014, as political unrest in Ukraine spiraled into armed conflict—with Russia's annexation of Crimea and two separatist republics declared in portions of Donetsk and Luhansk—a familiar pattern unfolded. As has occurred in countless armed conflicts and other types of largescale crises across the globe (typhoons, earthquakes, and disease outbreaks, for example), local actors mobilized and organized with the aim of attending to the needs of people affected by the conflict, international humanitarian organizations (IHOs) already operating in the country sought to scale up their operations, and other IHOs sought to enter Ukraine. But, as with other humanitarian crises that have arisen in countries and regions across the world, an empirical puzzle came into focus as well. When largescale crises erupt, some governments and non-state armed groups (NSAGs) can be persuaded to facilitate access for IHOs, whereas other governments and NSAGs persistently restrict and obstruct IHOs' access. In Ukraine, the level of resistance that humanitarian organizations have encountered from the government during access negotiations has not risen close to that seen in other contexts, such as Syria.¹ This is not because the Government of Ukraine has adopted an overall approach of accommodating the civilian population living under separatist control in eastern Ukraine. Indeed, the Ukrainian government has implemented an economic blockade on the separatist-controlled portions in the east and maintains stringent measures to control people's mobility in and out of these areas.² Humanitarian organizations, however, have largely succeeded in negotiating their way out of these controls.³ Meanwhile, the separatists controlling portions of Donetsk and Luhansk—in contrast to the more enabling posture of the Ukrainian government—have cultivated a much more restrictive humanitarian access environment.⁴

Zooming out to the broader contemporary global picture reveals disparate humanitarian access outcomes spanning humanitarian crises across the globe. A 2020 report produced by the Assessment Capabilities Project analyzes 58 ongoing humanitarian crises that range from extreme to low humanitarian access constraints, as Figure 1 below elaborates.

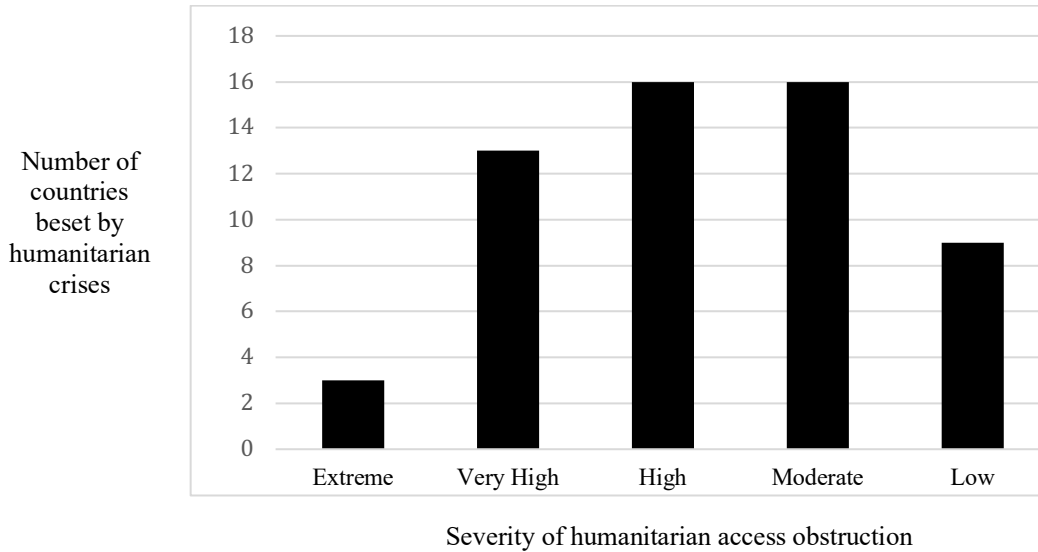
¹ For Syria, see generally IICOIS (2014); IICOIS (2018a); and IICOIS (2018b).

² Mirimanova (2016); Mirimanova (2017).

³ For example, in the context of the COVID-19 outbreak, Hyde (2020) notes that the contact line (which divides government-held from non-government-held territory) was “closed” in March 2020 in the midst of the pandemic, although humanitarian organizations “are some of the very few still permitted to cross the contact line.”

⁴ See, for example, Right to Protection (2019).

Figure 1: Humanitarian Access Outcomes by Country in Summer 2020⁵



What explains these differences in humanitarian access outcomes? As the above data suggests, some access gatekeepers—including states and NSAGs—have undertaken extensive measures to restrict humanitarian access, even in spite of persistent negotiation and advocacy efforts from humanitarian organizations. In other contexts, even when facing resistance during access negotiations, humanitarian organizations have more successfully pushed for freedom of movement.

In this paper, I offer an explanation for this empirical puzzle. I argue that Western-aligned access gatekeepers should be more inclined to facilitate, as opposed to block or control, humanitarian access. The reason, according to my theory, is that access gatekeepers’ geopolitical alignment shapes the humanitarian access negotiation process. The largest IHOs operating today have a Western identity, stemming from the location of their headquarter offices, the profile of their leadership, the sources of governmental and private funding, and their organizational histories. Western donor governments—in particular, members of the Development Assistance Committee, under the umbrella of the Organisation for Economic Co-operation and Development

⁵ This chart draws data from ACAPS (2020). The report is based on nine indicators grouped into three dimensions of humanitarian access, those being: 1) access of people in need to humanitarian aid; 2) access of humanitarian actors to the affected population; and 3) physical environmental, and security constraints.

(OECD-DAC)—contribute the lion's share of international humanitarian funding.⁶ For these reasons, I argue, we should expect Western alignment to facilitate the trust- and relationship-building process necessary for collaborative problem-solving during humanitarian access negotiations.

My theory has implications for an ongoing discourse—among scholars, practitioners, and policymakers—on the nature of humanitarian organizations, the extent of their potential influence in international affairs, and their limitations. Under what conditions can humanitarian organizations operate as effective norm promoters with the ability to shape states' perceptions and behaviors, persuading combatants to armed conflict to facilitate humanitarian access in situations when combatants would not have otherwise done so? Conversely, under what conditions do humanitarian organizations fall prey to the interests of states, NSAGs, and governmental donors? My theory suggests that the answer to these questions lies with geopolitics. When engaging with Western-aligned access gatekeepers, humanitarian organizations are more likely to succeed as norm promoters. When engaging with non-Western-aligned access gatekeepers, humanitarian organizations are less likely to succeed. If correct, my theory has startling implications for humanitarian action, which is supposed to be based on principles, not politics.

The stakes for understanding the dynamics at play during humanitarian access negotiation processes are high. The UN has estimated the number of people in 2020 needing humanitarian assistance and/or protection—including food relief, medical care, access to education, and psychosocial services—to be over 168 million.⁷ Their fate hinges on the ability of humanitarian organizations to successfully negotiate access. Over the past two decades, humanitarian organizations have devoted increased efforts to cultivating humanitarian negotiation capacity. Numerous educational centers now offer trainings on humanitarian negotiation, and multiple

⁶ According to FTS (2021), during 2002-2018, the top ten governmental donors of humanitarian programming were all OECD-DAC members, except for two: Saudi Arabia and United Arab Emirates. The overall trend of OECD-DAC dominance of humanitarian financing holds as well if one looks at a broader array of donors. Extending the scope to the top 20 governmental humanitarian donors during 2002-2018, the only other non-OECD-DAC state is Kuwait, which ranks seventeenth. OECD-DAC member states are Australia, Austria, Belgium, Canada, Czech Republic, Denmark, European Union, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, South Korea, Luxembourg, The Netherlands, New Zealand, Norway, Poland, Portugal, and the Slovak Republic. See DAC (2021).

⁷ See United Nations (2020).

organizations have produced humanitarian negotiation handbooks.⁸ Nevertheless, these efforts have thus far not been based on empirical analysis of what does and does not work in humanitarian negotiation. Despite recent valuable social scientific efforts to understand the dynamics at play during humanitarian access negotiation processes, scarce knowledge exists of the causal processes at play.⁹ This paper fills this gap, further cultivating our understanding of humanitarian access negotiation, contributing to the broader strand of scholarly research on combatants' treatment of civilians in armed conflict.

This paper analyzes the applicability of this theory to the conflict in Ukraine, a clear case for my theory in that the government, aligned with the West, is combatting separatists definitively aligned with Russia against the West. The paper proceeds in six parts. First, I briefly explain the concept of humanitarian access. Second, I elaborate my theory in greater detail. Third, I further probe the puzzle of humanitarian access in light of existing scholarly and policy-oriented literature. Fourth, I present evidence—based primarily on semi-structured interviews, as well as analysis of open-source material—from humanitarian access negotiations in Ukraine.¹⁰ Fifth, I assess possible alternate explanations. Sixth, I offer concluding remarks.

I. What is Humanitarian Access?

Humanitarian access is fundamental to the implementation of humanitarian programming. In order to operate effectively, humanitarian organizations must garner the consent of governments and NSAGs, as well as other actors, that control territory on which people in need reside. This practical reality is also enshrined in the laws of armed conflict (LOAC). According to customary international law, as Rule 55 in the ICRC Customary Law Database states, “The parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians

⁸ See Grace (2020a) for an overview of contemporary humanitarian negotiation capacity building efforts. Humanitarian negotiation handbooks include Mancini-Griffoli and Picot (2004); Mc Hugh and Bessler (2006); Mercy Corps (2018); and CCHN (2018).

⁹ For example, see Labonte and Edgerton (2013); Cunningham (2018); and Clements (2020).

¹⁰ Interviewees were humanitarian workers, governmental actors, representatives of states that fund humanitarian organizations, and individuals knowledgeable about or involved in humanitarian access negotiations in Ukraine. I conducted these interviews (47 in total) in Ukraine, Switzerland, the United States, and remotely via Skype in 2019. Interviews were conducted in English, or in some cases, in Ukrainian with the assistance of an interpreter.

in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control.”¹¹

States and NSAGs, as access gatekeepers, can control: 1) territory on which humanitarian needs exist, 2) transit territory, or 3) both. Regarding transit territory, relevant to the analysis is both cross-line and cross-border access. Cross-line access entails traveling between territory controlled by different actors within the same country (for example, a government granting access for a humanitarian organization to travel from government-controlled to NSAG-controlled territory, or vice versa). Cross-border access refers to the same phenomenon but across an international border (for example, a government granting access to NSAG-controlled territory in a neighboring country, even if the neighboring country's government does not consent to this access).

I consider that every access gatekeeper—governments and NSAGs alike—falls along a spectrum of possible behaviors. At one end of the spectrum is denying access, which entails a gatekeeper prohibiting the entry of humanitarian personnel or goods. At the other extreme is facilitating access, which means that the gatekeeper fully accepts the autonomy of humanitarian actors. In such scenarios, humanitarian action is allowed to proceed in a principled manner, meaning that humanitarian organizations have the ability to conduct a needs assessment to determine the extent of humanitarian needs in the relevant territory and to carry out humanitarian programming accordingly. Between these two extremes is restricting access, meaning that the access gatekeeper allows the humanitarian organization into its territory but limits the organization's activities to some degree by restricting and/or directing the implementation of humanitarian relief programs.

**Figure 2: The Spectrum of Access
Gatekeepers' Possible Behaviors**



Humanitarian organizations engage with access gatekeepers on two overarching areas of access: 1) establishing a presence in the country, and 2) designing and implementing programming. Table

¹¹ ICRC (n.d.).

2 (below) presents different types of humanitarian access restrictions relevant to these two dimensions of humanitarian access.

Table 1: Means of Restricting or Denying Humanitarian Access¹²

Dimension of Humanitarian Access	Example of Humanitarian Access Restrictions
Establishing a presence in the country or territory	<p><i>For materials/supplies:</i> imposing tariffs or customs clearance requirements, banning importation of certain supplies, such as medicine.</p> <p><i>For organizations and/or personnel:</i> delaying or denying visas, requiring organizational fees in order to operate in the country.</p>
Designing and implementing programming	<p><i>Regarding processes of granting permission:</i> requiring authorization for in-country movement of personnel or supplies (for needs assessments, program implementation, and monitoring and evaluation), corruption in the form of bureaucrats requesting bribes in order to approve requests</p> <p><i>Regarding the terms of implementation:</i> imposing control over to whom, where, and when relief will be distributed; requiring that some other organization, perhaps the access gatekeeper itself, take responsibility for the physical distribution of aid; requiring relief distribution to be accompanied by armed escorts.</p> <p><i>Regarding security issues:</i> refusing to guarantee the humanitarian organization’s security, intensifying hostilities in order to put humanitarians at risk, requiring the use of armed escorts, directly targeting humanitarian workers.</p> <p><i>Regarding infrastructure:</i> failure to support adequate infrastructure (for example, constructing bridges or roads) or to wield services to address weather-related issues (for example, delays in removal of snow that obstructs roads).</p>

Two additional caveats are important to highlight regarding how I conceptualize humanitarian access in this paper. First, my dependent variable (DV) of interest is the extent to which an access

¹² This table draws on information from Kunz and Reiner (2013): 4; Long and Wood (1995); Van Wassenhove (2006); Kovács and Spens (2007); and Seekins (2009).

gatekeeper facilitates IHOs' ability to operate freely and independently and to reach the people their programs aim to serve. However, humanitarians typically understand the norm of humanitarian access to be broader, "encompass[ing] the dual dimension of both humanitarian actors' ability to reach affected people and of affected people's ability to access humanitarian assistance and services."¹³ This second dimension of "humanitarian access" ("people's ability to access humanitarian assistance and services") has implications for other related, and important, DVs, for example: mobility of the civilian population and domestic governmental and non-governmental response capacity. Second, I have mentioned governments and NSAGs, although there are other types of actors that one could also consider to be access gatekeepers, including donor governments; local business, community, and religious leaders; and the broader affected population. In this sense, my DV (government and NSAG behavior regarding facilitating humanitarian access for IHOs) is just one element—albeit a crucial dimension—of a broader humanitarian access picture.

II. Explaining Humanitarian Access Negotiation

My argument is that geopolitics—in particular, combatants' alignment (or not) with Western countries—shapes humanitarian access outcomes. My reasoning is that geopolitics plays a predominant role in shaping humanitarian access negotiation processes. In this sense, my theory places causal emphasis on the structure of the international humanitarian system, although the causal mechanism flows through individual-level dynamics (such as how individual humanitarians negotiate) and organizational-level dynamics (such as how particular organizations approach obtaining and sustaining humanitarian access).

To elaborate on the different possible levels of analysis, just as one can turn to three "images" to explain international conflict, one can consider three images of humanitarian organizations to examine the puzzle of humanitarian access negotiation.¹⁴ The first image focuses on individuals. According to this image of humanitarian access negotiation, individuals' skills, competencies, and profile play a predominate role in shaping negotiation outcomes. What is the extent of the negotiator's analytical acumen, social and emotional intelligence, and cultural

¹³ Conflict Dynamics International (2014).

¹⁴ See Waltz (1959), which analyzes three images—individuals, states, and the international system—to explain causes of war, as well as Singer (1961), which lays out a similar framework.

competence?¹⁵ How does the humanitarian practitioner's profile—in terms of gender, sexual identity, nationality, ethnicity, religion, age, and numerous other identity characteristics—shape how they negotiate and how counterparts perceive them?¹⁶ These are the questions that the first image brings forth.

The second image turns analytical attention to the organizational level. This image focuses on elements such as a humanitarian organization's reputation, the extent to which the organization has institutionalized “red lines” that determine how it will and will not operate, the values at the heart of the organization's mission or mandate, and the particular programmatic activities on which the organization focuses. Another second-image element is the extent to which a humanitarian organization devotes resources to building the negotiation capacities of its staff, pointing to the possibility that the variations in individual negotiation competencies that the first image envisages can be shaped by second-image dynamics.

The third image focuses not on particular individual or organizational attributes, but rather, on the humanitarian system as a whole. Three key attributes of the humanitarian system as it exists today are worthy of emphasis. First, the international aid sector is dominated by Western-centric organizations that are led by predominantly Western personnel and funded largely from Western governmental sources.¹⁷ Local humanitarian organizations and non-Western organizations are also important players in the humanitarian field, but the scale of their work is eclipsed by the large Western-centric humanitarian organizations—including UN humanitarian agencies, the ICRC, and international NGOs—that control the vast majority of humanitarian funding. There is, indeed, increased policy attention on how the international aid system can better empower local organizations and ensure that international humanitarian activities build upon local capacities.¹⁸ This policy discourse has traditionally fallen under the rubric of localization, although the language of decolonizing aid has also entered further into mainstream humanitarian policy discourse, driven by concerns that control of funding and programmatic decision-making power resides with large

¹⁵ See Grace (2020a): 24-31, which describes three types of negotiation “capital” that humanitarian workers can focus on cultivating to bolster their own negotiation skills.

¹⁶ See Du Pasquier (2016), which examines the role of gender in humanitarian negotiation, as well as Alsalem and Grace (2021), which analyzes how the aid workers' profiles—namely: sexual orientation and gender identity; nationality, ethnicity, and cultural background; age and physical skills and profile; and professional profile—can impact humanitarian negotiant processes.

¹⁷ Davey, Borton, and Foley (2013); Whittall (2015).

¹⁸ Fabre and Gupta (2017); Van Brabant and Patel (2018); Roepstorff (2020).

Western humanitarian organizations.¹⁹ In this sense, although local organizations play an important role in the humanitarian system—often as first responders before international organizations have the ability to mobilize and gain access—the humanitarian system, as a whole, has maintained its Western-centric nature.

Second, this Western-centered humanitarian sector is united by a set of core principles, although fragmented over how to actually operationalize them. The core principles are humanity (addressing suffering regardless of where it arises), neutrality (refraining from taking sides in conflicts), impartiality (implementing programming based on need alone), and independence (maintaining autonomy from political forces).²⁰ These core principles are among those proclaimed in the Fundamental Principles of the International Red Cross and Red Crescent Movement in 1965 and later codified in the International Red Cross and Red Crescent Code of Conduct in 1992, as well as in UN General Assembly resolutions 46/182 (1991) and 58(114).²¹ The principles aim to ensure that humanitarian work is not unduly influenced by politics, although humanitarians widely acknowledge that principles are challenging to operationalize, leading to sometimes intensive inter-organizational contestation—as seen in Syria and Iraq during the Battle of Mosul, for example—over how far is too far to compromise.²²

Third, humanitarian organizations are operationally fragmented. Aid agencies offer overlapping or complementary programming, and although coordination mechanisms and pooled funding streams exist, humanitarian organizations often compete with one another, instead of leaning more toward coordination or cooperation.²³

My theory cuts across all three images of humanitarian access negotiation. Third-image dynamics play an important role in my theoretical framework. The Western-centric nature of the international humanitarian system should cause Western-oriented access gatekeepers to have a greater propensity to facilitate humanitarian access. The fragmented nature of the humanitarian system—including the lack of consensus about how to operationalize the core humanitarian principles that unite the sector—prevents humanitarian organizations from coalescing around common negotiating positions to adopt a united front when engaging with access gatekeepers.

¹⁹ Jayawickrama (2018); Morris and Gomex de la Torre (2020); Currion (2020).

²⁰ OCHA (2012).

²¹ Ibid.

²² Slim (2015)

²³ Cooley and Ron (2002); Krause (2014).

However, first and second image dynamics are also present in my theory, as my causal mechanism is the access negotiation process, and in particular, the role that Western alignment plays in facilitating effective integrative negotiation strategies. An integrative approach entails pursuing constructive dialogue with one's counterpart, engaging in open discussion about one another's interests and one's best alternative to the negotiated agreement (BATNA), and creatively exploring alternate options when conflicting interests appear to arise. With an integrative approach, two negotiation counterparts, through open discussion with one another, might find that their underlying interests, which might at first have seemed to be conflictual, are actually compatible. An everyday example of integrative negotiation is two people who both want an orange negotiating over how to divide the fruit amongst themselves. By adopting an integrative approach, open discussion with one another might reveal that the two negotiators' underlying interests are actually not conflictual: for example, perhaps one person just wants the pulp while the other just wants the peel.²⁴ The negotiation counterparts can divide the orange among them in a way that allows both to get exactly what they want.

The emerging scholarship on humanitarian negotiation has highlighted the relational nature of humanitarian negotiation, emphasizing the importance of integrative negotiation to these processes.²⁵ Indeed, across the humanitarian sector, there is a widespread sense of the desirability of pursuing a strategy of acceptance, considered by humanitarian organizations to be a tool of security management, although the notion of acceptance is also relevant to humanitarian access negotiation more broadly.²⁶ With an acceptance strategy, humanitarian organizations seek to cultivate "broad acceptance" of their presence "through good works and adherence to humanitarian principles."²⁷ Acceptance entails "[l]istening and responding to what people want, treating them with respect, acting transparently and being accountable may encourage a greater level of acceptance," all elements that are consistent with an integrative negotiation approach.²⁸

The logic of my argument—that being that Western alignment should facilitate fruitful integrative engagement—is that integrative engagement requires a high level of trust between negotiating parties. According to my theory, these dynamics should be more easily achieved if an

²⁴ Ury, Fisher, and Patton (1992).

²⁵ Clements (2020).

²⁶ Van Brabant et al. (2010).

²⁷ *Ibid.*, at 57.

²⁸ *Ibid.*, at 59.

access gatekeeper relies on security support from the same set of Western countries from which humanitarian organizations hail. In such scenarios, there is less reason for the access gatekeeper to question whether the humanitarian organization is aligned with the access gatekeepers' opponents, and more reason to take the humanitarian negotiator seriously as a credible interlocutor worthy of serious engagement.

Two main empirical expectations follow from my theory. First, I expect to observe a correlation between an access gatekeeper's geopolitical orientation (aligned with the West or not) and the extent to which an access gatekeeper facilitates humanitarian access for organizations that comprise the Western-centric international humanitarian system. I do expect that there will be variations in the access obstacles that different Western organizations operating in the same context confront. First image and second image dynamics will cause variations in the ways that access gatekeepers engage with the ICRC, UN agencies, and Western-based international NGOs. Additionally, given the fragmentation of the humanitarian system, I expect that organizations will generally negotiate individually, as opposed to collectively, meaning that their outcomes will differ from one another in ways that we would not observe if aid agencies forged a united front and agreed across organizational lines on common parameters of humanitarian access. Nevertheless, I do expect to see variation when looking at the same organization—or set of organizations—across different contexts. For example, a Western aligned access gatekeeper should facilitate humanitarian access for the ICRC more so than an access gatekeeper not aligned with the West. The same should be true for Western-aligned versus non-Western-aligned access gatekeepers engaging with UN agencies and Western international NGOs.

Second, when probing the actual dynamics at play in these negotiations, we should observe that humanitarian actors can more effectively employ integrative negotiation approaches when engaging with Western aligned access gatekeepers. We should observe that humanitarians and Western aligned access gatekeepers are better able to engage in open and frank exchanges about their interests, as well as the parameters that they will and will not accept. We should also observe that Western aligned access gatekeepers are more likely to engage in creative joint problem solving when challenges in humanitarian access negotiations arise. Conversely, I expect that non-Western aligned access gatekeepers should be more cautious about trusting humanitarian actors and less likely to engage in the open type of dialogue that integrative engagement necessitates.

III. Implications for Existing Scholarship

My theory helps bring coherence to three largely disconnected strands of scholarship. The first strand consists of structural explanations for humanitarian access outcomes—and civilian victimization during wartime more broadly—from the field of political science. This body of scholarship emphasizes the attributes of combatants, as well as dynamics of conflicts, largely omitting humanitarian organizations from the theoretical picture. The second strand consists of agentic explanations that focus on the power of humanitarian organizations—through norm promotion and/or effective negotiation strategies—to shape humanitarian access outcomes. The third strand adopts a more critical approach toward humanitarian organizations as instruments of states, donor governments, or even their own organizational interests in ways that can be harmful to the populations they purport to aid. Below I provide an overview of these bodies of scholarship and explain how my theory helps us unpack how, when, and why we should expect the impact of humanitarian organizations to be negligible, helpful, or harmful.

Structural Explanations

Structural explanations for humanitarian access outcomes focus on attributes of the combatants themselves and the nature of the conflicts in which they are embroiled. In this vein, Labonte and Edgerton (2013) propose a typology of three different types of humanitarian access denial. The first type is “latent access denial,” in which a state perceives that humanitarian action conflicts with its national image or, as Labonte and Edgerton describe, “prevailing national cognitive or political structures.”²⁹ Consequently, states use bureaucratic constraints—for example, delaying the granting of visas or imposing burdensome fees—to control, and place conditions on, humanitarian access. In “latent access denial,” the state holds certain “red lines” around which governmental actors, through these bureaucratic measures, condition and control humanitarian access. Labonte and Edgerton offer Ethiopia in the 1970s as an example of this type. The second type is “deterrent access denial,” in which humanitarian aims appear to contravene a state’s military and/or security objectives. In such instances, the state turns not only to bureaucratic

²⁹ Labonte and Edgerton (2013): 51.

impediments but also to measures that can lead to security threats for humanitarian actors: for example, intensifying military activities, refusing to guarantee aid workers' security, or directly attacking humanitarians in the field. In such contexts, states heavily restrict humanitarian access, allowing only activities that align with its security or military objectives.³⁰ Labonte and Edgerton note that the Government of Sri Lanka exhibited this behavior during the country's civil war. The third type, "proxy access denial," entails states using humanitarian access as a bargaining chip in negotiations to pursue other aims. Their example of this type is Sudanese President Omar al-Bashir's decision in 2009 to expel a number of humanitarian organizations from the country.

This typology constitutes a step forward in terms of understanding similarities and differences between different humanitarian access environments, but two key issues remain. First, the typology leaves open the question of what circumstances cause the aforementioned factors to result in access restrictions. How can one understand when considerations of national image will prompt access denial and when they will not? In what ways do states perceive that humanitarian access serves security and military aims, and under what circumstances are states likely to view humanitarian and security or military aims as conflictual? What prompts states to use humanitarian access as a bargaining chip, or conversely, what factors inhibit states from doing this? Second, questions remain about the generalizability of the typology. Labonte and Edgerton frame their typology in narrow terms, focusing solely on states. This conceptual delineation leaves open the question of whether their typology would also apply to NSAGs. Should one expect NSAGs to be guided by similar considerations of image and security/military considerations? Are there ways in which the drivers of humanitarian access obstruction for governments versus NSAGs might differ from one another? These remain open questions.

Various other scholars have examined different dimensions of humanitarian access and/or have probed what drives combatants to respect the LOAC, a broader topic that holds insights for humanitarian access, given that humanitarian access is a LOAC norm.³¹ This growing body of literature proposes a host of possible structural explanations that one could group into four categories, each of which could constitute an alternate explanation for humanitarian access outcomes. The first category consists of strategic-oriented explanations. This literature examines the circumstances under which combatants have incentives to punish the civilian population as a

³⁰ Ibid, at 53.

³¹ Schwendimann (2011).

means of furthering their war aims.³² For example, Downes (2008) analyzes what drives civilian victimization, a broad concept that, in his definition, includes “aerial, naval, or artillery bombardment of civilians or civilian areas; sieges, naval blockades, or economic sanctions that deprive noncombatants of food; massacres; and forced movements or concentrations of populations that lead to widespread deaths.”³³ He argues that, as the costs of an armed conflict increase (e.g., as war aims become more expansive, battle-related deaths rise, or the war becomes increasingly protracted), combatants are more likely to resort to targeting the civilian population. His analysis includes, as a case study, the Allied naval “starvation blockade” of Germany during World War I.³⁴ In a similar vein, Narang and Stanton (2017) argue that NSAGs are driven by strategic incentives to attack humanitarian workers as a part of a broader strategy to undermine civilian support for the government in areas where an NSAG seeks to enhance its influence.³⁵

The second category consists of legitimacy-oriented explanations, meaning that combatants might have an interest in demonstrating adherence to the LOAC during an armed conflict to secure political support from domestic and/or international audiences.³⁶ This literature has uncovered a robust correlation between LOAC compliance and reliance on international support from states that are human rights conscious or democratic in nature. Under such theories, combatants exercise restraint out of concern for losing international political, diplomatic, military, or financial support from their external sponsors. From a domestic standpoint, scholars in this vein argue that combatants who depend on political support from the local population are more likely to abide by the LOAC. Jo (2015) dubs such a framework “strategic legitimacy” theory and examines NSAG behavior in terms of civilian targeting, use of child soldiers, and granting the ICRC access to detention centers. Stanton (2016) offers a similar argument to explain civilian targeting applicable not only to NSAGs but also to states. Kobayashi (2017) applies the same argument—the need for external and domestic legitimacy—to humanitarian access specifically, with a focus on how the needs for external and local legitimacy interact with one another to fuel differing humanitarian access outcomes.

³² Kalyvas 2006; Valentino, Huth and Croco 2006; Downes 2008; Narang and Stanton 2017.

³³ Downes (2008): 14.

³⁴ Ibid, at 83-114.

³⁵ See also Murdie and Stapley (2014); Hoelscher, Miklian, and Nygård (2017).

³⁶ Jo (2015); Stanton (2016); Prorok and Appel (2014); Jadoon (2017).

The third category consists of repercussion-oriented explanations, meaning that punishing civilians through wartime conduct could lead to externally imposed repercussions. These repercussions could be rooted in reciprocity, meaning that one combatant's LOAC violations could trigger violations by the opposing side.³⁷ Repercussions could also be legal in nature, pointing, for example, to the impact of the International Criminal Court on wartime conduct.³⁸ Scholarship in this category has not directly addressed humanitarian access, although the insights of these analyses present potentially useful structural explanations for humanitarian access outcomes. For example, Morrow (2014) argues that LOAC treaties operate as "screens," meaning that treaty ratification signals an interest in reciprocal behavior with other treaty parties. It could be the case that, in an armed conflict, when relevant combatants can credibly signal to one another a commitment to the LOAC, both sides would be more likely to facilitate humanitarian access into territory that the opponent controls.

The fourth category consists of capacity-oriented explanations. Organizational capacity limitations can lead to incentives to commit LOAC violations as a means of cultivating organizational cohesion.³⁹ Various scholars have also examined the role that internal organizational monitoring and enforcement of individual combatants' behavior plays in patterns of LOAC compliance.⁴⁰ Morrow (2014) highlights this aspect as a key determinant of whether a party to a conflict will be able to comply with the LOAC. As Morrow writes, given that "various issues [encompassed by the LOAC] provide varying levels of opportunities for individuals to commit violations, overall levels of compliance should vary across issues."⁴¹ For example, as Morrow notes, one would expect LOAC violations at sea to be more rare because acts in that domain require commands from high-level officers, as opposed to issues of detainee treatment and targeting civilians, which, in some contexts, might be undertaken only by individual soldiers. For such issues, the extent to which the party to the conflict successfully implements appropriate training and disciplinary measures will impact its LOAC compliance.⁴²

³⁷ Posner (2013); Morrow (2014).

³⁸ Jo and Simmons (2016).

³⁹ Cohen (2016).

⁴⁰ Muñoz-Rojas and Frésard (2004), Humphreys and Weinstein (2006), Weinstein (2007), Wood (2010), and Terry and McQuinn (2018).

⁴¹ Morrow (2014): 116.

⁴² *Ibid.*

Organizational capacity is particularly relevant to humanitarian access in light of the fact that humanitarian actors engage with access gatekeepers at different organizational levels. A policy publication produced by the HD Centre for Humanitarian Dialogue articulates a useful framework consisting of three levels.⁴³ The first is “high-level strategic,” which entails engaging with a government at a high political level to forge an agreement on establishing a presence in the country, as well as the general parameters and modalities of the humanitarian organization’s activities. The second is “mid-level operational,” which entails negotiating with authorities at the regional or district level on the practicalities of the humanitarian organization’s daily activities. The third is “ground-level frontline,” which entails interacting with junior-level state authorities, community leaders, and NSAGs. Even if a “high-level strategic” decision is made to allow for humanitarian access, “mid-level operational” or “ground-level frontline” individuals could still decide on their own to obstruct access. Consequently, the access gatekeeper’s capacity to ensure organizational policy cohesion—or an ability for humanitarian actors to successfully negotiate across multiple organizational levels—is a precondition for allowing humanitarian access.

A key aspect of these structural explanations is that this body of work almost entirely discounts the role of humanitarian organizations as a key causal actor with the power to shape combatants’ behavior during wartime. To the extent that humanitarian organizations do appear in these theories, they are merely passive actors. For example, Fazal and Konaev (2019) analyze the factors that lead NSAGs to sign onto, and comply with, a deed of commitment— created and monitored by the NGO, Geneva Call—that bans using antipersonnel landmines. Their theory, which combines insights from the strategic-oriented and legitimacy-oriented strands of literature, proposes that the key variables are an NSAG’s strength and its political aims (namely, strong secessionist NSAGs are likely to commit to and abide by the deed of commitment, whereas weak, non-secessionist NSAGs are less likely to do so). The specific dynamics of the interactions between Geneva Call and NSAGs fall outside of their theoretical picture.

Similarly, Labonte and Edgerton (2013) omit from their analysis any factors related to the organizations seeking territorial access from access gatekeepers. They dub their framework an “interpretist approach,” basing their analysis on the assumption that “actor behaviour can only be understood as being influenced in part by one’s environment, but also by one’s subjective

⁴³ Mancini-Griffoli and Picot (2004): 21.

perception of that environment.”⁴⁴ The focus on subjectivity leaves open the possibility that humanitarian organizations, themselves—as well as other external actors—might be able to play a role in shaping governments’ perceptions about the desirability of humanitarian access. Labonte and Edgerton do not delve into the explanatory value that interactions between governments (as access gatekeepers) and humanitarian organizations (as entities seeking access).

Agentic Explanations

Agentic explanations de-emphasize structural factors and place focus primarily, or in some instances solely, on the humanitarian access negotiation process itself. There are three waves of scholarship that fit this category. The first wave consists of constructivist international relations scholarship that emphasized the role of humanitarian and human rights organizations as norm entrepreneurs or norm promoters in international politics.⁴⁵ Finnemore (1996) examined the role of the ICRC in “promulgating and transmitting humanitarian norms,” and in particular, the ICRC’s efforts to persuade states of the value of allowing humanitarian actors onto the battlefield.⁴⁶ Similarly, Finnemore and Sikkink (1998) describe the ICRC as the “chief socializing agent” for the LOAC, “helping states to teach the new rules of war to their soldiers, collecting information about violations, and publicizing them to pressure violators to conform.”⁴⁷ Although, these works focus on the role of the ICRC in promoting norms at the global level. Political science work on LOAC compliance and civilian victimization during ongoing armed conflicts, as already discussed, has not embraced the notion of humanitarian organizations as agents of normative change.

The second wave of scholarship errs in the opposite direction. This body of work—produced by policy researchers who focus on humanitarian issues, or in some cases, by humanitarians reflecting on their own negotiation experiences—has yielded policy-oriented analyses that focus primarily on the dynamics of interactions between humanitarian workers and

⁴⁴ Labonte and Edgerton (2013): 42.

⁴⁵ For example, see Finnemore (1996); Finnemore and Sikkink, (1998); Keck and Sikkink (1998); Risse, Ropp, ad Sikkink (1999).

⁴⁶ Finnemore (1996): 70.

⁴⁷ Finnemore and Sikkink (1998): 902

combatants to armed conflict.⁴⁸ This work has been valuable in raising the visibility of humanitarian access negotiation across the aid sector. Additionally, this work has illuminated many of the dynamics at play in humanitarian access negotiation, including how to navigate adherence with humanitarian principles and the need to compromise during negotiation processes.⁴⁹ This wave of scholarship, beginning in the 1990s and continuing into the early 2000s, mostly produced analyses that touched on only one country, with little to no comparative analysis across cases. In this sense, these policy-oriented analyses have limited ability to generate insights about the factors that drive humanitarian access outcomes.

In the past half-decade, a third wave of scholarship has emerged that has applied social scientific analysis toward analyzing humanitarian negotiation processes, also garnering insights from broader negotiation scholarship and applying them to the humanitarian realm.⁵⁰ For example, Clements (2000) presents a framework that draws on Zartman and Rubin's (2002) structuralists' paradox, the question being: how do weaker negotiation parties still achieve successful negotiation outcomes? As Clements notes, inherent in humanitarian negotiation is a power asymmetry that disfavors humanitarian organizations. Indeed, the authorities, state or non-state, control the territory that humanitarian organizations seek to access and also have the option of the use of force at their disposal, whereas humanitarian organizations do not. With these factors in mind, one might find it surprising that humanitarian organizations could successfully negotiate for unimpeded access at all. To resolve this paradox, Clements examines five modes that humanitarian organizations can use to overcome this asymmetric power dynamic. The first is persuasion, meaning that humanitarian organizations can succeed in convincing NSAGs of the value of humanitarian programming. The second is commitment and coalition forming, referring to the possibility that humanitarian organizations might be more committed to pushing their agenda than NSAGs are in resisting, as well as the fact that different humanitarian organizations can band together to bargain collectively for access. The third is the fact that humanitarian organizations can persuade NSAGs that granting access can enhance an NSAGs domestic or international legitimacy. The fourth is turning to a third party for support. Clements discusses the UN in this regard, in particular, the UN Security Council and the UN Secretary-General. The fifth is changing

⁴⁸ For example, see Cutts 1999; Jamal 2000; Richardson 2000; Avruch 2004; Minear and Smith 2007; Magone et al. 2011.

⁴⁹ Slim (2015); Heyse (2016).

⁵⁰ Lempereur (2016); Du Pasquier (2016); Clements (2020); Grace (2020a); Grace (2020b).

alternatives, an example being persuading the UN Security Council to authorize humanitarian access even in the face of a government's refusal to authorize it (as was done in Syria).

Left under-examined in these analyses is: in what ways do structural forces shape or limit what humanitarian access negotiations can achieve? Finnemore and Sikkink (1998) pondered the relationship between agents and structure in their broader examination of norm proliferation. On the one hand, Finnemore and Sikkink examined the role of individual norm entrepreneurs and their organizational platforms in helping to create new norms; states, international organizations, and networks in promoting these norms; and professional networks and bureaucracy in fueling norm internalization. On the other hand, Finnemore and Sikkink also considered other factors, including states' varying need for legitimacy, whether prominent or successful states had adopted a particular norm, and the intrinsic characteristics of different norms. The aforementioned second and third waves of scholarship relevant to humanitarian access negotiation has not followed this path of examining the inter-relationship between the agentic power of humanitarian organizations and the structural constraints that shape and structure humanitarian organizations' persuasive potential.

Humanitarian Organizations as Instruments of States, Donors, and Organizational Interests

Whereas the above strands of scholarship view humanitarian organizations as either not impactful at all or potentially impactful in positive ways, a third strand of scholarship adopts a more critical approach toward humanitarian organizations. These works examine humanitarian organizations as entities that can be instrumentalized by states or donors.⁵¹ Along these lines, Krause (2014) argues that the structure of the humanitarian system is one in which humanitarian organizations are incentivized not necessarily to serve populations affected by crises, but rather, to "sell" projects to their donors.⁵² Humanitarian organizations can also inadvertently fuel humanitarian crises, operating in ways that increase humanitarian needs and exacerbate or prolong armed conflicts.⁵³ Barnett and Finnemore (2004) examine how international organizations can be driven toward dysfunctional behavior. In a case study of the Office of the High Commissioner for Refugees (UNHCR), they make the case that state pressure has led UNHCR toward complicity in efforts to

⁵¹ Cooley and Ron (2002); Barnett and Finnemore (2004); Donini (2012); Krasue (2014).

⁵² See also Sell and Prakash (2004).

⁵³ Anderson (1999); Terry (2002); Branch (2008); Wood and Sullivan (2015); Wood and Molfino (2016); Mary and Mishra (2020).

forcibly repatriate refugees.⁵⁴ Cooley and Ron (2002) analyze how inter-organizational competition for resources can lead humanitarian organizations toward “dysfunctional outcomes” (e.g., failing to speak out against government corruption, complicity in aid diversion, and inadequate efforts to protect prisoners of war) that are inconsistent with their missions and mandates.⁵⁵ Scholars have also examined how NGOs (including humanitarian and human rights organizations), driven by the need to remain influential and secure continued funding, can shy away from advocating and promoting norms in line with their organizational mission.⁵⁶

What leads to these types of organizational dysfunctions? Humanitarian access negotiation processes actually live at the heart of many of these analyses. For example, according to Krause (2014), the humanitarian system is a donor-driven enterprise in which organizations select and design projects based on criteria that they believe donors (including states and private foundations) will find appealing. However, one of the primary factors in this decision-making process, Krause notes, is the importance of “making a contribution” or “adding value” in a particular context.⁵⁷ What shapes whether an organization can make a difference or not? Humanitarian access is essential, Krause notes: “To make a difference, access to the population in need has to be secured. That means visas for expatriate staff need to be obtained from the receiving government. Other forms of government support also make it easier to operate in a country, such as free movement across the territory (which cannot be taken for granted with a visa) and protection.”⁵⁸ Similarly, Cooley and Ron (2002) focus on the political economy of humanitarian donorship, highlighting the “highly competitive aid market in which multiple organizations compete for contracts from the same donors.”⁵⁹ However, at its core, their argument is also about humanitarian access, given that dysfunctional outcomes arise when there are “uncooperative local actors [who] will take advantage of the transnational sector's perverse incentives to further their own opportunistic age.”⁶⁰

⁵⁴ In particular, see Barnett and Finnemore (2004); Kennedy (2004).

⁵⁵ Cooley and Ron, 2002: 6

⁵⁶ Stroup and Wong (2017); Srivastava (2021).

⁵⁷ Krause (2014): 31

⁵⁸ Ibid.

⁵⁹ Cooley and Ron (2002): 17.

⁶⁰ Ibid, at 6. The same logic holds for the argument laid out by Barnett and Finnemore (2004) to explain UNHCR's complicity in forcibly repatriating refugees (i.e., sending them back to their country of origin against their will). As they argue, the reason that UNHCR moved toward this policy was because UNHCR perceived that it had no ability to persuade states to refrain engaging in forcible repatriation. See Barnett and Finnemore (2004): 97, which states, “If states were going to forcibly repatriate, pragmatists argued, then the choice for UNHCR was whether to sit on the

What causes local actors to be uncooperative? What helps us understand why humanitarian organizations cannot persuade these actors to be cooperative? These questions—and indeed, the puzzle of humanitarian access negotiation—are essential to understanding the dynamics at play in this critical strand of scholarship.

My Theory's Contribution to These Three Strands of Scholarship

The above overview of these three strands of scholarship reveals a scholarly conundrum. On the one hand, a field of humanitarian negotiation analysis and practice has emerged as a key issue on the policy agenda within the humanitarian sector. Scholarly literature—including constructivist international relations scholarship on the authority of humanitarian organizations in international politics, as well as policy-oriented literature on humanitarian negotiation—emphasizes the potential for humanitarian organizations to play a role in shaping their operational environments. On the other hand, according to thinking within the field of political science on combatant treatment of civilians—given that the literature focuses on structural factors—humanitarian negotiation as an activity with any sort of significant causal power does not, and should not, even exist at all. In short, the key overarching question is: are humanitarian policymakers fooling themselves in thinking that humanitarian negotiation is actually a significant activity worthy of further attention in terms of policy development and capacity building, or rather, have political scientists been overlooking key dynamics that shape combatants' behavior during wartime? Moreover, these questions speak to the underlying assumptions of the critical strand of scholarship on humanitarian organizations as organizationally dysfunctional entities. When and why should we expect humanitarian organizations to reach the limits of shaping their operational environment, and in particular, the limits of what humanitarian organizations themselves can do to pry open humanitarian access that would otherwise persist as restricted? If we know the answer to this question, we will also have a clearer picture of the circumstances under which humanitarian organizations are more likely to fall prey to dysfunction.

My theory—by examining the impact of a key structural factor (an access gatekeeper's alignment with the West) on the negotiation process (in terms of facilitating effective integrative

sidelines with its abstract principles or try to make the best of a bad situation and protect the refugees as well as it could.”

engagement)—synthesizes the agentic and structural approaches to analyzing humanitarian access, also informing our understanding of the critical strand of scholarship. In my theory, the structural factor (Western alignment) wields a great deal of causal power. However, the structural factor does not do its causal work on its own. The reason this structural factor matters is because of how it shapes access gatekeepers' receptiveness to integrative humanitarian access negotiation approaches. The humanitarian access negotiation process itself is also central to the causal story.

This is not the case for purely structural explanations. Consider a comparison between my theory and “strategic legitimacy” theory. Both theories posit the same correlation between, on the one hand, external sponsors that value humanitarian and human rights norms, and on the other hand, patterns of combatant compliance with the LOAC. In “strategic legitimacy” theory, humanitarian organizations do not need to do anything to shape the outcome. Instead, the combatant, fearing a loss of external support, structures its behavior to match what it perceives to be the external sponsor's wishes. Applying “strategic legitimacy” theory to humanitarian access—as Kobayashi (2017) does, for example—we would not expect humanitarian organizations to need to engage in humanitarian access negotiation at all. In my theory, access gatekeepers do not come to the negotiating table already predisposed toward facilitating or restricting humanitarian access. They need to be persuaded and reassured. Access gatekeepers and humanitarian organizations need to collaborate to agree on parameters of humanitarian access that are acceptable to both sides. The access gatekeeper's geopolitical alignment, I posit, shapes how this process will turn out.

In summary, the overarching puzzle of humanitarian access obstruction speaks to three inter-related questions. First, what explains combatant treatment of civilians during wartime? Second, how do structural and agentic factors interact to shape LOAC compliance outcomes? Third, when and why do humanitarian organizations succeed in promoting humanitarian norms versus falling prey to dysfunction? As noted earlier, humanitarian access is one of numerous LOAC norms that political science scholarship has examined. Thus, my theory has potential implications for other LOAC norms as well. If my theory is correct, it opens up another front in broader LOAC compliance scholarship by highlighting that geopolitics can shape the circumstances under which humanitarian organizations are likely to be considered credible interlocutors as they engage in advocacy efforts with combatants on other issues of humanitarian protection, such as child protection, refugee protection, sexual and gender-based violence, targeting of civilians, and detainee treatment.

Although, my theory also has implications about the nature of the humanitarian system that humanitarians themselves would likely not be so pleased to confront. The policy-oriented scholarship on humanitarian access negotiation has highlighted the potential for aid workers to operate as agentic actors during negotiation processes. According to my theory, humanitarian organizations can be agentic, but the possibilities for impact are structured, and indeed limited, by geopolitics. If humanitarian access depends on an access gatekeeper's geopolitical alignment, then the international humanitarian system will not be able to be as principled as it would like to be on a global scale. In this sense, my theory suggests a structural constraint to humanitarian organizations' ability to actualize the principles that live at the normative heart and soul of the humanitarian system as it exists today.

IV. Evidence from Ukraine

In this section, I analyze my theory's applicability to the conflict in Ukraine. This section is divided into three parts. First, I discuss how the geopolitical alignments of the government and the separatists. Second, I examine humanitarian access negotiations with the government. Third, I do the same for the Russian-backed separatists.

Geopolitical Alignments

After Ukraine achieved independence amidst the dissolution of the Soviet Union in 1991, the country fairly swiftly swung geopolitically toward the West. These early years of the country's post-Soviet life entailed various dimensions of a "civilized divorce" from Russia including: forging a military from Soviet military assets and personnel left residing on Ukrainian soil, dividing the Soviet Black Sea Fleet among itself and Russia, and reaching an agreement (that the United States brokered) to give up its nuclear weapons.⁶¹ Over the course of the 1990s, the United States and the EU emerged as Ukraine's most significant development donors.⁶² By 1998, Ukraine had clarified its "European choice," meaning an explicit hope and aim to become a member of the

⁶¹ Plokhly (2015): 324-326. See also D'Anieri (2019). On the negotiations around Ukraine's nuclear reversal see Pifer (2011).

⁶² Bukkvoll (1997); Shapovalova (2010).

EU.⁶³ Ukraine also cultivated a relationship with NATO during this time, and in 1995, the Government of Ukraine announced support for enlarging NATO, reversing Ukraine's previously articulated position.⁶⁴ In 2002, then President Leonid Kuchma announced his hope that Ukraine would join NATO.⁶⁵

The tumultuous 2004 presidential brought Ukraine's east versus west leaning to the fore. In the final round of the election, Viktor Yushchenko (the more pro-Western candidate) faced off against Viktor Yanukovich (supported by Russia). Yanukovich was declared the victor, although amidst accusations of electoral fraud, massive protests erupted (dubbed the "Orange Revolution"). Ultimately, after the case had made its way to the Supreme Court, a repeat of the Yushchenko-Yanukovich runoff was held, and Yushchenko emerged victorious. Six years later, Yanukovich won the 2010 presidential elections, paving the way for the episode that would cause the country to descend into unrest, and ultimately, armed conflict over the course of 2013-2014. The issue that sparked Maidan protests of 2013 was President Yanukovich' decision not to sign the planned Ukraine-EU Association Agreement. Ukraine experienced massive protests, as well as government violence directed at civilians in an effort to manage the situation. The protesters ultimately were successful. Yanukovich fled the country, and a new, pro-Western country came to power.

After this development, the conflict escalated. Russia annexed Crimea, and Russian-aligned separatists declared independent republics in Donetsk and Luhansk. In fall 2014, the conflict began a slow transition from highly kinetic (active hostilities and changing control of territory) to 'frozen' (comparatively low-level conflict with territorial control remaining fairly stable). In September 2014, a twelve-point peace (commonly called 'Minsk-1') plan came to fruition. The resulting ceasefire did not hold, leading to a second agreement (called 'Minsk-2') in February 2015. A successful rebel offensive on the city of Debaltseve in Donetsk during January 2015 was the last significant territorial change in the conflict. A 'contact line' emerged that divides territory controlled by the government from that controlled by separatists. As of the writing of this paper, peace efforts (thus far still unsuccessful) continue, as do hostilities between government and separatist forces.

⁶³ Kubiak (2003).

⁶⁴ Bukkvoll (1997).

⁶⁵ Pifer (2019).

The armed conflict has left the government and the separatists on opposite sides of a major geopolitical divide: the Government of Ukraine has been aligned with the West, the separatists have been aligned against the West with Russia. Collating data from the SIPRI Arms Transfers Database with data from the Financial Tracking Service, which is maintained by the United Nations Office for the Coordination of Humanitarian Affairs, one can discern that, from 2014-2018, the value of 91% of arms transfers that Ukraine has received have come from OECD-DAC member states that have also contributed funding to humanitarian operations in the country.⁶⁶ The SIPRI Arms Transfers Database also records that Russia transferred \$24 million worth of arms to separatists in 2014. In this sense, this context represents a clear case to test the validity of my theory.

Humanitarian Access Negotiations with Governmental Actors

In Ukraine, before the armed conflict emerged, there was only a relatively small-scale international humanitarian presence in the country. Over the course of the 1990s, Ukraine requested international humanitarian support on numerous occasions for flood and severe winter weather response.⁶⁷ International humanitarian actors—including the UN and the International Federation of Red Cross and Red Crescent Societies—also engaged in offering services (for example: medical and psychosocial assistance) to people affected by the Chernobyl disaster, even decades after the incident.⁶⁸ International humanitarian efforts also included health responses—such as the H1N1 pandemic in 2009, as well as other disease prevention and treatment activities⁶⁹—and addressing issues of migrants and asylum seekers.⁷⁰

Pre-conflict relations between humanitarian and government actors were generally productive and collaborative. A humanitarian actor engaged on issues of migration in Ukraine

⁶⁶ OECD-DAC member states that have transferred arms to Ukraine are Canada, Czechia, France, Poland, the United Kingdom, and the United States. Ukraine has also received arms from United Arab Emirates (\$8 million worth of arms transferred in 2015), which is not an OECD-DAC member state.

⁶⁷ For flooding in 1993, see UNDHA (1993); in 1998, see OCHA (1998); in 2001, see OCHA (2001); in 2006, see IFRC (2006a); in 2008, see OCHA (2008); and in 2010, see IFRC (2010). For severe winter weather response in 2000, see IFRC (2000); in 2006, see IFRC (2006); in 2007, see IFRC (2007); and in 2012, see IFRC (2012a).

⁶⁸ See IFRC (2012b).

⁶⁹ For H1N1, see WHO (2009). For tuberculosis, see WHO (2004).

⁷⁰ Both UNHCR and the UN International Organization for Migration (IOM) had a longstanding presence in the country before 2013.

during this time described engaging in joint brainstorming with governmental interlocutors to find solutions to problems; joint development of draft regulations on standards; and overall, “joint work” aiming toward a “joint outcome.”⁷¹ This is not to say that there were not issues and delays. Indeed, during this period, humanitarians had to grapple with a heavy and cumbersome government bureaucracy, including outdated communication technology (for example, the use of fax machines).⁷² However, there is no evidence that governmental actors sought to control or restrict humanitarian activities in the country on a large scale during this time period.

When the Maidan protests erupted in fall 2013, international humanitarian actors were initially slow to engage. An ad hoc medical response emerged to provide medical relief to protesters.⁷³ The Ukrainian Red Cross provided medical care to protesters and police alike.⁷⁴ International humanitarian actors were present at the protests, with some participating in the medical response in their personal capacity.⁷⁵

International humanitarian actors began to engage in a more significant, and organizationally supported, manner after violence in February 2014 led to dozens of deaths—including protesters and security forces—and as the situation in the country escalated to active armed conflict over the course of March and April 2014. During this period of scaling up humanitarian response operations to levels unprecedented in the context of Ukraine, humanitarian actors found the access negotiation environment to be, in some cases, enabling, and in other cases, rife with corruption and burdensome bureaucracy. For example, an individual tasked with getting an international NGO registered to operate in the country described the legal paperwork as “nine circles of hell,” noting also that it was “tough to be honest,” because the process would take much longer if one refrained from paying bribes (which she and her organization did not do).⁷⁶ A health response actor discussed the “dog and pony show” that international organizations have typically received from governmental actors in the capital, Kyiv. He stated, “Most of them spend a whole lot of money but don’t accomplish the objective or task that they went in there with. If they do, they do it with a bandwidth of maybe two or five per cent of what they wanted to do. Money stays

⁷¹ Interview U44.

⁷² Interview U44.

⁷³ See Stepurko et al. (2014).

⁷⁴ Interview U77.

⁷⁵ Interview U59.

⁷⁶ Interview U65.

in Kyiv. Programming stays in Kyiv. Nothing gets to the end user. Nothing gets to the war fighter or the civilians in country.”⁷⁷

However, the overall access situation improved over time, as humanitarians were able to push for a more systematized, more limited bureaucratic procedure for gaining governmental permission for humanitarian operations. As the ‘contact line’ solidified—dividing government-held from separatist-held territory, manned by checkpoints on both sides—a de facto movement control regime emerged, by which humanitarian actors (at least in terms of engagements on the government side) have been able to obtain permission to cross. This process includes a ‘deconfliction’ mechanism, which has established a process for humanitarians to briskly resolve access disruptions if they emerge at the frontline level.⁷⁸

Trust-building has been a significant element of humanitarian access negotiation processes in Ukraine. According to one humanitarian actor, speaking about relationship-building efforts, especially in the early months of the conflict, “The Government of Ukraine was new, was finding its own way and had to deal with the armed conflict in the east. It would have probably been impossible to maintain a solid and regular presence in non-governmental territories if we didn’t develop a very broad network with different centers of power.”⁷⁹ In the words of another humanitarian actor, reflecting on engagements with the Government of Ukraine, “Whenever working with a government, as a development actor, it’s crucial to show that you take them seriously, put them into the driver’s seat. Be available but also be transparent and frank with all aspects of the work.”⁸⁰ Trust-building was not always successful. Humanitarian actors, as mentioned earlier, still encountered bureaucratic impediments and corruption. Nevertheless, when these issues arose, a humanitarian negotiator specified, “The intent was not to block us. It was more the bureaucratic spiral where it got lost. It was not an instruction from the top to impede or restrict the agencies from access.”⁸¹

Humanitarian actors pursuing integrative engagement in Ukraine have, in many cases, found governmental counterparts who also are willing integrative-oriented negotiators. One

⁷⁷ Interview U19.

⁷⁸ Interview U29.

⁷⁹ Interview U34.

⁸⁰ Interview U44.

⁸¹ Interview U29.

humanitarian actor noted of his organization's approach to engaging with local governmental actors who have had no prior experience or engagement with international humanitarian actors:

In terms of approach, it's something that would be a mix of lecturing and listening. The lecturing part, what I mean by that, is explaining who we are, going into the nitty gritty of our way of working. Building rapport with that individual or that group of individuals. If it's eastern Ukraine, explain how we have been working in other areas, such as Chechnya, South Ossetia, countries from the region that people can connect with and identify with.⁸²

Meanwhile, the listening part is "hearing about the needs, about the problems" in a "non-judgmental" way.⁸³ In the words of another humanitarian actor reflecting on engagements with the Ukrainian government, "It's very much about figuring out which people are there, what people need to know, how people want to be notified, and then trying to regularize or standardize that in some way, and then trying to simplify or mainstream that requirement into your day-to-day operations."⁸⁴

In general, the government has cultivated a fairly permissive humanitarian access environment, as evidenced by the following interviewee quotes from humanitarian actors operating in the Ukraine: "I think the government here has been permissive. They let humanitarians alone to do their thing;"⁸⁵ "We've never had any problems with the government. There is full access, full support. Never had trouble with access;"⁸⁶ "There are almost no issues [regarding humanitarian access with the government]. There are some limitations during active phase of conflict. But these issues are temporary;"⁸⁷ "The government doesn't try to restrict our movement. Maybe they say no if there's shelling. But you can go another day;"⁸⁸ "International NGOs and the United Nations are running around the government side pretty much with freedom of movement, except in certain areas where there are military activities happening;"⁸⁹ and "They [the Government of Ukraine] have never blocked us from going to the non-government-controlled

⁸² Interview U34.

⁸³ Ibid.

⁸⁴ Interview U45.

⁸⁵ Interview U64.

⁸⁶ Interview U74.

⁸⁷ Interview U78.

⁸⁸ Interview U69.

⁸⁹ Interview U32.

areas. There has been no occasion, as far as I remember, that they have threatened us to cut off the access to non-government-controlled areas or have blocked us.”⁹⁰

However, the permissive humanitarian access environment did not emerge on its own. Rather, it required extensive relationship-building and negotiation efforts from humanitarians, as indicated by the below quote from a humanitarian actor, who said, speaking of humanitarian access negotiations with the government:

One thing that was indispensable was very intense efforts on connecting with weapons bearers on the government-controlled side, and also with the security services who had the lead on the anti-terrorist operation, as they called it, in the east. If we hadn't done that, then a lot of our assistance and presence, even on the government side, where we were access many sensitive areas close to the contact line, wouldn't have been possible.⁹¹

Western donor governments have also, at times, engaged directly to support humanitarian access negotiation processes. In the early months of the conflict, the government enacted an embargo on separatist-held territory, meaning commercial and humanitarian goods could not pass through.⁹² As Barbelet (2017) notes, “Advocacy by humanitarian actors and pressure from some donors succeeded in forcing an exemption for humanitarian assistance, though local army leaders still tried to deny access to humanitarian assistance crossing the line of contact.”⁹³ There are other examples in this context as well. One humanitarian actor notes, “On a number of occasions, [advocacy from Western governmental donors] has been instrumental because it unblocked certain issues for us and helped us in discussions with the government.”⁹⁴

Nevertheless, the context is not devoid of humanitarian access issues for which the government bears responsibility. There are security issues for humanitarian actors during periods of active hostilities, landmines that present additional security risks for humanitarians and other civilians, there has not been a national humanitarian assistance law to systematize the formalization of humanitarian organizations' presence in the country, and many humanitarian organizations need to pay value added tax to operate in Ukraine. There have also been tensions with the government over humanitarian organizations that have sought ‘accreditation’ from

⁹⁰ Interview U29.

⁹¹ Interview U34.

⁹² Barbelet (2017): 6.

⁹³ Ibid.

⁹⁴ Interview U29.

separatists in order to operate in separatist-held areas in Donbass. Another dimension of humanitarian access has been protracted negotiations between the government and separatists over reconstructing and reopening the Stanytsia Luhanska bridge, which was destroyed early in the conflict and finally reopened in 2019.⁹⁵ Additionally, the broader population does not enjoy the level of mobility across these checkpoints from which humanitarian organizations benefit. There are notoriously long lines, and restrictions on movement have led to a significant humanitarian and health crisis for people seeking to travel back and forth from government-controlled to separatist-controlled territory, or vice versa.

Moreover, Russian humanitarian operations in Ukraine have not fared the same as Western-oriented humanitarian operations. Beginning in summer 2014, Russia sought permission from the Government of Ukraine for Russian governmental humanitarian aid convoys to enter into the country. Absent Ukrainian governmental permission, Russia sent in the convoys anyway (Russia did have the consent and support of the separatists in the areas targeted for aid). In Ukraine, governmental actors have viewed these activities with skepticism, seeing them as a cover for Russian military support for the separatists.

However, in Ukraine, one does not see the government committed to a strategy of siege warfare, as well as delays and obstruction geared toward the intentional disruption of humanitarian activity in the country. Rather, even in the context of an imperfect humanitarian access environment, aid workers from Western-oriented humanitarian organizations operating in Ukraine have found a fairly high degree of negotiation maneuverability. This finding is consistent with my theory that geopolitics shapes humanitarian access negotiation processes.

Humanitarian Access Negotiations with Separatists in Donetsk and Luhansk

The dynamics of humanitarian access negotiations with separatists in Donetsk and Luhansk have been very different in nature. In contrast to the enabling humanitarian access environment cultivated by the Government of Ukraine, separatists have been much more restrictive of humanitarian operations in separatist-held territory. Separatists have been suspicious of

⁹⁵ Karazy (2019).

humanitarian organizations, have denied entry into separatist-held territories at unpredictable moments, and have ejected humanitarian organizations from their territory without a clear explanation. Separatist authorities have also demanded that humanitarian organizations seek 'accreditation' to operate in the Donetsk Peoples Republic (DPR) and the Luhansk People's Republic (LPR). Humanitarian organizations have been divided over whether to accede to this demand, out of concern that it could seem to legitimize the separatists' authority and complicate the ability to maintain fruitful relations with the government. Even organizations that have sought and received accreditation have had it revoked for reasons that remain unclear. One interviewee said of separatist authorities' views of UN humanitarian actors, "There was concern that they were spies. There was also concern about capacity building and training. They saw this as brainwashing."⁹⁶ Another humanitarian noted that, in LPR in particular, they "have zero space for maneuvering" in humanitarian access negotiations and that LPR authorities have banned their organization from operating.⁹⁷

As with their engagements with the government, humanitarian actors have sought to build trust and relationships with separatist authorities. Indeed, there have been some successes. However, the successes remain highly dependent on first-image (individual) and second-image (organizational) factors. Trust has been challenging to cultivate, but humanitarian negotiators have made inroads based on building personal relationships. Still, these inroads have occurred in an overall context of restrictive humanitarian access. Attempts at integrative negotiation have not yielded results that resemble what has been achieved through similar negotiation efforts on the government side. Meanwhile, and unsurprisingly, separatist authorities have not adopted the same approach to Russian governmental convoys carrying humanitarian relief into separatist-held territory. Indeed, separatist authorities in DPR and LPR have facilitated access for these convoys. In this sense, the humanitarian access situation in separatist-held areas is the mirror image of that within government-held territory. When engaging with the government, aid workers from Western-oriented humanitarian organizations have cultivated positive relations, whereas Russian humanitarian efforts have been blocked or restricted. The opposite situation—once again, consistent with my theory—has arisen in DPR and LPR.

⁹⁶ Interview U64.

⁹⁷ Interview U32.

V. Assessing Alternate Explanations

This section assesses possible alternate explanations for variations across cases in humanitarian access outcomes. In particular, this section examines the case of Ukraine through the lens of the strategic-oriented, repercussion-oriented, legitimacy-oriented, and capacity-oriented explanations mentioned earlier in this paper. As I argue in this section, these alternate explanations fall short, compared against my theory, in explaining the behavior of the government and separatist authorities in this context.

Strategic-Oriented Explanations

Downes (2008) argues that states are more likely to resort to civilian victimization in armed conflict if they desperate to win (as wars become more protracted), desperate to save lives (as casualty figures increase), and when quick victory is infeasible (because a strategy of civilian victimization requires time to have an effect on the enemy).⁹⁸ Might these factors explain how humanitarian access negotiations have unfolded in Ukraine? It is difficult to see how this theory explain the humanitarian access situation in Ukraine. The logic of Downes' argument is that combatants sometimes have an incentive to punish the civilian population loyal to one's adversary. In Ukraine, the most severe humanitarian access difficulties have arisen from separatist authorities restricting access to territory that they themselves control. Contrary to Downes' logic, separatist authorities in DPR and LPR have been restricting access to populations that they have an interest in serving. Turning to the government's behavior, one could argue that the government has, indeed, adopted an approach of punishing the civilian population by controlling population movements in and out of separatist-held territory, making life difficult for those in DPR and LPR who need to cross the 'contact line'. However, this does not explain why international humanitarian organizations have succeeded in negotiating their way out of these restrictions. Therefore, one must conclude that there are other dynamics fueling these outcomes.

⁹⁸ Downes (2008), pp. 32-33.

Repercussion-Oriented Explanations

Scholarship focused on repercussion-oriented explanations has proposed two particular possibilities for explaining combatants' compliance with (or lack thereof) regarding LOAC norms: reciprocity and international legal ramifications. Regarding reciprocity, the notion is that one combatant could have an interest in refraining from violating LOAC norms if this choice could make the opposing combatant refrain from doing so as well.⁹⁹ This notion does not explain the dynamics of humanitarian access in Ukraine. Based on Morrow's (2014) conception of reciprocity, we would not expect LOAC compliance to be one-sided (one combatant respecting the LOAC, the opposing combatant showing a lack of respect for the LOAC). If reciprocity played a role in fueling the Ukrainian government's stance toward facilitating humanitarian access, we would expect the separatists to reciprocate. However, this has not been the case.

I now turn to a second type of repercussion-oriented explanation: concern about international legal ramifications. Ukraine is not a member of the ICC but self-referred to the court, first with a temporal scope limited to the period of Maidan protests (through a declaration on April 17, 2014, restricted to the time period, November 21, 2013 – February 22, 2014) and later in more expansive terms (through a second declaration on September 8, 2015, opening up the ICC's jurisdiction to alleged crimes committed on Ukrainian territory from February 20, 2014 or anytime afterward).¹⁰⁰ The ICC's jurisdiction over issues related to humanitarian access actually hinges on a determination of whether the armed conflict is international or non-international in character. The reason is that, under the Rome Statute of the ICC, starvation of civilians constitutes a war crime during international armed conflict but not during non-international armed conflict. This means that humanitarian access obstruction is unlikely to be successfully prosecuted by the ICC if the conflict in Donbass is classified as a non-international armed conflict.¹⁰¹ The ICC prosecutor has deemed Russia's seizure of Crimea to constitute an international armed conflict, but for the conflict in Donbass, considers DPR and LPR to be parties to a non-international armed conflict.¹⁰² Although, the prosecutor has left open the possibility that, if it is revealed that Russia has sufficient

⁹⁹ Morrow (2014).

¹⁰⁰ ICC (n.d.).

¹⁰¹ Bartels (2015).

¹⁰² ICC n.d.)

control over DPR and LPR, the conflict in Donbass could be considered international in nature, meaning that the provision barring starvation of civilians would apply.¹⁰³

Even if one accepts that the shadow effect of possible ICC prosecution could have shaped the outcomes of humanitarian access negotiations in Ukraine, the trends do not match what one would expect from this logic. Indeed, the government's enabling approach toward humanitarian access predates the ICC self-referral. As noted earlier in this paper, before the conflict erupted, international humanitarians in Ukraine enjoyed much fairly collaborative relationships with governmental actors. Moreover, if, theoretically, the Government of Ukraine self-referred the situation to the ICC to shape the separatists' approach toward humanitarian access, the effort was unsuccessful, as humanitarian access difficulties in separatist-controlled areas has endured.

Legitimacy-Oriented Explanations

Legitimacy-oriented explanations fall into two categories, sometimes considered together by scholars under the rubric of a single unified theory: international legitimacy and domestic legitimacy.¹⁰⁴ Internationally focused explanations fall closest to my explanation. Such explanations flow from the observed correlation between, on the one hand, human rights conscious external sponsors for states and/or NSAGs, and on the other hand, civilian victimization outcomes. The difference between my explanation and those of other scholars is the causal mechanism. Legitimacy-oriented explanations theorize that combatants that depend on human rights conscious external sponsorship should be predisposed toward allowing humanitarian access, fearing that they will lose external support if they do not. According to this theory, they do not need to be persuaded, and the humanitarian access negotiation process itself does not explain the outcome. However, the evidence I presented for humanitarian access negotiations with governmental actors in Ukraine suggests that negotiation was necessary to secure these outcomes. Indeed, humanitarian organizations have had to build relationships and trust; sensitize governmental actors on how humanitarians operate; and manage and mitigate tensions that have arisen, in particular, as humanitarian actors have sought to operate in both government-controlled and separatist-controlled territory.

¹⁰³ Ibid.

¹⁰⁴ Jo (2015); Stanton (2016).

Turning to domestic focused explanations, the relevant independent variable is regime type (democracy versus autocracy). The logic of this theory is that, for a democratic government facing a civil war (and for an NSAG that depends on the political support of the population residing on territory it controls), one should expect restraint in violating LOAC norms to signal willingness to care for the population.¹⁰⁵ For Ukraine, a regime-oriented explanation would somehow have to grapple with the ways that the Ukrainian government's approach has, in fact, victimized civilians living in separatist-controlled areas. Focusing specifically on humanitarian access, as noted earlier, although the Government of Ukraine has done much to facilitate the mobility of humanitarian organizations, including across the 'contact line' into separatist-controlled territory, the government has kept in place severe movement restrictions across the line of contact for the broader civilian population. The result has been a great deal of suffering, one element of which has been elderly people who must endure long waits to cross the 'contact line' to secure their pensions. The way the government has orchestrated its policy of economic blockade of these eastern portions of the country held by separatists (albeit with exemptions for humanitarian organizations) would be puzzling for a theory based on regime type. The theory also does not explain the separatists' behavior. Strategic legitimacy theory would predict that an NSAG that cares about effectively governing the territory it controls (as separatists in DPR and LPR do) would not be prone toward facilitating humanitarian access. The empirical reality does not match this theoretical prediction.

Capacity-Oriented Explanations

Capacity-oriented explanations focus on combatants' ability to monitor and enforce LOAC compliance across multiple organizational levels.¹⁰⁶ The notion inherent in this explanation is that LOAC violations should be more likely if loose command-and-control structures are unable to prevent them. This theory could conceivably explain the governments', but not the separatists',

¹⁰⁵ See Stanton (2016). Although, Downes (2008) finds different results regarding democratic countries engaged in international armed conflict (pp. 64-66 and pp. 246-247). Indeed, Downes presents statistical evidence that democratic countries are prone to violate the LOAC in international armed conflicts, one reason being that, in democracies, leaders have more risk of being held accountable for losing a war, especially "if they fail to use all the means at their disposal to prevent casualties among their troops and defeat the enemy quickly" (p. 247).

¹⁰⁶ Muñoz-Rojas and Frésard (2004), Humphreys and Weinstein (2006), Weinstein (2007), Wood (2010), Morrow (2014), and Terry and McQuinn (2018).

behavior. Indeed, in Ukraine, a commitment at higher governmental levels has led to the implementation of a 'deconfliction' mechanism that has largely prevented access obstruction at the frontline level from occurring. In the words of one interviewee speaking about humanitarian access negotiations with governmental actors at a lower organizational level, "If someone would very clearly obstruct activities of international organizations, they would not have a back-up at the highest level of the state. Maybe behind closed doors from certain politicians, but not as an overall policy."¹⁰⁷ The situation for separatists mirrors this situation only for access restrictions. The types of access difficulties that humanitarian actors face with separatist authorities do not appear to arise simply from lower-level actors acting at their own behest, but rather, due to an approach adopted more broadly by DPR and LPR at the highest levels, potentially with the influence of Russia as an external sponsor.

VI. Conclusion

I conclude by summarizing my key points and highlighting implications worthy of attention in future research efforts. In this paper, I have proposed a theory of humanitarian access negotiation. According to this theory, Western-aligned access gatekeepers should be more prone to facilitate humanitarian access for Western-oriented humanitarian organizations. Evidence from the conflict in Ukraine is consistent with my theory. The government (aligned with the West against Russia) has largely facilitated humanitarian access for primarily Western-funded international humanitarian organizations but has not done so for Russian humanitarian access. Separatists in Donetsk and Luhansk (aligned with Russia against the West) have been more suspicious and restrictive of humanitarian organizations operating in territory they control, while adopting a permissive stance toward humanitarian aid entering separatist-controlled territory from Russia.

My theory has implications for both the study and practice of humanitarian access negotiation. Regarding scholarship in this area, my theory aims to bridge the gap between structural and agentic explanations for humanitarian access, as well as combatants' conduct in armed conflict more broadly. The evidence presented in this paper suggests that humanitarian organizations can indeed be influential actors in armed conflict situations, playing a role in shaping

¹⁰⁷ Interview U80.

how combatants behave. However, my theory also suggests that geopolitics limits the zone of humanitarian actors' potential influence.

An important avenue for future research is to examine how well my theory holds across a wider array of cases. In particular, it would be valuable to examine how well my theory explains outcomes in situations in which humanitarian access is less politicized. A second worthy avenue would be to examine how behavioral and structural dynamics combine to shape outcomes for other types of civilian victimization during wartime. Indeed, perhaps it is the case that the persuasive efforts of humanitarian organizations (albeit geopolitically circumscribed) wield causal power for dependent variables such as civilian targeting, sexual violence, the use of child soldiers, and detainee treatment.

Regarding the practice of humanitarian access negotiation, my theory and findings suggest that humanitarian action is more political than many humanitarian policymakers and practitioners would like to admit. If humanitarian access outcomes hinge largely on access gatekeepers' geopolitical alignments, then the humanitarian principle of independence comes particularly into question. My theory highlights the challenging position in which humanitarian negotiators find themselves. Indeed, if my theory is correct, humanitarians are both imprisoned and empowered by the Western-centric nature of the organizations for which they work. A greater acknowledgement of this dynamic can play a role in framing future humanitarian negotiation capacity building efforts, guidance documents, and policy decisions of humanitarian organizations and donor states toward humanitarian access.

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