



APPEL DE GENÈVE  
GENEVA CALL

POSITIVE OBLIGATIONS OF ARMED  
NON-STATE ACTORS: LEGAL AND POLICY ISSUES

Report from the 2015 *Garance* Talks

The  
*Garance*  
Series:  
Issue 1



ABOUT GENEVA CALL ..... 3

THE GARANCE TALKS ..... 4

THE THEME OF THE 2015 GARANCE TALKS:  
POSITIVE OBLIGATIONS  
OF ARMED NON-STATE ACTORS ..... 5

Positive obligations and the work of Geneva Call ..... 6

1 THE LEGAL FRAMEWORK ..... 7

**A. The applicability of HRL to ANSAs and its utility** ..... 7

        ANSAs refer to HRL in practice ..... 7

        Human Rights belong to the people ..... 8

**B. Exploring the possible content of positive human rights obligations applicable to ANSAs** ..... 9

        People’s everyday lives continue during situations of armed conflict ..... 9

        Applying the law of occupation by analogy ..... 9

**C. Accountability issues** ..... 10

2 A SLIDING SCALE OF POSITIVE OBLIGATIONS ..... 11

**A. Types of ANSAs and the applicable law** ..... 11

**B. Territorial control by ANSAs and the role of the State** ..... 12

3 AN ARMED NON-STATE ACTOR’S PERSPECTIVE... 13

**A. Presentation by Judge Mahmoud Kallo of the ‘Democratic self-administration of Rojava’, Syria** ... 13

**B. Q and A session with the participants** ..... 14

4 POLICY ISSUES ..... 16

**A. The meaning of capacity building** ..... 16

**B. Challenges and further research** ..... 16

ANNEXES ..... 18

Annexe 1: List of participants at the 2015 *Garance* Talks .... 18

Annexe 2: Agenda ..... 19

Annexe 3: Positive Obligations under International Humanitarian Law ..... 20

Annexe 4: Positive Obligations under International Human Rights Law ..... 24

Annexe 5: Positive Obligations in Geneva Call’s *Deeds of Commitment* ..... 29

FURTHER READING ..... 30



47, chemin de la Chevillarde • 1224 Chêne-Bougeries  
P.O. Box 334 • 1211 Geneva 4 • Switzerland  
T. +41 22 879 10 50 • F. +41 22 879 10 51  
info@genevacall.org • www.genevacall.org

Follow us on:



Graphic Design: www.kathleenmorf.ch  
Cover Photo: *Improvised education in Karen State, Burma/Myanmar.* © Karen Education Department  
Printing: www.imprimerie-villiere.com  
Paper: Paper: Printed on paper using organic inks  
© Geneva Call, September 2016



ABOUT GENEVA CALL

Geneva Call is a neutral, impartial humanitarian organization dedicated to promoting respect for international humanitarian norms<sup>1</sup> by armed non-State actors (ANSAs) in armed conflicts and other situations of violence. The organization focuses on armed movements that operate outside effective State control and are primarily motivated by political goals.

Geneva Call’s key tool for engagement with these movements is an innovative instrument known as the *Deed of Commitment*. Because ANSAs cannot sign international treaties, signing a *Deed of Commitment* allows them to undertake to abide by specific humanitarian norms and to be held accountable. Three such *Deeds of Commitment* have been developed to date: the *Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action*,

in 2000; the *Deed of Commitment for the Protection of Children from the Effects of Armed Conflict*, in 2010; and the *Deed of Commitment for the Prohibition of Sexual Violence in Situations of Armed Conflict and towards the Elimination of Gender Discrimination*, in 2012. Geneva Call also provides ANSAs with training on the rules of international humanitarian law (IHL) and encourages them to integrate these rules into their codes of conduct and other internal regulations.

Since its creation in 2000, Geneva Call has engaged in dialogues with over 100 ANSAs worldwide. More than half of them have signed one or several *Deeds of Commitment* or made similar undertakings. Geneva Call monitors and supports the implementation of these humanitarian commitments.

ACKNOWLEDGEMENTS

Annyssa Bellal coordinated the 2015 *Garance* Talks and the elaboration of the present report. Geneva Call wishes to thank Anna Chiapello, Juliette Praz and Yvette Issar for their assistance in the organization and note-taking during the meeting. Any mistakes in this report are those of Geneva Call.

The 2015 *Garance* Talks were held with the support of the Swiss Federal Department of Foreign Affairs.

<sup>1</sup> Geneva Call uses the term ‘international humanitarian norms’ to refer to both international humanitarian law and the relevant norms of international human rights law.

In the course of its work, Geneva Call has witnessed the challenges that ANSAs face in order to comply with international humanitarian norms. Some of them are due to a lack of clarity in the applicable law itself (such as the law pertaining to detention in non-international armed conflicts); others can be explained by the fact that some ANSAs have insufficient capacity to abide by the requirements of certain rules (such as the right to due process and fair trial procedures). With these challenges in mind, Geneva Call launched the process of the *Garance* Talks at the San Remo 37th Roundtable on 'Current issues of IHL', in 2014. The *Garance* Talks are yearly expert meetings that are held at the *Villa La Garance*, Geneva Call's head office. They bring together experts to discuss the current challenges faced by ANSAs attempting to comply with international humanitarian norms, and they try to identify possible solutions. One important added value that the *Garance* Talks generate is an understanding of ANSAs' perspectives on the legal and policy discussions that concern them. They aim to complement on-going international processes which either do not or cannot, for institutional reasons, involve ANSAs or even address issues related to them.

The first *Garance* Talks took place on 26 November 2015 on the issue of the positive obligations of ANSAs. Fourteen experts from academia and relevant international organizations and NGOs participated, including the Office of the High Commissioner for Human Rights (OHCHR), the International Committee of the Red Cross (ICRC) and Amnesty International, as well as the Swiss Federal Department of Foreign Affairs (see the full list of participants in Annexe 1). One member of an ANSA, Judge Mahmoud Khallo, of the 'Democratic self-administration of Rojava'—the Kurdish authorities in northern Syria—also participated. The meeting, organized over four sessions, was held under a modified Chatham House Rule, where all participants are identified in an annexed list, but contributions are not attributed to individuals or affiliations, except for distinguishing between contributions made by ANSA representatives. The first session focused on legal issues, the second addressed the different types of ANSAs, the third heard the perspectives of the ANSA present during the meeting, and the last session allowed the participants to brainstorm on the policy aspects of engaging with ANSAs on their positive obligations as well as possible ways forward (see the meeting agenda in Annexe 2).



## POSITIVE OBLIGATIONS OF ARMED NON-STATE ACTORS

Although still a debated topic with regard to human rights law (HRL), the majority of scholars acknowledge that ANSAs have negative obligations under both IHL and HRL—at the very least, fundamental human rights norms such as the prohibition of torture. However, there is more controversy over the scope of their obligations when these imply taking positive actions to respect international norms. Some ANSAs administer territories and populations, implying that they should take actions which are regulated by positive IHL and human rights obligations, such as providing healthcare, education, freedom of expression and so on.

*Negative* obligations entail a prohibition on adopting certain conducts and are often worded in a negative form ('do not'); *positive* obligations can be understood as requesting that an entity subject to the law 'adopt reasonable and adequate measures to protect the effectiveness of rights'<sup>2</sup>. Positive obligations are closely linked to that entity's capacity to fulfil or implement the norms. However, international law does not give much information on the level of organizational capacity that an ANSA should possess in order to fulfil its obligations. IHL only briefly mentions that ANSAs must be organized in order to trigger the applicability of that body of law. Yet it gives little information on what an 'organized armed group'<sup>3</sup> is, although case law does give some indication in this regard<sup>4</sup>.

At first sight, the bulk of IHL rules applicable to non-international armed conflicts (NIACs) involves negative obligations, although there are some positive obligations applicable to ANSAs as well (see Annexe 3). Under HRL, on the other hand, if there are obligations worded so as to encourage abstention from committing certain

acts (for instance the prohibition of torture), there are also many positive obligations, especially in the 1966 International Covenant on Economic, Social and Cultural Rights, such as the rights to healthcare and education (see Annexe 4). As will be further discussed in the next section, one of the difficulties lies in the fact that HRL was originally conceived as a body of norms for regulating the relationship between States and the individuals living under their jurisdiction or control, and as such they did not theoretically bind ANSAs<sup>5</sup>.

The issue of the applicability of HRL to ANSAs arises not only when the threshold of armed conflict is not reached but also when they control a territory and a population over an extended period of time. In these circumstances, one could question the pertinence of using IHL to regulate the everyday lives of the people living under an ANSA's control, especially when there is no direct link to an armed conflict. This, for example, is one of the issues facing Geneva Call in its engagement with the Palestinian ANSAs that control refugee camps in Lebanon, especially on law and order issues.

Situations in which ANSAs would be willing to comply with their positive obligations do exist, but they often lack the capacity or resources to implement those obligations properly and this can discourage them from undertaking any positive action. Therefore, a key policy question is to what extent would the international community support capacity building for ANSAs in order to promote and protect IHL and human rights on a given territory and for a given population.

<sup>2</sup> Sudre (1995), p.363. The distinction between positive and negative obligations is relative. It should not be understood as the distinction between civil and political rights and economic, social and cultural rights, but implies that the duty-bearer take positive action in order to respect and implement the norm.

<sup>3</sup> Article 1 of AP II notes that the Protocol is applicable to conflicts which 'take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups, which under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement its protocol.' Common Article 3 only mentions 'each party to the conflict', without any further indication of what a 'party' may be.

<sup>4</sup> See the International Criminal Tribunal for ex-Yugoslavia Haradinaj case of 3 April 2008 (para 360). This gives some indications on the criteria of organization: the existence of a command structure and disciplinary rules and mechanisms within the group; 'the existence of a headquarters; the fact that the group controls a certain territory; the ability of the group to gain access to weapons, other military equipment, recruits and military training; its ability to plan, coordinate and carry out military operations, including troop movements and logistics; its ability to define a unified military strategy and use military tactics; and its ability to speak with one voice and negotiate and conclude agreements such as ceasefire or peace accords.'

<sup>5</sup> Lisbeth Zegveld (2002) argues that because human rights treaties typically set norms to regulate the relationship between a State and individuals under its jurisdiction, they would be 'neither intended, nor adequate, to govern armed conflict between the state and armed opposition groups', p. 54.

## Positive obligations and the work of Geneva Call

“Militarily active groups are often not separate from the community but an integral part of it and as such, can be key agents of protection.”

Kirsten McConnachie, *Rethinking the ‘Refugee Warrior’:  
The Karen National Union and Refugee Protection on the  
Thai-Burma Border*

Geneva Call’s operational scope of action focuses on “organized armed entities that are involved in armed conflict, which are primarily motivated by political goals and which operate outside State control, thereby lacking legal capacity to become a party to relevant international treaties. These include non-State armed groups, national liberation movements and *de facto* governing authorities. In addition, Geneva Call also works with non-recognized States as well as in situations other than armed conflict if it is deemed that its action can positively impact beneficiaries.”<sup>6</sup>

Geneva Call engages with ANSAs on both negative and positive humanitarian norms (see Annexe 5). The three *Deeds of Commitment* contain both types of obligations<sup>7</sup>. For example, ANSAs signatory to the *Deed of Commitment* protecting children commit not only to prohibiting the recruitment and use of children in hostilities but also to doing their best to provide children with the aid and care they need (such as access to food, healthcare and education). Positive obligations are framed as obligations to provide means rather than obligations for results. In Geneva Call’s view, engaging with ANSAs on positive obligations is an important means of enhancing the ownership of international norms and acknowledging the responsibility that ANSAs have in relation to the protection of the populations under their control.

<sup>6</sup> www.genevacall.org

<sup>7</sup> As explained above, Geneva Call’s key tool for engagement with ANSAs is an innovative instrument known as the *Deed of Commitment*. Three such *Deeds of Commitment* have been developed to date: the *Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and*

*for Cooperation in Mine Action; the Deed of Commitment for the Protection of Children from the Effects of Armed Conflict; and the Deed of Commitment for the Prohibition of Sexual Violence in Situations of Armed Conflict and towards the Elimination of Gender Discrimination.*

The 2015 *Garance* Talks addressed the legal framework applicable to ANSAs, particularly with regard to their positive obligations and HRL. The discussions dealt with the applicability of HRL to ANSAs and the utility of trying to do so; they explored the possible content of applicable human rights norms as well as the issue of monitoring.

## A. The applicability of HRL to ANSAs and its utility

Some experts argue that because HRL was originally and mainly conceived as a body of norms regulating the relationships between States and the individuals living under their jurisdiction or control, they should not be binding on ANSAs, as such. Other legal scholars are of the opinion that human rights belong to the people and that persons should be protected against any threats, whether those are posed by States or ANSAs. There are arguments to suggest that ANSAs are at least bound by the core obligations of human rights belonging to the category of peremptory norms of international law (*jus cogens*)<sup>8</sup>. There is, in addition, a broader consensus that ANSAs that can be considered as *de facto* authorities bear human rights obligations. For instance, the Office of the High Commissioner for Human Rights (OHCHR) has consistently taken the position that “Non-State actors that exercise government-like functions and control over a territory are obliged to respect human rights norms when their conduct affects the human rights of the individuals under their control.”<sup>9</sup> However, precisely which entities can be considered as *de facto* authorities under international law is not entirely clear, nor is the exact scope of the human rights obligations to which they are bound.

## ANSAs refer to HRL in practice

During the *Garance* Talks, it was noted that many ANSAs do refer to HRL in practice, whether or not it is a legal obligation. Some have constitutions, draft their own ‘legislation’ and establish judicial courts that issue judgments, all of which are based on HRL. In one participant’s view, the fact that legal experts do not unanimously agree on the applicability of human rights obligations to ANSAs does not much matter: “What should be taken into consideration is that ANSAs apply and use HRL in practice.” A reasonable and effective commitment to those obligations should be the main issue, rather than the formal legal framework. Other experts added that, most of the time, a commitment would stem from a problem that a humanitarian organization encountered with an ANSA rather than from an abstract legal obligation. Other frameworks used as a basis for commitments might be more relevant. For instance, when humanitarian organizations approach armed groups, they might not declare that ‘human rights apply’, but rather appeal to the ‘principle of humanity’, as it is reflected in human rights treaties. ANSAs rarely discuss issues in terms of whether or not they are bound by HRL. Discussions usually revolve around denying a violation, justifying it by the lack of capacity to do anything else or denouncing violations committed by the enemy. The discussion would not necessarily develop around the *must* or the *should*, but most of the time about *respect* and *capacity*. It was also noted that it might be easier for non-governmental organizations (NGO) like Geneva Call to engage with ANSAs than for intergovernmental organizations such as the OHCHR, whose interactions with armed groups is necessarily based on a more formal legal framework.

<sup>8</sup> Although the applicability of HRL as a whole to armed groups is contested, there seems to be a growing consensus that ANSAs may be bound by the fundamental or core obligations of HRL belonging to *jus cogens*. See, notably, the 1 June 2011 Report of the Commission of Inquiry on Libya, which stated, “It is increasingly accepted that where non-State armed groups exercise *de facto* control over territory, they must respect fundamental human rights of persons in that territory”

(para 315). See also, the International Law Association, the Hague Conference (2010): “The consensus appears to be that currently NSAs [non-state actors] do not incur direct human rights obligations enforceable under international law. Exceptions include violations of *jus cogens* norms.”

<sup>9</sup> See A/HRC/8/17, para 9; A/HRC/12/37, para. 7. See also Rodley (1993).

**Case study:**

The Human Rights Court established by the Sudan People's Liberation Movement/Army-North (SPLM/A-N) (excerpts). The whole document is available at [www.theirwords.org](http://www.theirwords.org)

**SPLM-N****Office of the Chairperson  
Resolution No. (6)-2013**

In accordance with my designative authorities in accordance and provision 20 (2) of the Constitution of the Sudan People's Liberation Movement/Army-North (SPLM/A-N), 2013, I hereby issue the following resolution:

a) Name of Resolution and Entering into Force: The SPLM/A-N Chairperson resolution to establish a Human Rights Court. The resolution enters into force from the date it was signed.

b) The Establishment: An independent Human Rights Court is hereby established to address complaints of human rights violations in the SPLM/A-N's liberated areas.

c) The Mandate of the Court: The mandate of the Human Rights Court is the following:

1. Study and make decisions about complaints and accusations of human rights violations received from individuals, the SPLM/A-N's institutions and/or civil society organizations.

2. Receive complaints from individuals and other civic institutions of violations, conduct investigations and take the appropriate actions.

3. Protect and promote human rights through monitoring of violations and dissemination of information.

.....

**Human Rights belong to the people**

"The rights enshrined in the Covenant belong to the people living in the territory of the State party. The Human Rights Committee has consistently taken the view, as evidenced by its longstanding practice, that once the people are accorded the protection of the rights under the Covenant, such protection devolves with territory and continues to belong to them, notwithstanding change in government of the State party, including dismemberment in more than one State or State succession or any subsequent action of the State party designed to divest them of the rights guaranteed by the Covenant."

*Human Rights Committee, General Comment 26*

Some humanitarian organizations have the specific mandate to protect people's human rights against any abuses. From that perspective, one expert noted that it was important, and also as a matter of impartiality, to address threats to human rights regardless of which entity was posing the threat, whether a State or an ANSA. Another expert added that the issue could be looked at in two ways: who has the obligation (actor) or who has the rights (population). From that perspective, either one focuses on the obligations of the actor or adopts the perspective that 'human rights belong to the individuals'. The latter expert added that some OHCHR reports did in fact address this issue from the second perspective and talked about 'the interference on the enjoyment on rights' rather than pointing at the violations of obligations<sup>10</sup>.

**B. Exploring the possible content of positive human rights obligations applicable to ANSAs**

"Human rights monitoring experience in Nepal suggests that the lack of a clear framework addressing the human rights obligations of non-state actors can impact the effectiveness of field operations... A narrow focus on the state's responsibility to protect its citizens from violence by non-state actors has proven unsatisfactory. As a consequence, human rights organizations struggle to justify their monitoring and interventions, host states become suspicious of international field presences, and policy makers at the headquarters of monitoring organizations become concerned about potential political fallout from human rights monitoring."

*Frederick Rawski, Engaging with armed groups: a human rights field perspective from Nepal*

**People's everyday lives continue during situations of armed conflict**

One expert explained that recent political science literature showed that everyday life is an important aspect of the human experience of armed conflicts. This aspect had been routinely ignored in the legal literature. Indeed, while identifying the parties to the armed conflicts and their purposes, legal scholars tended to define civilians exclusively as victims. In addition, territories controlled by ANSAs were more organized than expected. The expert added that the dynamics of daily life in zones controlled by ANSAs deserved more careful analysis. Personal lives also continue during armed conflicts and changing environments: individuals still make decisions relating to their daily and personal lives. Because IHL applies to activities which are linked to the armed conflict<sup>11</sup>, it was acknowledged that HRL could add more value to the legal framework in these zones as the everyday activities of life might fall outside the scope of IHL. Cases involving people who are arrested, harassed or prosecuted for everyday crimes in everyday lives should fall under HRL, because contrary to IHL, it contains provisions dealing with the rights to freedom of movement and expression, the right to work and the right to enjoy an adequate standard of living, among others.

**Applying the law of occupation by analogy**

One expert reminded the meeting that it was not clear which HRL rules applied to particular groups. The expert wondered where guidance could be found in this regard. For instance, could the OHCHR make such a decision? Indeed, most of the experts noted that there had been very little analysis of the substantive content of the HRL norms that should apply to ANSAs. At the same time, there was not necessarily any need to create new standards. Existing (IHL) norms could serve as an inspiration and it would be easier to work with a set of standards that already exist rather than create new ones.

<sup>10</sup> See, for example, the 7 January 2012 Report of the United Nations High Commissioner for Human Rights on the human rights situation in Mali. With regard to violations of the freedom of expression and the right to information, for instance, the report underlined that "With the arrival of armed groups in the north, at the beginning of 2012, local people have seen their freedom of expression systematically restricted," A/HRC/22/33, para. 37.

<sup>11</sup> ICTY case law supports the observation that issues related to everyday life and their regulation by ANSAs fall outside the scope of IHL, especially where hostilities are geographically distant. Case law confirms that people detained in connection with the armed conflict fall under IHL, and those who are detained for common crimes fall under HRL. It also confirms that HRL contains relevant norms for people who find themselves in situations of armed conflict (e.g. right to work, adequate standard of living, health, education, freedom of religion and movement, right to marry), see notably Prosecutor v Boskoski and Tarculovski, Case No. IT-04-82-T, Trial Judgment, 10 July 2008, and Prosecutor v Kunarac et al., Case No. IT-96-23-A, 23/1-A, Appeals Judgment, 12 June 2002.

One starting point could be to look at how IHL already deals with specific issues. IHL incorporates concepts like ‘minimum standards’, ‘possible measures’ or ‘maximum extent possible’. One could also apply the law of occupation by analogy, even though telling ANSAs that they are ‘occupiers’ hardly seems feasible. Experts also added that guidance exists in HRL itself—in relation to economic and social rights, for instance—as it refers to notions such as ‘minimum guarantees’.

Experts cautioned that some States might be troubled to see armed groups acting as fully functioning ‘de facto States’. It was suggested that norms should then be tailored to match the capacity of each ANSA, how it functions on the ground and the needs of the population. Adopting this perspective, i.e., tailoring the norms to each ANSA’s capacities, might ease States’ worries about the process of NGOs engaging with them on human rights obligations.

### C. Accountability issues

“The obvious accountability gap with regard to armed groups and international human rights architecture is that, in general, armed groups are not monitored by the international and regional human rights bodies which cover the actions and policies of states.”

Ron Dudaï and Kieran McEvoy, *Thinking Critically about Armed Groups and Human Rights Praxis*

<sup>12</sup> See the Permanent Court of Arbitration, *Optional Conciliation Rules*, which provide that, “The PCA Optional Conciliation Rules were prepared primarily for use in assisting to resolve disputes arising out of or relating to legal relationships where the parties seek an amicable settlement of their differences. In addition, parties are free to agree to use these Rules in seeking to resolve any other type of dispute. These Rules are intended for use in conciliating disputes in which one or more of the parties is a State, a State entity or enterprise, or an international organization. Thus, for example, the same Rules may be used in disputes between two States and also in disputes between two parties only one of which is a State.” As an example of such arbitration, the ‘Abyei Arbitration’ involved the Government of Sudan and the Sudan People’s Liberation Movement/Army (SPLM/A). They agreed to submit their dispute concerning the boundaries of the oil-rich Abyei area to the PCA on 21 June 2008. The PCA delivered its decision one year later. It is available at: [http://www.haguejusticeportal.net/Docs/Court%20Documents/PCA/Abyei\\_Final\\_Award\\_EN.pdf](http://www.haguejusticeportal.net/Docs/Court%20Documents/PCA/Abyei_Final_Award_EN.pdf)

Some experts noted that seeking human rights commitments from ANSAs without proper accountability could be perceived as collecting mere empty promises and would not bring much guarantee of improvement for the populations living under their control. One expert was of the opinion that developing accountability and enforcement mechanisms would help convince international partners that it was worthwhile capacity building with ANSAs. In that regard, it was acknowledged that it was not beyond the realms of possibility that an ANSA one day becomes a party in a dispute before an international court. Indeed, the Permanent Court of Arbitration now accepts disputes involving ANSAs and has rules and mechanisms to deal with disputes involving non-state entities<sup>12</sup>.

Many of the experts considered that the path towards a new paradigm—one where the different human rights committees could oversee ANSAs’ respect for human rights—will be a very difficult one. These committees have strict jurisdiction clauses which do not allow them to assess ANSA behaviour. However, some UN bodies might have less rigid approaches, such as the UN Working Group on Enforced or Involuntary Disappearances<sup>13</sup>, the UN Committee on the Rights of the Child<sup>14</sup> or the Committee on the Rights of Persons with Disabilities<sup>15</sup>.

One expert added that a solution might be to think beyond the traditional State-backed means of promoting accountability and rather look at transitional justice for inspiration, or perhaps even non-judicial mechanisms. This, however, could be problematic in instances where ANSAs disband or disappear. Furthermore, if transitional justice and reparations require financial compensation, this could be a challenge. Finally, it was underlined that the prevention of gross human rights and IHL violations by ANSAs was key.

<sup>13</sup> The Working Group might indeed have to deal with ANSAs as Article 3 of the International Convention for the Protection of All Persons from Enforced Disappearance provides that “Each State Party shall take appropriate measures to investigate acts defined in article 2 committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice.”

<sup>14</sup> Article 4 of the Optional Protocol to the Convention of the Rights of the Child on the involvement of children in armed conflicts addresses the issue of child recruitment and use in hostilities by ANSAs.

<sup>15</sup> See Burke and Vicentic (2014), esp. at page 401 citing the UNSC Presidential Statement that reaffirmed that: “Parties to armed conflict bear the primary responsibility to take all feasible steps to ensure the protection of affected civilians and urges parties to armed conflict to meet their basic needs, and give attention to the specific needs of women and children, refugees, internally displaced persons, as well as other civilians who may have specific vulnerabilities, including persons with disabilities and older persons.” Statement by the President of the Security Council, UN doc. S/PRST/2014/3, 12 February 2014, p.1.

As noted above, the idea that IHL is applicable to and binding on ANSAs is largely uncontested<sup>16</sup>. However, whether HRL is applicable to ANSAs remains the subject of debate in public international law. Nevertheless, the debate now seems to have shifted to other considerations, due especially to pressure from the international organizations and NGOs that regularly deal with ANSAs in situations where the law of armed conflict does not necessarily apply<sup>17</sup>. With particular regard to current UN practices, the discourse which seems to be emerging is that the scope of the human rights obligations should be determined in relation to the degree of control that ANSAs have over a territory or a population. In other words, the human rights law obligations demanded of ANSAs would be determined on a sliding scale: 1. When an ANSA controls and *de facto* ‘administers’ a territory, the scope of its HRL obligations would be akin that of a State<sup>18</sup>; 2. When the group does not possess a *de facto* state-like structure, but nonetheless controls a territory, it would still be bound by some human rights obligations, although it is not as yet precisely clear which ones<sup>19</sup>; 3. Finally, there are situations where an ANSA’s structure is very loose and there is no effective control over territory, at least not in a stable manner. But even in the latter case, it has been argued that at the very least, such groups must respect those core human rights obligations that belong to the peremptory norms of international law<sup>20</sup>.

### A. Types of ANSAs and the applicable law

It should be noted that the second session’s discussion on characterising different types of ANSAs was not meant to be compared to the political science research on the typology of ANSAs. Nevertheless, it was also noted that some cross-pollination between the academic research communities in law and political science should be encouraged.

The following types of ANSA characteristics were listed in the discussion (some groups may have several of these characteristics at the same time). There are ANSAs that:

- are *de facto* States or partially recognized States;
- are *de facto* authorities;
- control territory;
- do not control territory;
- are not engaged in an armed conflict (IHL does not apply), but control territory;
- are not engaged in an armed conflict and do not control territory;
- support the government;
- oppose the government;
- control territory with support from the population;
- control territory without support from the population;
- are willing to respect the law and discuss IHL/HRL;
- reject IHL/HRL;
- are on a terrorist list;
- are perceived ‘positively’ by the international community (the ‘good guys’);
- are perceived ‘negatively’ by the international community (the ‘bad guys’).

The degree of usefulness of such a classification for legal purposes was discussed. Experts thought that a classification would not necessarily matter from a legal point of view, but could be useful for engaging with armed groups and understanding how they function in practice. Many other parameters that should also be taken into account were mentioned, such as the group’s political agenda, economic interests and military tactics and strategy. Different types of groups should be approached differently depending on these different criteria. The danger of excluding the ‘bad guys’ controlling a territory or a population (such as the Islamic State group) was also underlined.

<sup>16</sup> See, for example, Sivakumaran (2012).

<sup>17</sup> See also Bellal (2014), p. 304.

<sup>18</sup> See the position of the OHCHR mentioned in page 7.

<sup>19</sup> For example, in its 2007 Report to the Security Council (S/2007/584), the Panel of Special Procedures Experts on the Sudan concluded that “Although it is the primary responsibility of the Government of the Sudan to guarantee the human rights of its citizens and to protect them from any transgression, the different armed opposition movements also bear responsibility in areas under their control. [...] Members of the SLA/MM [Sudan Liberation Army–Minni Minnawi] armed groups have consistently committed grave violations of human rights in areas where the armed group has a presence.” See paras 282 and 330.

<sup>20</sup> The Independent Commission of Inquiry on Syria noted in its February 2012 report that “At a minimum, human rights obligations constituting peremptory international law (*jus cogens*) bind States, individuals and non-State collective entities, including armed groups. Acts violating *jus cogens* – for instance, torture or enforced disappearances – can never be justified.” See A/HRC/19/69, para. 106.

The experts agreed that although the notion of ‘*de facto* authorities’ was indeed a distinct category with regard to the application of HRL on ANSAs, that distinction was difficult to make in practice, partly because there is such a wide spectrum of ANSAs in the field. It was also noted that controlling territory was far less important than the control over people’s daily lives.

Some experts were of the opinion that the legal framework was not dependent on the level of territorial control. For instance, they underlined that Additional Protocol II was not about territorial control, but rather the *capacity* to implement the treaty’s obligations. One expert, however, noted that territorial control was an important element that enabled a group to perform a number of functions. In order to guarantee a fair trial, for instance, ANSAs need to control a territory so as to be able to nominate judges, ensure their independence and call witnesses.

For other experts, territorial control signified a group’s capacity to implement norms, and this criterion was deemed to be more important for HRL. The relevance of territorial control was about the absence of the ‘*de jure*’ government.

It was also highlighted that, for Geneva Call, one of the important factors to be taken into account before engaging with ANSAs was their independence from state control: groups that are not considered to be *de facto* agents of States; groups that have a minimum level of organization and a command structure that enables them to enforce commitments; and groups that have a political agenda. Geneva Call’s *raison d’être* is engagement with these groups because they cannot be parties to international treaties. Geneva Call has held internal discussions on whether or not to engage with non-politically motivated groups, such as criminal gangs, and how that might affect the integrity of the ‘club’ of *Deed of Commitment* signatories. Indeed, some ANSA signatories would be very reluctant to be considered in the same category of criminal gangs. It was also mentioned that the criterion of territorial control was an important one for being able to implement the *Deed of Commitment* and it also allowed more potential for implementing positive obligations.

### B. Territorial control by ANSAs and the role of the State

The relationship between territorial control by ANSAs and the State’s responsibility to ensure respect for human rights obligations for the people living under its jurisdiction was mentioned several times during the meeting.

Experts noted that territorial control by ANSAs mattered because it meant that the State’s government had lost control over part of its territory and, therefore, the armed group would be the only entity able to implement positive obligations there. If an ANSA were unable to fulfil these obligations, then it should let the government and/or humanitarian organizations continue to provide necessary services. One expert explained how, in certain situations, some States chose to continue paying for the services or salaries of people living in areas controlled by ANSAs. In Sri Lanka, for instance, the government continued to provide education and healthcare in areas under the Liberation Tigers of Tamil Eelam (LTTE) control. Nevertheless, there have been other cases where States have purposely stopped delivering services to parts of the country controlled by ANSAs. One expert thus noted that NGOs should be careful not to provide States with arguments or reasons to avoid respecting their own human rights obligations.

Using another angle of analysis, the experts also wondered whether ANSAs were under any obligation to accept service provision by the State or whether they could refuse or deny it based on ideological or political reasons. According to one expert, if services already existed in the territory, then ANSAs were under the negative obligation to not hinder those services. Another proposed a negative test: if an ANSA were to exclude the State and refuse its services, then it should be obliged to provide those same services itself. It was suggested that one policy option might be to encourage ANSAs to conserve the legal system previously put in place by the State. Taking the principles of the law of occupation as an example, occupying powers must respect and not alter the laws of the State occupied, therefore ANSAs controlling a territory should be encouraged not to change the State’s regulations and normative framework.

The point was also made that it was important to discuss with the groups themselves whether they have the capacities to implement positive obligations. In the Democratic Republic of the Congo, for instance, some ANSAs were aware of their limited capacities to detain enemy combatants and said they would not detain because they could not do it humanly.

This third session of the 2015 *Garance* Talks featured a presentation by Judge Mahmoud Khallo on the judicial system in place in the ‘Democratic self-administration of Rojava’ (Syria). This was followed by a question and answer session and these are both reproduced below.

### A. Presentation by Judge Mahmoud Kallo of the ‘Democratic self-administration of Rojava’, Syria

...  
The Democratic self-administration (DSA) is one of the institutions set up to organize and serve our society, also including the Parliament, the Executive Council and the Judicial Council.

The DSA ratified the Social Contract for Rojava Kurdistan, which is considered as Rojava’s ‘Constitution’<sup>21</sup>. Its articles include general and basic principles related to the rights and liberties, and these were inspired by the general principles and charters of human rights. In addition, there are specific articles on women, regarding representation for both genders in the councils and administrations, as well as the joint presidency. The Social Contract also covers the structure of the DSA and its executive, judicial and legislative branches.

The Parliament (Legislative Council) is the authority responsible for issuing laws. It consists of members elected by all the components of the people (Kurds, Arabs, Assyrians and Chechens), in addition to political parties and several organizations. There is an almost equal gender representation and the percentage of the Assyrians, Arabs, and Kurds is not less than 10%. The local councils suggest laws to the Parliament’s legal committee for examination and amendment to ensure that they do not breach the principles of the Social Contract. The suggestions are subsequently forwarded to the Parliament for discussion and ratification, and the laws are then issued by the joint presidency of Jazeera Canton, the largest Canton of the *de facto* autonomous region of Rojava.

The Executive Council is responsible for the implementation of the laws, decisions and decrees issued by the Parliament. It also implements the judicial decisions issued by the People’s Courts. In addition, the Public Prosecution office and the civilian implementation committees in the People’s Courts execute the courts’ decisions according to their specializations as stated by law. The Public Prosecution Service is responsible for the implementation of the criminal law and monitoring detention and rehabilitation centres. The civilian implementation committees are specialized in implementing civil law decisions.

...  
The Judicial Council is responsible for the proper administration of justice, the prosecution of the accused and the application of social justice, through People’s Courts and conciliation committees.

Numbers of People’s Courts in Jazeera Canton:  
In Jazeera Canton, there are 8 first degree People’s Courts (in Hasaka, Qamishlo, Dirik, Sery Kanye, Tal Tommar, Derbaseya, Amuda and Karjy Laky) in addition to 4 appeals courts in Hasaka, Sery Kanye, Qamishlo and Dirik. There is one supreme court in Qamishlo.

As for the types of lawsuits that these courts deal with, it is comprehensive and the courts deal with all suits according to the following bases:

1. Civil and commercial suits: Before the court is involved, conciliation committees are in charge of dealing with the suit. These committees are elected directly by the people and considering gender representation. They are composed of all the components and minorities in the region, and they consider conciliation as a basis for resolving the problems presented to them, with the agreement of both parties. There is a diversity of committees: agricultural, commercial, real estate, etc. The committees apply each sector or profession’s norms and traditions in solving problems.

...

<sup>21</sup> The ‘Social Contract’ can be found in the Human Rights Watch report entitled ‘Under Kurdish rule’ available at: <https://www.hrw.org/report/2014/06/19/under-kurdish-rule/abuses-pyd-run-enclaves-syria>

2. Criminal suits: The Public Prosecution Service and Asayish investigation committees are responsible for collecting evidence and prosecuting the perpetrators of criminal offences. The Prosecution Service states its accusation against the perpetrator and presents it to the court for an appropriate decision. The Prosecution is obliged to apply the basic principles of the Social Contract, human rights charters and the laws regulating Rojava—that the accused is innocent until proven guilty by a judicial decision and nobody must be arbitrarily detained. The accused also has the right to a lawyer at all stages of the investigation. The main principle is that individuals must be tried while free (not in custody), since detention is the exception. It is illegal to detain suspects for more than 6 days during an investigation, and their file must be presented to a court.

The Social Justice system respects international human rights conventions and charters, and implements them when possible. It is obliged to implement the principles of the Social Contract and the laws issued by the Parliament. Defendants can appeal against the courts' decisions either before the appeal or the supreme courts. They also have the right to appeal against the judges 'as individuals' and sue them at specialized courts and according to the appropriate legal conditions. The Social Justice system allows the accused to appeal against the decisions and to hold the judges accountable.

...

Qamishlo 18.11.2015

The Judicial Council in Jazeera Canton

\*Unofficial translation by Geneva Call

.....

### B. Q and A session with the participants

*Q: Do any of the courts have jurisdiction over members of the armed forces?*

A: Our system is formed by the People's Protection Units (YPG), the military force and the Asayish, the police force. The courts are entitled to judge cases involving civilians and members of the armed forces. In addition, we have specific courts: the Court for the Protection of the People, and the Court against Terrorism (to try members of the Islamic State group, for instance).

*Q: You explained that all these rules are in line with international law. Which international norms did you think were important when you drafted the rules, or did you check afterwards to see whether they conformed with them? Are the rules drawn mostly from international law, the idea of justice or local traditions?*

A: Firstly, we would have liked you to be present with us, so that you could have helped us. But we have been studying these things for many years. Through personal experience, we brought the treaties and instruments before us. We got inspired by them. However, we found that the crux of the matter of justice is inherent in our judicial systems, so there were no conflicts between the two. Justice and similar values were already inherent in our traditions, culture and customs, so we had no problem in incorporating them.

*Q: You spoke about a social contract. To what extent was it important that this was a negotiated outcome with the involvement of normal people? How did that happen? Were there procedures for the negotiations?*

A: The social contract was the first draft for Jazeera canton, for an interim period. In the future we hope that there will be elections, and the social contract is amenable to amendments. The social contract took into consideration all the specificities of the population, including minorities.

*Q: Could you elaborate on how people can bring cases against the military?*

A: If it is a civilian court, litigants come and submit a case saying that the military has committed such and such. Does a lawyer represent them? Either they choose to defend themselves or to take a lawyer. The biggest challenge is that one day people are living under the control of the YPG or Islamic State group, and the next day they might be back under the control of the State. We have new rules in the social contract—as far as we are concerned, if a woman is a witness, her testimony is equal to a man's. But under Islamic law you need two women to counter one man. There are similar problems with inheritance laws. We want to apply more progressive laws, but more traditional communities would not agree. Honour killings are considered by us as a pre-meditated crime, while under Islamic law, they are treated with less severity than homicide. We have a problem regarding the enforcement of decisions, property registration and birth registrations. We do not have the institutions to carry out these tasks. The State continues to carry out these tasks.

I would like to speak about criminal suits. In Rojava, we are under siege. We lack the capacity to carry out all the forensic tests that we would need to do (finger prints, forensic medicine, investigation methods). This used to be done by

the State, before. I would like to comment about the social justice system as a whole. Dealing with justice is sensitive, and we will not be able to please both parties to the dispute. By basing our system on a conciliatory approach, we have had a lot of success as we are involving the participation of the community. We have statistics. In 2014, 6,000 cases were brought before the court; 4,000 cases were solved; 2,000 sentences were enforced (out of the 4,000). The implementation rate for cases emanating from court is slow. For the other, conciliatory system, 16,000 cases were immediately solved.

*Q: Does the Court against Terrorism only try members of the Islamic State group, or does it also try other members of other ANSAs that might attack Rojava territory? How would you define terrorism?*

A: We have a special law that regulates terrorist acts, and all the cases seen by these courts are cases brought against members of armed groups that commit these acts (there is a list of such laws). There have been more than 350 cases, including against Belgians, French, Chechens—all sorts of nationalities.

*Q: How did you come up with these laws?*

A: We based ourselves on the Syrian procedural criminal law. Then we cut everything that was not in line with international law.

*Q: What are the challenges related to the armed conflicts you face? How many members of the Kurdish forces have been tried or convicted for committing abuses relating to the conflict?*

A: To start, as soon as we began working on the legal system, to criminalize any act, we based ourselves on the Syrian law. We cleaned it and took the principles that are in line with the kind of justice that we want to have. The problem we have in investigating the crimes is technical (taking finger prints, blood analysis or knowing whether something is an authentic antique).

The example I gave earlier (YPG members being convicted) can answer your other question (crimes committed in the context of the war). Another case concerns the YPG entering and looting a village. The villagers came to us, complained, there was a case and compensation was offered to the villagers for their losses. Yes, there are cases where members of the army are committing crimes, however we do go after them and they are held accountable. Another very well-known case deals with a person who was tortured in detention and died as a result of the injury he suffered. The torturer was prosecuted and sentenced to 20 years imprisonment. People are encouraged to address their complaints to the courts.

*Q: In the areas controlled by the [Syrian] regime, do you have parallel systems? How does that work?*

A: Yes, there are centres of weak government control. They still do marriage acts and registration of property. The police of these zones are prohibited from entering Kurdish areas.

*Q: The Kurdish population may turn to the DSA, but what about the Arab population? Where do they go?*

A: The difference now is that we do not have a court in 'the Syrian sense'. We have a panel of judges that includes minorities, women, etc. It is no longer one judge handing down a sentence. Sometimes judges who still work for the State come to our courts for litigation.

*Q: With regard to the jurisdiction of your terrorist courts: would it be a crime, under that court, if a member of the Islamic State group killed a member of the YPG in the normal course of the conduct of hostilities?*

A: The rules on the conduct of hostilities in an armed conflict are different from the terrorist court's rules. Conduct that includes beheadings, for example, are sent to this court. Normal killings in the context of armed conflict are not.

*Q: You mentioned your desire for assistance from the international community, particularly with regard to forensics. What other areas would you like assistance in?*

A: We need training for the people working in the judicial systems and with regard to all matters that may help us to enact justice. Visit us more often. Come and see us more often. Observe the functioning of the courts and advise us accordingly. I have not seen a single member of a human rights organization in Rojava to help us. You are confusing the YPG and the DSA. The YPG is an independent fighting organization and the DSA is not.

*Q: You have mentioned public servants and judges. What about salaries? How are they paid? How do you raise capital?*

A: The basic services of social justice are free of charge. A number of lawyers and well-known personalities took it upon themselves to bring about this social justice system. Now we have more than 500 conciliation committees and none receives anything in return for its services. You might be shocked to hear that a judge receives no more than 35,000 lire (USD 100/per month). Maybe this is the hallmark of our justice system. It is not about money, it is about the people for the people.

The fourth and final 2015 *Garance* Talks session covered the policy dimensions of ANSAs' positive obligations, particularly the question of capacity building. The issues addressed related to identifying the relevant international forum in which the challenges of ANSAs' compliance might be discussed, whether the international community was ready to support capacity building for ANSAs and which key areas of research, both academic and policy, should be further explored.

#### A. The meaning of capacity building

The experts were divided on whether it was right for the international community to build capacity for ANSAs. One expert noted that some capacity building was already being done, but that it also depended on precisely what was meant by 'capacity'. Was it about training, bringing in materials or other concrete support? For instance, when reference is made to 'medical care', lawyers are not clear exactly what this covers. Should the international community help ANSAs provide medical care when it sees the need? Or is it also under the obligation to take measures to develop ANSAs' capacities and identify medical personnel and suppliers to develop those capacities? The expert added that humanitarian organizations were already providing some training and technical support to certain ANSAs. Furthermore, in some cases there were States supporting ANSAs and those States could also play a capacity building role.

Another expert was of the opinion that it was better to focus on how to help armed groups rather than focus on their accountability. He suggested the potential value of practical guidelines, and stated that it was important to engage with ANSAs on HRL in the same manner as it was done for IHL.

A Geneva Call representative reminded the participants that many ANSA signatories to *Deeds of Commitment* had neither the resources nor the technical capacities to implement their positive obligations, such as the provision of education, assistance to victims or mine clearance. They have, therefore, often requested Geneva Call's support, and Geneva Call has tried its best to mobilize the assistance of specialized agencies. In some cases, Geneva Call has been successful—bringing specialized agencies to areas controlled by ANSAs and facilitating their access—but it has generally proven difficult to mobilize such support. In Somalia, failure

to support an ANSA wishing to destroy its landmine stockpile resulted in the capture of mines by enemy forces. Thus, a lack of prompt support may have negative consequences. Geneva Call also experienced difficulties in Syria over the issue of demobilizing child soldiers: as it could find no partners to support the reintegration and education of these children, it had to improvise.

Building an ANSA's capacity may be seen as strengthening its governance capacity and contributing to the building of a parallel State. In other cases, providing assistance such as mine detectors could be considered military support. It is not always easy to draw clear lines. The Rojava administration's case is telling. Should the international community support its judicial system? Should it train its police force on human rights and law enforcement issues? Furthermore, certain national legislations could interpret capacity building as material support to a 'terrorist' organization, with the risk of incurring criminal sanctions. As an advocacy organization, there are numerous things that Geneva Call cannot do, such as provide support for forensic examinations, for example. The Geneva Call representative added that it was inconsistent to expect ANSAs, as the *de facto* authorities, to respect IHL and HRL, do nothing to help them build their capacities, and then shame them when they failed to meet the international community's expectations. States benefit from advisory services and technical assistance, but ANSAs do not.

#### B. Challenges and further research

The participants generally acknowledged that it was easier for an NGO than an intergovernmental organization to support capacity building for ANSAs, unless that organization was working through a State, as was mentioned above. It was noted that there was no existing forum in which to discuss and exchange organizations' experiences of ANSAs' concerns. Within the UN system, there was some possibility to address this issue by engaging with certain Special Rapporteurs, but since they are independent, they really represent their own voice rather than the UN's as such. On the other hand, because they are independent, this would facilitate interactions with ANSAs and enable greater flexibility. One expert added that capacity building through UN Special Rapporteurs could be difficult since they need the agreement of the State to perform their mission.

One of the main challenges identified was how State legislation and policies on counter-terrorism have a negative impact on the humanitarian space and capacity building. The participants acknowledged that because counter-terrorism measures have an impact on humanitarian action on so many fronts, it was difficult to imagine how States or intergovernmental organizations could provide capacity building support officially.

Finally, the assembled experts suggested some key areas for further academic and policy research, notably on:

- the notion of reciprocity and the equality of treatment of belligerents;
- the contextual analysis of the substantial body of human rights norms applicable to ANSAs;
- the meaning of ANSAs' commitments, their attribution and responsibility;
- the relationship between IHL and HRL, specifically as applied to ANSAs; and
- the meaning and significance of human rights norms for ANSAs, which might vary from one group to another.

Finally, it was noted that there should be more research on the positive protection role fulfilled by ANSAs: studies on mine action, education and healthcare have been conducted, but many other fields also deserved attention.

**ANNEXE 1: LIST OF PARTICIPANTS  
AT THE 2015 GARANCE TALKS****Academic experts**

*Prof. Andrew Clapham,*

Professor of Public International Law, Graduate Institute of International and Development Studies

*Dr Katharine Fortin,*

Lecturer, Utrecht University School of Law

*Prof. Jann Kleffner,*

Professor of International Law and Head of the International Law Centre, Swedish Defence University

*Dr Darragh Murray,*

Lecturer, Human Rights Centre and Director of the Human Rights Centre Clinic, Essex University

*Prof. Marco Sassòli,*

Professor of International Law and Director of the Department of International Law and International Organization, University of Geneva

*Prof. Sandesh Sivakumaran,*

Professor of Public International Law, University of Nottingham; Non-resident research fellow, United States Naval War College Stockton Center for International Law

*Mr Jonathan Somer,*

Consultant and Founder, Persona Grata Consulting

**Amnesty International**

*Ms Donatella Rovera,*

Senior Crisis Response Adviser

**Geneva Academy of International Humanitarian Law and Human Rights**

*Mr Felix Kirchmeier,*

Manager of Policy Studies

**ICRC**

*Dr Cordula Droege,*

Legal Adviser

*Ms Audrey Palama,*

Adviser on Dialogue with Non-State Armed Groups

**OHCHR**

*Mr Jan Hessebrugge,*

Human Rights Officer, Rule of Law and Democracy Section

*Mr Eric Mongelard,*

Human Rights Officer, Rule of Law and Democracy Section

**Swiss Federal Department of Foreign Affairs**

*Mr Adrian Junker,*

Head of Section, Humanitarian Policy and Migration, Human Security Division, Political Directorate

*Dr Nikolas Stürchler Gonzenbach,*

Head of Section, International Humanitarian Law and International Criminal Justice,

Directorate of International Law

**Representative of the Rojava administration**

*Judge Mahmoud Khallo,*

'Democratic self-administration of Rojava', Syria

**Geneva Call**

*Mr Mehmet Balci,*

Programme Director for the Middle East

*Dr Annyssa Bellal,*

Legal Adviser, Policy and Legal Unit

*Mr Pascal Bongard,*

Director of the Policy and Legal Unit

*Ms Anna Chiapello,*

Intern, Policy and Legal Unit; Research Collaborator,

Geneva Academy of IHL and Human Rights

*Ms Marie Coutin-Lequin,*

Programme Manager for Africa

*Ms Ataa Dabour,*

Intern, Middle East Department; University of Geneva,

Master's degree Candidate

*Ms Yvette Issar,*

PhD candidate, Research and Teaching Assistant,

University of Geneva

*Ms Carolin Nehmé,*

Thematic Legal Adviser, Policy and Legal Unit

*Ms Juliette Praz,*

Intern, Legal and Policy Unit; Graduate Institute

of International and Development Studies, LLM Candidate

*Ms Carla Ruta,*

Programme Manager for Colombia

*Dr Anki Sjöberg,*

Programme Director in charge of Latin America

and the Kurdish region

**ANNEXE 2: AGENDA****Positive Obligations of Armed  
Non-State Actors: Legal and Policy Issues**

12h45-14h00

Lunch break

26 November 2015

14:00-15:15

**Session 3: A perspective from the field**

Presenter: Judge Mahmoud Khallo,

'Democratic self-administration of Rojava', Syria.

**Moderator:** Annyssa Bellal

9h15-9h30

**Welcome and presentation of the Garance Talks process**

15:15-15:30

Pascal Bongard

Coffee break

9h30-10h45

**Session 1: The legal framework**

Presenter: Katharine Fortin

15:30-16:45

**Session 4: Policy issues**

Presenter: Pascal Bongard

Potential topics for discussion:

- What are the positive obligations of International Humanitarian Law and in Human Rights Law?
- What is the rationale for including positive obligations in the *Deeds of Commitment*?
- Is IHL sufficient to regulate the everyday lives of people living under the control of an armed non-State actor (ANSA)?
- Which authority should determine which HR norms apply to ANSAs, if at all?

Potential topics for discussion:

- Which international organizations or fora should address these issues (ICRC; OHCHR; Human Rights Council; Human Rights Committees)?
- Would the international community be ready to support capacity building for ANSAs?
- What are the challenges in this regard?
- Which questions require more academic or policy research?
- What can be done to ensure better accountability of ANSAs, and how can the victims of HRL violations living in areas controlled by ANSAs get reparations?

10h45-11h00

coffee break

16:45- 17:00

**Closing remarks**

11h00-11h30

**Session 1 (continued)**

11h30-12h45

**Session 2: Typology of ANSAs**

Presenter: Jonathan Somer

Potential topics for discussion:

- Which types of ANSA are operating today?
- Does this matter for international law?
- How can levels of territorial control be assessed?
- Should international law be applied on a case by case basis?

### ANNEXE 3: POSITIVE OBLIGATIONS UNDER INTERNATIONAL HUMANITARIAN LAW

#### Positive obligations under Common Article 3 of the 1949 Geneva Conventions

##### Human treatment

###### Article 3

"[...] (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. [...]"

##### Health care

###### Article 3

"[...] (2) The wounded and sick shall be collected and cared for. [...]"

#### Positive obligations under the 1977 Additional Protocol II

##### Fundamental guarantees

###### Article 4

"1. All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. [...]"

##### Protection from the conduct of hostilities and displacement of children

###### Article 4

"3. Children shall be provided with the care and aid they require, and in particular: [...]"

- (d) the special protection provided by this Article to children who have not attained the age of fifteen years shall remain applicable to them if they take a direct part in hostilities despite the provisions of sub-paragraph (c) and are captured;
- (e) measures shall be taken, if necessary, and whenever possible with the consent of their parents or persons who by law or custom are primarily responsible for their care, to remove children temporarily from the area in which hostilities are taking place to a safer area within the country and ensure that they are accompanied by persons responsible for their safety and well-being".

##### Reunion of families

###### Article 4

"3. [...] (b) all appropriate steps shall be taken to facilitate the reunion of families temporarily separated; [...]"

##### Education

###### Article 4

"3. [...] (a) [Children] shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care; [...]"

##### Persons deprived of their liberty

###### Article 5

"Persons whose liberty has been restricted

1. In addition to the provisions of Article 4, the following provisions shall be respected as a minimum with regard to persons deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained:

- (a) the wounded and the sick shall be treated in accordance with Article 7;
- (b) the persons referred to in this paragraph shall, to the same extent as the local civilian population, be provided with food and drinking water and be afforded safeguards as regards health and hygiene and protection against the rigours of the climate and the dangers of the armed conflict;
- (c) they shall be allowed to receive individual or collective relief;
- (d) they shall be allowed to practise their religion and, if requested and appropriate, to receive spiritual assistance from persons, such as chaplains, performing religious functions;
- (e) they shall, if made to work, have the benefit of working conditions and safeguards similar to those enjoyed by the local civilian population.

2. Those who are responsible for the internment or detention of the persons referred to in paragraph 1 shall also, within the limits of their capabilities, respect the following provisions relating to such persons:

- (a) except when men and women of a family are accommodated together, women shall be held in quarters separated from those of men and shall be under the immediate supervision of women;
- (b) they shall be allowed to send and receive letters and cards, the number of which may be limited by competent authority if it deems necessary;

- (c) places of internment and detention shall not be located close to the combat zone. The persons referred to in paragraph 1 shall be evacuated when the places where they are interned or detained become particularly exposed to danger arising out of the armed conflict, if their evacuation can be carried out under adequate conditions of safety;
- (d) they shall have the benefit of medical examinations;
- (e) their physical or mental health and integrity shall not be endangered by any unjustified act or omission. Accordingly, it is prohibited to subject the persons described in this Article to any medical procedure which is not indicated by the state of health of the person concerned, and which is not consistent with the generally accepted medical standards applied to free persons under similar medical circumstances.

3. Persons who are not covered by paragraph 1 but whose liberty has been restricted in any way whatsoever for reasons related to the armed conflict shall be treated humanely in accordance with Article 4 and with paragraphs 1 (a), (c) and (d), and 2 (b) of this Article.

4. If it is decided to release persons deprived of their liberty, necessary measures to ensure their safety shall be taken by those so deciding."

##### Penal prosecutions

###### Article 6

"Penal prosecutions

1. This Article applies to the prosecution and punishment of criminal offences related to the armed conflict.
2. No sentence shall be passed and no penalty shall be executed on a person found guilty of an offence except pursuant to a conviction pronounced by a court offering the essential guarantees of independence and impartiality. In particular:
- (a) the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defence;
- (b) no one shall be convicted of an offence except on the basis of individual penal responsibility;
- (c) no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under the law, at the time when it was committed; nor shall a heavier penalty be imposed than that which was applicable at the time when the criminal offence was committed; if, after the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;

- (d) anyone charged with an offence is presumed innocent until proved guilty according to law;
- (e) anyone charged with an offence shall have the right to be tried in his presence;
- (f) no one shall be compelled to testify against himself or to confess guilt.

3. A convicted person shall be advised on conviction of his judicial and other remedies and of the time-limits within which they may be exercised.

[...]

5. At the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained."

##### Protection, care of and search for the wounded, sick and shipwrecked

###### Article 7

"1. All the wounded, sick and shipwrecked, whether or not they have taken part in the armed conflict, shall be respected and protected.

2. In all circumstances they shall be treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them founded on any grounds other than medical ones."

###### Article 8

"Whenever circumstances permit, and particularly after an engagement, all possible measure shall be taken, without delay, to search for and collect the wounded, sick and shipwrecked, to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead, prevent their being despoiled, and decently dispose of them."

##### Dissemination of humanitarian rules

###### Article 19

"This Protocol shall be disseminated as widely as possible."

##### Positive obligations under Customary IHL

##### Precautions in attack (subject to discussion)

Rule 15. "In the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects. All feasible precautions must be taken to avoid, and in any event to minimise, incidental loss of

civilian life, injury to civilians and damage to civilian objects.”  
Rule 16. Each party to the conflict must do everything feasible to verify that targets are military objectives.

Rule 17. Each party to the conflict must take all feasible precautions in the choice of means and methods of warfare with a view to avoiding, and in any event to minimising, incidental loss of civilian life, injury to civilians and damage to civilian objects.

Rule 18. Each party to the conflict must do everything feasible to assess whether the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

Rule 19. Each party to the conflict must do everything feasible to cancel or suspend an attack if it becomes apparent that the target is not a military objective or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

Rule 20. Each party to the conflict must give effective advance warning of attacks which may affect the civilian population, unless circumstances do not permit.

Rule 21. When a choice is possible between several military objectives for obtaining a similar military advantage, the objective to be selected must be that the attack on which may be expected to cause the least danger to civilian lives and to civilian objects.

#### **Precautions against the effects of attack**

*(subject to discussion)*

Rule 22. The parties to the conflict must take all feasible precautions to protect the civilian population and civilian objects under their control against the effects of attacks.

Rule 23. Each party to the conflict must, to the extent feasible, avoid locating military objectives within or near densely populated areas.

Rule 24. Each party to the conflict must, to the extent feasible, remove civilian persons and objects under its control from the vicinity of military objectives.

#### **Cultural property**

Rule 40. “Each party to the conflict must protect cultural property:

A All seizure of or destruction or willful damage done to institutions dedicated to religion, charity, education, the arts and sciences, historic monuments and works of art and science is prohibited.

B. Any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, property of great importance to the cultural heritage of every people is prohibited.”

Rule 41. “The occupying power must prevent the illicit export of cultural property from occupied territory and must return illicitly exported property to the competent authorities of the occupied territory.”

#### **Fundamental guarantees**

Rule 87. “Civilians and persons hors de combat must be treated humanely.”

Rule 100. “No one may be convicted or sentenced, except pursuant to a fair trial affording all essential judicial guarantees.”

Rule 101. “No one may be accused or convicted of a criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time it was committed; nor may a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed.”

Rule 102. “No one may be convicted of an offence except on the basis of individual criminal responsibility.”

Rule 105. “Family life must be respected as far as possible.”

#### **The wounded, sick and shipwrecked**

Rule 109. “Whenever circumstances permit, and particularly after an engagement, each party to the conflict must, without delay, take all possible measures to search for, collect and evacuate the wounded, sick and shipwrecked without adverse distinction.”

Rule 110. “The wounded, sick and shipwrecked must receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. No distinction may be made among them founded on any grounds other than medical ones.”

Rule 111. “Each party to the conflict must take all possible measures to protect the wounded, sick and shipwrecked against ill-treatment and against pillage of their personal property.”

#### **The dead**

Rule 112. “Whenever circumstances permit, and particularly after an engagement, each party to the conflict must, without delay, take all possible measures to search for, collect and evacuate the dead without adverse distinction.”

Rule 113. “Each party to the conflict must take all possible measures to prevent the dead from being despoiled. Mutilation of dead bodies is prohibited.”

Rule 114. “Parties to the conflict must endeavor to facilitate the return of the remains of the deceased upon request of the party to which they belong or upon the request of their next of kin. They must return their personal effects to them.”

Rule 115. “The dead must be disposed of in a respectful manner and their graves respected and properly maintained.”

Rule 116. “With a view to the identification of the dead, each party to the conflict must record all available information prior to disposal and mark the location of the graves.”

#### **Missing persons**

Rule 117. “Each party to the conflict must take all feasible measures to account for persons reported missing as a result of armed conflict and must provide their family members with any information it has on their fate.”

#### **Persons deprived of their liberty**

Rule 118. “Persons deprived of their liberty must be provided with adequate food, water, clothing, shelter and medical attention.”

Rule 119. “Women who are deprived of their liberty must be held in quarters separate from those of men, except where families are accommodated as family units, and must be under the immediate supervision of women.”

Rule 120. “Children who are deprived of their liberty must be held in quarters separate from those of adults, except where families are accommodated as family units.”

Rule 121. “Persons deprived of their liberty must be held in premises which are removed from the combat zone and which safeguard their health and hygiene.”

Rule 123. “The personal details of persons deprived of their liberty must be recorded.”

Rule 125. “Persons deprived of their liberty must be allowed to correspond with their families, subject to reasonable conditions relating to frequency and the need for censorship by the authorities.”

Rule 128. “[...] B. Civilian internees must be released as soon as the reasons which necessitated internment no longer exist, but at the latest as soon as possible after the close of active hostilities.

C. Persons deprived of their liberty in relation to a non-international armed conflict must be released as soon as the reasons for the deprivation of their liberty cease to exist.” *(subject to discussion)*

#### **Displacement and displaced persons**

Rule 131. “In case of displacement, all possible measures must be taken in order that the civilians concerned are received under satisfactory conditions of shelter, hygiene, health, safety and nutrition and that members of the same family are not separated.”

Rule 132. “Displaced persons have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist.” *(subject to discussion)*

#### **Other persons afforded specific protection**

Rule 134. “The specific protection, health and assistance needs of women affected by armed conflict must be respected.”

Rule 135. “Children affected by armed conflict are entitled to special respect and protection.”

Rule 138. “The elderly, disabled and infirm affected by armed conflict are entitled to special respect and protection.”

#### **Compliance with international humanitarian law**

Rule 139. “Each party to the conflict must respect and ensure respect for international humanitarian law by its armed forces and other persons or groups acting in fact on its instructions, or under its direction or control.”

**ANNEXE 4:  
POSITIVE OBLIGATIONS UNDER  
INTERNATIONAL HUMAN RIGHTS LAW****Positive obligations under International Covenant  
on Civil and Political Rights**

## Article 2

"1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted."

## Article 3

"The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant."

## Article 6

"1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

[...]

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases."

## Article 9

"1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."

## Article 10

"1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2.

(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status."

## Article 14

"1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent,

independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

- (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
- (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
- (c) To be tried without undue delay;
- (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
- (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
- (g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation. 5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

[...]

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has

suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him. [...]"

## Article 16

"Everyone shall have the right to recognition everywhere as a person before the law."

## Article 20

"1. Any propaganda for war shall be prohibited by law. 2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."

## Article 21

"The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."

## Article 23

"1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. 4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children."

## Article 24

"1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. 2. Every child shall be registered immediately after birth and shall have a name. 3. Every child has the right to acquire a nationality."

## Article 26

"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

**Positive obligations under International Covenant on Economic Social and Cultural Rights**

## Preamble

“Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant, [...]”

## Article 2

“1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. [...]”

## Article 3

“The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.”

## Article 6

“1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.”

## Article 7

“The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular:

- a. Remuneration which provides all workers, as a minimum, with:
  - i. Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
  - ii. A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- b. Safe and healthy working conditions;
- c. Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- d. Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

## Article 9

“The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.”

## Article 10

“The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.”

## Article 11

“1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to

ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programs, which are needed:

- a. To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
- b. Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.”

## Article 12

“1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

- a. The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
- b. The improvement of all aspects of environmental and industrial hygiene;
- c. The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- d. The creation of conditions which would assure to all medical service and medical attention in the event of sickness.”

## Article 13

“1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

- a. Primary education shall be compulsory and available free to all;
- b. Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- c. Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
- d. Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
- e. The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved. [...]”

## Article 14

“Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.”

## Article 15

“1. The States Parties to the present Covenant recognize the right of everyone:

- a. To take part in cultural life;
  - b. To enjoy the benefits of scientific progress and its applications;
  - c. To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.
3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.
4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.”

## Article 16

“1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

2.

- a. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;
- b. The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

## Article 17

“1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.

3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.”

## Article 23

“The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.”

**Examples of other sources of positive obligations****International cooperation and justice**

UNSC Resolution 1019 (1995):

“8. Demands that all States, in particular those in the region of the former Yugoslavia, and all parties to the conflict in the former Yugoslavia, comply fully and in good faith with the obligations contained in paragraph 4 of resolution 827 (1993) to cooperate fully with the International Tribunal established pursuant to that resolution including by providing access to individuals and sites the Tribunal deems important for its investigations, and by complying with requests for assistance or orders issued by a trial chamber under article 29 of the Statute of the Tribunal, and calls upon them to allow the establishment of offices of the Tribunal.

9. Demands that all parties, and in particular the Bosnian Serb party, refrain from any action intended to destroy, alter, conceal, or damage any evidence of violations of international humanitarian law and that they preserve such evidence;”

---

**ANNEXE 5:  
POSITIVE OBLIGATIONS IN GENEVA CALL'S  
DEEDS OF COMMITMENT**


---

When signing Geneva Call's *Deeds of Commitment*, ANSAs accept that IHL and HRL apply to and bind all the parties to armed conflicts. They commit to respecting both negative and positive obligations, some of which even go beyond the existing requirements of the international law applicable to ANSAs. The *Deeds of Commitment* contain common general principles and obligations. For instance, ANSAs affirm their determination to protect civilian populations from the effects or dangers of military actions and to respect their rights to life, human dignity and development without distinction. In cases of non-compliance, they commit to taking all necessary measures to cease violations, initiate appropriate investigations and impose sanctions in accordance with international standards.

***Deed of Commitment for Adherence to a Total Ban  
on Anti-personnel mines and for Cooperation  
in Mine Action***

Under this *Deed of Commitment*, signatory ANSAs commit to undertaking and cooperating in stockpile destruction, mine clearance, victim assistance, mine awareness and various other forms of mine action.

***Deed of Commitment for the Protection of Children  
from the Effects of Armed Conflicts***

With regards to children in armed conflicts, signatory ANSAs commit to safely and securely releasing children from their armed forces and, whenever possible, in cooperation with specialized child protection actors. In addition, they commit to ensuring that children do not accompany their armed forces during military operations and to taking all feasible measures so that children in areas where they exercise control are not present during military operations. Signatory ANSAs acknowledge their obligation to treat children who are detained or imprisoned humanely and in accordance with their age and gender specific needs. Furthermore, in areas where they exercise authority, they endeavour to provide children with the aid and care they require, for example:

- take concrete measures towards ensuring that children have access to adequate food, healthcare (including psycho-social support), education and, where possible, leisure and cultural activities
- protect children from sexual and other forms of violence
- facilitate the provision of impartial humanitarian assistance to children in need
- facilitate efforts by impartial humanitarian organizations to reunite children with their families
- avoid the military use of schools or premises primarily used by children

***Deed of Commitment for the Prohibition  
of Sexual Violence in Situations of Armed Conflict  
and towards the Elimination of Gender Discrimination***

In addition to preventive measures, signatory ANSAs commit to providing the victims of sexual violence with access to the assistance and care they need (including medical, psychological and legal services, social reintegration and reparations). They should further endeavour to eliminate discriminatory policies and practices between men and women (they should guarantee equal protection before the law, equal enjoyment of rights, equal access to healthcare and education) and ensure the increased participation of women in their decision-making processes.

- Alston, P. (Ed). 2005. *Non-state actors and human rights*. Vol. 9. Oxford: OUP.
- Bellal, A. 2015. "Establishing the Direct Responsibility of Non-State Armed Groups for Violations of International Norms: Issues of Attribution." N. Gal-Or, C. Ryngaert, M. Noortman (Eds.) *Responsibilities of the Non-State Actor in Armed Conflict and the Market Place, Theoretical Considerations and Empirical Findings*. Leiden: Brill/Nijhoof: 304-22.
- Burke, M., and Persi Vicentic L. 2014. "Protecting persons with disabilities in armed conflict." S. Casey-Maslen (Ed.) *The War Report 2012*. Oxford: OUP: 388-410.
- Chirwa, D. M. 2004. "The Doctrine of State Responsibility as a Potential Means of Holding Private Actors Accountable for Human Rights". *5 Melb. J. Int'l L.* 1: 1-36.
- Clapham, A. 2006. *Human rights obligations of non-state actors*. Oxford: OUP.
- Clapham, A. 2006. "Human rights obligations of non-state actors in conflict situations." *International Review of the Red Cross* 88.863: 491-523.
- Clapham, A. 2014. "Non-State Actors." D. Moeckli, S. Shah, S. Sivakumaran, D. Harris (Eds.) *International Human Rights Law*. Oxford: OUP.
- Constantinides, A. 2010. "Human Rights Obligations and Accountability of Armed Opposition Groups: The Practice of the UN Security Council." *Hum. Rts. & Int'l Legal Discourse* 4: 89-110.
- Cronogue, G. 2012-2013. "Rebels, Negligent Support, and State Accountability: Holding States Accountable for the Human Rights Violations of Non-State Actors." *23 Duke J. Comp. & Int'l L.*: 365-388.
- De Brabandere, E. 2009. "Non-State Actors, State-Centrism and Human Rights Obligations." *22 Leiden J. f Int'l L.*: 191-209.
- Farrior, S. and Clagett B. 1998. "State Responsibility for Human Rights Abuses by Non-State Actors." *Proceedings of the Annual Meeting (American Society of International Law)*. The American Society of International Law.
- Giacca, G. 2014. *Economic, Social and Cultural Rights in Armed Conflict*. Oxford: OUP: 230-272.
- Hessbruegge, J. 2005. "Human rights violations arising from the conduct of non-state actors." *Buffalo Human Rights Law Review* 11: 21-88.
- Human Rights Watch. 2014. *Under Kurdish Rule: Abuses in PYD-run Enclaves of Syria*. US: HRW.
- Jochnick, C. 1999. "Confronting the impunity of non-state actors: new fields for the promotion of human rights." *Human Rights Quarterly* 21.1: 56-79.
- Mastorodimos, K. 2016. *Armed Non-State Actors in International Humanitarian and Human Rights Law: Foundation and Framework of Obligations, and Rules on Accountability*. Ashgate Publishing, Ltd.
- McCorquodale, R., and R. La Forgia. 2001. "Taking off the Blindfolds: Torture by Non-State Actors." *1 Human Rights Law Review*: 189-218.
- McCorquodale, R. 2010. "Non-State Actors and International Human Rights Law." S. Joseph and A. McBeth (Eds.) *Research Handbook on International Human Rights Law*. Cheltenham: Edward Elgar Publishing.
- Mills, K. and Jason Karp D. 2015. *Human Rights Protection in Global Politics: Responsibilities of States and Non-State Actors*. Hampshire: Palgrave Macmillan.
- Noortmann, M. Reinisch A. and Ryngaert C. (Eds.).2015. *Non-state Actors in International Law*. Portland: Bloomsbury Publishing.
- Obokata, T. 2005. "Smuggling of Human Beings from a Human Rights Perspective: Obligations of Non-State and State Actors under International Human Rights Law." *17 IJRL*: 394-415.
- Petrusek, D. 2000. *Ends & Means: Human Rights Approaches to Armed Groups*. Versoix: ICHRP, 2000.
- Rodenhauser, T. 2012. "Human Rights Obligations of Non-State Armed Groups in Other Situations of Violence: The Syria Example". *3 International Humanitarian Legal Studies*: 263-290.
- Rodley, N. 1993. "Can Armed Opposition Groups Violate Human Rights?" Kathleen E. Mahoney and Paul Mahoney (Eds.) *Human Rights in the Twenty-First Century: A Global Challenge*. Dordrecht: Martinus Nijhoff: 297-318.
- Rose, C. 2010. "An emerging Norm: The Duty of States to Provide Reparations for Human Rights Violations by Non-State Actors". *33 Hastings Int'l & Comp. L. rev.*: 307-344.
- Rowe, Peter. 2006. *The Impact of Human Rights Law on Armed Forces*. Cambridge: CUP, 2006.
- Sivakumaran, S. 2012. *The Law of Non-International Armed Conflicts*. Oxford: OUP.
- Ssenyonjo, M. 2005. "Accountability of non-state actors in Uganda for war crimes and human rights violations: Between amnesty and the International Criminal Court." *Journal of Conflict and Security Law* 10.3: 405-434.
- Ssenyonjo, M. 2008. "The Applicability of International Human Rights Law to Non-state Actors: What Relevance to Economic, Social and Cultural Rights?" *12 International Journal of Human Rights* (2008): 725-60.

- Sudre, F. 1995. "Les obligations positives dans la jurisprudence européenne des droits de l'homme." *23 Revue trimestrielle des Droits de l'homme*: 363-84.
- Tomuschat, C. 2004. "The Applicability of Human Rights Law to Insurgent Movements." H. Fischer, U. Froissart, W. Heintschel von Heinegg, C. Raap (Eds.) *Krisensicherung und Humanitärer Schutz – Crisis Management and Humanitarian Protection: Festschrift für Dieter Fleck*. Berlin: Berliner Wissenschafts-Verlag: 573-91.
- Weissbrodt, D. 2013. "The Role and Responsibility of Non-State Actors." Dinah Shelton (Ed.) *The Oxford Handbook of International Human Rights Law*. Oxford: OUP.
- Wolfrum, R. and C. E. Philipp. 2002. "The Status of the Taliban: Their Obligations and Rights under International Law." *6 Max Planck Yearbook of United Nations Law*: 559-601.
- Zegveld, L. 2002. *The Accountability of armed opposition groups in international law*. Vol. 24. Cambridge: CUP.



**APPEL DE GENÈVE  
GENEVA CALL**

47, chemin de la Chevillarde • 1224 Chêne-Bougeries  
P.O. Box 334 • 1211 Geneva 4 • Switzerland  
T. +41 22 879 10 50 • F. +41 22 879 10 51  
info@genevacall.org • www.genevacall.org  
f appel.de.geneve • t genevacall