Exploring Criteria & Conditions for Engaging Armed Non-State Actors to Respect Humanitarian Law & Human Rights Law

Conference Report
Geneva, 4-5 June 2007

PSIO PROGRAM FOR THE STUDY OF
INTERNATIONAL ORGANIZATION(S)

Why engage? Whom to engage? Who engages? When to engage? How to engage? About what to engage?

UNIDIR
UNITED NATIONS INSTITUTE
FOR DISARMAMENT RESEARCH

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Note

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Geneva Call is an international humanitarian organization dedicated to engaging armed non-State actors (NSAs)—armed groups and non-internationally recognized States—towards compliance with humanitarian norms. It was officially launched in 2000 by members of the International Campaign to Ban Landmines (ICBL). Since its creation, Geneva Call has focused on advocating the ban on anti-personnel mines to NSAs. It has been promoting an inclusive approach through the *Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation on Mine Action* (hereafter *Deed of Commitment*) which enables NSAs, that by definition cannot accede to the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (hereafter the *Mine Ban Treaty*), to subscribe to its norms. Geneva Call's work does not end with the signature of the *Deed of Commitment*; the organization is committed to supporting and monitoring its implementation. In 2008, building on previous work, Geneva Call plans to develop specific programmes on children and NSAs, as well as issues relating to gender including the prevalence of gender-based violence within and by NSAs.

Geneva Call's web site can be found at www.genevacall.org.

The Program for the Study of International Organization(s) (PSIO) of the Graduate Institute of International Studies, Geneva (now Centre for International Governance (CIG)) is a research, analysis, and training programme to further the study and implementation of international organizations. It seeks to serve as a forum between academics and policy makers and aims to stimulate dialogue between the two. The PSIO has often been commissioned by international organizations and the Swiss federal authorities to prepare and coordinate projects outside Switzerland. Its main activities are in the following areas:

- research projects involving policy makers in international organizations and members of the Graduate Institute of International and Development Studies (GIIDS) faculty;
- supervision of research by visiting fellows and scholars;
- forum for outside experts in international organizations;
- organization of major conferences and colloquia;
- publication and dissemination of the results of research, workshops, and conferences.
- training of government officials.

The PSIO web site can be found at http://graduateinstitute.ch/corporate/research/current-programmes/psio_en.html.

The United Nations Institute for Disarmament Research (UNIDIR), an intergovernmental organization within the United Nations, conducts research on disarmament and security. UNIDIR is based in Geneva, Switzerland, the centre for bilateral and multilateral disarmament and non-proliferation negotiation, and home of the Conference on Disarmament. The Institute explores current issues pertaining to the variety of existing and future armaments, as well as global diplomacy and local tensions and conflicts. Working with researchers, diplomats, government officials, NGOs, and other institutions since 1980, UNIDIR acts as a bridge between the research community and governments. UNIDIR's activities are funded by contributions from governments and donor foundations.

The Institute's web site can be found at www.unidir.org.

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Abbreviations

ALNAP	Active Learning Network for Accountability and Performance in Humanitarian Action
AP Mine	Anti-Personnel Mine
AU	African Union
CAFF	Children Associated with Fighting Forces
CAR	Central African Republic
CIG	Centre for International Governance
CNDD-FDD	Conseil National pour la Défense de la Démocratie - Forces de Défense de la Démocratie (National Council for the Defense of Democracy/Defence Forces of Democracy)
CNF/CNA	Chin National Front/Army
CRC	Convention on the Rights of the Child
DAC	Development Assistance Committee
DDR	Disarmament, Demobilization and Reintegration
DRC	Democratic Republic of Congo
DRP	Demobilisation and Reintegration Programme
ECP	Escola de Cultura de Pau
ELN	Ejército de Liberación Nacional (National Liberation Army)
EU	European Union
FARC	Fuerzas Armadas Revolucionarias de Colombia (Revolutionary Armed Forces of Colombia)
GAM	Gerakan Aceh Merdeka (Free Aceh Movement)
GIIDS	Graduate Institute of International and Development Studies
ICBL	International Campaign to Ban Landmines
ICC	International Criminal Court
ICRC	International Committee of the Red Cross
IDDRS	United Nations Integrated Disarmament, Demobilization and Reintegration Standards
IDMC	Internal Displacement Monitoring Centre
IDP	Internally Displaced People
IED	Improvised Explosive Devices
IGAD	Intergovernmental Authority on Development
IHL	International Humanitarian Law
IR	International Relations
JEM	Justice and Equality Movement
Kongra Gel-HPG	Kongra-Gelê Kurdistan-Hezên Parestena Gel (Kurdistan People's Congress - People's Defence Forces)
LRA	Lord's Resistance Army
LSE	London School of Economics and Political Science

LTTE	Liberation Tigers of Tamil Eelam
MBT	Mine Ban Treaty
MFDC	Movement of the Democratic Forces of Casamance
MILF	Moro Islamic Liberation Front
MRE	Mine Risk Education
NATO	North Atlantic Treaty Organization
NCDDR	National Commission for DDR
NDA	National Democratic Alliance
NGO	Non-Governmental Organization
NRC	Norwegian Refugee Council
NSA	Armed Non-State Actor
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
OECD	Organization for Economic Co-operation and Development
PILPG	Public International Law and Policy Group
PKK	Partiya Karkerên Kurdistan (Kurdistan Workers' Party)
PSIO	Program for the Study of International Organization(s)
RUF	Revolutionary United Front
SCHR	Steering Committee for Humanitarian Response
SIPRI	Stockholm International Peace Research Institute
SLM	Sudan Liberation Movement
SPLM/SPLA	Sudan People Liberation Movement/Sudan People Liberation Army
UN	United Nations
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations International Children's Emergency Fund
UNIDIR	United Nations Institute for Disarmament Research
UNMAS	United Nations Mine Action Service
UNMEE	United Nations Mission in Ethiopia and Eritrea
UNSC	United Nations Security Council
USAID	United States Agency for International Development

Foreword

By Dr Patricia Lewis

More than 157 countries have signed the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction,* also known as the Mine Ban Treaty, since its adoption in 1997. While the majority of States embraced the norms created by the Mine Ban Treaty, it became urgent and essential to address the challenges posed by non-State armed groups that continued producing and using anti-personnel mines. Complementary solutions were needed to bring these groups into the mine ban initiative, since they were not part of the Mine Ban Treaty discussions and may not recognize or be aware of its obligations.

Civil society played and continues to play a key role in promoting and universalizing the mine ban norm, including among non-State armed groups. Geneva Call, in particular, was created to engage these groups and *de facto* authorities in complying with the ban on anti-personnel mines and other humanitarian norms. The inclusive approach favoured by the organization rests upon an innovative mechanism, the *Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action,* which non-State armed groups can sign to show their adherence to the ban on anti-personnel mines. Some 60 such groups have been approached, of which 35 signed the *Deed of Commitment.*

Building on the model of the mine ban initiative, several other organizations regularly seek contact or negotiate with non-State armed groups in order to secure humanitarian access to populations at risk—such as refugees or children—or to promote the peaceful resolution of conflict as well as adherence to the laws of armed conflict. It has become particularly important and timely to reflect on such experiences in the current context.

It is against this background that the United Nations Institute for Disarmament Research (UNIDIR), Geneva Call, and the Program for the Studies of International Organization(s) (PSIO) co-hosted a conference to analyze the criteria and conditions for engaging non-State armed groups to respect international humanitarian law and human rights law.

This volume includes nine papers presented at the conference. The authors—experts from academia, international institutions and practitioners working in the field—discuss the conditions, criteria and modalities for engaging non-State armed groups, as well as challenges and lessons learned.

Engaging non-State armed groups in an appropriate manner to respect humanitarian and human rights law can represent a significant contribution to enhancing the various dimensions of human security, including development, humanitarian action and disarmament.

On 3 September 2007, UNIDIR organized a seminar on "Preventing the Spread of Weapons to Non-State Armed Groups," to address issues related to the proliferation of different weapon types to these groups, to define the scope of the problem, the groups and the weapon types involved, and to discuss the existing and future instruments to address this issue. More recently, an issue of *Disarmament Forum*, UNIDIR's quarterly journal, was devoted to "Engaging Non-State Armed Groups" (No. 1, 2008). The issue is available online at www.unidir.org.

It is my hope that this publication will help stimulate innovative thinking and policy making to begin to address the complex human security challenges posed by non-State armed groups.

About the Authors (2007)
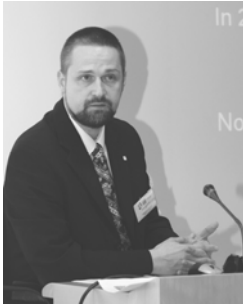
Olivier Bangerter

Olivier Bangerter studied theology at the University of Lausanne and holds a PhD from the University of Geneva. In 2001, he joined the International Committee of the Red Cross (ICRC) as a delegate. He spent several years on field missions in Pakistan, Afghanistan, the Republic of Congo (Brazzaville), and the Russian Federation (Northern Caucasus). Since 2005, he has worked in the International Committee of the Red Cross headquarters in Geneva in the Unit for Relations with the Armed and Security Forces. Currently, he is in charge of programmes with arms carriers in sub-Saharan Africa and of the file of non-State armed groups.

Pascal Bongard

Pascal Bongard has been working with Geneva Call since 2000. He is currently Programme Director for Africa and Policy Advisor. Before joining Geneva Call, he worked for the Swiss Federal Department of Foreign Affairs in Bern and collaborated with the United Nations High Commissioner for Refugees (UNHCR) in eastern Ethiopia. He studied history at the University of Fribourg and holds Master degrees in international relations from the Graduate Institute of International Studies in Geneva and in politics from the London School of Economics and Political Science (LSE). He recently conducted an internal assessment of Geneva Call's work and authored several articles and reports, including *Engaging Armed Non-State Actors in a Landmine Ban: The Geneva Call's Progress Report (2000–2007)*.

David Capie

David Capie studied law and politics at Victoria University of Wellington and the Australian National University. He holds a PhD from the York University in Toronto. He is currently Senior Lecturer in political science at Victoria University of Wellington. He is the co-founder and Associate Director of the Armed Groups Project, an international research network based at the University of Calgary. His work explores armed conflict and security issues with a particular interest in the extension of international norms to non-State actors through persuasion and socialization. He is the author of several books on Asia and Pacific security issues and has extensively worked on small arms trafficking in this region.

Jörn Grävingholt

Jörn Grävingholt studied political sciences, history, and Slavonic studies at the University of Freiburg i.B., and European studies at the University of Cambridge. He holds a PhD in political sciences from the University of Berlin. Since 2002, he is Senior Researcher at the German Development Institute in Bonn. His current research focuses on development policies in the context of violent conflict, issues of

governance and democracy promotion in development-cooperation, and governance and crisis prevention in the Post-Soviet space.

Julian Hottinger

Julian Hottinger is attached to the Swiss Federal Department of Foreign Affairs' "Expert Pool" as an expert in mediation and facilitation. Until the end of 2003, he was a Senior Research Fellow at the Institute of Federalism in Switzerland. He graduated from the University of Lausanne and holds a PhD in political science. He specialized as International Conflict Mediator at the Canadian International Institute for Applied Negotiations in Ottawa. He has worked as expert and consultant on various projects covering amongst others conflicts in Afghanistan, Cambodia, Liberia, Nicaragua, Northern Ireland, Rwanda, and Sri Lanka. Currently he is working on Somali issues as mediator within the Facilitation Team, in Juba, and on the negotiations between the Government of Uganda and the Lord's Resistance Army (LRA).

Marc Knight

Mark Knight recently returned from Aceh, Indonesia, where he was the Programme Manager of International Organization for Migration's Post-conflict Reintegration Programme. He has extensive experience of implementing post-conflict programmes in Sierra Leone and Albania, as well as being involved in facilitating dialogue between insurgent organizations and governments in Nepal, the Philippines, Northern Uganda, and during a previous peace agreement in Aceh, Indonesia. He has undertaken research for the World Bank and King's College London in Afghanistan and Sierra Leone, focusing on post-conflict stabilization interventions. He has previously published on Disarmament, Demobilization and Reintegration (DDR), and has an MA in post-war recovery from the University of York.

Monyluak Kuol

Monyluak Kuol studied international human rights law at the Universities of Khartoum and Essex as well as social anthropology at the University of Oxford. He previously worked with the United Nations International Children's Emergency Fund's (UNICEF) humanitarian principles department and in 2000 he was Project Officer for Human Rights Promotion. Subsequently he worked as Project Officer for Child Protection for United Nations International Children's Emergency Fund in Rumbek, Sudan. From 2004 to 2005 he took up the same position at the Human Rights Section of the United Nations Mission in Sierra Leone. Since March 2005 he is working as Human Rights Officer at the Human Rights Section of the United Nations Mission in Ethiopia and Eritrea (UNMEE).

Michael Miklaucic

Michael Miklaucic was educated at the University of California, London School of Economics and Political Science (LSE), and Johns Hopkins University School of Advanced International Studies. He joined the US Agency for International Development (USAID) in 1996 as rule of law advisor in the Office of Democracy and Governance. He represented the USAID in the development of a US Government doctrine for re-establishing criminal justice systems in post-conflict environments during the Clinton administration. Furthermore, he helped developing strategies for political development in Mongolia, post-conflict Rwanda, Cambodia, East Timor, post-Suharto Indonesia, Burundi, and Congo. In 2002, he served as deputy to the ambassador at large for war crimes issues at the Department of State. In 2003, he returned to the USAID serving as Program Officer for the Office of Democracy and Governance and Chief of the Operations and Response Division. He also heads the Crisis Response Team and is technical officer for the Illicit Power Structures project. Currently he is serving on an inter-agency task force to establish a US civilian reserve corps.

Marco Sassòli

Marco Sassòli chairs the board of Geneva Call. Since March 2004, he is professor of international law at the University of Geneva and chairs the board of the Geneva Academy of International Humanitarian Law and Human Rights. From 2001 to 2003, he was a regular professor of international law at the University of Quebec in Montreal where he remains an associate professor. He graduated as doctor of laws from the University of Basel and is member of the Swiss bar. From 1985 to 1997 he worked for the International Committee of the Red Cross (ICRC) at the headquarters in Geneva, *inter alia* as deputy head of its legal division, and in the Middle East and the Balkans. He has also served as executive secretary of the International Commission of Jurists and as registrar at the Swiss Supreme Court. He has published on international humanitarian law, human rights law, international criminal law, and the sources of international law and State responsibility.

Greta Zeender

Greta Zeender studied at the Graduate Institute for International Studies in Geneva and the Fletcher School of Law and Diplomacy. She is a senior analyst for the Norwegian Refugee Council / Internal Displacement Monitoring Centre based in New York. She has conducted numerous training seminars on internal displacement in conflict-affected countries in Africa and Asia, attended by national government and civil society representatives, non-State actors, and humanitarian staff. She researches situations of internal displacement and has authored numerous articles on the subject. She serves on the Steering Committee of the Watchlist on Children and Armed Conflict, a New York-based NGO network working to advance the rights of children in conflict areas. She is also an adjunct professor on refugee and internally displaced people issues at New York University's School of Continuing Studies, Department of Global Affairs. Before joining Norwegian Refugee Council (NRC), she worked for the Swiss Development Agency in Switzerland and Romania.

Acknowledgements

Introduction

By Jean-Damascène Gasanabo and Elisabeth Decrey Warner

Most armed conflicts today take place within States and involve one or more armed non-State actors (NSAs) fighting government forces or other NSAs. The consequences of such conflicts include the widespread abuse of international humanitarian law (IHL) and human rights norms. The prevalence of intra-State conflicts is also a cause of concern for national and human security and is increasing the attention given to NSAs. Yet, while IHL and human rights law provide a basis for regulating the way these conflicts are conducted, existing treaties and their implementation mechanisms remain predominantly State-centred. Moreover, since 11 September 2001, some countries, especially in North America and Europe, have become increasingly concerned with their internal security and the security of their interests abroad. They therefore established lists of terrorists and precipitated in the labelling of NSAs as "terrorist organizations" without basing their judgment on clear criteria. They have also placed restrictions on humanitarian actors, particularly inter-governmental organizations, and the consequences of this process make humanitarian engagement with NSAs ever more difficult.

Despite these challenges, some experiences—mainly by NGOs—have proven that it is possible to effectively engage NSAs to respect the principles of IHL. For instance, NGOs have been central in efforts to engage NSAs to refrain from using anti-personnel (AP) mines. The example of the Swiss-based organization Geneva Call shows that such engagement is possible and has met with success. Nonetheless, there are only few similar initiatives; engagement with armed groups has mostly been ad hoc practice. Lessons learned and experiences from the field have to be brought into a structured reflection for a better understanding of current processes. Further analysis and discussion on possibilities for creating similar initiatives are needed.

These are the reasons why Geneva Call proposed to convene a conference on the issue and launched a call for papers in February 2007. Among the proposals received, ten papers were selected and subsequently presented at the conference. Participants included a variety of experts from different academic fields (IHL, security studies, development studies, international relations, and political science) as well as practitioners with first-hand experience in humanitarian engagement with NSAs. The conference aimed at stimulating a crosscutting and interdisciplinary discussion on the criteria and conditions for engaging NSAs to respect IHL and human rights law. It took place in Geneva on 4–5 June 2007 and was jointly organized by Geneva Call, the United Nations Institute for Disarmament Research (UNIDIR), and the Program for Study of International Organization(s) (PSIO) of the Graduate Institute of International Studies, Geneva.

The present report is a compendium of papers that were presented and discussed during the conference. Professor Marco Sassòli introduces the subject in his keynote address. He shares his thoughts on engaging NSAs to comply with IHL, and explains why it is desirable in his view to try to engage *all* armed groups. The subsequent articles are divided into five chapters.

In chapter one, Dr Michael Miklaucic presents reflections and arguments on the selection of groups classified as NSAs. Miklaucic is developing a research project on illicit power structures, which attempts to provide a definition and classification of such groups.

In chapter two, the question *why* NSAs should be engaged is discussed. Different reasons are analyzed in the papers presented by Dr Jörn Grävingholt and Dr Julian Hottinger. While Grävingholt discusses the question of development cooperation in the debates on engaging NSAs, Hottinger focuses on prerequisites to peace negotiations and need to introduce mediators at an early stage of a conflict.

In chapter three, Mr Monyluak Kuol and Mr Mark Knight reflect on the question of *when* to engage with NSAs. Kuol examines this theme by drawing from the Sudan experience and Knight by analyzing the evolving role of post-peace settlement.

In chapter four, Dr Olivier Bangerter and Dr David Capie look at methods of engaging NSAs. Bangerter focuses on the International Committee of the Red Cross' (ICRC) methods of engaging armed groups. Capie, on the other hand, looks at the conditions for the persuasion and socialization of States and reconsiders them in the context of NSAs.

The final chapter of this report presents the papers authored by Ms Greta Zeender and Mr Pascal Bongard. In their papers they discuss the question, *which* topics NSAs can be engaged on, through specific examples. While Zeender focuses on the protection of internally displaced people (IDP), Bongard documents Geneva Call's experience in engaging NSAs in the landmine ban.

The interdisciplinary approach of the conference is reflected in the variety of aspects of the subject discussed in this report. It is our hope that the stimulating experience of the conference will carry on through this report.

Engaging Non-State Actors:
The New Frontier for International Humanitarian Law

By Marco Sassòli

I am not neutral on the question of whether and which armed groups should be engaged to obtain or improve their respect of international humanitarian law (IHL). This contribution will confirm that I am an extremist on the issue: I not only profoundly believe in engaging armed groups, but also that we should try to engage *all* armed groups. In contrast, an example of a view of the other extreme might be a representative of the Government of Turkey (to choose a country at random), who might perhaps accept the idea in principle, but would explain why one should never engage armed groups fighting against Turkey. In effect, such a position means that one should never engage any armed group, anywhere in the world, because every armed group is either fighting against the government of a sovereign State or is at least illegal under the legislation of that State. Indeed, if it were otherwise, the group would not be an armed group participating in an armed conflict. My argument applies only to such armed groups participating in a genuine armed conflict. I will hereafter make my case, without denying that the opposite point of view also has some merits, as always in policy debates.

"[I]n spite of the modern theories, […] international law […] nevertheless has something to do with States." This dictum at the beginning of an international law textbook written by Baty in 1930 is still true today. International law is mainly made by States; it is mainly addressed to States, and its implementation mechanisms are even more State-centred. While the rules on State responsibility are today well codified, the international responsibility of non-State actors (NSAs) is still largely uncharted land. Even when rules apply to NSAs or are claimed to apply to them, in most cases, no international forum exists in which the individual victim, the injured State, an international intergovernmental or NGO, or a third State could invoke the responsibility of an NSA and obtain relief. International reality, however, is less and less State-centred. NGOs, transnational enterprises, and armed groups have one thing in common: while they are important international players, they are largely non-existent for international law. When asked how the law should deal with this reality, we are confronted with genuine dilemmas. Should international law engage NSAs, thereby giving them an inevitable degree of international standing (but with the advantage of being able to require them to comply with certain international standards) or should it simply ignore them? For transnational enterprises and NGOs, the law has an alternative, which is to let the domestic law of the territorial State on the territory of which they act deal with them. For armed groups, this alternative by definition is not practicable, because they would not be armed groups engaged in an armed conflict if they were within the practical reach of the law and the law enforcement systems of the State on whose territory they are fighting. Therefore, the only possibility of engaging them is to do so by international law and by mechanisms of international law.

IHL applicable to armed conflicts not of an international character has, since 1949, been more progressive than the rest of post-Westphalian international law. Armed groups are specifically mentioned as addressees of IHL by Article 3 common to the 1949 Geneva Conventions, which reads: "In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties *each Party* to the conflict

shall be bound to apply, as a minimum, the following provisions" (emphasis added by the author). That article makes it absolutely clear that *both* sides of a non-international armed conflict are bound by these rules. Nevertheless, the implementation mechanisms for non-international armed conflicts remain very limited and some IHL treaties other than the Geneva Conventions, such as the Ottawa Convention banning landmines, are still only addressed to States. This is precisely one of the reasons why Geneva Call tries to get a *Deed of Commitment* from such armed groups not to use landmines: without such a commitment they would simply not be bound. In my view, however, this is not the main purpose of such a *Deed of Commitment*. Rather, the main purpose is that such a commitment by the armed groups themselves creates a sense of ownership among them and a basis for future dialogue and monitoring of the respect of the rules. Indeed, even when armed groups are bound by IHL – as they are by Article 3 common to the Geneva Conventions – it is necessary to engage them to obtain a sense of ownership by them.

In my view, this process already starts when drafting new rules. Today, many people – some of them desiring in good faith better protection for war victims – suggest that IHL is no longer adequate for modern conflicts and should be revised. One of the inadequacies mentioned is precisely situations of armed conflicts with armed groups – in particular when they are transnational armed groups. In the present international environment, I am rather sceptical about the chances of obtaining consensus on new rules genuinely improving protection for war victims. But let us assume that we should revise the law applicable to the fighting between States and armed groups. If we want to revise IHL in a certain area, we have to revise it by speaking to the actors, which, in the area of non-international armed conflicts, include armed groups. No one would suggest revising the law of naval warfare without speaking to navies. This is the essence of IHL. It has to be applied by parties and with the parties and it has to be based on an understanding of the problems, the dilemmas and the aspirations of the parties to armed conflicts. This is the main difference compared to criminal law. Criminal law does not have to accommodate the aspirations of criminals, allow them to reach their aims, or be realistic for them. For criminal law, however, there is vertical, hierarchical enforcement, whereas international law is still basically enforced horizontally by the parties.

More importantly, the law as it is or as some people would like to develop it, has to be disseminated to those who have to apply it. This is a basic requirement, laid down in all IHL treaties, but when applying it to armed groups we should take their specificities into account. How does one disseminate IHL to armed groups? Certainly not by PowerPoint presentations! Moreover, members of armed groups do not receive, like members of regular armed forces, months of basic training. Most of the time, once they become members of the armed group, they are immediately sent into action. We should at least be able to suggest some realistic ways in which such people can be trained to respect IHL.

To get a commitment by the armed group is already an important step because this somehow creates a constituency within the armed group. Some members and leaders who undertook the commitment will to a certain extent become advocates of IHL within the armed group. They do not want to lose face by showing that they do not have any influence on the group and that the group continues to violate IHL as much as before the commitment was undertaken.

For this purpose, it is even more useful to negotiate a code of conduct with the armed group, rather than forcing them to accept a code of conduct prepared in Geneva. I must admit that I am very sceptical every time I see an armed group promising that it will comply with the Geneva Conventions. There are some 400 articles in those Conventions! I prefer a two-

page code of conduct, which really addresses the genuine humanitarian issues that arise for a given armed group in the field.

I would even go one step further. At least as a scientific community, we also have to provide advisory services to armed groups. The ICRC has a specific unit within its legal division, which advises States on how to implement IHL, how to adopt legislation in conformity with humanitarian law, and how to create inter-ministerial commissions, *inter alia* to look into humanitarian law issues. Such advice is also needed for armed groups. Obviously, armed groups are confronted with other difficulties in implementing IHL than States. Many lawyers would be reluctant to see them "legislating". However, how else than on the basis of general and abstract regulations can they obtain compliance by their members, punish those who do not comply, or require certain conduct from those who are under their *de facto* control? An inter-ministerial commission is probably not what armed groups need. If we want to obtain respect for IHL by armed groups, we should put ourselves into the shoes of their leaders and assume that they genuinely wish to respect IHL. How should they do it? In my view, it is more difficult for them than for a government with a structure and institutions in place. We must be able to give them advice. How does a clandestine, illegal group ensure compliance with IHL? It would probably have to punish members who do not comply. But can it do that, while respecting international human rights law? How could it provide a fair trial? Based on what legislation? Obviously our advice will be based on the assumption that the group wants to respect IHL and the assumption may often be wrong. Nevertheless, the same assumption is often wrong in the case of States, too, which does not prevent us from giving them advice based on that assumption. Experience shows that such advice will often contribute to making its beneficiaries want to comply with IHL. I do not think the ICRC has a list of States to which it does not provide advisory services on the basis that it considers that in any case they are not willing to respect IHL.

The next step is to reward the respect of IHL. This is a very weak point of the rules of IHL applicable to non-international armed conflicts. In an international armed conflict a combatant who complies with IHL and only kills enemy soldiers on the battlefield will be a prisoner of war once he falls into the power of the enemy. Thanks to combatant immunity he cannot be punished for having killed enemy soldiers. If he commits war crimes, he must be punished. He therefore has a definite interest in complying with IHL. Such a reward does not exist for non-international armed conflicts. If I, as a Swiss citizen, were to start a non-international armed conflict against the Swiss government tomorrow, and I were to kill only Swiss soldiers, I would nevertheless be prosecuted for murder once the Swiss governmental forces captured me, simply because I had killed Swiss soldiers. I would not avoid such prosecution even if I complied with Article 3 common to the Geneva Conventions, Additional Protocol II and even with the many rules the ICRC has recently found in its Study on Customary IHL to apply to international and non-international armed conflicts alike. As far as I know, there are very few countries where it is a mitigating circumstance to have only killed soldiers and not women and children. Although this fundamental difference between international and non-international armed conflicts cannot be fully overcome within the Westphalian system, we should nevertheless develop some incentives for those who comply with IHL in the corpus of IHL, international criminal law, refugee law, and international anti-terrorism law. This is one of the major reasons why acts that are committed in an armed conflict and are not prohibited under IHL should never fall under any definition of terrorism.

Commitment, advice, and rewards are never sufficient. Compliance with the law also has to be monitored. Under Article 3 common to the Geneva Conventions, the ICRC may offer its services to armed groups and, if an armed group accepts, the ICRC may monitor the group's compliance in exactly the same way that it monitors States involved in international armed

conflicts. Similarly, when Geneva Call obtains a *Deed of Commitment*, that is not the end of the story but the beginning of a process in which Geneva Call also monitors whether the commitment corresponds to the reality in the field. I would go so far as to suggest setting up procedures allowing and encouraging armed groups to report on their compliance. This may sound completely unrealistic. In international human rights law, however, some of the most uncontroversial implementation mechanisms for human rights law are the reporting obligations of the addressees: States. In my view, State administrations are made up of human beings just as armed groups are. Therefore, if we believe that those working for States will be influenced by the simple fact that they have to report about what they do, why should armed groups not be influenced by having to report about what they do? Certainly, as for States, someone must be there to receive, discuss, comment upon, and evaluate those reports.

Finally, with armed groups as with States, there must be (and there is) responsibility for violations. In recent years, international criminal law and international criminal jurisdictions have made a lot of progress and gained credibility. They are as much addressed to those fighting for armed groups as they are to those fighting for States. In international private law, the possibility of construing and sanctioning a violation of IHL as a tort has to be explored and implemented in domestic courts. In this field, the United States is a pioneer with its Alien Tort Claims Act. Furthermore, the international responsibility of an armed group has already been addressed by sanctions taken by the Security Council against armed groups. This makes me feel less of an extremist because, in certain situations, the Security Council apparently agrees with me that international mechanisms have to engage armed groups: taking sanctions means engaging. The Security Council does not engage individuals; it may at best require States to engage them. Another area, which I think deserves exploration, is how humanitarian organizations should react to violations of IHL by armed groups. How should they ensure that armed groups do not take advantage of the competition between humanitarian organizations, which face a considerable dilemma when confronted with violations by armed groups? On the one hand, these organizations want to help the people in the hands of armed groups – which necessitates continuing cooperation with the group – while, on the other, it is essential that there be some reaction to violations and that humanitarian organizations do not simply tolerate all violations just to ensure access.

To conclude, I would like to address two main objections to my approach of trying to engage all NSAs. First of all, many object that when armed groups are engaged by international actors they are somehow encouraged to continue violence, which inevitably creates human suffering. I agree that a world without armed groups would be a better world and I think everyone at Geneva Call would be happy to look for another job in such a world. However, armed groups are simply a reality, just as armed conflicts are a reality. Those who developed IHL did not like armed conflicts, but they did not simply state that armed conflicts should not exist. They also accepted that armed conflicts are a reality and tried to design rules applicable to that reality, acceptable to all those involved. Similarly, I do not believe that the unhappy reality of armed groups will disappear because we ignore them. We have to deal with this reality and the first step towards gaining respect for some rules is to speak to the people involved and to have mechanisms engaging with these people. Second, more moderate opponents of my position recognize the need to engage some but not all armed groups. I think we have to engage all armed groups. The only limitation is that such a group must be a genuine armed group, engaged in a genuine armed conflict. Both terms are admittedly poorly defined in IHL. Beyond that, I do not see how we could distinguish between "good" and "bad" armed groups. Whether they are "serious" or not, or whether they are willing to comply with restraints, will be shown by the result of the process and therefore cannot be a precondition to the process. From a humanitarian point of view, such distinctions would mean

that those in need of the greatest protection would be deprived of any protection efforts just because they are in the hands of a group we utterly reject. Next there is a diplomatic problem. If we refuse, for example, to engage Hezbollah in Lebanon or the Taliban in Afghanistan, how can we justify to the Government of Sri Lanka that we engage the Liberation Tigers of Tamil Eelam (LTTE) or to the Government of Colombia that we engage the *Fuerzas Armadas Revolucionarias de Colombia* (FARC). These governments would never agree that their opponents are "better", more "serious" or more willing to comply with rules than other armed groups. Therefore, I think our only chance is to try to engage all armed groups and to develop mechanisms, not only for the ideal inter-State world of the United Nations (UN) Charter, but also for the real world in which armed conflicts are as much fought by armed groups as by governments. This is the new frontier of IHL. If it does not develop along that frontier, it will become slowly, but increasingly, irrelevant.

CHAPTER 1

Selecting which Armed Non-State Actors to Engage

Whom to engage? When dealing with NSAs, it is crucial to define which ones governments, international organizations, and NGOs should target. An array of groups can be found under the label of NSAs and ways to differentiate between them, as well as criteria for selection, must be identified.

In his paper, Michael Miklaucic, a US-based development specialist who until recently worked for the United States Agency for International Development (USAID), proposes a multidimensional typology of what he calls "illicit power structures". He examines them through four analytic "prisms": worldviews or ideologies, motivations, practices, and structures. This classification, to be tested in the field, is aimed at helping devise more effective strategies for dealing with NSAs.

1. Exploring Non-Violent Options for Engaging Violent Armed Non-State Actors

By Michael Miklaucic[1]

Abstract

Illicit power structures are sub-national, extralegal entities that seek political and/or economic power through the use of violence often supported by criminal economic activity. The leadership of these structures may be situated within or parallel to the State, or they may constitute an armed opposition to it. Illicit power structures operate outside the framework for establishing and maintaining the rule of law, and erode that framework. Organizations such as the Taliban in Afghanistan, Al-Qaeda in Iraq, the FARC in Colombia, the RUF in Sierra Leone, and the Janjaweed in Sudan subvert reconstruction and stabilization operations, impede the process of sustainable, democratic development, and obstruct the achievement of viable peace. Through private militias, rogue intelligence networks, criminal enterprises and other tools illicit power structures obstruct efforts to stabilize the environment because they profit from conditions of sustained conflict. They disrupt the legitimate processes of governance and create an environment in which peace settlements will seldom prosper, and democracy and development cannot succeed. Numerous typologies of illicit power structures have been proposed in the past 15 years. Most are handicapped by their focus on a single aspect, attribute or dimension of illicit power structures; they are one-dimensional. The resulting analyses and more importantly recommended actions typically fail to appreciate the multi-dimensionality of illicit power structures. This can result in ineffective or even counter-productive responses and effects. The typology below fuses together several important differentiating attributes, leading to a more complex, flexible and nuanced framework for analysis, and one that is hopefully both more comprehensive and more useful.

Introduction

This paper is concerned with a species of NSA, which I refer to as illicit power structures. These structures are sub-national, extralegal entities that use violence or the threat of violence, illegal inducement, and/or charismatic, anti-status-quo leadership to advance parochial, non-State interests, very often at the expense of the State and broader public interest. Elsewhere referred to variously as NSAs, warlords, rogue networks, militias, etc, such groups challenge the State and create an environment in which peace settlements seldom prosper, and where State-building, democracy and development cannot flourish.

The U.S. military and other military communities have studied the problem of illicit power structures extensively but, in most cases, have used the frame of reference and applied the operational modalities with which they are most familiar and comfortable, namely military or kinetic responses. Recently, reflecting upon the challenges posed by NSAs in the Middle East (Iraq, Palestinian Territories, Lebanon) and South Asia (Afghanistan), the U.S. military has re-visited some of the concepts and principles developed in an earlier era related to insurgencies and counterinsurgency.[2] The so-called "hearts and minds" doctrine associated with counterinsurgency is once again gaining currency.

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[1] The current paper derives from a USAID project, but reflects the author's views and analysis only. It does not represent any position, policy, or view of his employers, colleagues, or associates.
[2] U.S. Army Field Manual FM 3–24; Counterinsurgency 2006.

The development and democracy-building communities, however, have come slowly to the recognition that their efforts are hindered substantially by the existence and subversive activities of illicit power structures. Experts in these fields have rarely examined the toolboxes of development and democracy building for possible uses against such structures, except in an indirect way (i.e. economic opportunity, education and political participation "drain the swamp" out of which insurgents, terrorists and other miscreants emerge). Of the nearly $2 trillion of Official Development Assistance given by the major industrialized States since 1950, the vast majority of those funds and associated efforts to improve the lot of developing country citizens have been directed at the formal governmental institutions of developing States.[3] A small amount has been invested in the cultivation of "civil society", mostly in recent years. These approaches were predicated on the thesis that developmental and governance failures result from deficits in the formal State institutions or traditional civil society.

While the conventional developmental approaches to economic and political development are indispensable, the absence of a more pro-active developmental approach to illicit power structures has left this area of activity to military contingents through cooperation, exchange and other assistance. Indeed, during the same period—1950 to the present—even more trillions of dollars have been provided by industrialized countries to developing countries in military equipment and training, a good portion of which has been for dealing with internal security, and often for dealing with illicit power structures. Given the predisposition of military organizations to military responses, it should not be surprising that a range of non-violent or non-kinetic approaches to coping with illicit power structures is yet to be examined.

On the premise that we cannot—and should not—kill all the bad guys, everywhere, all the time, this paper proposes a provisional analytic framework to help those in the field to devise tactics and strategies for mitigating the subversive impacts of illicit power structures on development and democratization, short of so-called "kinetic" action. To deal with illicit power structures effectively, we need a better understanding of such factors as their motivations, structures, practices, and vulnerabilities. What is effective with one illicit power structure may or may not be effective with another. Indeed, a faulty analysis, leading to the wrong approach to an illicit power structure, may exacerbate the situation being addressed, as Vinci argues was the case in Uganda when the Government of Uganda applied classic counterinsurgency tactics against the Lord's Resistance Army (which he argues is not and was not a classic insurgent movement).[4]

The analytic framework presented below suggests a typology based precisely on the kinds of factors mentioned above, and presents the analyst with a series of prisms for examination of the subject. At each analytic stage—or prism—credible, if not definitive, conclusions should be reached suggesting the kinds of actions deemed to be most effective in mitigating the impacts of illicit power structures. It is beyond the scope of the present paper to identify comprehensively the appropriate actions and interventions to mitigate the impacts of illicit power structures—this is an area in need of considerable additional historical and field research. Here we are merely suggesting an analytic trajectory that yields a multi-dimensional picture of illicit power structures by getting at those attributes, which most accurately reflect their essence.

Previous outstanding scholarship has produced numerous typologies of NSAs or illicit power structures. The common limitation of these proposed typologies is that they tend to stress only a single aspect or characteristic of the illicit power structure, and thus miss their

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[3] Updated April 2007. <http://www.oecd.org>
[4] Vinci, Anthony (2006)

multi-dimensionality. Stedman's typology of spoilers, for example, while path-breaking and still relevant, distinguishes between organizations on the basis of their stand with regard to a peace process; they are implacably opposed to any agreement ("absolute spoilers"), opportunistic negotiators ("greedy spoilers"), or reconcilable, provided their specific demands are met ("limited spoilers").[5] Shultz, Farah and Lochard propose a taxonomy consisting of insurgents, terrorists, militias, and organized crime,[6] which emphasizes primarily their respective motivations. Vinci criticizes such taxonomies, adding in warlords and guerillas, explaining that these labels fail to adequately define the proliferating armed groups emerging since the end of the Cold War. He then proceeds to create a typology based on the mobilizing functions of armed groups—which he claims is not "another taxonomic system."[7] In fact, it does indeed appear to be a taxonomic system, but one based on the mobilization of resources.

The typology developed below, while perhaps adding little that is new or dramatically innovative, fuses together several important typological differentiators, leading to a more complex, flexible, and nuanced typology, and one that is hopefully both more comprehensive and more useful. To be effective, a typology of illicit power structures must identify the aspects of an illicit power structure that most fully capture its essence while describing those characteristics that distinguish one from another. The typology proposed in this paper examines illicit power structures through four successive analytic "prisms", attempting to reach a progressively more granular and multi-dimensional understanding. The four prisms are 1) their worldviews or ideologies, 2) motivations, 3) actions, and 4) structures.[8]

The following is a working definition of illicit power structures: **illicit power structures are sub-national, extralegal entities that seek power through the use of either actual or threatened coercion, illegal inducement, or charismatic, anti-system leadership. Often supported by criminal economic activity, the leadership of these structures may be situated within or parallel to the State, or they may constitute an armed opposition to it. Identity groups that benefit from their patronage will typically regard them as legitimate.** This definition intentionally excludes at least two types of structure that arguably could be included, but which are both the subject of extensive study elsewhere; namely rogue States and transnational terrorist groups. Effective responses to such structures will likely require all the elements of national power, including substantial and high-level diplomatic and military interventions, while the framework herein proposed focuses on how the tools of development and democratization may be useful in neutralizing illicit power structures.

Worldview – Ideology

Arguably the most important attribute of an organization, certainly among the most important, is its view of the world in which it resides and of the world in which it seeks to reside. I refer to this as worldview or ideology, realizing that I short-change both terms. Ultimately, what an illicit power structure can be reconciled with—and thus how it must be dealt with—depends on the nature of the outcome it seeks and its determination to achieve that outcome. Such an approach to differentiation of NSAs was proposed by Stephen Stedman in the 1990s in his seminal work on spoilers. Stedman distinguished between "absolute", "limited", and "greedy" spoilers, concluding that their participation in peace negotiations

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[5] Stedman, Stephen John (1997)
[6] Shulz, Richard H., Douglas Farah, and Itamara Lochard (2004)
[7] Vinci, Anthony (2006)
[8] These proposed analytic "prisms" deconstruct the internal components of illicit power structures in a way similar to how a glass prism disaggregates white light into its component wavelengths or colours.

could be effectively differentiated, and appropriate responses crafted, based on the differentiation.[9]

For simplicity, let us suppose that there are fundamentally two archetypal ideologies or worldviews: those, which accept a rule-based system of democratic States as the fundamental organizing principle for the global architecture, and those that reject that principle. This is a simplified iteration of the current Westphalian system, governed as it is by the norms of international and domestic behaviour embodied in the U.N. Charter, the Geneva Conventions and the various conventions and agreements pertaining to State behaviour, prerogatives and responsibilities. Competing worldviews may be characterized by a desire for the radical re-structuring of the international order, or sizable parts of the world, in a manner that de-emphasizes the State in favour of other organizing structures such as communities of faith, class, or ethnic identity. Or they may accept the State system but cling to an earlier norm of sovereignty, which permits total latitude by each State with respect to internal governance.

If the ideology of an illicit power structure is fundamentally at odds with the underlying architecture of a rule-based system of democratic States, it would appear unlikely that an accommodation satisfactory to both the major State powers and the illicit power structure is on the cards. For example, it is hard to imagine how groups seeking to do away with the State system altogether, such as those promoting a global proletarian revolution, or a global Islamic caliphate, can be accommodated in a system based on the fundamental values of the so-called modern Westphalian system, built around individual sovereign States. Based on this rude dichotomy, we can differentiate between illicit power structures driven by two fundamentally opposed ideologies or worldviews. Those whose aims can be accommodated within the prevailing global architecture will inevitably be more susceptible to co-optation, negotiation and compromise than those that are resolutely opposed to that system. Therefore the tactics and strategies to counter their subversive impacts must be differentiated accordingly.

Motivation

In a paper published in 1998, British political scientist David Keen argued persuasively that we cannot assume that resolution of conflict, peace, the cessation of hostilities, or by extrapolation democratic consolidation, are objectives shared by all or any of the belligerents in a conflict.[10] Keen's insight was that some belligerents benefit substantially from conflict and therefore protect their material interests by fuelling and sustaining conflict. These are often referred to as "conflict entrepreneurs". The motivation of so-called conflict entrepreneurs is the same as that of any other entrepreneur—i.e. profit. This signified a departure from the common assumption that parties to conflicts indeed seek resolution—on terms beneficial to them no doubt—and that the key is finding the right terms of compromise.

In 2001, Paul Collier of the World Bank and Anke Hoeffler argued that conflict is fuelled and sustained by greed and economic considerations,[11] and concluded that opportunity (availability of finance, opportunity, cost, and risk) is the key explanatory factor in understanding conflict, and thus dismissed as less important motivations based on need or beliefs. The work of Collier and Hoeffler engendered a significant counter-literature arguing that identity politics remain a critical motivating factor in civil war, as is relative deprivation.

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[9] Stedman, Stephen John (1997). Although Stedman wrote only about spoilers to peace processes, the same analysis can be applied to so-called "governance spoilers".
[10] Keen, David (1998)
[11] Collier, Paul and Anke Hoeffler (2001)

Today, the heated debate over the competing roles of "need", "greed", and "creed" in fuelling internal conflict appears to have dissipated somewhat as further study and examination has produced more nuanced understanding.[12] It is frankly quite likely that any illicit power structure is motivated by a combination of factors, which are possibly inconsistent within the group, and which may change over time due to internal evolution or external pressures. In order, however, to inform the design of remedial activities to neutralize the negative impact of illicit power structures on development and democratization, it is suggested that the analyst reach a conclusion regarding the dominant motivating factor currently driving those in positions to determine the actions and behaviour of the overall illicit power structure.

Examples of illicit power structures and their principle motivations include the grievance-driven Zapatista Army of National Liberation of Mexico, the greed-driven Revolutionary United Front of Sierra Leone, and the creed-driven Hezbollah of Lebanon. The obvious implication of this determination is that motivation sheds light on the dispositions, propensities, vulnerabilities and willingness to compromise of an illicit power structure. As in differentiating the response to an illicit power structure based on its worldview, the response should also be differentiated according to its motivation, whether it is grievance, need, or creed.

Modality

Organizations, including illicit power structures, have idiosyncratic organizational "cultures," and dominant modes of behaviour. The primary modality of its behaviour, or its method of operation, is also the primary lens through which outsiders view an illicit power structure, given that their worldviews, motivations and morphologies are most frequently obscure. The power of an illicit power structure—its ability to exert significant influence over the processes of peace, development and democratic consolidation—may derive from financial sources, weapons, propensity to engage in violent behaviour, or the number and quality of fighters at its command. However, the methods by which such assets may be applied to exercise power are limited.

As early as 1968, the sociologist Amitai Etzioni identified three modalities of the exercise of power by an organization: *"Power, analytically, can be exhaustively classified according to the means of control applied. If they are symbolic, such as gestures and signals, we refer to the power **as normative.** If they are material objects, or cash used to obtain them, we refer to the power as **remunerative.** If they are physical means which entail contact with the body of those subjected to power, such as inflicting pain, deformity, or death, we refer to **coercive** power."*[13] Although they tend most frequently to be used in combination, Etzioni argued that one modality will prevail for any given organization based on its function.

The *Interahamwe* was an illicit power structure with an ethnically-based worldview, and motivated by grievance, that exerted coercive power with extreme violence. It was a key organization in the genocide that convulsed Rwanda in spring 1994, responsible for brutally massacring ethnic Tutsi civilians in the hundreds of thousands. It exercised the same merciless violence against Hutus viewed as Tutsi sympathizers, and massacred them also by the thousands.[14] The case of the *Interahamwe* is interesting not only because of the extremity of its violence, but because it operated not in opposition to State authorities, but rather in

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[12] Ballentine, Karen and Heiko Nitzschke (2003)

[13] Etzioni, Amitai (1968), pp. 94–109.

[14] Des Forges, Alison (1999) and Gourevitch, Philip (1998)

collusion with them to eradicate its ethnic rivals, thus creating a parallel system working in tandem with the State in a genocidal spasm of violence.

After years of lawlessness and factional fighting in Afghanistan, the *Taleban* achieved early power through a normative appeal to the Afghan populace, particularly in the Pashtun regions. Their initial attractiveness was due to their strict adherence to Islamic law and practice, their opposition to the lawlessness of the warlord period they brought to a close, and their rejection of official corruption. The *Taleban* were able quite easily to win control of much of the country in a relatively short period of time, "with Mujahideen warlords often surrendering to them without a fight and the 'heavily armed population' giving up their weapons."[15] Although the *Taleban* later turned to highly repressive practices of governance, their rise to power represents an example of the power of normative messages to influence events and developments.

Throughout the 1970s and 1980s, the drug trade in Colombia was dominated by two cartels: the Medellin cartel (known for its infamous leader Pablo Escobar) and the Cali cartel. While the Medellin cartel was renowned for its brutality and narco-terrorism war against the Colombian government, the Cali cartel controlled its environment through bribery and other economic inducements, with over 2800 employees on the payroll at one point. One of the cartel's leaders said: "we don't kill judges, we buy them."[16] While the cartel leaders did not seek political power per se, seeking only to influence or induce those in political power, I use them here as an example of an organization whose primary modus operandi was inducement or remuneration.

As the response to an illicit power structure should be conditioned by the ideology and motivation of that structure, the dominant behavioural modality of an illicit power structure should also contribute to finding the most effective counter-action. An obvious case in point is the relevance of a DDR programme when dealing with a coercive illicit power structure, which might be completely irrelevant in the case of an organization that advances its interests primarily through normative messages.

Morphology

Much can be learned about an organization by the way in which it is structured, and this is certainly true of illicit power structures. The simplest distinction—and perhaps the most fundamental—concerning the morphology of organizations is that between hierarchical and networked organizations. While there are undoubtedly numerous varieties of each, this core distinction goes to the very essence of the organization, determining its patterns of communication, command and control.

Hierarchical organizations are characterized by a well-defined chain of command, clear lines of authority, vertical subordinate-superior relationships and vertical communication patterns. Networked organizations, by contrast, have less definitive chains of command, leaning more toward channels of communication with de-centralized decision-making. Hierarchical organizations are capable of executing complicated plans and behave in predictable ways, while networked organizations are inherently more adaptive, rapid and flexible.[17]

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[15] Rashid, Ahmed (2000)

[16] Wikipedia: <http://en.wikipedia.org/wiki/Cali_Cartel>

[17] For a discussion of hierarchical and networked organizations see Arquilla, John and David Ronfeldt (1996).

In addition to the structural topography of an illicit power structure, there are other elements to be considered in describing its morphology, for example its connectivity to external and other internal actors. How does it finance its illicit activity? Is it fueled by remittances from a Diaspora? From illegal natural resource exploitation, trafficking in contraband or black-market trading in ordinary commercial items? Is its personnel tribe or clan-based, class-based, geographically localized or dispersed? How is it related to traditional forms of social organization? What kinds of armaments does the illicit power structure have, and from where and how are they obtained? These questions must be examined to fully articulate the morphology.

How an illicit power structure is organized gives critical information about the propensities, strengths and vulnerabilities of the organization. Rigidly hierarchical organizations can be hobbled by disruptions in the chain of command. On the other hand, negotiations with hierarchical organizations are likely to follow a more predictable course than negotiations with de-centralized networks. Networked organizations may have more difficulty reaching categorical and final decisions and they can be compromised if their communications network is disrupted. Arquilla and Ronfeldt of Rand Corporation have developed a theory of counter-action against networked organizations, which they call "netwar."[18] This concept highlights the use of communication and information technology as the basis for neutralizing the operations of highly networked organizations. Moreover, their concept of "swarming", which features striking "from all directions at a particular point or points, by means of a sustainable 'pulsing' of force and/or fire, close-in as well as from stand-off positions,"[19] represents an effort to develop a strategy specific to the force organization of networks.

Conclusion

We are still in the early stages of understanding the phenomenon of illicit power structures. The preliminary typology proposed in this paper seeks to differentiate and distinguish among the variants of illicit power structures so that more effective strategies and tactics to counter their malignant impacts on development and democratization may be devised. I acknowledge the unlikelihood or even impossibility of pure types. No illicit power structure will fit perfectly into any specific category. Each illicit power structure is likely to combine multiple characteristics at each stage of analysis, and change characteristics over time as well. However, that does not mean they cannot be differentiated.

The four successive analytic steps suggested in the preceding sections lead to a typology consisting of 36 variants or types of illicit power structures (two ideological types, three motivation types, three modalities, and two morphologies). This typology will be most useful if it is used not rigidly, but to create a narrative that leads to actionable conclusions and analytically supports specific strategic courses of action and tactics to neutralize the subversive impact of illicit power structures on development and democracy-building efforts. The application of the proposed typology maps out an asymptotic approach whereby analysis through each successive prism brings us ever closer to an accurate description and understanding of the specific illicit power structure, even if we may never reach a perfectly accurate understanding. It is hoped that, by examining illicit power structures through this set of prisms, field operators will have a better understanding of their propensities, vulnerabilities and capacities, leading to more effective strategies for dealing with them.

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[18] Arquilla, John and David Ronfeldt (1996)
[19] Arquilla, John and David Ronfeldt (2003)

More granular analysis can certainly elicit additional variants, therefore these categories cannot be considered to be comprehensive. Moreover, the 36 variants of illicit power structures derived from this process are theoretical—i.e. according to the framework they are logical possibilities. However they must be tested in the field to determine if they indeed describe satisfactorily existing illicit power structures. Some variants may not exist in real life—for example it is difficult to imagine an absolutist illicit power structure whose behaviour is intransigent, motivated by greed, whose modus operandi is one of normative leadership structured as a leaderless network. Such an organization does not appear at first glance to make sense—if motivated by greed, compromise with a dose of material reward (opportunism) rather than intransigence would seem more logical.

Field (or possibly desk) testing is now needed to populate the typology, to determine whether the types fit actual illicit power structures both past and present, and across a range of geographic settings. It will also be in the field testing process that the most effective strategies for countering the influence, or mitigating the negative impact of illicit power structures on those processes, will be identified. This is in fact the critical next step in developing counter measures; examining both past and present experience to determine what has and has not worked in neutralizing illicit power structures.

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CHAPTER 2

Reasons to Engage Armed Non-State Actors

Why to engage? In any engagement process, the rationale behind or case for engagement, is a key consideration. Should dialogue be aimed at promoting protection of civilians or gaining humanitarian access to vulnerable populations under NSA control? Should it go beyond humanitarian objectives and also address development issues? And what is the relationship between humanitarian and peace negotiations?

Both papers presented in this chapter focus on these questions. Julian Hottinger, working as an expert in mediation with the Swiss Federal Department of Foreign Affairs, stresses the importance of the right timing when introducing human rights and IHL in peace negotiations. The relationship between humanitarian and political engagement is complex, sometimes tense, but not mutually exclusive. Jörn Grävingholt's paper is based on research conducted by the German Development Institute from 2004 to 2006. Grävingholt points out that, while they have been far less active in NSA engagement than humanitarian agencies, development agencies have become increasingly exposed to situations involving NSAs. He encourages them to pay more attention to NSAs' impact on their programmes and suggests do's and don'ts to address such challenges.

1. The Engagement to Respect Humanitarian Law and Human Rights: A Prerequisite for Peace Negotiations, or a "Future" Component within Peace Negotiations?

By Julian Thomas Hottinger

Abstract

The universe of NSAs is complex, not to mention the world of negotiations. Nowadays, mediators rarely wait for NSAs or a government to get ready to negotiate. At a very early stage, there is a need to establish informal contact with NSAs, sometimes well before they even think of possible peace negotiations. This means that mediators have to introduce themselves early so as to understand the cause that NSAs are fighting for, the logic of the struggle, their internal structure and dynamics, as well as their relations with the rest of the world. All of these aspects will have their importance at the moment of wanting to organize pre-negotiations or negotiations amongst fighting forces.

In parallel to this, there is a special need to hold the members of an NSA in contact with "reality", as no NSA or any other armed group is more dangerous than when it sinks into its own world, isolates itself and feeds on its own reasoning. One way of helping NSAs to prepare for future peace negotiations is to start—at an early stage—by working on Humanitarian Law and Human Rights. The overall aim of humanitarian negotiations at such an early phase is to secure the NSA's cooperation in reaching an agreed outcome on how to facilitate and improve conditions in general. Nevertheless, how should such clauses be negotiated? And how does one link negotiating ground rules for Humanitarian Law and Human Rights with future peace negotiations, should they ever come about?

1. A Problem of Definitions

I wish to be as clear as possible on a series of substantive issues. This paper is more about how you introduce Humanitarian Law and Human Rights within discussions with NSAs, than on the content of Humanitarian Law and Human Rights. The aim is not to downplay the importance of Humanitarian Law or Human Rights, but just to explain how they are dealt with within the different phases of a negotiation. Maybe neither of the topics is dealt with at the same time or in the same way. Nevertheless, it is worth looking into how you introduce Humanitarian Law and Human Rights.[20] What does one have to be careful about? Which can be delicate issues? And finally, how to get the parties—may they be NSAs or governmental—to respect their engagements? In the conclusion, I will very briefly try to explain why it is so hard to deal with Humanitarian Law and Human Rights within the preparatory stage of peace negotiations.

There must be no misunderstanding though. In no way does this mean that Humanitarian Law or Human Rights are to be seen as secondary issues, of little or no interest. Both issues, though very different in nature, are of major importance, but there is a need to get them right, introduce them in a way that they will do more good than harm, and especially make sure that they can be implemented. This demands, of course, in some cases, not necessarily insisting on Human Rights as such, but rather looking at their practical aspects, so as to get NSAs—not to mention other parties—to understand their importance and how they can be implemented. Especially, as they are rarely a priority for parties involved in a conflict.

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[20] Donnelly, Jack (2001)

One major risk that all mediators run into when wanting to introduce, discuss and plan for a certain topic, is that the parties take it up and use it as a bargaining chip: "We will stop torturing our prisoners on condition that you get the adversary to do this or that…" Or, "We are willing to help implement Human Rights on the condition that you get this or that for us". And once you are caught in such a dynamic, where every issue is up for a bargain, you are bound to create more harm than good. Especially if the NSAs believe that you desperately need to obtain some form of success in Humanitarian Law or Human Rights, they will try to bargain every step. Why should they do so? Well, one must not forget that peace negotiations are a process in itself, with its phases, and in some cases unknown or lesser known phases, when parties are not always in a negotiating mood, as their initial reasons for coming to the table are not necessarily only to negotiate. Quite often the initial aim of negotiating parties is "to test the water" or to see what this universe of negotiations looks like. Test their enemy and in some cases use a recess to build up their forces or prepare for the next stage of fighting. And it is up to the facilitation or mediation team to try to keep them at the table, if possible. Nevertheless, before getting into the details of a peace process, there is a need to define "Humanitarian Law" and "Human Rights" which have been used, so far, without any explanation.

One of the major stumbling blocks one comes across is trying to define an ever-evolving world of Human Rights and Humanitarian Law while trying to set them into an even more unstable world: that of peace negotiations. Within the world of negotiations, we usually "artificially" separate Humanitarian Law and Human Rights. Why? Simply because humanitarian law, which in some cases takes up the name of "Laws of War", is principally based on the laws and customs of war or the law of armed conflict. It deals with the legal corpus comprised of the Geneva Conventions, The Hague Conventions, as well as subsequent treaties, case law, and customary international law. Roughly said, it defines the conduct and responsibilities of belligerent groups and individuals engaged in warfare, in relation to each other and to civilians. Humanitarian Law has its importance during the conflict and it is supposed to help civilians and people not engaged in the conflict by giving them appropriate care, while pleading for combatants and prisoners to be treated humanely. Prisoners should be protected against torture or any other act of violence. And no additional or superfluous suffering should be inflicted on combatants or even less on civilians.

As for Human Rights law, it is a system of laws, both domestic and international, which is intended to promote Human Rights, while punishing some violations of Human Rights such as war crimes, crimes against humanity and genocide. If both Humanitarian Law and Human Rights pursue a common objective and share a common aim, within negotiations, there is usually, though not always, a way of sequencing them when dealing with one topic or the other. But to be able to say that you can strongly distinguish between them would be unfair. Especially in a universe where you rarely refer to the title or the global aspect but where more commonly you initially address the key issues that are part of Humanitarian Law or Human Rights which are being violated. You address the most urgent needs, with the hope of stopping abuses in one area or the other, while leaving substantive and core issues for later. During any conflict, where you are far from any negotiating stage, quite often (and it could be considered in some cases a mistake) you are overrun by emergencies. You "deal with the immediate while hoping to get a chance to address the rest later". And sometimes, "later" just never comes about.

2. The Universe of NSAs

There is no discussion: whether we like it or not, today, NSAs are the main feature of violent conflicts both within States and at a regional level. For years, there have been various debates on how to engage such actors, what to expect from them and how to go about negotiating with NSAs.[21] Without wanting to go through the entire debate again within this paper, I do believe there is a need to recognize the importance, sometimes negative importance, of NSAs and the consequences for those confronted with them. We should avoid generalizations and there are probably just as many exceptions as confirmations of the rule. Nevertheless, humanitarian organizations have for some time developed strategies to engage armed groups on questions related to the respect of humanitarian principles, while very little, if any, research has been done on how you bring them to the negotiation table so as to achieve peace. Over the years, major debates have been taking place about how facilitators and mediators, at a multi-track level, can address these groups and help neutralize their negative effects, such as the murder of civilians, rape, torture, and plunder, not to mention the large number of those killed or injured.

This is, in some ways, a totally new universe that has been introduced into the area of conflict resolution. Not so much NSAs as such, as NSAs have been around for years, but the way they are to be dealt with and how particular issues are addressed before the NSAs or parties come to the negotiation table. Of course, just as damaging to this debate have been all the discussions on NSAs and how you distinguish between NSAs and terrorist groups. Not to mention the new school of thought amongst mediators, who believe that you do not negotiate with/for the "bad, bad boys". They do not deserve it. As if negotiations were a premium and we were not there to try to negotiate an end to a conflict, solve a violent problem, so that people can get on with their lives, and where those who commit major crimes are made to answer for their actions.

When I was going through my training to become a mediator about fifteen years ago, we were quite often told to be very careful about how we brought on board any debate on Humanitarian Law or Human Rights. We were warned that, when negotiating with the parties in conflict, we would have to deal with people who had committed serious crimes against humanity, who had probably tortured or had blood on their hands. There was a moral issue and each mediator had to handle it according to his personal ethic. We were also told that to try and promptly solve Human Rights violations or to try to even table such violations too early could literally ruin your process. How? Quite simply because, by bringing in Human Rights issues at the wrong moment, or wrong time, you could make them backbreakers. And as I look back today, and with some experience in the field, even though reality is rarely black or white, I can say that I have been in one or two negotiations where Human Right issues were wrongly tabled, which prompted some parties, though not necessarily all, to walk out.

Now, I would like to be very clear about this. I am not saying that Humanitarian Law and Human Rights should just be swept under the carpet and forgotten, when having to try and strike a deal. No! Please do not misread me. What I am saying is that like all other areas that need to be negotiated within a process, Human Rights have to be introduced gradually and at the right time. Some of my colleagues in the field would even go further and say that Human Rights should only be introduced once the negotiations have reached a point of *non-retour*, and that you roughly know you have struck a deal and that the parties will not just walk away from the table.

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[21] Jacques, Geneviève (2000)

Nevertheless, I would want to be careful and not necessarily introduce or adopt one extreme position, or the other. **In my opinion, the issue is not about whether we deal with Human Rights or not, but more about when we try to start dealing with Human Rights, and how we table them.** The subject is very delicate and needs to be treated with a certain nuance.

I suspect that Human Rights, like peace agreements, cover vast areas and that, according to whom you are talking to, they probably mean just about everything, while for others, they mean very little.[22] Please let me explain. I am always fascinated by people who go into long details about what a peace agreement should look like or not. What the agreement should contain, what it cannot contain and, finally, how it should be implemented. My personal experience, for whatever it is worth, is that there is no "one size fits all". Nevertheless, there is probably a minimal threshold for a peace agreement to be viable. And the minimum has to fulfil at least three major prerequisites.

First of all, peace agreements are strongly conditioned by the nature of the conflict. Conflicts are heterogeneous and often have more explanations to them than the fighting parties admit. Already the way you define your conflict is a form of engagement, and a mediator should not get caught up in the debate about whether it is of a religious, ethnic, or political nature. Quite often, the truth is that it contains all three visions, together with other elements, be they regional, linguistic, colonial, economic, or ethnic. In other words, the definition of the conflict per se is already an issue of debate and not necessarily neutral. The most important thing is to design your process according to the issues you are dealing with. It might be the case that the process calls for different forms of trying to solve the conflict or stop the violence.

Secondly, a peace agreement also calls for a series of heterogeneous elements that have to be dealt with. About fifteen years ago, a mediator could be called upon to negotiate a ceasefire and there was hope that, if the violence could be stopped, the institutional/constitutional coalition mechanisms could be put in place and society could be brought out of its conflict. Today, such a strategy is simply a no go! Conflicting parties today want to have a total vision of what their future looks like, before they are willing to drop their arms. Not only will the fighting forces be looking for a military agreement, with some Disarmament, Demobilization and Reintegration of ex-combatants (DDR), but also they will want to see how the political sharing out is done and how the wealth sharing folds out. In fact, one could say that the parties are looking at what future they can build together, with each side having control over their share, so that their survival is guaranteed. And, even though it is sad to say, trust is far from present and will still have to be built in later, hopefully.

A third aspect in my opinion is the least well understood. No peace agreement is a perfect document. No peace agreement has all the solutions to all the problems. Quite often, the document itself is rather confusing, with institutional elements, constitutional elements, wealth-sharing aspects, and probably some basic rights and obligations, without forgetting the separation of powers between the three layers of government and some basic principals on security. But in no case is it complete, detailed on every aspect and always to the point. The idea underlined here is to say that a peace agreement is an initial understanding between conflicting parties of how and what has to be done to be able to START living together. And due to the lack of trust and the fact that parties are testing each other out, quite often you have primordial elements that are either deferred until later or not necessarily mentioned where an outsider would expect them to be. Why? Well, for one thing because it is an agreement between conflicting parties or recent enemies, and they too have an interest in trying to sweep

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[22] Robertson, Geoffrey (1999) and Coady, C.A.J. (2002)

certain issues concerning their past under the carpet. It is therefore for a mediator to keep them from doing so while trying to find ways of convincing the parties to deal with issues they dislike. And I can assure you, Human Rights are quite often considered to be a taboo subject. Why? Maybe because Human Rights are not seen as exactly being of the same nature according to whom you talk to, according to who you are, and according to what phase you are going through within your process. Maybe also because you have a room full of guilty people.

3. Phases of a Peace Agreement Negotiation

So as to understand how to deal with Humanitarian Law and Human Rights in peace agreements, it is really necessary to grasp, at least broadly, how a process works. You cannot simply ask people to come to the venue, sit down and talk. This will never work. It never has, and even if there is a belief that it can work with military men (soldiers) known to obey for example, it is just another myth that circulates. Military officers are probably more disciplined than political actors, or members of civil society, but this does not necessarily mean that they are easier to talk to or that they can be easily convinced to talk to each other. Officers will take orders, but they will not decide or show initiative. On various occasions, I have sat in rooms with military officers who have remained silent for hours and never said a word.

To get your peace agreement or negotiations going, there are a series of phases, which have to be gone through.

The conventional three-phase approach is known as being made up of a first phase called the **pre-negotiations** (**Talks about the Talks**). Pre-negotiations are followed by a second phase known as the **Substantive Negotiations** or **Framework**, and finally a third phase is put into place, known as the **Implementation Phase.**[23] In reality, I must say that these phases are slightly more confusing and might overlap, but so as to illustrate the best I can what I want to explain in relation to Humanitarian Law and Human Rights, I would like to stick to this typology, while adding a supplementary phase, quite often preceding the pre negotiations, called **pre-pre negotiations** or **follow up**. This initial phase is strongly linked to the universe of NSAs.

3.1. Humanitarian Law and Human Rights within the Pre-Pre-Negotiation Phase

Quite often, when dealing with NSAs, you need to make contact with a group well before they even think of coming to the negotiation table. Initially, you will link up with various circles that gravitate around the group, be they members of the Diaspora, intellectuals known to be close to the group, or family members. The aim is to gradually gain confidence and be introduced into the combatant circles. This can take years and is not always successful. But it is necessary, as no group will negotiate properly until the ripe moment has been reached, where adversary parties conclude that the cost of conflict is unbearable and a solution has to be found. When this moment does come about there is a need of being able to reach out and knock on the right door, so that the negotiations can start as early as possible.

Consequently, and because of the potential danger of leaving NSAs or armed groups to feed on their own logic, the specialist starts following groups at a very early stage, so as to understand them, explain what could be expected from them, if they decide to negotiate, while

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[23] Bell, Christine (2000) and International Council on Human Rights Policy (2006)

in parallel insisting on trying to get Humanitarian Law and some principles of Human Rights respected.

Now, this might sound vague, but the truth is that it is a substantial task that can go on for years. With success, at best, if you can get a peace process going, but also of relative success if you can negotiate some principles that the NSAs will apply. Though one is never sure of what to expect when it comes to discussing principles of Humanitarian Law in the midst of a conflict with desperate combatants. In some cases, not to say most, parties will try to bargain the implementation of a humanitarian principle if they can. If they violate an agreed principle, they are conscious that there could be sanctions or imprisonment and so they will try to hide their crimes. And if ever there is a slight possibility of wanting to negotiate the end of a conflict, the NSAs—as well as the government—will be haunted by the idea that they could be indicted for crimes committed. So one has to be careful. To start with, when looking for the moment and the best people to talk to about Humanitarian Principles, discussing what kind of crimes should stop, while making sure that there is some form of implementation, or obtaining guarantees that the principles agreed upon will be respected.

While some armed groups might look for retribution, it is important not to go down that path, but to work on the need to gain the respect and understanding of the international community, if they decide to "behave" and at the same time start to think about looking for a solution to their conflict which cannot necessarily be done by fighting.

The second advantage in dealing with Humanitarian Law during the conflict is that you hope to get a better situation on the ground, but at the same time you are starting to get the NSAs to work differently. Instead of a confrontational logic, you are bringing them into an argumentative logic, which is vital for negotiations. All NSAs, and I have never known any exception yet, are convinced, at least at an initial stage, that they are strongly disadvantaged when having to step into negotiations. Therefore, there is a need to put them at some ease, before trying to level the negotiation ground, by getting them used to discussing issues instead of fighting them. And Humanitarian Law is the perfect tool. As it affects them directly, has a series of concrete responses on the ground, and deals with their daily life. This is why I must insist that we always start with Humanitarian Law principles (no rape, respect of civilians, humanitarian corridors, respect of prisoners, no summary executions and a total refusal of torture).

But let me please be honest with you. These principles take a long time to discuss and are rarely accepted by all. The excuse is that the adversary does not behave much better, or that they will see this change in attitude as a weakness on behalf of the combatants, who will not be feared. There are also those who argue that such principles and their concepts come from a Western World and could be read differently in each culture. This argument has been tabled in the past by the Janjaweed in the Darfur.[24]

Others simply have to, or need to, use fear to justify their cause or to survive over the years. Because here we are confronted with another problem: the life expectancy of NSAs.

NSAs have doubled their life expectancy within the last twenty years. An average rebel force in Africa could either achieve its objectives, or decide to negotiate, within a life span of roughly six years. This was in the sixties and seventies. Today, most NSAs on the African continent have either existed or fought for over 12 to 16 years. They have spread geographically and their combatants have become more diverse. This means that common denominators become rare and that groups are more and more heterogeneous, fighting in the

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[24] Prunier, Gérard (2005)

long run just for their survival. This introduces a new dimension strongly linked to war economy.

In some cases, NSAs might desperately need a way out, but may not be sure they can go back to "normal life", whether they will be accepted or whether they will have to answer for past crimes. The fact that the struggle lasts longer also means that the chain of command, with known commanders or leaders, tends to disappear either in combat or within internal struggles. Therefore, according to whom you have been dealing with, you might have to renew completely your contacts, rework up the ladder just to obtain a minimal consent on one issue or the other. And this means having to gain the movement's confidence again while quite often renegotiating principles that you hope help make ordinary people's daily lives just slightly easier or at least safer.

It is within this pre-pre–negotiation phase that Humanitarian Law takes up all its importance. It is as much an issue of how you bring it up, as well as how you deal with the concepts. Concepts will be taken out of a global framework and discussed according to the specificities of the conflict and the kind of violations perpetrated.[25] Discussions will be strongly influenced by the confidence you have acquired with the NSAs and their belief that there is something to gain by starting to respect those principles.

Of course, mediation techniques do not always help either when trying to start a process or trying to convince conflicting parties to negotiate, as the world of mediation has become so complex and specialized. Mediators are called in to fulfil certain tasks, while others only fulfil a precise mission, within one phase or the other, and then must drop out as they will not be seen as neutral by the adversary of the NSAs you have probably been following for years. If you work with NSAs or a group for years, once the pre-negotiations are done, you step out. You will never take part in the substantive negotiations, as you usually lack the trust of the adversaries of the NSAs or group you were following.

3.2. Human Rights within the Pre-Negotiation Phase

Broadly speaking, in the pre-negotiation phase the facilitator or mediator is going to try and limit the discussions to very practical aspects. Where to meet? What to discuss? How to discuss the content? What is the aim of the negotiations? And finally, one big chunk, which is who will sit at the negotiation table? Of course, the idea is to try to create an inclusive enough process. Inclusive not only refers to levels of participation (all parties), but to the level of content, too.

Within this phase, the parties will automatically come up with what we could call prerequisites. These are specific demands being put forward that condition the possibility that parties might accept or not accept to negotiate. Within a mediator's world, prerequisites are an eternal discussion. I have colleagues who refuse to discuss prerequisites, which they often label as preconditions. Others, like me, could not care less, as long as they are not discussed in this initial phase. So that you do not start discussing them within the pre-negotiations, you will have to convince the parties to get them included in the future agenda of the talks. You also have to insist on the fact that only a party can convince an adversary of the need of making concessions on one aspect or another, and the best way to do this is by discussing them with your enemy.

Now, amongst prerequisites (in general), there are constantly elements that have to do with Human Rights. In some cases, parties will want guarantees that they will obtain a blanket

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[25] Sigg, Alain (2003)

amnesty for coming to the table. Other parties may want guarantees of better conditions for, or the liberation of, some of their imprisoned colleagues. A third group may want to make sure that the past (years of conflict) is forgotten or not looked into. While another party might try to limit the role that NGOs or civil society play within a process. Sometimes, one party will demand that the other parties' Human Rights violations be denounced publicly so as to obtain a form of victory that will allow it to justify why it is coming to the table. There is also hope that this will strengthen their bargaining position. And so on.

There are probably as many examples as there are negotiations. But what is important, in my opinion, is that parties recognize at this initial stage that they have violated Human Rights, and often try to use the process in a negative way, so as to get them(selves) off the hook. I usually call this stage "Appeals for ditching Human Rights". And, "yes", in this case, Human Rights can be an obstacle. But it is an obstacle that has to be dealt with, without engaging any promises about the future. Quite often, the only concession that is made is that it will be discussed near the end of the negotiations, and this explains why, quite often, it is either found to be amongst the last items of the agenda or is segmented into various parts throughout the negotiations.

Nevertheless, little does it matter how you qualify these initial burdens, they always demand a lot of attention, especially since you are probably getting to know your parties under a new aspect: that of negotiating partners.

The main danger though is that you might be tempted to use some creative ambiguity to get over the hurdle, but the Human Rights issues will still have to be dealt with. The question one is faced with is: is it the right moment to deal with these issues? I would probably say "no", and again, as said before, I could easily refer to two particular cases in which Human Rights were too heavily insisted upon, for no valid reason at this initial phase, when there was not the slightest confidence between parties but probably even less in the mediators, and in both cases the NSAs just walked out!

However, please let me be clear! I am not saying that you have to evacuate Human Rights within the pre-negotiations; I am just saying that they can be—in certain cases—more of a problem than a solution. For example, if combatants feel that you are pushing heavily on Human Rights, they might walk out, or never start the negotiations. Or worse, they will horse-trade and try to create a process and fight for a process that might exclude those who have every interest in defending Human Rights (civil society for example), or those wanting to deal with the past: the victims, often represented through various organizations. You have to be careful not to jeopardize your process just for an initial victory in which you could tie your hands and find yourself strongly handicapped in a near future, in the substantive phase.

3.3 Human Rights within the Substantive Phase

When dealing with Human Rights at the substantive phase, you are probably more conditioned then ever by your negotiations and by what you hope to obtain. Very often at this stage, initially, you start working on your Human Rights issues, without necessarily even labeling them as such. You can call them reconciliation mechanisms, coalition techniques, or standard democratic procedures. You have to get the parties to understand their importance, while hoping that the more they are discussed, the better they are accepted and the less they will be perceived as a threat.

Within this substantive phase and when discussing you future institutional and constitutional issues, there is a possibility of bringing on board key issues to be dealt with within Human Rights. That is: the Bill of Rights; Human Rights Commissions, reform of

policing; reform of the judiciary, return of refugees and IDPs; land issues; prisoners' detention conditions; prisoners' release; together with measures to build some form of reconciliation while trying to help the victims of the conflict.

Maybe the issue though is not so much how important Human Rights are in peace agreements, but more a debate about how they are introduced. How are they taken care of? And finally, how does one go about getting them approved by the negotiating parties? And the one answer I can give as a receipt is the following: by mixing Human Rights within the total content of your process, without necessarily addressing them as human rights, with a capital "H" and "R". When you discuss one topic or the other, you gradually introduce different human rights ingredients without necessarily drawing the parties' attention to the fact that they are Human Rights (issues) you are talking about. In other words, you make sure that human rights are not seen as an individual discipline, but part of a larger picture. As it is important to show how Human Rights integrate into other topics, and are not a separate issue altogether. This is just another way of illustrating indirectly how peace agreements, today, need to cover all aspects of society, including Human Rights.

3.4 Human Rights within the Implementation Phase

Within the implementation phase, Human Rights take up a special place. Why? They have to be introduced and applied; it is not enough just to have them stated in your peace agreement. But above all, they must be taught, shared though all sectors of society and guaranteed. In no way can Human Rights only be in the interest of the government. No! They must play an important role within civil society and be one of the entry points for the involvement of civil society in any form of implementation. I must admit though that the topic of civil society is probably another chapter in itself.

The truth is that no peace agreement is complete, viable or "applicable" without dealing with Human Rights. They are an integral part of the agreement itself. Now, the issue, in my opinion, is more a question of how, when, and where do you deal with Human Rights? There might even be a fourth question, which is, with whom do you deal with Human Rights? But in some ways I think this last question in itself carries an obvious answer: Human Rights concern everybody.

I sincerely doubt whether there is a mediator working in the field today who could afford to ignore Human Rights or even think that his process will be easier to deal with just by guaranteeing a blanket amnesty and trying to sweep any Human Rights issue under the carpet. Let us be realistic, one would not get very far without dealing with Human Rights for the simple reason that such a line could not be easily sold within the international community and that civil society just wouldn't accept it. There is always a risk that a peace agreement without Human Rights will not have been witnessed by the diplomatic representatives or, even worse, that the financing of the implementation of the peace agreement would become incommodious. Not to mention the disappointment amongst victims or their families.

4. The Unclassifiable World of Peace Negotiations

The relationship between Humanitarian Laws and Human Rights and peace negotiations is dynamic, complex, and is constantly shaping and reshaping the course of both peace and war. Yet, despite its importance, our understanding of this relationship has for too long been fragmentary, chiefly because three different schools of thought—Humanitarian Law, Human Rights and conflict resolution—offer three different and often contradictory perspectives.

Contradictory perspectives, but this does not necessarily mean that no form of collaboration or understanding can be obtained. No! What has probably happened is that, over the years, ways of working and looking at issues have drastically changed and will still change, while specialists in their respective areas have not managed to communicate. Therefore, there is in some cases, though not all, a conviction that mediators might be an obstacle to justice, while just trying to achieve peace, while on the other hand, mediators believe they have a more pragmatic approach to Humanitarian Law and Human Rights, when it comes to dealing with conflicting parties. This has often been put forward in a long, ongoing debate entitled: "peace with justice or peace without justice".[26]

Peace cannot be acquired without justice. There is no space for debate on this issue. Nevertheless, the degree of justice and the speed at which it can be acquired is an element for debate. As I have already mentioned earlier on, peace agreements are weak, incomplete, contradictory documents. They represent the areas of agreement amongst the parties that negotiated them. The international community has very little leverage, and knows that the harder they push for an issue, the less likely it will be implemented. Nevertheless, there is an agreement (tactical) that certain principles cannot just be violated and ignored. If a peace agreement was signed today and contained clauses which violated Humanitarian Principles, most countries would refuse to witness the agreement per se and it would have to be renegotiated at a latter stage. As such a proposal just wouldn't stick, civil society would be furious and victims or victims' families would be looking for revenge. Nevertheless, one issue that does come up for discussion in a society coming out of a deep embedded conflict is: does it have the tools, will, judicial structures and investigation resources to carry out a full investigation on what happened? Or is there a need to create a moratorium under which justice is consolidated and from there action is taken? This is, without doubt, the unsolvable question Somalia will soon have to deal with, if their Reconciliation Conference can get on track…

As for working with NSAs in the shadow (within the pre-pre-negotiation phase) and, at the same time, trying to respect Humanitarian Law and Human Rights is a vital prerequisite. It will never be satisfactory to state that it helps diminish the misery of those suffering from the conflict, but it is one step in the right direction and of great help when having to address Human Rights and Human Rights violations within a peace process later on. Violations that have to be either addressed within the process or at least a mechanism to deal with these violations have to be agreed upon within a peace agreement and implemented. An implementation that, admittedly, quite often lacks the required muscle…, but this is another debate altogether.

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[26] Allen, Tim (2006)

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2. Engaging Armed Groups in Development Cooperation

By Jörn Grävingholt[27]

Abstract

This paper advances a two-fold argument. First, it argues that for the debate on engaging armed groups it may be useful to go beyond the "usual suspects" among international humanitarian agencies and address classical development agencies, too. While they have as yet been far less prominent in dealing with NSAs, they have in recent years become more and more exposed to situations involving NSAs. Getting development agencies to debating their engagement with NSAs more openly may add a useful component towards understanding the scope and limits of engaging armed groups.

Secondly, development agencies should actively address the as yet often underestimated challenge associated with the existence of NSAs in the context of their activities. They need to pay systematic attention to NSAs possible impact on aid programmes and base their choices of how to deal with armed groups on encompassing analyses of opportunities and risks. As a conclusion, the paper offers tentative recommendations of what development agencies should attempt and what they should avoid to do when faced with NSAs.

Engaging Armed Groups in Development Cooperation

NSAGs (NSAs), defined as "*groups which, through their actions, challenge the state's monopoly of force*" are not a new phenomenon in conflicts throughout the world.[28] Civil wars and other intrastate violent conflicts, which by their nature are characterized by the participation of NSAs on at least one side, have dominated warfare since the end of the Second World War, so much so that war between States has increasingly become the exception among incidents of major collective violence.[29]

Nonetheless, it is only since the early 1990s that the international debate has increasingly turned to NSAs in their various forms. The end of the East-West conflict was a precondition for an international consensus to begin to emerge on the normative yardsticks of security and development. With the popularisation of the concept of "human security", which has advanced to become a new guiding concept of international efforts to ensure peace and prevent violence,[30] attention has increasingly focused on those whose actions are primarily responsible for guaranteeing—or endangering—human security. Any involvement of external actors in violent intrastate conflicts, whether with humanitarian intentions, for peace-making purposes or in pursuit of development goals, is thus exposed to the need to see State *and* non-State actors as part of the conflict and to decide what attitude to adopt towards them.

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[27] This article is based on research conducted at the German Development Institute (DIE) between 2004 and 2006. The project was substantially supported through a research grant from the German Federal Ministry for Economic Cooperation and Development (BMZ) that is gratefully acknowledged. For a comprehensive account of the project's results see Grävingholt, Jörn, Claudia Hofmann, and Stephan Klingebiel (2007). Obviously, the article draws heavily on the collaborative work of all three aforementioned authors. Likewise, it owes much debt to interviewees from numerous organizations who shared their thoughts and insights—while usually not wishing to be cited.

[28] Grävingholt, Jörn (2007), p. 23.

[29] Human Security Centre, The University of British Columbia (2005), p. 23.

[30] For a discussion of the conceptual value of "human security" see Kaldor, Mary, Mary Martin, and Sabine Selchow (2007).

The growth of interest in NSAs is related to the proposition that the form of war has changed in the recent past—a notion that has become popular under the heading of "new wars".[31] According to this proposition, the dominant paradigm of war changed fundamentally with the end of the East-West conflict. The now predominant type of war, it is argued, differs not only from the classical wars between States but also from classical civil wars. Typical now is the privatisation of the armed groups, the economisation of the motives for using force, the brutalisation of strategies of violence, and the criminalisation of economies of violence. The change in the form that war takes is accompanied by the rise of new kinds of armed groups.

The debate that has ensued on the role of and engagement with NSAs is becoming increasingly relevant to development policy. The human security agenda assigns to development assistance a key role in the prevention and management of violent conflicts. Relevant areas where development agencies become more and more involved in, range from combating poverty as a root cause of conflict to directly strengthening civil components of conflict prevention, peace-building and post-conflict reconstruction.[32]

In addition, even where aid agencies are not directly addressing causes or consequences of violent conflicts, they will often find it hard to avoid their fallout. For example, a 2006 early warning analysis of Germany's partner countries in development cooperation revealed that no fewer than 49 of the 91 countries examined were identified as affected or threatened by violent conflicts. Non-State armed groups existed in almost all of them.

At the same time, a discussion on standards and procedures to be employed by development agencies that are faced with NSAs is almost entirely absent. For international *humanitarian* agencies, dealing with NSAs has long been a matter of routine, regulated by codes of conduct and a clear understanding of one's position as a non-partisan external actor.[33] For international *development* agencies by contrast, no such standards exist to date, and it is not even clear whether they should exist or not.

This paper, thus, advances a two-fold argument. First, I argue that general debates on how to engage NSAs to respect human rights and humanitarian norms should look beyond the "usual suspects" among international humanitarian agencies and a small number of active governments (such as Switzerland or Norway). Rather, it should involve a plurality of classical development agencies, too. Getting development agencies to discuss their experiences made with NSAs more openly may add a useful component towards understanding the scope and limits of engaging armed groups. Secondly, development agencies, or more general, actors in development cooperation, should actively address the as yet often underestimated challenge associated with the existence of NSAs in the context of their activities. They need to pay systematic attention to NSAs' possible impact on aid programmes and base their choices of how to deal with armed groups on encompassing analyses of opportunities and risks.

To develop this argument, the article first recalls why development agencies are affected by NSAs and which concerns arise from that situation. It then goes on to analyse the general circumstances under which development agencies act when engaging with NSAs and

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[31] Kaldor, Mary (1999)

[32] See, e.g. OECD –DAC (2001).

[33] SCHR (1994). Attempts have recently been made to have NSAs subscribe directly to obligations to comply with humanitarian norms. The efforts made by Geneva Call since 2000 to persuade non-State participants in civil wars to comply with a "*Deed of Commitment*" that essentially corresponds to the provisions of the international treaty outlawing anti-personnel mines (the 1999 Ottawa Convention) have been a pioneering initiative in this context.

describes the opportunities as well as challenges inherent in such a kind of engagement. Thirdly, some findings drawn from empirical research on the case of German development cooperation and supplemented by information from other donors are briefly presented. As a conclusion, I offer tentative recommendations of what development agencies should attempt and what they should avoid to do when facing the choice whether or not to engage with NSAs.

Why and How Are Development Agencies Affected?

Until well into the 1990s, development policy typically sought to avoid situations in which NSAs posed a challenge. Often, the emergence of violent conflict in a developing country prompted foreign development agencies to freeze their engagement and leave the country or move to non-affected territories wherever possible. In cases where NSAs were in evidence and where engagement was maintained (or resumed after a ceasefire or peace agreement), action under official development policy was clearly geared to government actors, leaving NSAs aside. In any case, the standard approach taken by official development agencies until the 1990s was characterised by a clear State bias.

This standard behaviour in development policy, today often referred to as "working *around* conflict", has changed since the mid-1990s.[34] Several factors combined to bring about that change. First, an international consensus emerged by the end of the twentieth century urging development agencies to concentrate their efforts on the primary goal of tangible poverty reduction. Simultaneously, an increasing body of scholarly literature pointed out that, roughly speaking, poorer countries are far more likely to be affected by violent conflict than better-off ones and that conflict-affected societies are typically much poorer than those living in peace. Addressing poverty, therefore, called for increased attention for and engagement with countries in conflict; in other words "working *in* conflict" was called for rather than circumventing it.

A second and related factor that helped bring about change in development agencies' attitudes towards conflict was the growing understanding that socially and economically sustainable development can only succeed when civil war or other forms of massive violent conflict have been stopped. Aid, the reasoning went, should try to contribute towards reducing potential sources of conflict and help terminate conflicts. According to this logic, many aid agencies began to even work "*on*" conflict, i.e. to directly address causes and consequences of violence.

Thirdly and finally, the 1990s and early 2000s, under the influence of such events as the 1994 genocide in Rwanda, saw an increasing affection among the international community to the concept of *human security* as a guiding paradigm to link basic security concerns with development objectives.[35] From this perspective, development was seen as instrumental for reducing conflict and thus as contributing to a better provision of human security. Consequently, development had to be brought to countries in conflict. Working "*in*" and "*on*" conflict became inevitable for development agencies.

Anecdotal evidence and assessments given by representatives of aid agencies suggest that the sheer number of situations where NSAs have become a relevant factor for development

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[34] For a discussion of the terminology of working *around*, *in,* or *on* conflict, see OECD-DAC (2001), p. 22, note 2.

[35] Instrumental in popularizing the concept of human security was the 1994 Human Development Report. That issue of the UN Development Programme's annual flagship publication was explicitly devoted to the promotion of human security.

agencies has increased tangibly within the recent past. Perhaps understandably, official data on the prevalence of "NSA issues" in development cooperation are not publicly available. Less inevitably, though, they do not even seem to exist as internal information. Aid agencies do not seem to have made systematic monitoring of NSA incidents a part of their internal reporting routines.

Examples of development agencies coming into contact with NSAs are manifold. They occur, e.g. in the context of demobilisation measures, crisis prevention activities, or efforts to promote peaceful means of conflict management through development. The scenarios range from those in which warlords are active in the context of *Provincial Reconstruction Teams* through widespread violent crime in, say, Colombia to situations in many countries (Nigeria, Afghanistan, etc.) where traditional or new authorities have the potential to threaten the use of force or experience of doing so. "Engagement" with NSAs takes many forms. Negotiations with kidnappers, arrangements with NSAs on transport routes for aid deliveries, political appeals to NSAs not to recruit child soldiers or to use land mines constitute engagement just as much as deliberate cooperation with them.

Despite the rising number of situations in which those engaged in official development activities come into contact with NSAs, virtually no systematic or even incidental thought was given to their conduct until the early 2000s. This fact constitutes a marked difference to the conduct of many humanitarian agencies, not least those of non-governmental origin, such as the organizations of the Red Cross movement. Examples of aid organizations gaining negotiated access to target groups at risk show that direct contact with NSAs has often been unavoidable for humanitarian aid groups and indeed has frequently been sought by them.

For foreign development agencies, one can roughly discern four ideal-type motives why to engage with NSAs.

Box 1:	Four ideal-type motives for development agencies to engage with NSAs
	❑ Access to target groups
	❑ Responsibility for personnel
	❑ Commitment to norms
	❑ Conflict transformation
Source: Grävingholt, Jörn, Claudia Hofmann, and Stephan Klingebiel (2007), p.76	

Access to target groups: Violent conflicts can render the task of bringing assistance or providing services to certain parts of a population difficult if not impossible. In conflict environments where parts of a country's territory are partly or completely controlled by NSAs, foreign agencies may face the choice of either reaching some form of agreement (tacit or explicit) with the controlling group or ceasing (or not even beginning) activities.[36] Accordingly, engagement with NSAs can be unavoidable if there are strong reasons not to disengage.

Responsibility for personnel: Similarly, and closely related to the first motive, local and/or external development cooperation personnel may be exposed to considerable danger by

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[36] To be sure, in certain situations official or unofficial government forces may be no lesser a problem for foreign agencies' access to a population in need than any typical NSA. The distinction relevant here is not a moral one but has rather to do with legal challenges emanating from communication with an illegal formation.

working in a region where NSAs are active. Some of the risks can be significantly reduced if agreements are reached with the NSA or arrangements made with groupings or individuals able to play a mediating role.

Commitment to norms: Engagement may also be of interest from the development angle as a means of helping to persuade an NSA to commit itself to rules and norms such as human rights law and standards derived from international humanitarian law. Examples here are attempts to have NSAs commit themselves to mechanisms intended to prevent the use of landmines (as promoted by Geneva Call) or the deployment of child soldiers.

Conflict transformation: While access to target groups and responsibility for personnel may often be reasons for beginning to interact with NSAs, a further objective of engagement may be to contribute to conflict transformation. This motive may evolve during engagement and is far more ambitious. The conflict transformation motive changes the foundations of relations with the NSA and with the official government, since it places the emphasis on explicit political matters beyond immediate humanitarian aspects and security concerns.

The four motives are not mutually exclusive, but can be pursued simultaneously or even as complements to one another. This feature, moreover, is unique to development policy because even though each of the four motives can apply to actors in other areas of policy than development, they do not all apply at the same time. Humanitarian agencies, for example, share most of the concerns relevant for development policy but will usually attempt not to become involved in conflict transformation activities at the same time in order to insulate their humanitarian engagement against potentially negative dynamics of a complicated peace process. Actors in foreign policy, by contrast, do usually not have issues with access to target groups as their activities are mainly directed at the classical level of track-one (or less often track-two) diplomacy.

The interconnectedness of the different motives, however, is not necessarily an asset, because certain modes of behaviour in one context may turn out to have negative implications for the other contexts. Safety regulations geared to complete isolation against NSAs, for example, may have an adverse effect on a mediator's credibility in a peace process, just as certain strategies designed to ensure access to target groups may have consequences for the safety of personnel.

Circumstances of Engagement: Challenges and Opportunities

It makes a difference of some considerable consequence whether a State or a non-State development actor engages with an NSA. International NGOs quite obviously have a lot more scope for developing forms of engagement with NSAs. For official development actors on the other hand, the limits are sometimes more clearly recognizable. Nonetheless, they too have some room for manoeuvre. "Closer" engagement is likely to be problematical mainly when a conflict situation has become particularly complicated, communication with the NSA is explicitly unwanted, the approach does not have the firm backing of an international consensus, and the NSAs have been guilty of particularly serious violations of human rights or international humanitarian law.

Many development agencies active in conflict environments are either owned by donor governments (bilateral agencies) and/or implement programmes funded by bilateral donors (as in the case of multilateral agencies). In both cases programmes are usually agreed with the host government. Two related consequences result from this setting: First, an official development agency's engagement with an NSA is normally subject to the respective donor government's general foreign policy guidelines that usually reach beyond pure developmental

and/or humanitarian concerns; and secondly, policies are bound by the principle of State sovereignty in international relations and the primacy of the State monopoly of power as guiding tenets of international action.

The limits to this principle have, however, long been debated. The recognition by the United Nations in 2005 of an international "responsibility to protect" parts of a population who do not enjoy (adequate) government protection in their own country has, by implication, also given foreign policy fresh scope for legally acceptable engagement with NSAs. In the final document of the "Millennium + 5" summit marking the United Nations' 60th anniversary in September 2005, the international community explicitly established for the first time the possibility under certain conditions (e.g. a Security Council resolution) of intervening with all—including military—means where a country is unable or unwilling effectively to protect its people against genocide, ethnic cleansing, war crimes, or crimes against humanity.[37] As this wording implicitly includes the protection of population groups *against* that State, there *may* come a time when the international community allies itself *de facto* with an NSA against a ruling State power.

The implicit conclusion to be drawn from this limitation of the hitherto incontrovertible principle of State sovereignty is that the opportunities for interacting with NSAs cannot be properly assessed unless the overall political context, and especially the actions of the government concerned, is measured against the same yardsticks with which NSAs are expected to comply. If a government systematically violates human rights and by doing so helps itself to exacerbate conflicts, closer forms of engagement of external actors with an NSA involved in this conflict seem more legitimate than when the government's conduct is generally acceptable in this respect. Much the same situation arises where an NSA performs quasi-State functions in a territory left to its own devices indefinitely by the central government concerned because of a lack of interest or capacity, or for other reasons which are not primarily to do with the NSA's existence.

Such a perspective of putting humanitarian concerns first conforms with the concept of "human security" as a guiding line for international engagement and thus enjoys particular support in the field of development policies whereas other fields such as foreign and security policy have hitherto largely remained reluctant to embrace "human security" as the main leitmotif of foreign policy making. Consequently, although engagement with NSAs is fraught with difficulties for any external actors in a country, the forms those difficulties take differ between policy areas.

One asset of development policy is the possibility to use not only the instruments of (bi- and multilateral) governmental cooperation but also the option of supporting non-governmental cooperation. NGOs involved in development cooperation are less subject to the rationalities of general foreign policy and thus of international relations than government development cooperation and, as a result, are often able to exploit their greater independence to engage more flexibly with NSAs. Although they too are bound by the domestic laws of the partner country concerned, which may penalize contact with NSAs, they are freer to pursue their respective political preferences than external governmental actors, and in some cases their actions are governed by a generally recognized supranational ethos (as is true of the churches, for example), or a longstanding reputation as committed to an agenda that is generally acceptable to the host government (as is the case in some countries with German

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[37] UNGA (2005), Articles 138–139.

political foundations), which gives them some room for manoeuvre.[38] Development policy can use this variety of actors to adopt a coordinated, multidimensional approach.

Another important feature of development policy is the fact that it has to do with a wider range of target groups and implementation partners than other externally oriented policy areas. As a general rule, not only non-governmental development organizations but also official bi- and multilateral development agencies pursue, despite their State orientation in the agreement of measures, agendas that extend beyond the respective partner country's governmental institutions into its society. From this it follows that for development cooperation in many countries, the question of engaging with NSAs does not only have a tactical dimension (Is my conduct beneficial to my development objective? Is it harmful to my relations with the partner government?), but also direct consequences for the development policy strategy (Is it permissible to implement projects in an area controlled by NSAs? On the other hand, if a planned programme is to be relevant, can it be implemented *without* contact with NSAs? What distributional effects will my intervention have on various population groups, some associated with the government, others with NSAs?).

From what has been said so far it has become clear that engagement with NSAs holds both opportunities and considerable challenges that might turn into problems if not properly addressed. On the opportunity side, three main features deserve mention:

Box 2:	**Engaging NSAs: Opportunities**
	❑ Achieving legitimate immediate goals
	❑ Building up a track record for conflict mediation
	❑ Acquiring knowledge, reducing "blind spots"

Achieving legitimate immediate goals: Ideally, successful engagement with an NSA may help development agencies to achieve one or more of three immediate (among the overall four) goals mentioned in Box 1 as motives for engagement: It may help to gain access to target groups in need of assistance; it may contribute towards better security for local and foreign staff; and it may lead to an NSA's commitment to observing basic humanitarian standards while engaged in violent conflict with government forces.

Building up a track record for conflict mediation: Secondly, a deliberate interaction with an NSA is a precondition for any development agency that intends to play a meaningful role in mediating between the conflicting parties. Apart from building up experience in dealing with the conflict situation, engagement can contribute greatly towards an outside actor's credibility among non-government forces and his track record as an impartial, unbiased third party.

Acquiring knowledge, reducing "blind spots": Thirdly, closely monitored interaction with NSAs is arguably the best way for a foreign development agency to acquire badly needed background information on not only the relevant NSA itself but also the underlying conflict dynamics, the motives and rationale of the individuals involved, and the likelihood of different scenarios to materialise.

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[38] However, in the case of foreign (and, to some extent, domestic) civil society organizations, this "room for manoeuvre" is usually associated with a less secure legal status than that enjoyed by governmental development cooperation organizations.

These opportunities, however, need to be weighed up against numerous challenges that have to be taken into account. The challenges can be roughly grouped in four types:

Box 3:	Engaging NSAs: Challenges
❑ Legal challenges	
❑ Moral challenges	
❑ Political challenges	
❑ Analytical challenge	

Legal challenges: A serious legal challenge arises from the fact that engaging with NSAs is often illegal by local standards, as incumbent governments will usually attempt to put pressure on their adversaries by outlawing them. The international community's increased engagement in the "war on terrorism" has generally turned interaction with NSAs into a politically highly sensitive issue, since NSAs are often seen and described internationally by the governments they oppose as terrorists. A practice that has particularly serious consequences for engagement with NSAs is the compilation by many States and international bodies of official lists of organizations and individuals they regard as terrorists. Similarly, arrest warrants issued by international tribunals against representatives of NSAs may have a strong impact on a foreign development organization's room for manoeuvre in dealing with such groups. In the final consequence, both the organization as such and individuals working for it face the risk of legal prosecution which may force an organization to leave a country altogether.

Moral challenges: From a moral point of view, it may appear highly undesirable for a foreign agency to get into contact with an NSA that is notorious for its poor human rights record—examples being excessive violence against civilians, torture, the use of child soldiers, and many other atrocities. On the other hand, in many cases governments, too, are notorious for horrible human rights abuses. In such situations refusing to engage with NSA on the grounds of their behaviour while turning a blind eye towards government actions would mean to send wrong signals to the conflicting parties and appear cynical towards the human costs of conflict for the sake of diplomatic acquiescence. Striking the right balance between a clear message of disapproval and continued impartiality is the difficult task to manage.

Political challenges: Politically, engaging with an NSA often comes at a price that exceeds the immediate risks inherent in any engagement with armed groups. In particular, this refers to a foreign agencies' relationship with the official government of a country in conflict. For a foreign government, sponsoring a development agency's engagement with an NSA without the explicit consent of the government concerned holds the risk of a significant deterioration of bilateral relations with that government. If nothing else, the consequence of such a deterioration of relations will often be a reduced influence on the government concerned with detrimental consequences for the foreign government's capacity to contribute towards conflict transformation through official diplomacy. In fact, this is one common argument brought forward by advocates of traditional diplomacy against interaction with NSAs, and it certainly raises a valid point. Given the moral dilemma discussed above, however, and the possibility that a government involved in a violent conflict may not be particularly willing to compromise anyway, the political risk can only be but one factor on the balance sheet of arguments for and against engagement.

The other important political challenge for foreign donors is to avoid conveying legitimacy upon an NSA in a way that strengthens the latter's moral or political position to such an extent that this could contribute to a prolongation of conflict. Similarly, contributing other, material, resources (such as humanitarian assistance, development projects, etc.) may also eventually turn out to fuel, rather than end, an ongoing conflict. Foreign governments will therefore usually have to consider the general political implications of their behaviour both in the context of a given conflict and also beyond the immediate case at hand. Foreign NGOs, by contrast, need to be careful not to be exploited by NSAs for pure political or material gains.

Analytical challenge: Lastly, but perhaps most importantly, engaging armed groups poses also a veritable analytical challenge. To address all of the challenges mentioned earlier and behave with the necessary degree of care, foreign agencies need, beside other things, excellent knowledge of the NSA concerned in any given case. Otherwise, there is a high risk of engaging based on false assumptions, which may lead to adverse effects. Understanding NSAs and the context they are engaged in is also important because without proper knowledge of the complexity of a conflict it is difficult to assess cross-effects and unintended consequences that might result from engagement at one level of activity (e.g. staff security) for other possible levels (i.e. access, humanitarian concerns, or peace process). While policies or activities may be (and usually must be) selective, prior analysis must be complex if unintended harm is to be avoided. Reliable information, however, is often hard to come by. Rather, opacity is a natural feature of most NSAs. Also, the type of information required extends beyond the usual work of intelligence agencies. It encompasses a wide spectre of sources ranging from academic (historical, ethnographic, political science, etc.) research to the close monitoring of activities in development projects and field missions.

In attempting to use the opportunities and avoid the risks inherent in the challenges mentioned above, development agencies cannot yet rely on any set of clear principles or internationally agreed guidelines for engaging NSAs. However, important documents do exist that lay down general principles devised for coping in conflict situations. As a bottom line these documents, such as the 2001 OECD/DAC Guidelines on "Helping Prevent Violent Conflict", implicitly suggest modes of behaviour towards NSAs that differ from a pure strategy of exclusion and instead favour approaches of deliberate, if highly careful, engagement.[39] Development agencies should usually endeavour

- to *avoid bias* in the support provided (normally for the government side) so as not unwittingly to help exacerbate the conflict;
- to work towards the *inclusion of NSAs' constituencies* in the population rather than their exclusion;
- to *stay engaged* even in difficult circumstances, if the security situation permits;[40]
- to *seek dialogue* with NSA representatives when it comes to gauging opportunities and routes, but also obstacles, to a peace process.

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[39] OECD–DAC (2001). For a brief summary of passages in the DAC Guidelines that are relevant for engagement with NSA see Grävingholt, Jörn, Claudia Hofmann, and Stephan Klingebiel (2007), p. 41.
[40] Within the DAC in particular the principle of "staying engaged" wherever possible, even in adverse circumstances, emerged during the *"Learning and Advisory Process on Difficult Partnerships"* (now renamed: "Fragile States Group") as one of the main principles governing behaviour. See OECD-DAC (2005a). OECD–DAC (2005b).

Given the specifics of engagement with NSAs discussed in the previous section, this list of guidelines might be continued by adding four other important requirements that development cooperation practitioners ought to keep in mind when faced with the choice of whether (or usually rather: how) to engage with NSAs:

- Engagement with NSAs should *not be an end in itself* but a means to an important, clearly identifiable end.
- The form of engagement should be *legally defensible* (against the background *inter alia* of constantly evolving international penal law).
- It must also form part of an *overall foreign policy strategy* that commits all foreign policy actors (especially in the areas of diplomacy, security, and development policy) to a coordinated and coherent approach.
- Finally, it should be *ethically defensible* in the sense that the decision whether certain forms of engagement are acceptable is guided by principles that can be generalized.

Engagement in Practice

As mentioned above, engaging NSAs is still a new issue on the agenda of development agencies and donor governments and one, which is not yet being discussed as a principal challenge. Consequently, the strategies employed in practice by various agencies differ widely. Research conducted on the example of German development agencies as well as information provided by other donor governments suggest, however, that one common feature exists: In all partner countries of development cooperation in which NSAs are of any relevance development agencies interact (or used to interact) with these groups. This is as true for German actors in the Casamance/Senegal or Tajikistan, for example, as it is for all other relevant countries, such as the Democratic Republic of Congo (DRC), Somalia, Uganda, Nigeria, Yemen, Israel/Palestine, Afghanistan, Nepal, Sri Lanka, the Philippines, Colombia, and others. Some NSAs are "more accessible" and engagement with them is less problematic, while other situations are more complex and above all politically more sensitive.

Another commonality concerns a "gap" between "theory" at headquarters and the "reality" on the ground in country or project offices. Officially, development agencies, and in particular government-owned ones, would usually deny direct contact with NSA and officials in the headquarters would at least hesitate to openly communicate the true dimension of interaction with NSAs, while many projects employees report about interaction with NSA as a frequent fact of life. However, the level of awareness appears to rise. Country or programme managers in headquarters are increasingly aware of the pervasiveness of NSA interaction in development projects and begin to bring the issue to the attention of their superiors.

Given the variety of contexts but also uncertainties among staff members about standards and guidelines, very different forms of behaviour can be observed among development agencies and donor governments engaged in countries in conflict. Roughly, five modes of behaviour can be discerned:

- *Avoidance of engagement*: Development actors consciously or unconsciously avoid countries, regions, or situations in which NSAs are involved.
- *Disregard / observation / involuntary engagement*: Development actors are present in situations involving NSAs, but take no notice of them or try not to become involved by resorting to "non-behaviour" or to behaviour geared solely to observation.
- *Apolitical action / equidistance*: Development actors endeavour to make development-related and sometimes even conflict-related contributions, but they are deliberately kept apolitical.

- *Exclusion*: Development actors support the exclusion of NSAs.
- *Inclusion / Cooperation*: Development policies involve NSAs directly in different ways. This may consist in direct account being taken of them in measures and dialogue forums or in their acting as cooperation partners.

The room for manoeuvre that development actors enjoy in relation to NSAs is usually determined by the government of the country concerned. This is especially true of countries with a generally efficient and legitimized government. In these cases, a development policy approach explicitly opposed by the government is hardly conceivable or feasible. Where governments are *de facto* weak, the monopoly of power is severely restricted and/or legitimacy is lacking, there is usually more room for manoeuvre.

Moreover, there is a difference that may be of some consequence between government and non-government development actors interacting with NSAs. International NGOs have more scope for developing forms of engagement with NSAs while for governmental development actors the limits are more clearly recognizable. Nonetheless, governments, too, have some room for manoeuvre. "Closer" engagement is likely to be problematical mainly when a conflict situation has become particularly "bogged down", communication with the NSA is explicitly unwanted by the host government, the approach does not have the firm backing of an international consensus, and the NSA have been guilty of particularly serious violations of human rights or humanitarian standards.

Conclusion: Some Tentative Do's and Don'ts for Development Agencies

In any action taken under development policies to prevent crises and manage conflicts (working *on* conflict) it is vital to take adequate account of NSAs. The involvement of NSAs is, however, equally essential where development policy is being implemented in situations in which they are present, but development policy has no direct bearing on armed conflicts or potential violence (working *in* or even *around* conflict). Ignoring NSAs similarly has effects on engagement with them, since it may mean that potential cannot be tapped and their exclusion may influence the balance of power in a situation where, for example, the result is that the government is in fact strengthened or a region in which an NSA is active is not taken into account.

Engagement with NSAs creates opportunities, but it also entails risks, which may vary widely from case to case. This being so, the debate on engagement with NSAs reveals that ignoring NSAs in situations where development and other actors are involved results in failure to seize or at least to consider potentially creative opportunities for bringing influence to bear and possibly in the occurrence of unintended adverse effects. A cost-benefit analysis of engagement in a situation that necessitates engagement with an NSA is, as a general rule, an appropriate means of exposing the possible effects of the approach adopted.

The potential opportunities presented by engagement arise from the motives and aims pursued by development actors in this context (security for personnel, conflict-transformation objectives, etc.). Risks may be inherent in the possible *de facto* enhancement of the international status of NSAs as a result of engagement with external actors. Engagement, and especially cooperation, with an NSA may also mean that this approach is interpreted by the government concerned as taking sides and that possible influence as a "neutral" partner is consequently reduced. If engagement means that resources reach areas to which NSAs have access, the balance of power and resources may be affected and an NSA's ability to use force unwittingly strengthened. In any weighing up of opportunities and risks, however, the costs

and benefits of not becoming involved or of engagement/cooperation biased towards the government must also be considered.

A clear message resulting from research conducted on the example of German development agencies and emphasized in many interviews with representatives of these organizations is the lesson that each case must be taken on its own merits. Conditions for and risks and opportunities associated with the engagement of NSAs by development actors need to be assessed separately for different groups and different contexts. Nonetheless, some general conclusions can be drawn that may provide a useful starting point for a debate on the issue of engaging NSAs in development cooperation. Development actors are called upon:

- *to invest in analysis, evaluation and learning from experience*. Proposing that better policies require better knowledge and that better knowledge management is paramount may sound like a truism. But nevertheless many agencies and governments have yet to make the necessary adjustments and investments at the different levels of the knowledge chain. Acknowledging that dealing with NSAs is an important issue to be discussed and tackled more actively is the necessary first step on this path. Using fora of exchange among agencies within and between donor countries to share experience and extract examples of good practice is another useful step to begin with.
- *to remember that interaction with NSAs must not be an end in itself*. While this article argues for a more pro-active and deliberate engagement with NSAs, development actors should always be aware of the risks involved and seek engagement only when constructive influence seems possible, or in other words when a clearly defined value added by such an engagement can be expected. As a consequence, it is both important to define goals realistically, i.e. modestly, and to constantly monitor processes and effects at all levels.
- *to be able to react quickly to changing circumstances*. As with the overall dynamics of violent conflicts, windows of opportunity for constructive engagement with NSAs may open up for a brief moment only or close for a long time to come.
- *to communicate your own rules and values*. One's own system of rules and values should be clear to all actors involved. One's position on the use of force and the violation of human rights must always be beyond doubt.
- *to consider the issue of legitimacy of both NSAs and governments*. Legitimacy is a factor that must be considered when it comes to deciding whether and, if so, in what form engagement is appropriate. The legitimacy dimension is often complex because it must also be related to government actors.
- *not to go it alone but seek international backing for engagement*. Engagement with an NSA should be based on extensive international agreement on the approach to the group concerned. Development actors should therefore routinely consult with others and seek coordinated international action.

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CHAPTER 3

Timing of Engagement

When to engage NSAs? Should humanitarian engagement take place within a wider political process such as peace negotiations or in isolation? Should it end after the hostilities or continue beyond? The question of timing does not only affect the outcome but also the methods of engagement with NSAs.

In their papers, Monyluak Kuol and Mark Knight pick up on a subject already touched upon in Chapter 2 by Julian Thomas Hottinger and provide reflections drawn from their field experiences. Monyluak Kuol, who works for the Human Rights Section of the UN Mission in Ethiopia and Eritrea, describes efforts undertaken by various actors to engage the different NSAs operating in Sudan (Darfur, southern and eastern Sudan) towards compliance with IHL and human rights. Following a comparative perspective, he examines key circumstances that affected the success of these efforts. Mark Knight, who until recently worked for the International Organization for Migration in Aceh, Indonesia, pinpoints the need for *continuous* engagement of NSAs in post-peace settlement. He argues that NSAs should receive special attention at the end of the conflict, in particular in the context of DDR programmes, in order to be able to transform themselves into entities capable of contributing to the future of their countries.

1. Exploring Criteria and Conditions for Engaging Armed Non-State Actors to Respect Humanitarian Law and Human Rights Law: The Sudan Experience

By Monyluak Alor Kuol

Abstract

Sudan has witnessed a wave of civil wars since independence from the symbolic Anglo-Egyptian condominium but largely British rule in 1956. The strife was sparked off by the politically oriented mutiny of disgruntled government soldiers in southern Sudan a few months before the declaration of independence. The hostility spread across the country over the years leading to the ongoing fighting between the government forces and a string of belligerent groups in the western region of Darfur. The cost in human life and suffering in the Sudanese civil wars was staggering.

The conduct of the parties during the fighting and in relation to the treatment of civilian populations in their areas of control has received little attention. The efforts exerted at local and international levels to address the humanitarian and material needs of the populations trapped in such area were usually greater than any attempts to engage the parties in order for them to account for their human rights violations. The uncertainty of when and whom to engage also shrouded or foiled the protection of human rights in the circumstances.

The paper supports the trend in human rights movement that advocates for the need to engage all parties to the armed conflict in a given country to ensure better human rights protection to the local civilian populations. The particularity of conflicts and the varying capacity of the warring parties in the Sudan form the basis for advancing this paper's argument for engagement and accountability in the field of human rights protection.

Introduction

Successive governments in Sudan have experienced protracted armed resistance from groups based mainly in three different parts of the country. The rebel movements, better known as NSAs, developed and sustained their armed wings in the South (SPLM/SPLA), the West (SLM & JEM) and the East (Eastern Sudan Front) with declared intentions to achieve specific political objectives. The fighting however, has led to mounting loss of civilian life and catastrophic humanitarian and environmental crisis.

The current government, which came to power through a military coup in 1989, and several armed opposition groups have engaged in peace negotiations with varying degrees of success. The government role was also crucial for the international community to establish contact with the rebel groups to allow the flow of humanitarian assistance to needy populations in areas under their control. The principle of engagement was found to be vital for both the relief delivery and collaboration of the parties to strengthen local systems for human rights protection.

Following a comparative approach, this paper traces the efforts undertaken by various actors including the NSA rebel groups to uphold the promotion and protection of human rights in absence of a full political settlement. The impact of the groups' broad base support and government counter-insurgency measures on the human rights situation would be closely examined to draw some relevant lessons on the subject matter. The paper concludes that humanitarian actors that have attained the threshold as the ones under review are obliged to

take action in order to observe humanitarian law standards and enhance human rights protection during the emergency of civil strife.

1. Overview of the Main Non-State Actors in Sudan

1.1. SPLM/SPLA: (Southern Sudan)

Some of the founders of the SPLM/SPLA were veterans of the 17-year Sudanese civil war (1955 – 1972), which was waged by the South SLM, widely known as 'Anyanya', in an attempt to seek independence for southern Sudan against the north. The leader of the newly established movement (SPLM), Dr John Garang de Mabior, did not conceal his disappointment with the 1972 Addis Ababa peace agreement when it was concluded between the Anyanya and the Khartoum government. Though the agreement had granted limited autonomy to the southern region, he predicted the breakdown of the agreement on account of its failure to address the root causes of the conflict in Sudan. Dr John Garang, however, continued to serve in the Sudan armed forces until he led the formation of the Sudan People's Liberation Movement and the SPLM/SPLA in 1983. He proved during his leadership of the movement to be an influential political thinker. In the south, the new movement provided a cohesive political and military platform for former semi-independent armed groups that had been operating against the government forces in southern Sudan since 1975. The unification of the fragmentary southern Sudanese armed groups was by no means an easy task, and yet the process was undertaken with great success and later extended further to streamline the fight against all forms of injustice in Sudan.

The proclaimed SPLM/SPLA objectives were aligned towards the creation of a united, secular, and democratic Sudan. Apparently, such a declaration ran contrary to the separatist aspirations of certain smaller groups, which had perceived the conflict in terms of the domination by northern Sudanese over the southerners. The movement, however, persisted in supporting the view that the liberation struggle was a fight against injustice in the whole of Sudan. The 1983 SPLM/SPLA Manifesto articulated those views and associated the underlying factors of the Sudanese conflict with the domination of socio-economic life by certain Sudanese minority cliques. The SPLM/SPLA vision for a new Sudan was subsequently illustrated in numerous documents and speeches as the armed opposition deepened in other parts of the country.[41]

The late Chairman Dr John Garang de Mabior was able to galvanize support in the north to call for a new political dispensation in a unified Sudan. He warned that Sudan might break up if it continued to be ruled on the basis of privileged ethnicity, religion, or cultural affiliation. He advocated for all Sudanese people to proportionately participate in public life and share the national wealth equitably to ensure the country's unity in diversity. The SPLM and subsequent movements considered the armed struggle as a legitimate means that could be used by the people to remove oppressive governments from power. In this regard, it was concluded that the people needed a disciplined and politicized army to wage a successful protracted war. The SPLM/SPLA therefore sought local and external opportunities for training its army to respect and comply with the standards of IHL, irrespective of the conduct of government troops. The SPLM also envisioned the possibility of a popular uprising or that some sympathetic/patriotic military officers within the Sudanese armed forces might stage a military coup to achieve the common objective. At the same time, the movement effectively

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[41] Mosely Lesch, Ann (1998), p. 3.

supported like-minded groups in the northern parts of the country, including Darfur, for the realization of political change in Sudan.[42]

1.2. SLM & JEM: (Darfur)

The main non-State-actors in Darfur are the SLM and the JEM, which started their military activities against the government forces in 2002 and 2003, respectively. While the SLM appeared as a direct reaction of parts of Darfur society to their longstanding grievances against Khartoum governments, JEM was established by disenchanted Islamist leaders from Darfur, who had been part of the Khartoum regime, in the wake of the well-known split of the ruling Islamic party and the expulsion of Dr Hassan Al-Turabi's faction from power in the late 1990s. However, the military wings of both movements have since carried out joint and separate military operations against the Sudan government forces in the region. The general outlook of the two movements is largely influenced by the political legacy of the historic Darfur Sultanate that was only incorporated into modern Sudan in 1916 and the advent of several Darfurian underground pressure groups such as SUNI,[43] the Red Flame, etc, since Sudan's independence in 1956. This string of opposition groups had invariably sought to assert the distinctive identity of Darfur people. To draw an even closer linkage, some leaders of the SLM claimed their group to have also started as a clandestine liberation front for Darfur before the decision to surface in 2002.

1.3. THE EASTERN SUDAN FRONT: (Eastern Sudan)

The two armed movements of Beja Congress and Free Lions that constituted the Eastern Sudan Front in 2005 represent the peoples of Beja ethnic groups and Rashaida Arabs of the eastern Sudan region, respectively. Initially, the Beja Congress was formed in 1958 to ensure the participation of the Beja people in Sudanese political life, but it remained a minority party until it transformed itself into an armed opposition group in 1993. It claimed that the Beja population of about three million people had been subjected to chronic underdevelopment since Sudan's independence, even though their region "supports lavishly the national economy through gold production and harbour and port revenues."[44] The Free Lions was organized by the nomadic Rashaida people in 1996 to contest their marginalization and the negative impact of foreign investors' large mechanized agricultural schemes upon their traditional life.

The two organizations had earlier been part of the National Democratic Alliance (NDA) political coalition of Sudanese opposition groups that had also been fighting the government in the east of the country. Both movements fought alongside other NDA organizations against the government until they declared the establishment of the Eastern Front. The new organization, however, continued to draw on the NDA's main objective of creating a new Sudan and to expound the historical and persistent marginalization of the peoples of the eastern Sudan.

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[42] Johnson, Douglas H. (2003), p. 148.
[43] In reference to a historical village on Jebel Marra mountain range in Darfur. Tanner, Victor and Jerome Tubiana (2007), p. 13.
[44] "Beja Congress Calls for UN Participation in Eastern Sudan Talks." (Letter to H.E. Kofi Annan UN Secretary General: Sudan Tribune. Issue of Thursday 8 June 2006).

2. The NSAs' Conduct of Operations

It is well known that wars paint the worst scenario under which human rights can be protected. The associated death and human misery provide little chance for the promotion of absolute rights and make it almost impossible for the realization of conditional rights. The national systems for human rights protection in weak States prone to civil wars are usually rudimentary and likely to collapse in a situation of multiple armed conflicts such as in Sudan. NSAs that control inhabited territories should face up to the reality of filling the gap for policing and providing basic legal and social services to the civilian populations. Some aspects of humanitarian law amount to customary international law and are automatically binding on any NSAs party to an armed conflict. In the circumstances, NSAs that are entangled in a civil war are equally responsible for preventing their combatants from violating human dignity or committing war crimes and crimes against humanity as stipulated in article (3) common to the four Geneva Conventions of 1949, the 1977 Protocol (II) additional to the four Geneva Conventions, and the 1998 Rome Statute of the International Criminal Court.

The conduct of "each party to the conflict" has started to come under greater scrutiny since the end of the cold war and the spread of the global human rights movement.[45] While Sudan largely missed out on the waves of political reforms of the late 1980s and early 1990s that swept across many African countries, it could not escape the ramifications of playing host to Osama Ben Laden during that period and the new world conditions prompted by the 11 September 2001 terrorist attacks. The SPLM was also affected by global change, with the fall of the socialist regime of Colonel Mengistu in Ethiopia, which had previously lent it support, leading to a major split within the movement in 1991. The splinter group, which collapsed shortly after, exploited the SPLA's record of human rights violations for self-justification. In response, the SPLM used the opportunity for self-appraisal, reorganization and the adoption of practical measures to promote respect of human rights after convening its first national convention in 1994. Thus, it was imperative for the movement to engage with the international community and undertake collaborative efforts to improve the local system of human rights protection, safeguard the delivery of humanitarian assistance to the needy civilian populations, and pursue possible opportunities for a negotiated, peaceful settlement of the conflict.

In Darfur, the magnitude of human suffering and blatant war atrocities caused by government troops and their agency of Janjaweed militia have generated world-wide condemnation and contemplation of international intervention on humanitarian grounds. Moreover, NSAs were urged to contribute to and support external efforts to alleviate the suffering of the civilian population in Darfur. The NSAs' interaction with international actors increased their awareness of the responsibility and need to respect and protect human rights in the areas that fall under their control. Similar experiences were also witnessed in eastern Sudan during the quest for peace in the region. The role of neighbouring Eritrea and Kuwait, whose people claimed special historical and blood ties with the Rashaida Arabs that founded the Free Lions, was crucial in tempering that NSA's conduct and paving the way for peaceful negotiations with the government. Relationships with some international players often contribute to widening the scope and raising the capacity of NSAs to safeguard human rights standards in their territories.

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[45] Englund, Harri and Francis B. Nyamjoh (2004), p. 3.

3. The Concept of 'Rights' in the Sudanese (NSAs') Agenda

The ideals of "equality, progress and justice" have been echoed as major political objectives in the organizational manifestoes of the SPLM, SLM/JEM, and the parties constituting the Eastern Front. This slogan stimulated common demands for recognition, social justice and adequate power sharing between the country's peripheries, represented by the movements, and the centre, which was seen to have unduly usurped the people's rights. As a result, the movements' conceptual frameworks appeared to embrace the basic human rights principles that governments usually have an obligation to promote and protect. On the ground, the SPLM and the Eastern Front have been in full control of considerably populated territories in the southern and eastern Sudan for a number of years. The Darfur-based SLM and JEM have invariably sustained their fighting against the government forces in different parts of the region. Each of the movements has introduced administrative structures according to the area and populations that fall under their responsibility. It was noticeable that the NSAs' approach to issues of justice and rights was guided by the local traditions and cultural values of their popular constituencies. For instance, the customary laws of local communities were expressly recognized and formed the basis for the development of wider legal norms for the SPLM.[46] Furthermore, the movements' administrative policies and structures were generally related to their political aspirations and sense of reform. The political interaction between Sudanese NSAs also allowed them to share practical experiences on issues of governance relevant to the areas under their control. It could be observed that the NSAs' varying levels of organization and experiences determined their capacity to conform to their obligations under human rights and humanitarian law.

3.1. The SPLM

In anticipation of its role of maintaining law and order in some areas, the SPLM produced its written Penal and Disciplinary laws in 1984. The document was intended to regulate the conduct of the SPLA and provide the basis for a broader legal system that would uphold the importance of customary laws. Subsequently, the movement established structures of civil administration, in accordance with the resolutions of its first national convention in 1994, and adopted the 1995 Agreement on Ground Rules, signed with international humanitarian actors, to ensure uninterrupted flow of relief assistance to the civilian population. The agreement also enlisted SPLM obligations to respect the principles of IHL and the 1989 Convention on the Rights of the Child (CRC). Ultimately, the movement facilitated ICRC courses to instruct SPLA officers on the basic principles of IHL and sanctioned a wide-scale demobilization of child soldiers with the support of several humanitarian organizations in 2002. This period also witnessed the advent of civil society organizations in SPLM areas. On the peace front, the movement continued to organize or participate in discussion meetings with various Sudanese political parties and regional and international intergovernmental organizations to address the question of war and peace in the Sudan.

The SPLM's role was pivotal in building the coalition of northern and southern Sudanese opposition parties, which culminated in the formation of the umbrella grouping of the NDA. The consolidated opposition enhanced common understanding of the question of rights and the restatement of the country's political benchmarks. The NDA parties emphasized in their Massawa Declaration of September 2000 that one of the main objectives for the creation of the new Sudan was to: "Establish good governance in the Sudan on the basis of respect of

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[46] Section (3) of the 1994 SPLA Penal Code provides: "The provisions of this law shall not prejudice the application of the existing customary laws and practices prevailing in each area."

human rights, separation of powers and upholding the rule of law etc."[47] All NDA coalition members were expected to abide by those principles and disseminate them on the ground.

3.2. The SLM & JEM

The nature of the conflict in Darfur has imposed limited contact between the military elements of the movements and the local population, which has either been forced into IDP camps in government-held towns or sought sanctuary in refugee settlements in neighbouring Chad. The movements' leaders have stated that separation from communities came about as a direct result of the government's 'scorched earth' policy to destroy the people in the region. Government troops and militias constantly bomb and destroy entire villages, market areas, and water sources on mere suspicion that the movements' fighters might be in the vicinity. The movements have kept their soldiers in check whenever they have encountered Arab nomads en route to avoid any incidence of rape or interference with personal property. Their own people (mainly African tribes) often suffer from such incidents at the hands of government troops and/or Janjaweed Arab militias. Discipline among the fighters is enhanced by political indoctrination and emphasis on traditional values at the stage of joining the movement or while in military training centres. The leaders maintain that strong discipline and dedication to the cause have ensured widespread popular support for their fighters.

In a later development, the parties formally recognized the need to respect the rights of the child by agreeing to the protocols on the improvement of the humanitarian situation and the enhancement of the security situation in Darfur signed between the Government of Sudan, the SLM/A, and the JEM at Abuja, Nigeria in 2004. The parties to the protocols agreed to:

- "Allowing the UN and other humanitarian assistance organizations, including NGOs to travel along routes determined by the UN, without restrictions or escorts, in order to deliver assistance to areas controlled by any party, and facilitate all activities undertaken to that end."
- "The parties shall refrain from recruiting children as soldiers or combatants, consistent with the African Charter on the Rights and Welfare of Children, the Convention on the Rights of the Child (CRC) and the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict."[48]

The obligations of the parties to the war in Darfur under IHL and human rights law were also brought under the spotlight by United Nations Security Council (UNSC) resolution 1564 of 18 September 2004. The resolution called for the Secretary General to "rapidly establish an international commission of inquiry in order immediately to investigate reports of violations on IHL and human rights law in Darfur by all parties, to determine also whether or not acts of genocide have occurred, and to identify the perpetrators of such violations with a view to ensuring that those responsible are held accountable".[49] The parties' attention to the need to respect human rights and humanitarian law was resolutely drawn by the International Criminal Court, which issued its first arrest warrants for a Sudanese government minister and a Janjaweed militia leader on May 2, 2007. The two individuals were charged with various counts of war crimes and crimes against humanity, including murder, torture, and mass rape.

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[47] Massawa Declaration on the New Sudan: NDA 2nd Conference (2000)
[48] Sudanese Studies Centre (2006), pp. 145–152.
[49] Report of the International Commission of Inquiry on Darfur to the UN Secretary General (2005), p. 2.

3.3. The Eastern Sudan Front

The organization adopted traditional tribal structures and NDA guidelines for the administration of the areas that fell under its control. It also established a humanitarian department that coordinated the relief activities of the few international humanitarian NGOs that offered relief assistance to civilian populations in those areas. The civil administration structures followed the outlines drawn by the 2nd Conference of the NDA, held on 9–12 September 2000 at Massawa, Eritrea.

The conference resolution on the administration of the liberated areas in eastern Sudan and establishment of an agency for humanitarian affairs provided the following:[50]

- formation of civil administration and establishment of the humanitarian agency to provide basic social services and development activities in the liberated areas, and
- launching an appeal to the international community and humanitarian organizations for relief assistance and clearance of landmines in the liberated areas.

Trends and Processes of the NSAs' Engagement

The SLM and JEM forces launched their first joint military operation against government troops based at the main regional capital of Darfur Al Fashir in April 2003. The joint forces destroyed the stationed military aircrafts and captured 32 government soldiers, including the commander of the air base, General Ibrahim Bushra Ismail.[51] The captives were treated humanely and subsequently released to the ICRC following the participation of relatives and tribal leaders of captured soldiers in the negotiations with the NSAs' leaders. In subsequent developments, the joint forces of the National Redemption Front, a political coalition of Darfur organizations that refused to sign the May 2006 Darfur Peace Agreement in Abuja, Nigeria, claimed to have captured hundreds of government soldiers in the battlefields at Umm Sidir and Kariyari in June and October 2006. The captured soldiers were later released to the ICRC on humanitarian grounds. Members of the coalition contended that they would continue to release their captured government soldiers in compliance with international norms despite being aware that the government still commits such freed soldiers to further fighting against the NSAs.

Also in Darfur, the humanitarian relief operations have been marked by uncertainty and repeated disruption of supply routes. The warring parties have frequently ignored the signed protocols on humanitarian and security arrangements facilitated by regional and international actors. The presence of uncontrollable, though government supported, Janjaweed militias has aggravated the humanitarian situation in the entire region. Nevertheless, many humanitarian actors have continued to provide food and essential services to millions of people affected by war and displacement. Peace efforts have also been attempted in the midst of the deepening crisis that has increased human suffering in the country and posed security threats to regional peace and stability. The African Union (AU), alongside the United States, Great Britain, Canada, the European Union (EU), the UN, and other countries have engaged Darfur's NSAs and the Government of Sudan in the quest for peaceful resolution of the conflict.[52] However, these efforts have yet to bear fruit as the war still rages, notwithstanding the signing in Nigeria of the ostensible Darfur Peace Agreement on 5 May 2006. The agreement was only endorsed by the government and one faction of the main NSAs in Darfur. Hence, there are ongoing

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[50] NDA (2000)
[51] Flint, Juliet and Alex de Waal (2005), p. 99.
[52] De Waal, Alex (2006)

regional and international efforts to bring the Government of Sudan and the non-signatories of Abuja peace agreement to a fresh round of peace talks.

In the case of the SPLM, the marginalization of the vast majority of the Sudanese people was a recurring theme in the movement's political statements. It was emphasized that the political and social exclusion extended beyond the south to most parts of the country. On that basis, the movement expounded a national charter to create a new Sudan that rests on the foundations of unity, equality, and justice. Besides, the SPLM/SPLA was involved in negotiations with several Khartoum governments to find a peaceful resolution to the conflict. The leadership argued that its negotiation strategy enabled the movement to keep abreast of the political realities and communicate its insights on national issues more effectively. The SPLM was convinced that dialogue with other political forces, including those in power, could neither infringe upon the fundamental principles of nor compromise its overall military strategy.

On the humanitarian aspect, the 1995 Agreement on Ground Rules, signed between the SPLM and the UN's relief operation (Operation Lifeline Sudan), asserted the right to deliver and receive humanitarian assistance in SPLM-administered areas. The principles and provisions of the agreement have largely guided subsequent operations of relief assistance to the needy populations in Darfur and eastern Sudan, where other NSAs were also active. Additionally, the experience of the Agreement on Ground Rules was recommended for similar crisis situations in the Gracia Machel study on children[53] and replicated in Sri Lanka, Sierra Leone, and the Great Lakes region.[54] Though the environment for implementation was far from exemplary, the ground rules ensured tacit recognition and respect for humanitarian principles by large NSAs in Sudan. The SPLM was also engaged in lengthy peace negotiations with the government. Regional leaders and organizations played their role to contain the consequences of Sudanese civil wars at different stages. However, the involvement of the IGAD (Intergovernmental Authority on Development) regional organization, the friends of IGAD, including USA, Great Britain, Norway, Italy, etc, and the UN culminated in the Comprehensive Peace Agreement signed between the SPLM and the Government of Sudan in Nairobi, Kenya on 9 January 2005. The engagement of the parties by the international community in the post-war period is vital to ensure implementation of the agreement and peace building.[55] The agreement between the SPLM and the government is viewed by other NSAs as a model that could guide future agreements in the country.

In a related peace settlement, the Government of Eritrea mediated a peace deal between the Government of Sudan and the Eastern Front, which the parties signed in Asmara on 14 October 2006. Eritrea was keen, as a neighbouring country with sections of the Beja and Rashaida people constituting part of its own population, to find a lasting solution to the conflict across its border with Sudan. The organizational and political capabilities of the Eastern Front were not as much as those of the SPLM or SLM & JEM. Nevertheless, the intervention of some donor countries to raise the movement's negotiating capacity and the objective role of the Eritrean mediator ensured a balanced peace agreement.

Conclusion and Recommendations

The international community and governments of nations affected by civil wars should realize that people in NSAs' held areas require special measures to address their need for

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[53] Marchel, Graça (1996)
[54] Humanitarian Policy Group Report (Overseas Development Institute), p. 3.
[55] International Crisis Group (2005), p. ii.

human rights protection. That might involve tailored collaboration with the NSAs to undertake responsibility, as governments would usually seek collaboration with the international community in order to improve national human rights protection systems of people living in its territory. It is also an established fact that civil wars are likely to break out in countries notorious for their illegitimacy of governance and weak institutional structures. The consequences of such phenomena often lead to insecurity that could spill over the country's borders. The people in countries that are plagued by civil wars therefore become more vulnerable to human rights violations, especially those caught up in the area of conflict. The vulnerability of national borders in the face of armed conflicts imparts a collective responsibility for a broader strategy of security, based on collaboration to ensure respect for human rights in emergency situations.[56] It is imperative that the collaboration efforts are extended to include human rights protection for civilian populations in areas under NSAs' control as part of the strategy to achieve peace in the war-stricken country.

The humanitarian community should not be inhibited from engaging NSAs by government attempts to discredit them or the risk that relief supplies might be diverted or used by either party to prolong the war. Some amount of pressure might be necessary for the parties to meet their obligations in allowing access to humanitarian assistance and working to bring about peace. It should be emphasized to the NSAs, through quiet diplomacy or capacity building, that protection of basic rights such as the right to life or freedom from discrimination and torture, etc, are obligations that require the commitment of the *de facto* authority rather than availability of material resources.

It could be learned from the Sudan experience that local and international public opinion are crucial for the attainment of peace and security in the country. NSAs that pursue clear political objectives therefore have an interest in controlling the actions of their officers, valuing the people's traditions and supporting the establishment of local systems for the protection of basic human rights.

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[56] Fukuyama, Francis (2004), p. 129.

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2. A Continuous Engagement: An Evolving Role Post-Peace Settlement

By Mark Knight

Abstract

The immediate post-peace settlement environment involving NSAs (referred to as insurgent organizations) requires a number of interventions from national and international actors. The international community has evolved a number of mechanisms and methodologies, with the overriding purpose of stabilizing environments and supporting the development of the wider peace process or transition from armed conflict. The most immediate interventions are generically defined through DDR programmes. This field continues to be defined and codified, for example the UN Integrated DDR Standards; these standards require continued discussion and additions. There remains a need to understand the whole DDR process in a more holistic manner; specifically the process of DDR should be viewed as a continuation of the political dialogue process, and not purely as a programmatic undertaking. Within this understanding the concept of demobilization must consider the requirements of the organization, as well as the individuals. An armed insurgent organization requires specialized focus and assistance to evolve from an insurgent organization into an entity that possesses a future role within a peaceful environment.

Introduction

The Disarmament, Demobilization and Reintegration (DDR) of former combatants play a critical role in transitions from war to peace. The success or failure of this endeavour directly affects the long-term peace building prospects for any post-conflict society. The exploration of the closely inter-woven relationship between peace building and the DDR process also provides a theoretical framework for this paper, which aims to present an assessment of the prevailing view of DDR processes as programmatic undertaking, and to expand upon the understanding of demobilization.

The author has previously examined various DDR programmes planned or implemented in a number of countries over the last two decades.[57] Previous publications focused on three specific DDR issues: disarmament as a social contract, demobilization without cantonment, and the relevance of financial reinsertion assistance. The analysis found that DDR initiatives adopted a 'guns-camps-cash' approach, which seemed to provide only a limited perspective for dealing with a wide range of complex issues related to the DDR process. Therefore, the authors question whether there is a need for a more comprehensive consideration of disarmament by acknowledging and responding to its social, economic and political implications, and disarmament as a social contract was proposed as an alternative to the prevailing military-centred approach. The analysis also indicated a tendency towards the inclusion of cantonment in the demobilization phase, regardless of whether it might actually have some negative impacts on the DDR process in general. The analysis questioned such concepts and approaches to demobilization, suggesting an alternative understanding of demobilization. Finally, the analysis focused upon the effectiveness of cash payments during reinsertion as a more effective alternative to the provision of other material assistance, since this tends to be the most controversial aspect of the reinsertion phase.

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[57] Knight, Mark and Alpastan Ozerdem (2004), p. 499.

The DDR of former combatants is part of the overall long-term peace building process, a task in which success depends on the holistic and integrated implementation of various post-war recovery programmes. International peace building is now considered a critical instrument of the international community for addressing countries in conflict. An examination of the war termination literature points to a critical role for DDR in the resolution of civil conflict.[58]

Two types of DDR programme can be identified: demilitarization, and those taking place in war-to-peace transition.[59] The former involves a reduction in the number of military personnel following a decisive victory, attempting to reduce military expenditure in order to take advantage of the peace dividend, and is predominantly understood within the Security Sector Reform arena. Large-scale downsizing as part of peacetime demobilization initiatives can also be considered under this heading. However, in the second scenario no clear victor emerges and DDR is undertaken as part of a peace settlement. Within this scenario the outcome of any DDR programme depends predominantly upon the political context in which it is carried out and the political will amongst the belligerent parties will remain the chief criterion for determining success.[60] The scope of this paper will be based on planned DDR experiences in war-to-peace transitions.

1. Disarmament, Demobilization and Reintegration (DDR) in a Peace Building Context

Peace building encompasses programmes ranging from micro-level changes in the opinions and behaviour of conflicting communities to macro-level institutional changes that address the structural causes of conflict.[61] 'An Agenda for Peace' defines 'peace building' as "…an action to identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict".[62] It is a holistic but distinct process, with numerous stages, which require multi-sector efforts in order to achieve sustainable results. Potentially, the DDR of former combatants constitutes one such activity, and within the context of the war-to-peace transition it can have a number of important effects upon the wider transitional process. The efficient implementation of the DDR programme can reassure belligerent parties of the possibility of a permanent cessation of hostilities, as they are often the most visible element of the peace agreement. Moreover, a well-planned and flexible reintegration process can also promote the viability of long-term peace locally, nationally, and internationally.[63]

Experience indicates that there is a symbiotic relationship between peace building and the DDR process. Berdal refers to this relationship as 'an interplay' and 'a subtle interaction'.[64] Although a sustainable recovery after war cannot be achieved without a successful DDR process, conversely, without a successful peace building process in general the viability of a DDR process would be questionable.[65] Supporting this view, Colletta, Kostner & Wiederhofer highlight the relationship between economic reintegration of former combatants and the sustainability of the peace process.[66]

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[58] Weinstein, Jeremy (2005)
[59] Colletta, Nat, Markus Kostner, and Ingo Wiederhofer (1996)
[60] Knight, Mark (2001)
[61] Lily, Damian (2002)
[62] Boutros-Ghali, Boutros (1992)
[63] Berdal, Mats (1996)
[64] Berdal, Mats (1996), p. 73.
[65] Ozerdem, Alpaslan (2002), pp. 961–975.
[66] Colletta, Nat, Markus Kostner, and Ingo Wiederhofer (1996), p. 18.

A successful long-term DDR process can make a major contribution to national conflict resolution and to the restoration of social capital. Conversely, failure to achieve a successful DDR process can lead to considerable insecurity at the societal and individual levels, including rent-seeking behaviour through the barrel of a gun.

Poorly conceived and executed DDR programmes can themselves also become a factor in the creation of future conflicts. The incomplete disarmament in Mozambique contributed to the proliferation of weapons not only throughout that country, but also in neighbouring countries such as South Africa, Zambia, and Malawi. By 1998, Mozambique constituted the single largest source of small arms to the South African domestic market.[67] Based on their experience in the Horn of Africa, Kingma & Grebrewold identify a number of situations in which the reintegration of displaced populations and former combatants may have an impact on the recurrence or development of conflicts.[68] These include the absence of a functioning State and legal system, lack of economic opportunities, competition for natural resources, political marginalization and the absence of appropriate conflict management systems, and the availability of light weapons. In other words, war-torn countries with demobilized combatants also run the risk of returning to conflict if they are not provided with a comprehensive DDR strategy.

Collier's micro- and macro-insecurity framework for possible threats presented by former combatants asserts that if demobilized combatants are not placed into employment or provided with skills training opportunities, the lack of an income source increases their propensity to commit crimes.[69] Kingma cites the examples of Mozambique and South Africa where some demobilized combatants turned to banditry.[70] Similarly, in countries such as El Salvador, Cambodia, Mozambique, and Nicaragua, former combatants were disposed to make their living through banditry after demobilization.[71] This is a particular concern when DDR processes fail. For example, the reports of increased levels of crime in Angola in the late 1990s were linked to the failure of the DDR programme either to remove weapons from society or to reintegrate former combatants in a manner conducive to establishing income activities.[72]

In conjunction with the macro-insecurity framework, if the grievances and frustrations of demobilized combatants are not addressed through a DDR strategy, former combatants can be remobilized easily and pose security risks at a regional level, as happened in 1998 following the border clashes between Eritrea and Ethiopia. According to Ozerdem, some former combatants of the Kosovo Liberation Army are believed to have been involved in the 2001 Macedonian conflict between Albanian guerrilla groups and security forces.[73]

One of the primary conditions for ensuring an effective relationship between peace building and a DDR process is the coordination of activities. Experience shows that a wide range of programmes are carried out by a variety of agents, preferably, but not necessarily coordinated by a single vision for the future. Reflecting on the issue of coordination, the United Nations Development Programme (UNDP, 2000) explains that, in 2001, there were a number of different DDR activities taking place in the DRC, such as the UN Mission to the DRC, which was mandated to carry out DDR activities applicable to the foreign armed groups only. The UN Office for the Coordination of Humanitarian Affairs (OCHA), UNDP and other

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[67] UNIDIR (1999)
[68] Kingma, Kees and Kiflemariam Grebrewold (1998), p. 12.
[69] Collier, Paul (1994), pp. 343–351.
[70] Kingma, Kees (1999)
[71] Weiss-Fagen, Patricia (1995)
[72] UNIDIR (1999)
[73] Ozerdem, Alpaslan (2002), pp. 961–975.

organizations were conducting various DDR and development activities in eastern DRC. Meanwhile, the *Bureau National de Mobilisation et Réinsertion*, which is a DRC government initiative, began implementing a pilot project targeting vulnerable groups. In addition to these, the UN Children's Fund was providing additional support to the demobilization of child soldiers. Unfortunately, it is stated that all of these activities were taking place independently from each other. Such uncoordinated, disparate approaches have been largely dealt with by the publication of the UN Integrated Disarmament, Demobilization and Reintegration Standards (IDDRS).

In the framework of the peace building-DDR relationship, there are also a number of issues related to social and cultural norms and psychological impact that should be borne in mind. First, social reintegration involves the re-establishment of family and community ties that play a significant role in the success of reintegration programmes. According to Kingma (2000), in a number of cross-cultural experiences, there is a pattern of more successful reintegration in rural than in urban areas. This is put down to the likelihood of having stronger supporting societal networks in rural than in urban areas. For example, in the rural areas of Ethiopia, a key factor for successful social reintegration was the acceptance and support by the community as well as their extended families.[74]

Second, armed conflicts also affect cultural norms and reciprocal relationships in a society. For example, women as both fighters and war-affected civilians acquire new roles during the war. However, they are usually expected to return to their traditional roles after the war. Kingma makes linkages between this attitude and the high divorce rate in Eritrea, where about one third of the Eritrean People's Liberation Front were women.[75] The analysis of socio-economic and demographic data on former combatants in Guinea-Bissau and Eritrea has also shown that female former combatants were more vulnerable than their male counterparts.[76] Consequently, Tegegn emphasizes the importance of providing female former combatants with special assistance to enable them to participate fully and equally in social, economic and political life.[77]

Finally, the trauma of war can have a profound psychological impact on the population, particularly on children, both as soldiers and civilians, affecting their social and emotional development.[78] The World Bank (2001) argues that the reintegration of child soldiers should emphasize three key components: family reunification, psychological support and education, and economic opportunity. This is illustrated by the example of Sierra Leone, where the whole DDR process was seriously disrupted by the outbreak of renewed fighting, and many child soldiers whose distinctive needs had been neglected by the process returned to the conflict in April 2000.

2. State of Play

An analysis of the DDR programmes existing in the world during 2006, by the Escola de Cultura de Pau states that more than 1'255'510 former combatants participated in one way or another and in some phase of a DDR programme during 2006.[79] The analysis goes on to estimate that the total cost of the twenty DDR programmes comes to some US$ 2 billion.

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[74] Ayalew, Daniel and Stefan Dercon (2000), pp. 132–171.
[75] Kingma, Kees (2002), pp. 181–201.
[76] De Watteville, Nathalie (2002)
[77] Tegegn (1992), pp. 38–40.
[78] El Nagar, Samia El Hadi (1992), pp. 15–21.
[79] Escola de Cultura de Pau (2007)

Concurrent to these programmes, the Swedish Ministry for Foreign Affairs published its final report on the 'Stockholm Initiative on DDR', and stated:

> "Notwithstanding the hope that DDR programmes will make a significant contribution to peace processes, the fact is that about half the countries emerging from conflict risk reverting to violence and, to an even larger extent, violence merely changes form and might even increase in the post conflict period."[80]

With a backdrop of a 50% failure rate, costing US$ 1 billion and the disparate and uncoordinated attempts at DDR within the DRC, highlighted previously, the UN Inter-Agency Working group on IDDRS. Within the understanding of DDR, the concepts of DDR are stated as follows:

> "The aim of the DDR process is to contribute to the security and stability in post-conflict situations so that recovery and development can begin. The DDR of ex-combatants is a complex process, with political, military, security, humanitarian and socio-economic dimensions. It aims to deal with the post-conflict security problem that results from ex-combatants being left with livelihoods or support networks, other than their former comrades, during the critical transition period from conflict to peace and development."[81]

The two areas to be analyzed for further understanding and engagement related to the concept of DDR as a political endeavour and the support networks of ex-combatants, the latter being addressed within the wider understanding of demobilization.

3. War by other Means

The Stockholm Initiative on DDR concludes with the assertion that although DDR is an important part of the political process, it has continued to be divorced from political considerations and neglected as a political tool of a peace process.[82] The UN's Briefing Note for Senior Managers states that DDR is essentially a politically-driven process, and that many DDR programmes stall or are only partially implemented because of the political climate.

> "The success of the DDR process is therefore dependant on the political will of the parties to enter into the process in a genuine manner."[83]

One of the factors determining the success or otherwise of a DDR process is not the will to enter the process (within the war-to-peace transition this is evident with the signing of the peace agreement) but rather the maintenance of political will. The Public International Law and Policy Group (PILPG), in a comparative analysis of peace agreement provisions that address paramilitary groups and programmes for DDR, states that political goals, such as constitutional or legislative reform, are conditioned upon the completion of DDR programmes.[84] Within this view, the requirement to maintain the political will is paramount to the success of the wider peace process and transition from conflict to peace, all of which is conditional upon a successful DDR process. The requirement to maintain the political will of

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[80] Swedish Ministry for Foreign Affairs (2006)
[81] UN IDDRS (2006), pp. 2–10.
[82] Swedish Ministry for Foreign Affairs (2006)
[83] UN (2006b)
[84] Public International Law & Policy Group (2006)

the parties to implement the DDR process would seem to be of paramount importance. Yet, in the ECP analysis of DDR programmes in 2006, it is stated:

> "In the great majority of cases (13) the decision has been made to opt for the creation of a National Commission for DDR (NCDDR), with **the military component playing a predominant role in this, either because the Commission itself is coordinated by the Ministry of Defence, or due to the existence of a military sub-commission**."[85]

The involvement of the military within the implementation of the DDR process raises two problematic issues: (i) the intent of a military in the immediate post-conflict environment, and (ii) the perspective of international stakeholders' understanding of the DDR process that allows heavy military involvement. When examining the overriding purpose of DDR, the removal of weapons, the dissolution of command structures and the return of combatants to civilian status, these outcomes mirror the purposes of counter-insurgency operations undertaken by the State's military. DDR offers the possibility of achieving counter-insurgency objectives without the violence; war by other means. Recalling that peace agreement provisions that address paramilitary groups and programmes for DDR are often conditional upon political goals, such as constitutional or legislative reform, the predominance of the military in implementing bodies could be argued to be ill conceived.[86]

The literature on DDR concepts, design, and implementation correctly asserts that national leadership and institutions should have the leading role and political responsibility for the DDR of ex-combatants.[87] The UN IDDRS states that one of the key characteristics of DDR is that it should be nationally owned.

> "The primary responsibility for the successful outcome of DDR programmes rests with the national and local actors, and national stakeholders are responsible for planning, coordinating and running institutions set up to manage different aspects for the peace agreement."[88]

The predominant perspective of international stakeholders towards a DDR process that results in heavy military involvement is that, once the peace agreement is signed and the mechanics of the DDR process are defined, the implementation becomes predominantly a programmatic undertaking. As asserted in the UN briefing to senior managers, the success of the DDR process is therefore dependant upon the political will of the parties to **enter** into the process in a genuine manner.[89] An alternative perspective for international stakeholders would be to view the implementation of the DDR process as a continuation of the political dialogue that led to the peace agreement, and approach the implementation as an inherently political undertaking. Within this view, the process and structures established to enact DDR are correctly viewed as the political arena in which the belligerent parties to the conflict continue the process of dialogue, with the intent of cementing the commitments that would lead to a sustainable peace. Through this perspective of the DDR process, the structures and membership of these structures would be conceived and established based upon the requirement to **maintain the political will** of the two parties.

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[85] Escola de Cultura de Pau (2007)
[86] Public International Law & Policy Group (2006)
[87] Swedish Ministry for Foreign Affairs (2006)
[88] UN IDDRS (2006), pp. 2–10.
[89] UN (2006b)

4. Conceiving Demobilization

The understanding of demobilization has been one of the most contentious issues within the development of the concepts of DDR. Colletta, representing the World Bank's understanding of DDR programmes, describes demobilization as the first part of the DDR process. "It consists of the following segments: cantonment (sometimes termed "assembly" or "quartering"), pre-discharge orientation, discharge, transportation, and post-discharge orientation".[90] Echoing an evolving UN understanding, Berdal states:

> "Demobilization is understood here as the formal disbanding of military formations and, at the individual level, as the process of releasing combatants from a mobilised state. It covers a number of activities associated with establishing and maintaining assembly area. These include: surveys of soldiers' needs and aspirations; medical examinations, counselling; initial reintegration packages; and transport to the community of choice."[91]

As has been highlighted at the beginning of the paper, the context in which DDR programmes are implemented has a bearing upon the objectives and form the programmes adopt. The World Bank (1993), in a study of seven countries implementing DDR programmes, states:

> "…success or failure [of the DDR programme] is intertwined, to varying degrees, with the political backdrop in which they take place… The more ambiguous the conflict and its termination, the more susceptible the DRP [Demobilisation and Reintegration Programme] seems to be to becoming embroiled in factional disputes"[92]

The study continues by stating that the case studies highlighted very different dynamics between a DDR programme carried out during peace time, with a clearly established government in power, versus a DDR programme undertaken in the context of war-to-peace transition, characterized by some loosely controlled factions and some form of power sharing in the government. The contexts highlighted at the beginning of the paper identified two scenarios: demilitarization and the war-to-peace transition. The context for consideration within this paper continues to be exclusively the war-to-peace-transition with the signing of a peace agreement.

Demobilization has predominantly been understood as the second stage of the DDR process, following disarmament; and its form and functions vary according to context. Tanner states that "…demobilisation [sic] refers to the disarmament and dissolution of the force structures and the transition of combatants to civilian status".[93] Within this understanding, disarmament is an element within demobilization and not a prerequisite to the combatant entering the demobilization phase of the DDR programme. Tanner's definition differs slightly from Berdal's discussed above. Berdal does not locate disarmament either before, or as an element of, demobilization. Rather, he specifies the objective of demobilization as the dissolution of the fighting forces, and continues by highlighting the required activities to achieve this. Colletta's understanding of demobilization differs by stating that it is the first stage of the DDR process. It echoes Berdal in defining the elements that comprise

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[90] Colletta Nat, Markus Kostner, and Ingo Wiederhofer (1996), p. 12.
[91] Berdal, Mats (1996), p. 39.
[92] World Bank (1993)
[93] Tanner, Fred (1996), p. 171.

demobilization. Colletta's understanding is informed by the evidence from a number of case studies of countries that have implemented DDR programmes. It is therefore intended as a best practice guide in establishing an integrated DDR. As with Berdal, Colletta includes cantonment (sometimes termed "assembly" or "quartering") as an element within demobilization. However, the specific objectives of a particular demobilization phase are often dictated by the context in which it is to be undertaken. Defining the objectives of the demobilization phase by activities that must be undertaken appears to presuppose the contextual setting and the objectives of the DDR programme, and precludes alternative implementation strategies being undertaken. Berdal states the objective of demobilization as being the "…formal disbanding of military formations".[94] Tanner's definition of demobilization, except for the inclusion of disarmament, represents the predominant view.

Discussions and debates concerning the purpose and meaning of demobilization culminated with the publication of the UN Integrated Disarmament Demobilization and Reintegration Standards, in which it is stated:

> "DDR programmes should support the process of tuning combatants into productive citizens. This process starts in the demobilisation phase, during which **the structures of armed forces and groups are broken down** and combatants formally acquire civilian status."[95]

Within all understandings of demobilization, there is either an explicit statement that the structures of the armed forces should be dissolved, or an implied understanding that this can be achieved through processes involving encampment or cantonment. When considering DDR within a context of war-to-peace transition, this requires the dissolution of the structures of the insurgent organization. In previous publications Knight and Ozerdem, as well as Knight, have argued that cantonment or encampment as part of a demobilization process runs counter to the stated objectives of dissolving the command structures.[96]

> "Ironically, the cantonment of combatants reinforces the command structures that the process is intended to dissolve […] the former combatants are concentrated and isolated from the community when the objective is, in fact, to dissipate and integrate them within the community."[97]

The literature, definitions, and hence focus of DDR processes retain an overarching concentration upon the individuals. The UN IDDRS defines the UN approach to DDR with five principles, the first of which is that DDR is "people centred".[98] This is reflected in the definition of demobilization as "the formal and controlled discharge of active combatants from armed forces or other armed groups".[99] The definition continues by stating that the first phase of demobilization "may extend from the processing of individual combatants in temporary centres to the massing of troops in camps designated for this purpose".[100] The focus remains on the release of individuals from the command structures, with the implied intent that cantonment and the release of individuals will result in dissolution of the structures. Ironically, there is also an understanding that the removal of the command

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[94] Berdal, Mats (1996), p. 39.

[95] UN (2006a)

[96] Knight, Mark and Alpaslan Ozerdem (2004), pp. 499. Knight, Mark (2001)

[97] Knight, Mark and Alpaslan Ozerdem (2004), pp. 508.

[98] UN (2006a)

[99] UN (2006a)

[100] UN (2006a)

structure presents an immediate threat to the overall stability and peace objectives of DDR processes:

> "It [DDR] aims to deal with the post-conflict security problem that results from ex-combatants being left without livelihoods or **support networks, other than their former comrades,** during the critical transition period from conflict to peace and development."[101]

There is ample evidence from contexts that have experienced DDR processes, including Zimbabwe, Mozambique, Eritrea, East Timor, and Northern Ireland, that "former comrades" will retain a support network. In the examples cited, veterans' associations have become significant political actors.

5. Demobilization & Transformation

The PILPG (2006) paper on DDR and comparative State practice, concludes:

> "Within the context of DDR many peace agreements address the legal status of paramilitary groups as political and military entities […] peace agreements often provide these groups with substantial political representation in transitional governments. In other situations, former members of paramilitary groups are permitted to join new or existing political parties […] In other States, political goals, such as constitutional or legislative reform, are conditioned upon the completion of the DDR programmes."[102]

Within contexts where the formal peace agreement specifies the political and governmental role of the insurgent organization, the dissolution of the same organization, within a demobilization process, would run counter to the evolution of the wider peace process. Within a context where the State's military dominates the structures established to implement a DDR process, the effect upon the insurgent organization to be demobilized could be more acute, creating suspicion as to intentions resulting in difficulties within the full implementation of the DDR process and wider evolution of the peace process. Even within contexts where the peace agreement distinguishes between armed military structures and political structures of an insurgent organization, with the DDR process clearly focused upon the military elements, experience suggests that the social networks and bonds that comprise the command structure will continue to exist and operate after demobilization.

The immediate post-peace settlement period is one of great anxiety and threat to an insurgent organization and, for the individual combatants, new skills are required to survive and prosper within the new peaceful environment. The present understanding of the DDR process is designed to deal with the individuals' transition from combatant to productive peaceful civilian, with the implication that the command structures will be dissolved or "broken down".[103] Experience suggests that the command structures will continue to exist as social networks and bonds created through shared experiences, and that they also retain the capacity to remobilize combatants or disturb the progression of the peace process in other ways. Therefore, a more holistic view of the demobilization element within a DDR process would incorporate the inclusion of targeted specialist assistance for the insurgent organizational structures, as well as assistance for individual combatants, to facilitate the

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[101] UN (2006a), pp. 2–10.
[102] Public International Law & Policy Group (2006), pp. 11.
[103] UN (2006a), pp. 2–10.

transformation of the organization from a military organization into a civilian entity. Such organizational assistance for transformation would not be appropriate within all contexts; the necessity for this type of assistance would depend upon two factors: (i) the provisions of the peace agreement, and (ii) the characteristics of the organization.

6. When to Engage?

The premise of this paper is that NSAs, referred to as insurgent organizations, require specialist and targeted assistance within the immediate post peace settlement period to assist their transition from an armed insurgent organization into a civilian entity. The process through which this assistance could be delivered is a DDR programme, which at present predominantly focuses upon the needs of the individuals, excluding the organization. An expanded model of DDR that included assistance for the transition of the organization would allow for the delivery of targeted transformational organizational assistance. The situations when this type of assistance is relevant, and could contribute to the evolution of the peace process, would depend upon a careful analysis of the type of agreement reached and the organization potentially to be assisted.

For transformational organizational assistance to be relevant, the peace agreement would require a base assumption that the post-settlement political landscape included the insurgent organization. The organization's involvement in the continued political process would be defined within the agreement, as well as an articulation of the political process agreed. The agreement could, for example, specify that the insurgent organization become a political party and participate within a democratic process. The core of such agreements is that the insurgent organization relinquishes violence as a means to achieve its goals, and instead engages in purely peaceful political endeavours to achieve its objectives. The integrity of such an agreement requires the insurgent organization to be able to meaningfully engage in peaceful politics, which would require a transformation of the organization in order for it to adapt to the new environment.

The characteristics of the insurgent organization would also decide whether transformational organizational assistance would be relevant. Not all insurgent organizations are the same. They have varying degrees of cohesion, organization, control over members, articulation of political vision, and structures. The core difference, when deciding whether to engage, is the distinction between a political and military wing, and the reality of those divisions. The Communist Party of the Philippines, for example, has a very clearly articulated and structured military wing within the New People's Army. The political element of the Communist Party of the Philippines has a clearly articulated primacy in relation to the New People's Army, its military wing, with the two elements being separate entities. Any potential peace agreement would legitimately seek to DDR the military wing, whilst leaving the political wing to pursue its political goals. The Free Aceh Movement (GAM), a separatist insurgency in Indonesia, is an organization without such a firm structure or division. In effect, the GAM is a grassroots rebellion consisting of nebulous networks. As its name suggests, it is a movement predominantly bereft of structures. There was a clear articulation of the military wing of this movement, but in effect this was never a clearly defined distinction between military and non-military. The ability of such a disparate entity to transform, or in this case form, itself into a functional political mechanism was always weak. The GAM represents a clear example of an insurgent organization for which transitional assistance in the post peace settlement period would have strengthened the integrity of the subsequent political process.

Conclusion

The international community has evolved a number of mechanisms and methodologies, with the overriding purpose of stabilizing environments and supporting the development of the wider peace process, or transition from armed conflict. The most immediate interventions are generically defined through DDR programmes. This paper has argued a need to understand the whole DDR process as a continuation of the political dialogue process, and not purely as a programmatic undertaking. Within this understanding, the concept of demobilization should be expanded to include the requirements of the organization, as well as the individuals. An armed insurgent organization requires specialized focus and assistance to evolve from an insurgent organization into an entity that possesses a future role within a peaceful environment, an analysis of the peace agreement and the insurgent organization will indicate if such assistance is relevant and necessary.

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Chapter 4

Methods of Engaging Armed Non-State Actors

How to engage NSAs? A range of approaches or strategies has been used by humanitarian and human rights organizations. These include dialogue, negotiation, training, capacity-building, naming and shaming. Each has its own utility and limitations.

In their papers, Olivier Bangerter and David Capie examine these questions. Bangerter, who is currently Advisor on dialogue with armed groups at the ICRC, focuses on the methods of engagement of the ICRC. He examines in particular legal tools (special agreements, unilateral declarations, codes of conduct, etc.) and other means that the ICRC has used for improving NSA compliance with IHL. He also deals with the challenge posed by groups whose *modus operandi* implies IHL violations. Capie, who is Associate Director of the Arms Group Project, takes a more theoretical approach. Drawing on recent literature on norms building and the experience of humanitarian actors, he explores conditions under which persuasion and socialization are likely to influence NSA behaviour.

The ICRC and Non-State Armed Groups

By Olivier Bangerter

Abstract

Non-State armed groups are inescapable actors in today's conflicts. In the near future, they will remain parties to situations of violence of concern to the ICRC and have a direct influence on both, victims of conflict and humanitarian actors.

They represent a wide variety of actors, from quasi-State organizations to a mere handful of predators, but most of them are difficult to locate and access. This poses a significant challenge for any engagement, both for humanitarian action and for addressing IHL issues.

Because of its mandate to work in armed conflicts and other situations of violence, the ICRC seeks to engage armed groups with IHL at large, not only in a mine action perspective. Dissemination to fighters is an obvious tool, although it may be counterproductive in specific cases; wherever possible, it must be completed with measures by armed groups themselves that foster respect of the law. This article examines legal tools and integration processes that help armed groups comply with IHL. It also deals with the challenge posed by groups whose modus operandi implies IHL violations.

None of the tools the ICRC uses will have an effect unless there is a genuine commitment from the group's leadership; this strong will is the defining element for success of engaging armed groups with IHL.

Introduction

NSAs (hereafter armed groups) are inescapable actors in today's armed conflicts. The *Military Balance 2007*[104] published a list of armed groups with 335 groups, of which 261 are active. In its ten biggest operations, the ICRC works in contexts where armed groups are active;[105] in most other operations, it is also confronted with their reality.

Such groups are not new actors and one should not assume that either their existence or the dialogue humanitarian actors may have with them are new challenges. The present article assumes that armed groups have always existed, have always played a military role,[106] and are unlikely to fade away in the coming decades. The challenge is not whether to deal with them, but for what purpose. Since other contributors will speak about negotiations related to access to victims of conflicts or about mines, DDR or protection, we shall concentrate on the ICRC's work regarding IHL and examine questions such as whom to engage with, with what goals and with what prerequisites.

Historical evidence of the existence of armed groups is too complete and convincing for us to spend a long time discussing it. We shall only quote three examples, from various geographical, military and chronological origins, so that the assumption of the present article can be illustrated:[107]

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[104] Published by IISS.

[105] Namely Sudan, Israel/OT/AT, Iraq, Afghanistan, DRC, Colombia, North Caucasus, Somalia, Ethiopia, Sri Lanka, as per initial budget. 2007.

[106] As opposed to a purely criminal role.

[107] For numerous 19th century examples, see Callwell's *Small Wars, Their Principles and Practices*: <http://cgsc.cdmhost.com/cdm4/document.php?CISOROOT=/p4013coll11&CISOPTR=394&REC=1>

- King David spent many years practising guerrilla warfare in the Desert of Judea before coming to power.
- The Ming dynasty (1368–1644) originated from a group of revolted Chinese, eventually taking power by force from the Yuan Mongol dynasty.
- In the Peninsula War (1808–1814), Napoleon's army was defeated not by the Spanish army, but by a combination of British-Portuguese troops and Spanish irregulars opposing "their" king, Joseph Bonaparte.

Not only have armed groups been around in the past, they are very likely to remain active in the foreseeable future.[108] Whatever form they take, they will remain parties to armed conflicts / internal violence / disturbances and have a direct influence on both victims of conflict and humanitarian actors, or be victims themselves. There is a growing awareness of this, both in military[109] and humanitarian circles.[110]

However, one is rarely aware of the numerous occasions in which humanitarian actors have engaged armed groups. There is a widespread knowledge of Henry Dunant's role at Solferino in 1859, but few people know of his activity in Paris during the Commune in 1871, trying to save people taken hostage, and negotiating with some of the Commune's generals, with some success in the former case and very little in the latter.[111] To give another illustration of engagement of armed groups by the ICRC, let us revert to the Spanish Civil War (1936–1939). The ICRC engaged in a very early dialogue with nationalist authorities: on 23 July 1936, less than a week after the start of hostilities, the ICRC recommended its delegate Dr Junod to the National Defence Junta.[112] This delegate and others would be called upon to work on both sides of the frontline until the end of the conflict, visiting prisoners and facilitating exchanges or releases.[113]

1. Specific Challenges Posed by Armed Groups

Present in most, if not all, of today's armed conflicts, armed groups pose specific challenges for humanitarian actors wishing to work in their area of operations or to engage them with the law, be it IHL or human rights law. Engaging armed groups can be difficult, much more so than engaging the army or security forces of a State party to the Geneva Conventions. Armed groups are not simply other military forces and present some specific challenges to any humanitarian or political actor wanting to engage in dialogue with armed groups.

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[108] Military authors, such as Martin van Creveld and Sir Rupert Smith, support this thesis, which is not contradicted in professional literature.

[109] Giving just one example from the United States: *non-State armed groups pose a major security challenge to the United States, even without their acquisition of weapons of mass destruction. […] There is little to suggest that these […] challenges posed by armed groups—insurgents, terrorists, militias, and criminal organizations— are a temporary phenomenon. Rather, all data trends illustrate just the opposite* (Shultz Richard, Douglas Farah, and Itamara Lochard (2004), p. ix).

[110] Giving just one example: OCHA (2006)

[111] Boissier, Pierre (1978), pp. 346–348.

[112] Marquès, Pierre (2000), p. 42. Franco was not yet the Junta's president.

[113] Legal challenges posed by groups not part of regular armed forces (militias, *franc-tireurs*, partisans, etc.) were also addressed quite early, e.g. in the Brussels diplomatic conference of 1874, quoted almost word for word in the 1949 Geneva Conventions.

1. ***Definition challenge***: this could be the subject of a complete article and will only be mentioned in passing. There is no widely accepted definition[114] that will do for all cases, because the notion of "armed groups" encompasses so many different actors that no conceptual frame will be appropriate in every case. The definition of "armed groups" may vary according to factors that have nothing to do with armed groups themselves.[115] We must live with a margin of uncertainty in this area.

2. ***Security challenge for the ICRC***: dealing with fighters involved in hostilities is never completely "safe". Members of armed groups can be highly educated and aware of the world, but the average fighters are likely to have received limited education and know little of the external world. Dealing with them is a difficult task at best, and can have dramatic security implications. Little understanding of the ICRC could be a factor of risk, but an accurate knowledge of what the ICRC stands for cannot be a guarantee either.

3. ***Security challenge for the armed groups***: the use of a humanitarian actor by a State to discover where the group's leadership is hiding must never be discounted. Precautions taken against this by the armed group may in some cases prevent any direct contact in the context, and trying to circumvent this can have direct security implications for the humanitarian actor.

4. ***Practical challenge***: even if it is "safe" to meet members of the group, contact will be complicated where the armed group does not control part of the territory, or where the ICRC is restricted by the State from moving into armed group-controlled areas.[116] Most armed groups are difficult to locate and access.

5. ***Variety challenge***: armed groups present a wide variety of actors, in terms of size, command & control capabilities, *modus operandi*, control of territory, support networks, culture, aims, etc. For example, there is almost nothing in common between the 10'000 LTTE—with a strong chain of command and able to conduct land, air and naval operations—and the Sabaot Land Defence Front around Mount Eglon in Kenya. Armed groups represent a wide variety of actors, from quasi-State organizations to a mere handful of predators, and standardised approaches are doomed to fail. This may represent the biggest challenge to a typology-based approach. Even standard material is impossible to devise.[117] Tailor-made approaches must be the motto.

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[114] The main areas of doubt include the categorisation of the groups' structure, of their relations to States and humanitarian actors, and of their aims.

- OCHA considers *groups that have the potential to employ arms in the use of force to achieve political, ideological or economic objectives; are not within the formal military structures of States, State-alliances or intergovernmental organizations; and are not under the control of the States(s) in which they operate* (2006), p 6.

- Geneva Call considers *any armed actor with a basic structure of command operating outside State control that uses force to achieve its political or allegedly political objectives* (2006), p 8.

[115] If the aim is to engage with protection issues, the presence of a chain of command is a pre-requisite and groups lacking it will be discarded (e.g. road bandits). Humanitarian actors with a heavy footprint on the ground will need to be more inclusive than those operating from outside the context.

[116] Such an endeavour is however not impossible, and the generalisation of mobile and satellite phones offer interesting perspectives. Thuraya phone have become increasingly popular among armed groups in countries like Chad, thereby facilitating contacts even in very remote locations.

[117] A 2005 consultation of ICRC delegations regarding material they use with armed groups showed that no centrally-produced tool can be used everywhere, and that tools produced for other audiences can usually be re-used with great ease, such as calendars, bulletins, local adaptations of the brochure *Code of Conduct & First Aid*, etc.

6. *Acceptability challenge*: some groups will not want to meet the ICRC because of what it stands for (e.g. respect for people not directly or no longer involved in hostilities)[118] or for what it is perceived to be.[119]
7. *Legal Challenge*: Armed groups cannot be party to IHL treaties. They are, however, as individuals of a country, which has ratified them, bound to respect their provisions, together with customary international law. Armed groups oppose a State with which the ICRC may have a headquarters agreement and may feel the ICRC is biased towards the State. The question is sometimes asked whether engaging an armed group will legitimize it.[120] It should however be noted that Common Article 3 explicitly states that *"application of the preceding provisions shall not affect the legal status of the Parties to the conflict"*. This must be made clear with State and NSAs alike.[121]

Engaging in dialogue with armed groups is neither an easy nor a straightforward task. The above-mentioned elements greatly complicate any dialogue. However, concentrating on the challenges would obscure the fact that most armed groups present features facilitating dialogue. For example, the lack of distinction between the population and the armed group at large ("*Viet-Cong or peaceful villager?*") can be beneficial: targeting a group's support network by dissemination to "normal" civil society leaders and the general population is both easy and politically safe.[122] Although this indirect approach is not a panacea, it makes the start of a dialogue with armed groups much easier.

2. Whom to Engage?

Armed groups are a reality for any ICRC activity in their area of operations and may either have an impact on victims or become victims themselves. They are inescapable and often very valuable interlocutors; neither should one forget that they may also benefit from ICRC activities.[123]

Since they operate in certain areas, armed groups can be interlocutors for ICRC field movements and security, as well as for protection activities (visiting detainees they are holding, representations on violations of IHL, working with the Children Associated with Fighting Forces (CAFF)).[124] On the other hand, they can benefit from protection (as detainees,

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[118] In case of a group engaged in violations of IHL, and possibly under indictment by an international tribunal. The difficulties faced by the ICRC in meeting some leaders in the former Yugoslavia after the creation of the International Criminal Tribunal for the former Yugoslavia are a good example.

[119] For example, in 2003 an alleged "Mullah Omar" called Western aid agencies "*the greatest enemies of Islam and humanity*". Although this statement was denied by Mullah Omar's spokesman, it shows a perception of the ICRC not conducive for dialogue, to say the least. Perception will often be less manicheist, but draw on an impression that the ICRC is too closely associated with the State in which it operates. Regular contacts with authorities and armed/security forces, even for protection activities benefiting members of the armed group, may reinforce this perception.

[120] And never whether not engaging it will legitimize State pronouncements on the situation ("no conflict, just some terrorists"), sign that the question in itself is often biased…

[121] The point is not to suggest that legitimate caution should be forgotten. Any external actor can always be used by any party to the conflict for political or media gain. The risk of manipulation can be mitigated by explicitly stating some rules derived from article 3, but it will never disappear, requiring a careful assessment of the potential political implications.

[122] Other features include the existence of non-permanent combatants who can be reached when they are not active, the presence of groups' representatives in third countries easily reachable by the ICRC, trends in recruitment through institutions the ICRC can reach (e.g. universities), or the existence of 'legal' political parties with ideological or organizational ties with the armed groups.

[123] Those activities must obviously not offer a military or political contribution to the groups' cause.

[124] *Children Associated with Fighting Forces*, or Child Soldiers.

family of missing people, CAFF to repatriate), from assistance, whether directly (e.g. via a field surgical team) or indirectly (as members of a community receiving assistance, e.g. a well), or from preventive action (dissemination, mine risk education, first aid, IHL). It is too often overlooked that armed groups may have a positive influence on victims and may be as open to ICRC protection activities as some States.[125]

The ICRC's approach as to whom it should engage is therefore as wide as feasible: as soon as an armed group is a part of the situation, it should be engaged.[126] The ultimate factor for the engagement is consideration of the needs of beneficiaries of ICRC action and not the existence of armed groups as such.

This is not to say that the ICRC can engage all armed groups; a number of limiting factors should not be overlooked:

- *Logistical constraints* can limit dialogue with groups active in the same area as the ICRC. When the bad state of the roads, combined with heavy tropical rain, prevent any movement, sustained dialogue becomes virtually impossible.
- *The sheer number* of armed groups in some contexts and the general instability of their formal organizations. In Eastern Chad, the ICRC can have (and has) contacts with a number of field-level commanders, but is seriously hampered in working at a higher level, since there is no strong institution, and alliances are shifting regularly. This forces ICRC delegates to multiply contacts prior to any field trip and is a heavy but inescapable constraint on their work.
- When an armed group is *clandestine*, direct contact in the country is almost impossible.
- In exceptional cases, the use of *armed escorts* by the ICRC[127] will quite obviously shy away armed groups.

These are some of the factors limiting the ICRC's engagement towards armed groups. It will be noted that the branding of groups as "terrorists" is not one of these factors.[128] Regardless of the legitimate distaste any human being may have of some methods of warfare, such as deliberately targeting civilians, some armed groups using such methods are still party to a situation where the ICRC is operational and cannot therefore be ignored.[129]

3. Engaging with International Humanitarian Law[130]

Instead of focusing on the general dialogue between the ICRC and armed groups, we shall—after agreement with the organizers—concentrate on a specific aspect of the engagement with armed groups. As part of its mandate to work in armed conflicts and other situations of violence, the ICRC works with armed groups on the subject of IHL, mostly in

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[125] The ICRC can sometimes visit people detained by armed groups according to its modalities with ease, like, recently, in northern Central-African Republic.

[126] A criminal gang pre-existing an armed conflict may stay completely out of it, and therefore not be of interest to the ICRC.

[127] The ICRC's rule is not to use escorts, with only two exceptions, Northern Caucasus and Somalia.

[128] This question is not new and should not be treated as a post 9/11 novelty. The debate between 'terrorist' and 'freedom fighter' shows that no such definition is exempt of a political content; labelling organizations as 'terrorist' is a political choice.

[129] And deliberate targeting of civilians can also be done by armies.

[130] The full title is *International Humanitarian Law Applicable in Armed Conflicts*. This body of law is sometimes also known as law of armed conflicts and is distinct from human rights law.

the perspective of conduct of hostilities and protected persons and objects. It does the same thing with numerous armed forces around the world.

3.1. The Roots of Behaviour in War

Wishing to better understand the reasons that cause human beings to violate IHL during armed conflicts, the ICRC launched a study that resulted in several findings as to the characteristics of fighters.[131]

1. *Usually not pathological killers*: violations of IHL are not generally the work of sick, sadistic or irrational individuals. Even if a small fringe of people can give free rein to their impulses during the confusion created by combat, all studies will show that most people are not fit for fighting all the time. Training will help raise the proportion of those who take a direct part in combat, but cannot on its own transform normal people into pathological killers.
2. *Group conformity*: while individuals may not normally be killers, fighters are generally motivated more by group pressure than by hatred or even fear. What counts is the esteem of their comrades, the defence of their collective reputation and the desire to contribute to the success of the group. This favours the dilution of perceived individual responsibility.
3. *Obedience to authority*: the great majority of individuals are ready to adopt the behaviour that is expected of them. This is reinforced in a military setting with a framework more constraining than in civilian life, and through training. Nevertheless, one should not consider fighters as constrained to obey under oppression; they are generally individuals whose obedience stems from internal motivation and not (only) external pressure. While violations of IHL may sometimes stem from orders, they seem more frequently to be connected with a lack of any specific orders not to violate the law, or an implicit authorization to behave in a certain—reprehensible—manner.[132] Were fighters only acting under pressure, they would not commit most of the violations reported.
4. *Being exposed to violence*: combatants who have been directly affected by violence, from the enemy or from their own, will be more likely to violate IHL. Both a lower sensitivity to violence and a desire for revenge create favourable conditions for a downward spiral of violence with moral disengagement.

Violations of IHL are mostly concomitant with a process of moral disengagement, where combatants justify violations and dehumanize the enemy. Justification of what are essentially war crimes can take the form of an apology of the perpetrators, seeing themselves as a victim and under threat to become victims once more, unless they act decisively, by any means at their disposal. It can also take the shape of an accusation of the victim—often quoting real or supposed violations of IHL on the enemy's side—or of a denial of the seriousness of the violation. Lastly, fighters are tempted to justify themselves by dehumanizing the enemy; propaganda considering the "others" as vermin and implying that vermin must be exterminated[133] is only one example of how to do this. Moral disengagement both determines behaviour and is gradual; actions that once were inconceivable slowly become acceptable and then normal.

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[131] Mostly available in two booklets: ICRC (2004), ref 854, and ICRC (2004), ref 853. Both can be ordered or downloaded from <http://www.icrc.org/eng>. The present chapter is indebted to the second one.
[132] For example, "*you know what to do with these ***, I don't want to hear of this problem anymore*".
[133] In 1994, qualifying the 'enemy' as cockroaches, the Rwandese *Radio Mille Collines* urged its listeners to eliminate them.

As consequences of these processes, one should not appeal to the moral goodwill of the fighters with too many illusions; knowledge of the law will however help prevent fighters from entering into a spiral of violence and complicate moral disengagement. This knowledge does not and cannot replace measures taken by the leadership, but may incite the leaders to take such measures.

3.2. Dissemination—Spreading Knowledge of the Law

The international community, through the Statutes of the Red Cross and Red Crescent Movement that States have approved, has mandated the ICRC to work for the "*understanding and dissemination of knowledge*" of IHL. It has also been asked to support States in the dissemination of IHL.[134]

Dissemination mostly takes the form of lectures to fighters or commanders, explaining what the principles of IHL are. Most armed groups have no centrally-controlled training system, except for a peer-to-peer approach on the use of weapons and basic tactics. Dissemination is therefore the most obvious tool, and even more so when it targets commanders.

The ICRC has been using this approach for years, and has developed a combination of tools well suited to various groups. In Côte d'Ivoire, ICRC delegates and local Red Cross trainers combined to offer fighters of the *Forces Nouvelles* first-aid training, basic IHL dissemination and lectures on the Red Cross and Red Crescent Movement. This not only enhanced the Movement's acceptability, but also helped to spread awareness of the law and of first-aid techniques in a context where State institutions were not deployed.

Interestingly enough, such a combination is not accepted all over the world. Some armed groups of Western Afghanistan received the same offer in 2002 and refused, wanting only lectures on IHL and the ICRC. This puzzled the ICRC delegates involved, but illustrates that armed groups may be quite open to IHL, regardless of their structures or command culture. In countless African contexts, fighters have asked the ICRC to give them "the same things as to the military". This shows once again that conclusions as to the exact content of dialogue with armed groups are hard to draw and that no course of action works everywhere.

Although the ICRC does not keep statistics at this level,[135] scores of armed groups in more than 25 countries in the world received dissemination sessions during the year 2006.

Specific reference must be made to the process of moral disengagement outlined above: dissemination may be counterproductive and even dangerous for the ICRC in such situations. Morally disengaged fighters may use their little knowledge of IHL to further justify their violations by the real or alleged violations committed by the enemy. They may also perceive the ICRC as a threat, due to a possible link with the international criminal justice system.[136] Finally, they may simply reject the messages of the ICRC as totally de-linked from reality, as an irrelevant dream of "people who don't know". These issues require a careful designing of

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[134] Resolution XXI, 1977 diplomatic conference.

[135] This is not caused by a desire for confidentiality, but by the sheer impossibility of counting the number of groups in a given context over time; this is best illustrated by the example of Darfur, where groups have split in more than 20 movements since 2003, not counting the non-permanent groups composing parts of the Arab militias.

[136] The International Criminal Court (ICC) and other international courts are usually an element fostering questions on IHL, but mostly because fighters know that the ICRC will not gather information for the prosecutors. When the distinction of roles is not clear to fighters, they tend to avoid contact with the ICRC because of the ICC, if only because of the similarity of the two acronyms.

messages and the setting of a realistic strategy. As an example, it would not have been productive to start talking to the Ugandan Lord's Resistance Army (LRA) about child abductions, which were an integral part of their *modus operandi*. Respect for the emblem of the Red Cross was a better way to start, hopefully allowing both the ICRC and the Ugandan Red Cross Society freedom of movement and therefore direct access to victims of the conflict.

As for the LRA, a combination of direct and indirect dialogue was quite effective, also targeting the general support base[137] of the armed group. As part of the indirect approach, one should consider the ICRC's usual activities, which reinforce the messages of dissemination, and are facilitated by it. An organization trustworthy when it speaks of assistance and protection is more likely to be trusted when it speaks about the law. Dissemination of IHL works best when it is part of a broader ICRC action.

3.3. Means and Mechanisms for the Respect of the Law

Dissemination makes it possible to reach a number of individuals. Wherever possible, it must be completed with concrete measures by armed groups themselves that foster respect of the law.

Four areas are key in this respect, for any arms bearers and not only for armed groups: doctrine,[138] education, training, and sanctions. While not all arms bearers will have a viable education and training system,[139] they all have some sort of doctrine and sanction system. In all cases, top-level commanders must set the scene by insisting that IHL be incorporated into all the planning, organization and execution of operations. This is normally achieved by issuing a written standing order but may also be oral;[140] if it is consistently followed by disciplinary action, fighters will get the message.

Experience shows that the more visible sanctions are and the more predictable their application, the more dissuasive they will be. They also make it possible to effectively punish those who have failed to obey the law. They therefore offer the hierarchy a means of enforcing orders and discipline and of showing that the whole chain of command is firm in defending its fundamental values.

It has been argued that the majority of armed groups could not benefit from fully-fledged integration support, given their organizational weaknesses; such an argument is usually used

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[137] Willing or not, certain parts of the population supported the LRA, and therefore could also relay messages.

[138] Doctrine is understood as *all standard principles that guide the action of arms carriers* at strategic, operational and tactical levels, independently of the formats these principles take. It therefore encompasses all directives, policies, procedures, codes of conduct, and reference manuals—or their equivalents—shaping the decision-making process, tactics and behaviour in operations.

[139] We speak of an efficient system, not just of the appearances of it.

[140] Examples of codes of conduct that include elements of IHL would include the *Umkhonto We Sizwe military Code*, an ANC Manual, <http://www.bellum.nu/literature/ANC003.html>, chapter 6, point 3:

> *The following acts or omissions shall be an offence:*
> a. *Conduct that weakens the people's trust, confidence and faith in the ANC and Umkhonto.*
> b. *Theft from a comrade or the people, **looting of property, or other forcible seizure of goods**.*
> c. *Abuse of authority and/or power.*
> d. ***Cruelty** inflicted on a member of the army or public.*
> e. ***Assaults, rape**, disorderly conduct, the use of insulting and/or obscene language, bullying and **intimidation**, whether against a comrade or member of the public.*
> f. *Shameful conduct likely to disgrace the ANC, army or the offender, or bring them into disrepute, or provoke indignation and contempt against them, such as **violating the rights and dignity of the opposite sex**, whether in operational or base areas.*
> g. *Unjustifiable **homicide**.*
> h. *Ill-treatment of prisoners of war or persons in custody.*

to justify avoiding engaging an armed group. It fails to address the issue that a number of State armed and security forces also have organizational weaknesses, and still benefit from international support.

Despite inherently weaker structures, armed groups may benefit from ICRC support in IHL matters if such support is likely to lead to improved respect of IHL. Obviously, care should be taken for this process not to be used for public relations purposes, i.e. if no will to enhance compliance exists.

"Training of trainers" courses,[141] workshops with commanders, or joint courses for fighters[142] are tools that can enhance respect of the rules. They have been used with success in various parts of the world, be it for instance in Sudan or the Philippines. They will not be effective in themselves, but will give the group's leadership the necessary knowledge to create and implement means and mechanisms for the respect of the law. Putting the burden on the group and not on the ICRC is essential: group conformity and obedience to authority are key in the behaviour of individual fighters. The ICRC is external to the group and has no authority on its fighters!

3.4. Legal Documents to Integrate IHL

In addition to dissemination and working on means and mechanisms for the respect of IHL, several legal tools allow the ICRC to work at a higher level, where political and military leadership are intermingled. Even if armed groups are bound by IHL, it remains important for them to implement the rules in their own policy documents. One should have no illusions that legal documents can serve as quick fixes in situations of systematic disrespect for the law if the political will to abide by it is lacking, or themselves guarantee better respect. Nevertheless, experience has shown that where the requisite conditions exist, integrating IHL into certain legal documents may prove useful in bringing the parties into better compliance with the rules.

The following are a number of "legal tools" that have been used by the ICRC and other humanitarian actors in efforts to improve compliance with humanitarian law by parties to non-international armed conflicts. Such tools provide a basis on which legal representations can be made and accountability can be based:

1. *Special agreements* between the parties to non-international armed conflicts allow the parties to make an explicit commitment to comply with humanitarian law. Special agreements might also provide added incentive to comply with the law, based on the mutual consent of the parties. These special agreements make clear that both sides are bound by these IHL obligations. Common Article 3 explicitly states that concluding a special agreement will in no way affect the legal status of the parties to a conflict.
2. *Unilateral declarations* ("declarations of intention" or "declarations of undertaking") can be made by armed groups party to non-international armed conflicts, in which they state their commitment to comply with IHL. Some armed groups take the

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[141] Despite using the expression 'train the trainers', the ICRC is quite conscious that it cannot properly train instructors for arms bearers. It can provide an input in terms of content (what is IHL?) but not get into the practical skills required to apply the law in combat operations. This would mean crossing the boundary from neutral humanitarian organization to active support and enhancing military capabilities, an obvious impossibility for a humanitarian actor.

[142] With ICRC instructors and groups' officers; the ICRC states the obligations and the officers choose how to translate them into practical drills. An obvious example is the ICRC stating that a prisoner must not be ill-treated; what does it mean to fighters? They must receive orders from their trainers / superiors on how to capture, disarm, search, and interrogate a surrendering enemy.

initiative to make such declarations through a public statement. At other times, the ICRC or another humanitarian actor or organization initiates, negotiates and/or receives the declarations.[143]

3. By adopting and distributing a ***code of conduct*** that is consistent with IHL, the hierarchy of an armed group puts into place a concrete mechanism facilitating its members' respect for IHL. Such indication of commitment to adhere to the rules of IHL, although less public than a declaration of intention or a special agreement, can nonetheless lead to better implementation of IHL norms by an armed group, and have a direct impact on its training and dissemination.

4. The ***inclusion of IHL commitments in ceasefire or peace agreements*** entered into by parties to non-international armed conflicts helps to ensure respect for IHL provisions that continue to apply or come into force after the cessation of hostilities. Additionally, the inclusion of IHL commitments in a ceasefire agreement can also be useful in case of renewal of hostilities, to remind the parties of their obligations under IHL.

These four legal tools[144] share a common feature and benefit: the opportunity for a party to a conflict to make an "express commitment" of its willingness or intention to comply with IHL. The hierarchy of a party to an armed conflict takes an affirmative step in signing, or agreeing with, a statement of the applicable law, thereby taking ownership and making a commitment to ensure respect for the mentioned provisions of IHL. This express commitment provides evidence that the party recognizes its obligations under the law. Any of the tools of express commitment can serve as a useful basis for follow-up action to address violations of the law, providing additional leverage for representations. They can also be used as a basis for dissemination of the law.

In addition, any of the tools can have a positive impact on the long-term process of engagement and relationship-building with a party to a conflict. The pursuit of one of these legal tools can serve as a point of entry for establishing contact and beginning a dialogue. The negotiations or discussions can then provide opportunities to identify a responsible interlocutor, learn more about the party, and carry on a dialogue concerning respect for humanitarian law.

3.5. What About Groups Violating IHL as a Method of Warfare?

Some armed groups have a strict code of conduct, forbidding most IHL violations, but a number of others resort routinely to methods that constitute violations of IHL. Suffice to give the examples of kidnapping and hostage-taking, of deliberate attacks on civilians not taking part in hostilities or of acts designed to spread terror. A number of other groups, including some loosely linked to States, have the aim of committing actions that amount to war crimes, such as mass murder of people from another ethnic group. Rwanda and the former Yugoslavia have offered us enough illustrations of such groups in the 1990s. This poses a significant challenge to any engagement, both for humanitarian action and for addressing IHL issues.

For any humanitarian actor on the ground, "naming and shaming" such armed groups will very likely result in restriction of access to those who need it most, the victims of abuses by parties to the conflict. Any public denunciation of violations will be perceived as a political

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[143] For an example, see <http://home.casema.nl/ndf/about/ndf_on_geneva_protocol.html>.

[144] One could also mention the granting—by the State—of amnesty for mere participation in hostilities. Although this is not used by armed groups as such, it provides them a powerful incentive to respect the law. One of the common arguments used by armed groups is that they are going to be prosecuted anyway, since they are not privileged combatants, so why respect IHL? This line is obviously void if an amnesty has been proclaimed.

stance taken against the armed group.[145] The ICRC's confidentiality is essential to obtaining access to people who would not receive protection and assistance without the institution, but it means that the ICRC's leverage on groups violating IHL on purpose is very limited. Resorting to persuasion only may fail to address their choices of means of warfare.

This does not mean that such groups should not be engaged as well: one can still negotiate many improvements to the lot of civilians, detainees and wounded, be they only temporary or limited to a particular category of the population, and make representations on their fate. The ICRC in Bosnia was not able to protect all civilians in need of protection, but its action enabled evacuation of the elderly, wounded or sick from some areas that would experience the infamous "ethnic cleansing" anyway. Such a pragmatic approach may remain the only option when armed groups deliberately choose to ignore IHL provisions.

A pragmatic approach may seem minimalist, but when an armed group has decided to violate IHL, one needs a powerful leverage to change its stance. In Bosnia, no one was able to stop ethnic cleansing before the parties had reached a political settlement, after considerable political and military pressure. Using every opportunity to gain better partial respect of IHL, even on a case-by-case basis, is better than passively waiting for things to change, even if it is no panacea. Sadly, there is no panacea…

Conclusion – The Need for Commitment

None of the tools used by the ICRC will be fully effective unless there is a genuine commitment from the group's leadership to respect the ICRC as a humanitarian organization and IHL as a basis for their military actions. Such a commitment must not consist of words only, but regularly be illustrated by actions. IHL is not a box to be ticked in a checklist; respecting it requires constant attention from the chain of command.

Here may lie the biggest challenge faced by all those who engage armed groups for the respect of IHL: not so much in creating tools for the respect but in fostering and reinforcing a choice by the armed groups themselves. This cannot be obtained by external pressure, although such pressure can help; it cannot be replaced by an ICRC involvement. Doing more is not doing better when commitment is not present.

Especially today, when many armed groups do not have an external State patron, commitment is vital. Most efforts should be directed at fostering it, by engaging in dialogue on what IHL is and why it is important. This dialogue may have to be re-initiated often in contexts where armed groups fragment regularly. However, there is no other way: engaging in dialogue with armed groups is a necessity both for operational reasons, and to work with them to enhance respect for IHL. Armed groups have to take the most important decisions, not the ICRC. They must respect and ensure respect of IHL themselves.

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[145] In an insurgency situation where the goal is not to occupy a certain geographical objective, but to win assent of the population ("hearts and minds" as John Adams defined it about the American Revolution), perception does matter to the highest degree in military terms.

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2. Influencing Armed Groups: Are there Lessons to Be Drawn from Socialization Literature?

By David Capie[146]

Abstract

Over the last decade much has been made of the so-called 'normative turn' in international relations (IR). There is substantial evidence that, in some circumstances, moral persuasion can have a powerful influence on the behaviour of States. The best-studied case in this respect is the International Campaign to Ban Landmines (ICBL). Scholars have recently begun to extend that work by exploring the micro-processes of normative influence, i.e. examining how norms change behaviour. Drawing on research in social psychology, they have identified scope conditions under which persuasion and socialization are more likely to lead 'targets' to change their positions and to act in new ways. A continuing limitation of this research, however, is that it focuses exclusively on States. My paper takes hypotheses generated about scope conditions for the persuasion and socialization of States and reconsiders them in the context of NSAs. Drawing on the experiences of Geneva Call and other humanitarian actors, it offers hypotheses about when might we expect armed groups to be more susceptible to normative influence. What institutional settings hold the most promise? How should we frame arguments to influence armed groups, and who is best equipped to make the case? The findings have consequences for both theory and humanitarian policy.

Introduction

In recent years there has been a major growth in the literature on the influence of norms in IR. While traditional theories of world politics focus on how States are motivated by various material variables, norm theorists have explored how actors can be influenced by notions of what constitutes appropriate behaviour. Whereas realists see States as inherently selfish and motivated by a small number of core interests (typically making themselves richer or more powerful), norm theorists have shown that interests can sometimes be changed through moral persuasion and that States can come to redefine their interests in ways that cannot be adequately explained by material incentives alone. The best known cases include the adoption of the international ban on AP landmines, the abolition of apartheid and the abolitionist movement against slavery, among others.[147]

The success of the scholarship on norms is hard to dispute. There is now widespread acceptance that norms 'matter' in the study of world politics. The new focus of research is on which norms affect actors, how and why. But while there is interesting new theoretical work being produced, much of the norms scholarship suffers from one major limitation: it is overwhelmingly State-centric. It generally assumes that the only actors that might be influenced by norms are nation-States. While NSAs such as civil society groups and NGOs are treated as potentially important norm entrepreneurs and persuaders, there has been little

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[147] Price, Richard (1998), pp. 613–644. Klotz, Audie (1999)

thought given to whether the same ideas about patterns of normative influence can apply to NSAs as 'targets' or persuadees.[148]

This paper briefly explores how some insights from the norms literature might apply to one specific set of NSAs, namely armed groups.[149] Drawing on recent work on socialization, it offers some preliminary suggestions for the kinds of engagement that may be successful and the kinds of institutional environments that may facilitate norm diffusion and internalisation. The paper is necessarily highly speculative. It is not a template for how to influence or persuade particular armed groups. Rather, I hope that a discussion of some of the more conceptual issues surrounding normative influence might lead to debate and reflection among practitioners and others interested in this area and contribute to the development of more successful processes of humanitarian engagement.

1. Socialization, Persuasion and Social Influences

One of the most important concepts underpinning IR literature on normative influence is the notion of socialization. Socialization is a well-established concept across the social sciences. It is commonly understood to mean "the process of inducting actors into the norms and rules of a given community".[150] Typically, it involves novice actors, describing "processes by which the newcomer—the infant, rookie, trainee for example—becomes incorporated into organized patterns of interaction" (Stryker and Statham in Johnston, 2001, p. 494). This incorporation or induction involves the internalisation of the values and understandings held by a group or society that the newcomer wants to join. In IR, scholars have used socialization to explore a diverse range of cases, from how would-be members of the North Atlantic Treaty Organization (NATO) and the EU were "taught" norms about the death penalty or civil-military relations, to how China was persuaded to join multilateral security and arms control discussions in Asia (Gheciu, 2005; Lewis, 2005; Johnston, 2008).[151]

Although there is a growing literature on socialization in IR, scholars employing the term have until recently lamented the lack of a detailed theory that would allow them to measure if and how socialization has taken place.[152] To better understand how socialization occurs in a given context, Johnston has offered a detailed account of two distinct explanatory pathways or what he calls 'micro-processes' of norm diffusion: persuasion and social influence.[153]

Persuasion is the most widely assumed mechanism for achieving norm change. Much of the norms literature implicitly assumes that norm diffusion occurs because of the inherent persuasiveness of norm entrepreneurs and other agents. It is the quality of their ideas and the nature of their reasoning that results in a particular norm's adoption by targets. In this general sense, persuasion simply involves "changing minds, opinions and attitudes […] in the absence of overtly material or mental coercion".[154] Put slightly differently, persuasion is a communication act intended to "modify the mental state of an individual in a context where he retains or believes that he retains a certain freedom".[155]

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[148] There is also a small and informative body of work on influencing corporations, for example campaigns to abolish sweatshops and promote labour standards.

[149] For a good discussion on the use of the term 'armed groups' as opposed to 'rebels', 'terrorists' and other labels, see the International Council on Human Rights Policy's report (2001).

[150] Checkel, Jeffrey and Michael Zurn (2005), p. 1046.

[151] Gheciu, Alexandra (2005), pp. 973–1012. Johnston, Alastair Iain (2008)

[152] Checkel, Jeffrey (1998)

[153] Johnston, Alastair Iain (2001)

[154] Johnston, Alastair Iain (2001), p. 496.

[155] Muñoz-Rojas, Daniel and Jean-Jacques Frésard (2004), p. 205.

Within this broad notion of persuasion, however, Johnston identifies at least three ways in which preference change occurs. First, the target actor can be presented with new information that challenges his or her existing view of an issue. This new information is reflected on and debated, resulting in the actor coming to a new opinion or adopting new arguments. In this kind of persuasion, it is the intrinsic merits of the counter-attitudinal argument that achieve influence. This process requires the systematic scrutiny of alternative ideas. Accordingly, it is less likely to occur spontaneously and more likely to occur in institutions or settings that allow for careful deliberation and reflection.

A second route is that the actor is persuaded because of his or her relationship to the persuader. In this case counter-attitudinal arguments are more likely to be perceived as legitimate or authoritative (and thus more persuasive) if they come from a highly regarded source. Information "from in-groups is more convincing than that from out-groups" and arguments will be perceived as more persuasive if they come from someone perceived to have a socially recognized position of authority, such as a doctor, scientist or religious leader.[156]

Third, persuasion is in part a function of the characteristics of the target and his or her prior beliefs. These characteristics could include the actor's cognitive-processing capabilities, the strength of pre-existing attitudes (in particular, the extent to which they are consistent with the new norm) and the importance a given actor assigns to the appearance of maintaining consistency with past commitments. Schimmelfennig (2005) goes further, arguing that persuasion necessarily requires a "liberal minded" interlocutor. While he does not specify precisely why this is necessary, the implication is that liberals are inherently more open to new ideas and reason.[157]

To some degree, of course, in practice, preference change is a result of the interaction of each of these processes and it is hard to disaggregate them. However, as Johnston argues, collectively, they point to a number of situations in which a novice actor may be more susceptible to persuasion. These situations include: when the target is confronted with new information (i.e. when the target is placed in a novel context); when the persuader is a member of a small, authoritative, high-status in-group that the target wants to join; when the actor has few prior, deeply ingrained views that are inconsistent with the counter-attitudinal message; and when the agent is repeatedly exposed to counter-attitudinal information over time.[158]

A second—related—process through which socialization occurs is what Johnston calls social influence. Social influence works to achieve pro-norm behaviour through the distribution of social rewards and punishments. These rewards include improved "psychological well-being, status, a sense of belonging, and a sense of well-being derived from conforming with role expectations".[159] Social sanctions or punishments on the other hand can consist of shaming, exclusion or the psychological discomfort that comes with actions that are inconsistent with a particular role or identity.

Social influence differs from persuasion in that, although the recipient outwardly conforms to the norm, that public behaviour is not matched with internal private acceptance. In other words, while an actor that is persuaded comes to accept the merits of the new information, social influence is less about the intrinsic qualities of the norm or the quality of the agent's reasoning and more about recognizing the attitudes of other members of the group. With social influence, the target may not actually accept the views of the persuader but,

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[156] Johnston, Alastair Iain (2001), p. 497.
[157] Johnston, Alastair Iain (2005), p. 1016.
[158] Johnston, Alastair Iain (2001), p. 499.
[159] Johnston, Alastair Iain (2001), p. 499.

seeing that the rest of the group has changed their minds, does not want to rock the boat. However, as we shall see below, such behaviour, even if only initially motivated by a desire to conform rather than by full acceptance of the norm, can sometimes lead over time to 'true' norm internalization.

Socialization through social influence requires that the target actors have a high degree of identification with a given group. In other words, some sort of affiliation or community membership is required and it is crucial that "agents [know] what is socially accepted in a given setting or community".[160] Conformity is driven by a desire to maximize status, either for utilitarian reasons (it will lead to greater power, wealth or deference) or as an end itself (the sense of psychological well-being that comes with it). These rewards and punishments are social because they are effectively worthless without the recognition of the given community. Only the group whose approval an actor seeks can provide them.

While the literature is contested, a number of core assumptions about the workings of social influence can be summarized. Johnston argues that, "cognitive discomfort associated with perceived divergence from a group's norms generates strong internal pressures to conform to the group's practices".[161] In other words, when an actor is out of line with the rest of the group the damage to that individual's self-esteem can lead to greater efforts to secure conformity. He also notes that there is a sense of comfort achieved by interacting with like actors (those with shared social traits) that leads to a greater willingness to comply with the requests of friends. Third, the sense of discomfort generated from behaviour perceived to be hypocritical or inconsistent with prior commitments leads to efforts to maintain greater conformity. Conversely, the more identity-consistent behaviour is repeated, the more strongly held it becomes, in turn reinforcing the sense of identity with the group.[162]

This is a much-condensed summary of just some of the work on socialization in IR theory. While innovative and profoundly challenging to much of mainstream IR, to date it has only been applied to the behaviour and influence of States. What, if anything, does it suggest about engaging and changing the behaviour of armed groups? The next section attempts to connect theory and reality, with a particular focus on efforts to disseminate the norm against the use and possession of AP landmines.

2. Persuading Armed Groups

A frequent starting point for any discussion of the power of norms in humanitarian issues is the mine-ban treaty. In the Ottawa Process, a combination of moral and utilitarian arguments was used to mobilize international opinion against AP mines. Using these approaches, a like-minded coalition of States and NGOs was able to redefine what it meant for a State to be a "reputable" or "good" member of the international community. The humble landmine went from being seen as a perfectly ordinary conventional weapon to a particularly sinister and reprehensible symbol of rogue behaviour (Price, 1998; Rutherford, 2000).[163] In a very short time, some of the world's most powerful military actors renounced mine possession and use and changed their behaviour on the battlefield. Even States that refused to sign the treaty have complied with it to some extent, for example, by imposing a moratorium on exports. Once a number of influential States had agreed to support a ban, the process achieved a "tipping point" and a norm cascade began. New States rushed to support the

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[160] Checkel, Jeffrey (2005), p. 804.
[161] Johnston, Alastair Iain (2001), p. 500.
[162] Johnston, Alastair Iain (2001), p. 500.
[163] Price, Richard (1998), pp. 613–644.

measure, not because they were persuaded by the merits of the case, but more because they saw that what constituted appropriate behaviour as a State had been redefined.[164]

The Ottawa Process was a remarkable example of socialization in practice and it is possible to identify both persuasion and social influences impacting upon given actors. However, without diminishing the extraordinary achievements of the ICBL, it had one major advantage over the challenge of influencing armed groups. This is a world designed for States. There are numerous channels and institutions through which States interact as "social" beings. This socialization takes place through embassies, regional and global institutions and the meetings that occur every day in cities like Geneva, Washington and New York. Through these channels, States become aware of the views of others and come to understand what is expected as "appropriate" behaviour (as a State, as a democracy, as member of a particular regional organization, a part of the 'West", etc.). There is a reasonably clear set of reputational rewards and punishments for compliance or non-compliance with specific norms of the international system.

Despite that, I would argue that there is no prima facie reason why the strategies of moral persuasion that were so successful at influencing nation-States in the mine-ban case cannot also work with at least some armed groups. The ontological distinction drawn between States and non-State groups is frequently more evident in theory than in practice. As Will Reno has argued, there are parts of the world where armed groups provide basic public goods and behave somewhat like States, while internationally recognized governments behave more like private criminal syndicates. Some armed groups already act as *de facto* States, controlling territory and governing populations. To be sure, some groups will be more likely to seek status rewards associated with international recognition and engagement than others, but the same could equally be said of States. That it is difficult to change North Korean behaviour on human rights does not mean it is not worth trying. The twin challenge is to identify the kind of groups more likely to be influenced by particular norms, and second to work out the specific instruments and contexts through which compliance can be best encouraged.[165]

For reasons of length, I do not propose to deal with the first question—which groups might be more likely to be influenced—in this paper. Elsewhere, I have hypothesized that the more State-like an armed group is in terms of its structure and goals, the more likely it is to be influenced by these norms. An armed group that seeks statehood through conquest or secession, controls territory and has effective control over its rank and file is much more likely to be concerned about what is presented as appropriate behaviour for a member of the State system than a secretive network which rejects the legitimacy of the State system in the first place.

If we focus on the second question then, what does the socialization literature tell us about the techniques and contexts that might be important in influencing armed groups? The first lesson is the simple one that engaging with armed groups is essential. Persuasion requires contact, dialogue, discussion, and debate. Compliance with the norms and conventions of a given community can only be expected when those norms are clear to begin with, and are actively communicated to would-be members. Prospective 'teachers' of humanitarian norms need to get information from meetings in Geneva or New York into the hands of commanders and soldiers in the field. Research by the ICRC suggests that the most important step is influencing commanders and getting normative commitments included in rules and orders that are passed down the chain of command.[166] This has never been easy and in the context of the

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[164] Finnemore, Martha and Kathryn Sikkink (1998), pp. 895–905.
[165] Capie, David and Pablo Policzer, forthcoming.
[166] Muñoz-Rojas, Daniel and Jean-Jacques Frésard (2004)

'war on terror' the space for humanitarian actors to engage with some NSAs has closed significantly, but it remains the most important means for changing minds and behaviour among armed groups.

It is also essential that persuaders are clear among themselves about the norms that are to be exported. Here the research is conclusive: the simpler the norm, the better the chance it will have to diffuse widely and become internalized by targets. The landmine norm worked well because the logical links between perpetrator and victim were simple and clear. So too was the proposed solution. Advocates sought a total ban on all AP landmines, without exceptions for particular regions or types of device. This need for clarity highlights the risks of debates within the international community about what constitute basic principles of IHL, for example, regarding torture and the treatment of prisoners. If there is not clarity about the standards expected from members of a community, then it should be little surprise that influence over putative members is also reduced.

Geneva Call's *Deed of Commitment* is an innovative mechanism for encouraging norm diffusion and compliance with the landmine ban. The organization's experience to date suggests that strategies of moral persuasion are already having an impact with armed groups, with more than 35 groups having signed the *Deed*. According to the NGO, there are many reasons why groups sign, including an armed group's own experience with the damaging consequences of landmine use, pressure from their own communities, the expectation that signing might lead to demining assistance, employment or development projects, as well as military self-interest. But groups also recognize that reputation can be a strategic asset. They seek "exposure, visibility […] they] want to be treated as a legitimate actor on mine action." They want to "show they can look after their people and put pressure on the opponent States." Some groups "want to get higher moral ground that gives them respectability […] that makes them look better than governments".[167]

If there is preliminary evidence suggesting that reputation and status issues influence armed groups, the picture is much less clear when it comes to naming and shaming and the operation of social influence. Here the importance of disseminating information is crucial. Social influence and opprobrium work on the assumption that the target actor knows that it is being shamed. In some cases, armed groups simply do not know the norm with which they are supposed to comply. For example, while the UNSC created a list naming armed groups that were using child soldiers in an attempt to shame them into giving it up, activists reported that few groups on the ground even knew about the list (Becker, 2003).[168] Even if one accepts that stigmatization processes can work, a group is not likely to feel shame without knowing it has been named. There is also evidence that, when it comes to naming and shaming human rights violators, NGOs have given "insufficient attention to abuses by armed groups" (Petrasek, forthcoming).

This points to the importance of creating mechanisms to share knowledge, gather commitments and socialize armed groups. As the literature suggests, stigmatization is more likely to be effective when the targeted actor is a member of a defined group or community that declares its willingness to respect the particular norm. The public nature of these commitments is important. Even where there is an agreed notion of what constitutes appropriate behaviour, "actions will not generate social pressures where they are private and

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[167] Bongard, Pascal. 2007. *Interview*. Geneva, 4 June.
[168] There is the possibility that a group may decide that the publicity and status that comes with being named on a UN list outweighs the costs of being seen to violate basic humanitarian norms. In other words, it is better to have a reputation for being bad, than not to be known at all. I am grateful to Rachel Brett for drawing this to my attention.

unobserved".[169] A major challenge, of course, is that there are few institutional settings where armed groups can come together to make public commitments in the way that States do. Although many armed groups frequently make unilateral commitments to behave in a particular way (for example to respect IHL or eschew landmine use) they rarely make these commitments in a collective fashion. Armed groups do not sign international treaties. They usually do not belong to international or regional institutions. Visa requirements and international pressure can make it difficult even for willing groups to be able to engage in meetings with non-governmental actors.

However, the idea of creating some kind of arrangement where the undertakings of armed groups can be brought together is not fantasy. Indeed, it was not so long ago that the UN itself recognized a specific category of liberation movements. There have been small-scale efforts to create social environments among representatives of armed groups. In 2004, Geneva Call, the PSIO and the Armed Groups Project organized a meeting in Geneva that brought together representatives from a range of armed groups to discuss the mine-ban norm.[170] Most participants had signed Geneva Call's *Deed of Commitment* giving up mine-use, but some non-signatory groups also attended. One participant likened the atmosphere to a "mini-United Nations for armed groups." During the proceedings, signatory groups explained their rationales for doing so and engaged in dialogue with non-signatory groups. Their language frequently suggested the importance they attach to the improved reputations they perceived as a result of signing the *Deed*.[171]

But while such innovative efforts are to be applauded, there are reasons to doubt whether occasionally bringing together the representatives of groups to discuss these issues is effective as a form of socialization. Work on the teaching of new norms to prospective members of the EU and NATO indicates that the "intensity, duration and quality of exposure to counter-attitudinal messages are critical variables explaining the success of persuasion".[172] This suggests the importance of creating processes through which armed groups can be reminded of their obligations and prior commitments over a sustained period of time. There are many obstacles in the way of such an arrangement, not least resources and the intense opposition of some governments, but if it were able to be established it is likely to be more effective over time than single-issue, one-off gatherings.

This raises the question: are there other institutions that might encourage compliance by armed groups? The ICRC currently has training centres where members of national police and armed forces come together and are taught about IHL. Would it be possible to set up an arrangement where representatives of some armed groups could be similarly brought in and taught these principles? Would it be possible to create a central body that could collate unilateral commitments by armed groups to respect IHL? This would encourage good behaviour and make it easier to highlight non-compliance in a way that might make 'shaming' more effective.

A complaint frequently made about these 'soft' instruments is that armed groups make commitments to garner good publicity, but then do not honour them in practice. It is understandable, perhaps even sensible, to be sceptical about the claims of armed groups and

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[169] Johnston, Alastair Iain (2001), p. 502.

[170] A report on the meeting is available on the Geneva Call website: <www.genevacall.org>. Information about the Armed Groups Project can be found at <www.armedgroups.org>.

[171] See for example Nhial Deng Nhial, 'Statement of the Sudan People's Liberation Movement/Army on the occasion of the signing the Geneva Call *Deed of Commitment*: <http://www.genevacall.org/resources/testi-reference-materials/testi-nsa-states/spl-04oct01.htm>

[172] Johnston, Alastair Iain (2005), p. 1023.

about the influence of norms. But the norms literature provides at least some cause for optimism, even in cases where actors invoke norms for instrumental purposes. States have a long history of agreeing to human rights obligations with no intention of complying, only later to find themselves prisoners of their own rhetoric. The Indonesian government under President Suharto, for example, established a Human Rights Commission in an attempt to assuage international concerns about its brutal activities in occupied East Timor. The government did not want an active and independent human rights body but, over time, this is what the Commission became. It was able to point to explicit government commitments and treaty obligations and use them to put pressure on various State agencies, including the military.

The work on social influences suggests that embedding commitments within an institutional framework makes it harder for actors to backtrack on promises, even when they never fully accepted the norm to begin with. Membership of a group usually requires a certain number of "on the record" commitments that establish "a baseline identity such that behaviour that diverges from these identity markers are discomforting inconsistencies".[173] Even if an armed group's agreements and commitments are initially just 'cheap talk', they still serve a useful purpose, providing a benchmark for accountability. They can be tools for local communities and members of groups to use, or for agencies like the ICRC to use to begin a process of dialogue with an armed group.

Finally, the literature on persuasion also encourages us to be creative when we think about the agents we use as persuaders. If we are to convince armed groups to comply with norms, we need to find people to do the engaging who will be influential and seen as authoritative. One possibility might be to use former or even current combatants who have some shared worldview or common sense of purpose with the target group. Again, this idea is not as radical as it might sound. In fact, it is already occurring. An African National Congress representative played a confidence-building role in the decommissioning process in Northern Ireland. An SPLA/M representative recently called upon the Colombian armed group, the Ejército de Liberación Nacional, to abandon the use of landmines as part of a campaign pressed by Geneva Call. At the Nairobi meeting of States Parties to the Ottawa Mine-Ban Treaty, a meeting was brokered that saw the SPLA/M and Sudanese government jointly encourage the Colombian government to engage with NSAs on the landmine ban and other humanitarian issues. The Sudanese parties explained how humanitarian agreements had contributed to building peace in their country. Groups taking part in Geneva Call's 2004 conference also urged non-signatories to seek greater legitimacy by supporting a mine-ban. It might be possible to systematize this kind of initiative and create a network of advisers from groups that have renounced landmines, and have experience of DDR, demining and stockpile destruction for example. They could act as advisers to armed groups going through similar processes, helping to build confidence and encourage compliance.

Conclusion

At a time when world politics is dominated by the 'with us or against us' rhetoric of the 'war on terror,' proposing initiatives to engage armed groups and even to bring their representatives together in some form of loose arrangement will sound naïve, reckless or worse to some. But, for the tens of thousands of people who find themselves caught up in situations of violence every day, anything that might be done to encourage all parties to conflicts to comply with basic humanitarian norms deserves consideration. Given that almost

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[173] Johnston, Alastair Iain (2001), p. 500.

all of the world's current conflicts involve at least one NSA, this kind of engagement simply cannot be avoided.[174]

This paper argues that there are lessons from the State-centric scholarship on norms and socialization that are applicable to NSAs. That is not to say that there are easy solutions or that one kind of socialization mechanism will fit all armed groups. Given that there is serious debate about whether even liberal States are socialized when they take part in highly structured, international institutions that have been around for a long time, it is likely that many armed groups (most of whom are highly authoritarian) will be resistant to any kind of social influence and difficult to persuade. But rather than simply accept that that is the end of the matter, this paper argues that we need to look closely at instruments like Geneva Call's *Deed of Commitment* and agreements brokered by other humanitarian agencies, and try to understand which groups have changed their behaviour and why.

Far more research is necessary to grapple with this under-studied aspect of normative influence. Unfortunately, this is not easy research to undertake in the field. There are problems with security and access. Engagement with armed groups, never welcomed by the governments they oppose, has only become more difficult since 9/11. Actors like the ICRC have a wealth of information that could inform some of the questions raised in this paper but, for reasons of security, they have been reluctant to share it with researchers. There are signs that attitudes are changing. The ICRC is in the process of publishing some of the findings of an internal assessment on its efforts to engage and persuade armed groups. Other agencies, international organizations, NGOs, governments and former armed groups will also have experiences to share. A close, careful and systematic examination of that data will help us better understand just what kind of normative influences work to influence armed groups, when and why.

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[174] Capie, David and Pablo Policzer (2004)

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Chapter 5

Fields of Engagement

On what issues to engage NSAs? A key aspect when dealing with armed groups is to define the substance of the negotiations. Humanitarian and human rights organizations have engaged NSAs on a range of issues, be they specific like child protection or general such as IHL.

The papers presented in this chapter elaborate on two particular cases where NSAs are heavily involved. Greta Zeender, a senior analyst for the NRC, discusses the issue of IDPs. She provides concrete suggestions drawn from the NRC's experience in the Democratic Republic of Congo, Somalia, and Ivory Coast on how to protect IDP's rights in NSA-controlled areas. In her view, international NGOs may be in a better situation to engage NSAs than UN agencies and local NGOs. Pascal Bongard, who is Director of the Africa Department and Policy Advisor for Geneva Call, documents the experience of the organization in engaging NSAs on the landmine ban. He reviews the progress made to date and the challenges that lay ahead. His paper is based on the findings of an internal assessment he recently conducted.

1. Protecting the Internally Displaced: An Opportunity for International NGOs to Engage NSAs

By Greta Zeender

Abstract

Since NSAs have a direct and significant impact on IDPs, it is essential to engage them and to encourage them to respect IDP rights. NSAs are active in approximately half of the 50 countries with conflict-induced internal displacement and are often responsible for driving people from their homes and other gross human rights violations. While primary responsibility for the welfare of IDPs rests with the government, NSAs also have obligations towards them under international law.

International NGOs can make distinct contributions to IDP welfare, complementing efforts by UN agencies and domestic civil society organizations to engage NSAs. International NGOs may have fewer political restrictions on engaging NSAs than the UN and they may be better situated to convince NSAs of their impartiality than domestic organizations.

Drawing on the NRC's experience in the DRC, Somalia, and Côte d'Ivoire, this article discusses practical steps to engage NSAs, including training workshops with NSAs to highlight IDP problems and NSA obligations, 'go and see visits' of IDP camps with NSAs, and cooperative programmes among NGOs, UN agencies, and regional bodies to pressure or stigmatise violators of IDP rights.[175]

1. NSAs and IDPs

Some 25 million people in the world today are internally displaced, due to conflicts or human rights violations. IDPs outnumber refugees by two to one, but their plight still receives little attention. Four million people were newly displaced in 2006, while millions of others have been forced to live away from their homes for many years—even decades—because the conflicts that caused their displacement have remained unresolved.

In 2006, NSAs were active in at least 23 out of the 52 countries experiencing conflict-induced internal displacement.[176] Forced to flee their homes because their lives were in danger, IDPs remain within their own country, in territory controlled by either their government or an NSA,[177] neither of which generally grants them much protection. Much of the displacement over the last few years has been caused by NSA campaigns against civilians, as well as regular army campaigns, inter-communal violence, and the involvement of external armed forces.

In countries such as Chad, the DRC, and Iraq, among others, the killing, displacement, sexual violence, property destruction, and other abuses are not a by-product of the conflict,

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[175] Zeender, Greta (2005)

[176] List of countries: Afghanistan, Algeria, CAR, Chad, Colombia, DRC, Ethiopia, Georgia, India, Iraq, Israel, Myanmar, Nigeria, Pakistan, Palestinian Territories, Philippines, Russia, Senegal, Sri Lanka, Somalia, Sudan, Turkey, Uganda, according to the Heidelberg Institute for International Conflict Research (2007), p. 4.

[177] For the purposes of this article, non-State actors—or NSAs—are defined as "any armed actor operating outside State control that uses force to achieve its political/quasi-political objective. Such actors include armed groups, rebel groups, liberation movements and de facto governments." This definition is the one used by Geneva Call, a non-governmental organization which aims to influence NSAs to stop the use of landmines.

but a deliberate strategy used by armed groups to weaken and punish the support base of their enemies.[178] NSAs can be difficult to identify, since they can blend in with IDPs or with the local population, or infiltrate camps hosting IDPs. By posing as non-combatants, NSAs gravely endanger the security of IDPs. In Sri Lanka, for example, an armed breakaway group of the Tamil Tigers was infiltrating camps for newly displaced people and abducting its residents in March 2007.[179]

The primary responsibility to care for IDPs lies with their national governments. Focusing on NSAs does not imply that the role of States deserves less attention, but rather demonstrates the importance of also engaging NSAs on IDP protection, particularly when they are in control of territory.

While both States and NSAs, have committed human rights violations against IDPs and humanitarian workers, there is generally less information on actions committed by NSAs, mainly due to the difficulty for outside monitoring groups to access conflict zones or areas controlled by NSAs. Almost no public information is available on situations where NSAs may have provided assistance to IDPs.

2. Applicable Law: Human Rights Law, IHL, and International Criminal Law

Despite the comprehensive bodies of human rights law and humanitarian law that apply to States, NSAs are often not covered. This situation should be addressed, because NSAs have a major and growing impact on IDP welfare.

Human rights law is *de jure* still mostly applicable only to State entities, and the tools available to deal with NSA violations remain inadequate. There seems to be a trend, however, among some legal scholars and human rights NGOs to look at human rights law in a more comprehensive way. Some legal experts envisage a system whereby human rights obligations fall upon both States and NSAs.[180] Already, the Optional Protocol to the CRC on the involvement of children in armed conflict, which entered into force in 2002, places specific moral obligations upon NSAs. Article 4.1 states that "Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years." Also, human rights organizations such as Amnesty International and Human Rights Watch, now include acts committed by NSAs in their definition of what constitutes a human rights violation. Failing to criticise NSAs might indeed threaten human rights organizations' legitimacy as unbiased observers.[181]

Under IHL, NSAs have legal obligations towards IDPs, whether the conflict has an international or non-international character, if the violence has reached sufficient intensity to be considered an "armed conflict". NSAs in conflicts meeting this definition are bound by specific provisions of IHL treaties and by customary international law. The majority of IDPs in the world today are in "armed conflict" situations of a non-international character, where one or several armed groups fight against the government, or against each other. Non-international armed conflicts are explicitly covered by Article 3, which is common to the four Geneva Conventions of 1949, and by the Additional Protocol II of 1977. NSAs are bound to the treaties ratified by the State in which they operate, because they are subject to that State's law.[182] However, while the ratification of the four Geneva Conventions is universal, and

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[178] IDMC (2007), pp. 16–17.
[179] Amnesty International (2007)
[180] See for example Clapham (2006), p. 65.
[181] Clapham, Andrew (2006), pp. 50–51.
[182] Henckaerts, Jean-Marie (2002), p. 126.

therefore Common Article 3 applies to all parties in a non-international conflict where there are IDPs, it is not the case for Additional Protocol II, which has been ratified by 163 States.[183] A positive development was the ratification of Protocol II by Sudan in July 2006.

States not party to Additional Protocol II include countries undergoing major internal displacement, such as Indonesia, Myanmar, Nepal, Sri Lanka, and Somalia. For these countries, norms of IHL found to be customary[184] are applicable to non-international armed conflict:[185]

- parties to a non-international armed conflict may not order the displacement of the civilian population, in whole or in part, for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
- 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;
- 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;
- property rights of displaced persons must be respected;
- all parties are obliged to protect humanitarian relief personnel and objects, and to facilitate passage of humanitarian relief.

Another important legal development to hold NSAs accountable is related to international criminal law, which entails individual criminal responsibility for crimes of genocide, crimes against humanity, and war crimes. Since July 2002, the International Criminal Court (ICC) can, under certain conditions, prosecute individual members of NSAs who have committed such crimes.[186]

One of the crimes covered by the ICC statute is the "deportation or forcible transfer of population", which is defined as "forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law."[187] Other crimes that can be prosecuted include acts of sexual violence, the recruitment and use of child soldiers (younger than 15), and economic exploitation and pillage. These major violations occur in many situations of internal displacement.

Investigations are currently ongoing in three countries with millions of IDPs: the DRC, Sudan, and Uganda. The Court focuses on those individuals who bear the greatest

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[183] ICRC (2007)

[184] "Customary international law is based on the general practice of nations and if armed opposition groups want to overthrow a government or secede from a State and join the international community of nations, they have to abide by the laws of that community. Customary international law is based on a representative, widespread and consistent practice. So no matter what their political, religious or cultural background, armed opposition groups have to abide by customary international law because it represents the common standard of behaviour within the international community and it will not be acceptable that any party to any conflict applies different rules", Henckaerts, Jean-Marie (2002), p. 128.

[185] Henckaerts, Jean-Marie and Louise Doswald-Beck (2005), Note 12.

[186] ICC prosecutors can act 1) when the nation where the violations have been committed or from where the accused is a national has ratified the ICC statute, or if a State not party to the Statute accepts the exercise of jurisdiction by the Court with respect to the crime in question (Article 12 Rome Statute of the International Criminal Court, 10 November 1998), or when the UN Security Council refers a case to the ICC (Article 13 (b) Rome Statute) 2) when a nation with jurisdiction fails to investigate or prosecute the incidents ("complementarity" principle, Article 17 Rome Statute). 3) the crime is one of the most serious, of concern to the international community as a whole (Article 5, Rome Statute).

[187] Rome Statute, Article 7.2(d)

responsibility for the most serious crimes, and therefore only a small number of people will be prosecuted in each case. In January 2007, the ICC confirmed the charges against former militia leader Thomas Lubanga for war crimes committed in the Ituri district of the DRC, during 2002 and 2003, involving recruiting and conscripting children under the age of 15 and forcing them to take part in armed hostilities. While militias caused massive forced displacement in Ituri at the time, Thomas Lubanga was not prosecuted for that crime.

3. The UN Guiding Principles on Internal Displacement

The UN Guiding Principles on Internal Displacement, which have been developed by the UN Secretary General's Representative on IDPs and legal experts, incorporate current legal norms and developing norms with regard to IDPs.[188] The Guiding Principles include statements of IHL that are legally binding both on States and on NSAs. They also incorporate human rights law provisions relevant to IDPs, which oblige States, but not NSAs *per se*. In addition, the Guiding Principles include norms derived from refugee law, such as *non-refoulement* from one region to another within the State. The Guiding Principles provide a framework through which NSA obligations towards IDPs can be addressed.

The main principles of IHL applicable to NSAs in situations of non-international armed conflict and reflected in the Guiding Principles are:[189]

- obligation to humane treatment without adverse distinction based on race, colour, sex, language, religion, social origin, etc;
- prohibition on arbitrary displacement unless the security of the civilians involved or imperative military reasons so demand;
- prohibition on attacks against IDPs;
- prohibition on torture, rape, enforced prostitution, and any form of indecent assault;
- prohibition on the conscription of children under the age of 15 or to permit them to participate in hostilities;
- obligation to provide medical care for the wounded and the sick;
- prohibition on pillage;
- obligation to facilitate the reunion of families temporarily separated;
- obligation to respect freedom of religion;
- obligation to provide education for displaced children;
- right of humanitarian organizations to offer services to IDPs[190] and obligation to protect persons engaged in humanitarian assistance.[191]

Most of these provisions have become customary law. Even if NSAs are from States, which have not ratified Additional Protocol II, they are bound by these obligations.

Still, there are some gaps in the legal protection of IDPs when violations are perpetrated by NSAs. Most provisions of human rights treaties, which do not legally bind NSAs, have no analogues in the Geneva Conventions or in the Additional Protocols. However, reflecting the

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[188] Guiding Principles on Internal Displacement (1998)
[189] Kaelin, Walter (2000), pp. 106–185.
[190] According to article 18(2) of Protocol II, only the established government (the High Contracting Party) needs to manifest its consent, which cannot be arbitrarily withheld. This article does not mention the need for rebel groups to agree, even if relief action takes place in an area under their control.
[191] While Common Article 3 and Protocol II do not mention the obligation to respect relief personnel, attacks against such persons would violate the prohibition of acts of violence against persons taking no active part in the hostilities contained in Common Article 3.

opinion of many international law experts who argue that NSAs should be internationally responsible for human rights abuses, the Guiding Principles urge all actors to protect IDPs. Guiding Principle 2.1 states that "These Principles shall be observed by all authorities, groups and persons irrespective of their legal status." The Guiding Principles reflecting human rights law but not expressly recognized in IHL in situations of non-international armed conflict include:

- the right to personal identification, documentation, and registration;
- the right to seek employment and to participate in economic activities;
- the right to participate in community, governmental, and public affairs;
- the right of an individual to leave his or her country and to seek asylum.

These provisions are particularly relevant when NSAs are *de facto* governments that control territory and population. Some groups, like the authorities of Somaliland, have actually formally committed to abide by international human rights law.

A second legal gap in IDP protection occurs in situations that do not rise to the level of "armed conflict" and thus do not fall under IHL. The Guiding Principles, however, apply to situations of "general violence" that fall short of armed conflict, such as riots or isolated sporadic violence and "natural or man-made disasters", like nuclear disasters or famine,[192] and are therefore extremely valuable as a guiding tool to promote NSA accountability.

4. Engaging NSAs in Practice

The UN, governments, and humanitarian and human rights NGOs have recognized the need to make NSAs more aware of their legal obligations towards the civilian population and to hold them accountable. In 2002, the UN Secretary General's report to the UNSC on the protection of civilians stressed that: "All parties to a conflict, including non-State actors, must understand their obligations and responsibilities to civilians."[193] However, most NSAs that have committed major violations against the rights of IDPs and other civilians have remained unpunished.

Nonetheless, it is essential to engage NSAs, since they are key actors for the protection of IDPs, particularly when NSAs control territory and act as *de facto* governing authorities. Such groups also usually aim to establish an independent State, or aim to change the government of an existing State, and may be more sensitive to the need to adhere to human rights norms if their government is to be recognized by the international community.[194]

Both international and national actors have engaged NSAs on their responsibilities towards the civilian population. The ICRC in particular works to inform armed groups of their responsibilities under IHL. Various UN agencies and agents have also taken measures to influence NSAs. The UNSC has imposed sanctions against specific armed groups. UN Special Rapporteurs have discussed the human rights situations with NSAs in their respective countries. UN humanitarian agencies have developed guidelines on humanitarian negotiations with armed groups[195] and have dialogued with NSAs to secure access to vulnerable populations and to demobilise child soldiers. The UN Special Representative on the Rights of IDPs has discussed the application of the Guiding Principles on Internal Displacement with

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[192] Guiding Principles on Internal Displacement (1998); Walter Kaelin (2000), pp. 100–104.
[193] UNSC (2002), p. 7.
[194] International Council on Human Rights Policy (2000), p. 16.
[195] Mc Hugh, Gerald and Manuel Bessler, ed. (2006)

various NSAs during his country missions. IDPs have also benefited from other humanitarian initiatives that involve NSAs, for example, in the area of demining.[196]

Until a few years ago, most humanitarian NGOs working with IDPs focused on bringing them assistance, but not on defending their rights. Many worried that protection activities might bring them into conflict with governments or NSAs, place staff at risk, and reduce their access to IDPs and other vulnerable populations.[197] Today, many NGOs include human rights protection or monitoring as an important component of their humanitarian work, having seen that their services can be rendered useless in unsafe environments. For example, women are much less likely to use distant latrines that improve sanitation if they are likely to be raped on the way there.[198]

NGOs can complement specialised international agencies, such as the UN High Commissioner for Refugees and the ICRC, in ensuring the dignity and the rights of IDPs in zones controlled by NSAs. NGOs are often present in remote conflict areas, and can disseminate information on human rights conditions. Due to the nature of their operational activities, they have day-to-day contact with actors on the ground, including NSAs. The humanitarian work of NGOs often establishes their credibility as impartial actors. Because their interactions with NSAs occur on practical issues, they may not be seen as conferring recognition or legitimacy, unlike more formal interactions with government donors or UN agencies.

Humanitarian engagement with NSAs generally takes three forms, either successively or simultaneously: securing access to IDPs, providing them with assistance, and working to end massive violations of their rights.

Securing access

The Guiding Principles can be used as a framework to gain access to the affected population. Principle 25, for example, states that "international humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced." However, establishing and maintaining presence in NSA-controlled areas can be fraught with difficulties. NSAs may seek to impose rules, such as the payment of taxes or the obligation to register the organization with the *de facto* authorities, which can compromise the impartial nature of their work and endanger their relationship with the government. In such cases it is essential that NGOs working in the same location maintain a common position. If some organizations accede to such demands, the position of those who resist will be untenable. UN agencies, particularly the UN Office for the Coordination of Humanitarian Affairs, can play an important role in these cases, by bringing the different organizations together and helping them reach a common position.

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[196] Geneva Call has been engaging NSAs to respect and to adhere to humanitarian norms, starting with the ban on AP mines. See Geneva Call (2001).
[197] Refugee Survey Quarterly (1999), p. 108.
[198] The Norwegian Refugee Council (NRC)'s mandate reflects this evolution: "NRC shall promote and protect the rights of all people who have been forced to flee their countries, or their homes within their countries, regardless of their race, religion, nationality or political convictions. This will be achieved by acting as an independent and courageous spokesman for refugee rights nationally and internationally, by providing humanitarian assistance in emergency situations, and by strengthening the capacity of the UN organizations to offer and coordinate international aid and protection. […]".

Providing humanitarian assistance

Humanitarian organizations can provide food, education, or shelter to IDPs and other vulnerable people in NSA-controlled territories. Depending on the country, it may be necessary to keep the programme small and low-profile to make it acceptable to both the government and the *de facto* authorities.

With increasing frequency, humanitarian workers caring for IDPs are also deliberately targeted. Between July and September 2006, 12 humanitarian workers were killed in Darfur, reportedly by factions of rebel groups and by government-allied militias. *Médecins Sans Frontières* also reported that its personnel had been subjected to 40 security threats and attacks in 2006 in Darfur.[199]

Working to end violations against IDPs

Several modes of action are possible: to disclose violations publicly in order to pressure NSAs to meet their obligations; to convince NSAs through private dialogue to fulfil IDP rights; to share information in a discreet way with selected people or entities who can influence NSAs to respect IDP rights; to provide training to NSAs to sensitise them to the rights of IDPs and the importance of respecting them.[200]

When carrying out advocacy work, it is however important to coordinate with national and international NGOs, as well as the UN, to avoid duplication of effort. The mode of action chosen will depend on the assessment of the nature of the NSAs, i.e. whether they are aware of their obligations, whether they might heed public pressure or private diplomacy. It will also depend on the analysis of security-related issues, in particular the impact of advocacy work on staff security, on IDPs, and on operational projects. One way to minimise risks is to relay information obtained to organizations with expertise in bringing up issues to violators, such as the ICRC, or in denouncing their actions, such as human rights organizations. Information can also be relayed to regional actors, such as the EU or the AU's Special Rapporteur on Refugees, Asylum Seekers and IDPs in Africa.

5. The Norwegian Refugee Council's Experience

The NRC has worked to promote the rights of IDPs in dialogue with both States and NSAs. NRC distributes food and non-food items, manages camps and provides education, shelter and legal assistance to refugees, IDPs, and returnees in some 20 countries. It uses a rights-based approach to IDP assistance and protection. As a consequence, it pays attention to the role of NSAs, which can hinder the delivery of assistance and jeopardise the security of its staff and beneficiaries.

One of the ways in which NRC has influenced armed groups to better respect the rights of IDPs is by involving them in training workshops on IDP protection, particularly in eastern DRC, in Somaliland, and in Côte d'Ivoire. In the DRC, workshops included members of the *Rassemblement pour la Démocratie Congolaise-Goma*, which at the time were in control of a large part of eastern DRC. In Somaliland, *de facto* authorities took part in the workshops. In Côte d'Ivoire, representatives of the government and of the *Forces Nouvelles* rebel group participated, most of them meeting each other for the first time.

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[199] Amnesty International (2006)
[200] For a comprehensive discussion on the choice of protection activities and modes of action, see Slim, Hugo and Andrew Bonwick (2005), Section 7.

The workshops had two goals: to raise awareness of IDP rights and needs among government actors, NSA leadership, humanitarian organizations, and civil society representatives (including IDPs), and to develop concrete recommendations on how to improve the protection of IDPs. Workshops examined the causes of displacement, current locations of IDPs, the legal framework protecting IDPs, the main problems facing IDPs during displacement, and potential durable solutions. Specific sessions also highlighted the situation of displaced women and children. During the workshops, NRC used the Guiding Principles as a framework for discussion and action. This approach treated the specific situation of the internally displaced in an impartial way and avoided addressing matters of broader policy (such as peace processes or fundamental demands of the armed groups) that were not part of NRC's mandate.[201]

Before conducting a training seminar, it is critical to analyse the context, such as the NSA's structure, motivations, relationship with IDPs, and the kind of violations they commit. It is also important to clarify with IDPs, civil society actors, and NSA representatives the mandate of the NGO carrying out the training, as well as the objectives and scope of the training, in order to avoid misunderstandings and unrealistic expectations.

As much as possible, NRC invites local NGO representatives to participate in its workshops. Local actors usually give precious information about the particular context they live in, as well as about the armed group, its motivations, its leadership, etc. One should try to know the local partner's profile before conducting a specific training workshop, however, as some organizations may be seen as aligned with a particular armed group, or be vocally opposed to it, and therefore not be seen as impartial. Local actors can also benefit from having sensitive issues raised by international actors, even if they do not participate in workshops themselves. According to research conducted by the International Council on Human Rights Policy, many national NGOs have made the point that international attention on abuses by armed groups created some space to enable them to take up the same issues.[202]

NSAs in DRC, Somaliland, and Côte d'Ivoire were thought to be somewhat sensitive to the need to respect the rights of IDPs and other international law norms, due to the specific contexts they operated in. They seemed to have an interest in showing that they were ready to abide by the rules of the international community they hoped to join. Workshops in the DRC took place during negotiations between NSAs and national authorities over the creation of a national unity government. In Somaliland, an assembly representing all clans and ethnic groups had adopted a constitution, which affirmed that "the Republic of Somaliland recognizes and shall act in conformity with the UN Charter and with international law, and shall respect the Universal Declaration of Human Rights."[203] *De facto* authorities were also seeking international recognition for Somaliland as an independent State. In Côte d'Ivoire, the *Forces Nouvelles* were in control of the whole north of the country, and in the process of joining the government in a power-sharing agreement.

In all three countries, NSA representatives recognized the usefulness of the Guiding Principles, but fell short of committing to them in formal declarations or in writing. However, discussing the Guiding Principles led NSA leaders to think about the conduct of their forces vis-à-vis IDPs and other civilians under their control. During one of the workshops, the head

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[201] For more information on NRC's training modules, see the Internal Displacement Monitoring Centre's website: <www.internal-displacement.org>

[202] International Council on Human Rights Policy (2000), p. 57.

[203] Constitution of Somaliland. 31 May 2001. Unofficial English translation by Ibrahim Hashi Jama. article 10.2.

of the Department of Social Affairs of the *de facto* government in eastern DRC denounced the prevalence of rapes committed by various armed groups, including the one then in power.[204]

Training also empowers IDPs by enhancing their knowledge of their rights. IDPs may be sympathetic to NSAs controlling their territory, perhaps sharing the same religion or ethnicity, or they may be hostile to the NSAs. Informing IDPs about their rights and discussing how to better meet their needs is important, but it cannot be done lightly. It is essential to see in what context specific concerns can be raised, and whether this should be done by IDPs directly, by operational NGOs, or by other actors such as the UN, in order not to endanger any party. NGOs therefore need the technical know-how to carry out training workshops, but also to have enough resources and expertise to conduct follow-up activities.

As follow up in the DRC, separate workshops were organized with government actors, as well as with church leaders, NGOs, and IDP representatives. Radio plays, portraying the difficulties faced by IDPs, were broadcast in Swahili over several months. Working groups on IDP protection, involving UN, NGO, and IDP representatives, were created in several provinces. Some of them organized visits for NSA representatives to IDP camps, in order to sensitise them to IDP problems. In Côte d'Ivoire, the NRC office conducted follow up IDP protection workshops with actors in the different regions.

Conclusions

Engaging NSAs to protect IDPs is a formidable challenge. Humanitarian NGOs have to balance their operational concerns with the fact that some type of action or pressure may be needed to protect IDPs. Humanitarian NGOs have very valid concerns about vulnerability as a result of exposing human rights violations. Indeed, it may be easy to trace the source of information if few organizations are physically active in an area controlled by NSAs. Human rights protection and promotion must therefore remain a global responsibility for the whole humanitarian community. International NGOs can play an important and value-adding role, but they need to coordinate with other actors, in particular with the UN and with local NGOs.

When it comes to engaging NSAs through training workshops on IDP protection, NRC's experience demonstrates that the Guiding Principles on Internal Displacement constitute a good framework to address difficult issues and to depoliticise them. However, obtaining concrete commitments, particularly in writing, on the part of NSAs regarding IDP protection has proved difficult. Declarations of support for the Guiding Principles by NSAs are rarely followed by concrete actions to respect IDP rights, either because the declaration was primarily a public relations exercise or because NSAs lack the resources or know-how to take measures to improve IDP rights. Improving the protection of IDP rights by NSAs requires monitoring the follow up of workshops, continuing to report on violations, sharing information with relevant actors, and possibly offering technical expertise to NSAs to bring an end to violations.

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[204] IDMC (published under former name, Global IDP Project) (2003), p. 11.

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Engaging Armed Non-State Actors on Humanitarian Norms:
The Experience of Geneva Call and the Landmine Ban

By Pascal Bongard[205]

Abstract

Geneva Call has been advocating the mine ban to armed non-State actors (NSAs) since 2000. The NGO was created in response to the realization that the landmine problem would not be comprehensively addressed unless NSAs, which are the primary users of such weapons today, were engaged. To this end, Geneva Call developed an innovative mechanism—the "Deed of Commitment"—that enables NSAs, since they cannot accede to the Mine Ban Treaty (MBT), to undertake to respect its norms. Largely based on the findings of a recent internal assessment, this paper reviews progress made as well as the challenges faced by Geneva Call during its first seven years of existence.

Introduction

Though they are not a new phenomenon, NSAs have recently attracted growing attention from the international community. This is largely due to an increased realization that NSAs are key actors in contemporary warfare. Most present-day armed conflicts take place within States and involve one or more NSAs fighting either government forces or other armed groups.[206] Moreover, the case for humanitarian engagement with NSAs has also gained increasing prominence over the last few years. Humanitarian and human rights organizations have long had to negotiate with them in order to fulfil their missions. They have engaged NSAs for a range of purposes, such as to secure access to affected populations living in areas under their control or to promote their compliance with international standards. Yet, in the past decade, these organizations have made marked efforts to review their practice and to devise more systematic and effective approaches towards NSAs. UNICEF,[207] OCHA,[208] the ICRC,[209] and the Coalition to Stop the Use of Child Soldiers,[210] among other organizations, have compiled experiences and lessons learned from the field, and developed strategic guidance on humanitarian engagement with NSAs.[211] The Swiss-based NGO Geneva Call contributed to this effort. In 2007, it completed a comprehensive internal assessment[212] of seven years' worth of work advocating the mine ban to NSAs. This paper, which is largely

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[206] According to SIPRI (2007), all major armed conflicts waged in 2006 were intrastate.

[207] UNICEF (2002)

[208] McHugh, Gerard and Manual Bessler (2006)

[209] ICRC (2003 and 2007). See also Olivier Bangerter's paper in this report.

[210] Becker, Jo (2003), Coalition to Stop the Use of Child Soldiers (2006), and Whiters, Lucia (2007)

[211] In recent years, a number of studies have also been published on the legal and policy aspects of humanitarian engagement with NSAs. See *inter alia* Bruderlein, Claude (2000), Petrasek, David (2000), Zegveld, Liesbeth (2002), Clapham, Andrew (2006), Sassòli, Marco (2006), Capie, David and Pablo Policzer (forthcoming).

[212] Bongard, Pascal (2007). The assessment, which was conducted with the support of the Governments of Italy and Switzerland, as well as UNMAS, entailed face-to-face interviews with 40 representatives of States, NSAs, UN agencies and NGOs. In addition, 18 people replied in writing to questionnaires. Geneva Call's senior staff members were also consulted and the organization's archives thoroughly researched. An adapted version of the assessment was published by Geneva Call in November 2007 under the title *Engaging Armed Non-State Actors in a Landmine Ban: The Geneva Call's Progress Report (2000–2007).*

based on the assessment,[213] aims to document Geneva Call's experience in engaging NSAs. The first part briefly presents the case for NSA engagement in the landmine ban and describes Geneva Call's approach. The second part provides a summary of the main findings of the assessment, looking at the achievements as well as challenges that lay ahead. In the conclusion, the paper discusses the relevance of Geneva Call's approach for improving NSA compliance with other humanitarian and human rights norms.

1. The Concept of Armed Non-State Actors

There is no universally agreed upon definition of NSAs. Depending on one's perspective, different labels may apply to the same group. To their supporters, they may be "freedom fighters" or "resistance movements" while those who oppose NSAs may portray them as "bandits" or "terrorists".[214] Humanitarian and human rights organizations tend to use less politically loaded terminology, referring to "non-State armed group", "armed opposition movements", or "non-State actors". What these terms have in common is an attempt to find value-neutral terminology that captures the idea that the actors in question are not under State control and use armed violence to achieve their goals.[215] There is some debate over whether all actors challenging the State's monopoly of force should be included, regardless of their aims, level of organization, and degree of independence from States.[216] Some humanitarian and human rights organizations favour this broader approach and deal not only with traditional, politically-motivated rebel movements but also paramilitary groups and criminal gangs. The difference in focus seems to largely depend on the objectives and mandate of the organizations concerned. For its part, Geneva Call focuses on armed actors that are primarily motivated by political goals and operate outside State control. This working definition therefore excludes paramilitary groups since these are tied, either strictly or loosely, to a State apparatus. In some situations, it may be problematic to distinguish between a State-supported proxy force and an autonomous pro-government militia. However, where evidence suggests that the government exerts *effective* control over a paramilitary group, Geneva Call assumes that the State is accountable for the conduct of such *de facto* State agents. Similarly, although it is true that the distinction between political and economically-motivated violence is increasingly blurred in practice, mere profit-driven organizations, such as the mafia, drug cartels, or other criminal gangs, are not targeted by Geneva Call's advocacy efforts.[217] Furthermore, Geneva Call prefers to use the term "non-State actor" rather than "group" because the former also encompasses *de facto* authorities or self-declared republics such as Somaliland. As with armed groups, these entities cannot sign international conventions but are nonetheless more "State-like" than the term "group" suggests.

2. Armed Non-State Actors and Landmines

NSAs are involved in the landmine problem in several ways. First, because of their low cost and easy availability, mines have become a weapon of choice for many NSAs worldwide.

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[213] The assessment built upon preliminary review and research done by Santos, Soliman (2003) and Sjöberg, Anki (2006). See also Philippine Campaign to Ban Landmines (2004) and Geneva Call, PSIO and Armed Groups Project (2005).

[214] The use of the label 'terrorist' to describe NSAs, though it is not a recent phenomenon, has regained momentum since 11 September 2001. See Florquin, Nicolas and Elisabeth Decrey Warner (2008).

[215] Petrasek, David (2000), p. 6.

[216] Policzer, Pablo (2005), pp. 6–12.

[217] Of course, reality on the ground is often more complex than above classification and in the end, Geneva Call makes its own determination on a case-by-case basis, within this general framework.

Research conducted by Geneva Call identified at least 40 NSAs that reportedly used AP mines or mine-like improvised explosive devices (IEDs) between 2003 and 2005.[218] This significantly exceeds the number of mine-using States.[219] In addition, some NSAs have been manufacturing their own AP mines or IEDs. Therefore, any strategy that only addresses the supply side of the problem will not be fully effective. NSAs must be persuaded to renounce use *and* production of such weapons.

Second, many NSAs operate in mine-affected territories. In some cases, these areas are even under their *de facto* control. The civilian populations living in such areas suffer from the presence of landmines and often receive little or no assistance from the international community. This is the case in Burma/Myanmar and Somalia for instance. It is therefore important that NSAs undertake, support, or at least permit, mine action. They can contribute to alleviating the plight of affected communities in various ways: by removing mines, marking contaminated zones, and cooperating with humanitarian mine action organizations.[220]

Third, NSAs may undermine States Parties' ability to comply with the MBT. Under the treaty, it is the responsibility of the State Party to ensure that its obligations are respected in areas under its jurisdiction. Yet, how can States perform mine action in those parts of their territory that are controlled by NSAs, or ensure respect for the ban when NSAs are continuing to lay and produce AP mines? A number of States Parties have expressed such concerns.[221] Getting NSAs to renounce this weapon and cooperate in mine action can therefore facilitate the implementation of the MBT's provisions by States Parties.

Finally, NSAs may also influence *non-signatory* States' position towards the MBT. While some States are interested in joining the treaty, they cite the ongoing conflict with NSAs as an impediment.[222] Other States have linked their position on accession to agreement by NSAs to foreswear AP mine use.[223] Still others have justified their reluctance on the grounds that the existence of mined areas controlled by NSAs would prevent them from fulfilling the obligations contained in the MBT.[224] In such situations, a commitment by NSAs to observe the treaty's provisions may improve the chances of States reciprocating.

For all of these reasons, the engagement of NSAs is a necessity, for a truly universal ban on AP mines to be achieved. An inter-State ban alone is insufficient to stop mine use by NSAs and ensure their cooperation in mine action. From a victim's perspective, it does not matter who laid the mines: mines laid by States and by NSAs have equally devastating effects. Ultimately, the goal is to eliminate the danger such a weapon poses to the civilian populations, and this can only be reached if both States and NSAs are persuaded to act in accordance with the norms enshrined in the MBT.

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[218] Sjöberg, Anki (2005), p. 21. See also pp. 25–27 regarding the sources through which NSAs acquire AP mines.

[219] Nine States used, or allegedly used, AP mines during the same period. See ICBL (2004, 2005 and 2006).

[220] Sjöberg, Anki (2006)

[221] Colombia for example has repeatedly underlined the difficulties it faced in preventing the use of mines and IEDs by NSAs as well as in removing them. See Geneva Call (2006), p. 3.

[222] Morocco for instance cites the territorial dispute with the Polisario Front over Western Sahara as the obstacle to its accession. See ICBL (2007), p. 926.

[223] A case in point was Sri Lanka. See ICBL (2007), p. 988.

[224] This is the case of Georgia for example. See ICBL (2007), p. 824.

3. Geneva Call and the *Deed of Commitment*

An innovative mechanism

As is the case with any other international treaty, joining the MBT is a process exclusively reserved for States. Actors other than States such as NSAs cannot become parties: they cannot sign the treaty, nor can they express adherence to it in any other way. Furthermore, despite proposals made in 1997 during the Oslo negotiations,[225] the MBT does not directly apply to NSAs, unlike for instance Article 3 common to the 1949 Geneva Conventions. NSAs are nonetheless bound by its provisions if the State on whose territory they operate is party to the MBT.[226] The treaty covers all individuals in the territory of a State Party, be they government agents, members of NSAs, or private individuals. This State-centric framework, however, raises problems. It is one thing to argue that NSAs are bound by the State's rules, but it is quite another for such groups to accept and respect them. As pointed out by one ICRC legal adviser, "how can it be expected that insurgents comply with a treaty that has been ratified by a government they do not recognize and which they try to overthrow?"[227] NSAs may not feel themselves bound by conventions that they have not been involved in drafting, nor been allowed to sign. Moreover, practice does not seem to suggest that the mechanism foreseen under the MBT to enforce the ban (criminalization under national law) is effective in suppressing AP mine use by NSAs. Law enforcement is particularly problematic in situations of "failed" or "failing" States, where the government has collapsed or has lost control over part of its territory.[228]

Geneva Call was created to respond to these challenges. It was launched in March 2000 by members of the ICBL to engage directly with NSAs and to persuade them to observe the AP mine ban and other humanitarian norms.[229] To this end, Geneva Call developed a mechanism allowing them to unilaterally subscribe to the provisions of the MBT by signing a document entitled the *Deed of Commitment for Adherence to a Total Ban on Antipersonnel Mines and for Cooperation in Mine Action* (hereafter referred to as the *Deed of Commitment*). Where possible, NSAs are invited to sign the *Deed of Commitment* in Geneva, in the same hall (Alabama Room) in which the first Geneva Convention was signed in 1864. The document is co-signed by Geneva Call and the Canton of Geneva—the latter acting as custodian—and is publicized, thus increasing the political cost to the signatory NSA should it backtrack on its pledge.

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[225] Colombia and the ICRC proposed language that would apply the treaty in some way to NSAs but this was not adopted due to opposition by many States. See Goose, Steve (2001), p.135 and Maslen, Stuart (2004), pp. 74–75

[226] See Lawand, Kathleen (2005a), pp. 20–21. The paper contains the usual disclaimer that the views expressed in the paper do not necessarily reflect the position of the ICRC.

[227] Henckaerts, Jean-Marie (2002), p. 126.

[228] Dolan, Michael and Chris Hunt (1998), p. 417.

[229] The engagement of NSAs in the mine ban was actually conceived as early as 1997, during the process that led to the negotiation of the MBT, when it became apparent for several ICBL country campaigns that the landmine problem would not be solved unless NSAs were included in the solution. This led to the creation of an NSA Working Group within the ICBL. See ICBL (1999), pp. 940–945 and Moser-Puangsuwan, Yeshua (2008), pp. 166–167.

The *Deed of Commitment* provisions

Though there are some differences,[230] the two page *Deed of Commitment* by and large replicates the obligations contained in the MBT. By signing it, NSAs agree:

- to prohibit under any circumstances the use, production, acquisition, stockpiling and transfer of AP mines (Article 1);
- to cooperate in and undertake stockpile destruction, mine clearance, victim assistance, mine risk education (MRE) and various other forms of mine action (Article 2);
- to allow and cooperate in the monitoring of their commitment by Geneva Call; this includes field visits and inspections, as well as the provision of information and reports on the progress made in implementation (Article 3); and
- to take the necessary measures to enforce their commitment, such as the issuance of orders to the rank and file, information dissemination, training, as well as disciplinary sanctions in case of non-compliance (Article 4).

In addition to these clauses, which form the core obligations of the *Deed of Commitment*, signatory NSAs agree to consider their commitment to the AP mine ban as a step or part of a broader commitment to humanitarian norms. Moreover, they acknowledge that adhering to the *Deed of Commitment* shall not affect their legal status, pursuant to Article 3 common to the Geneva Conventions. They also acknowledge that, in cases of confirmed violations, Geneva Call may publicize them as a means of sanctioning their non-compliance.

An inclusive and integrated approach

Geneva Call is committed to engaging NSAs through an inclusive and integrated approach. The approach is inclusive in that it seeks to influence their behaviour through dialogue, persuasion and cooperation rather than denunciation, prosecution and other coercive methods. In addition, through the *Deed of Commitment*, Geneva Call grants NSAs the opportunity to formally express their consent to be bound by the MBT, so that they take ownership of rules that they might otherwise consider not applicable to them or biased in favour of States. Such an inclusive approach is believed to be instrumental in increasing their willingness to comply with the AP mine ban. Once NSAs acknowledge international standards and pledge to observe them, it becomes possible to pit their ensuing behaviour against their declaration of intent. Their commitment provides a benchmark that can be used to hold them accountable for their actions and ensure that they meet their promise.

For Geneva Call, engagement requires going further than getting NSAs to sign the *Deed of Commitment*. It means making sure commitments are enforced on the ground. While enforcing compliance is a responsibility primarily incumbent upon each signatory, Geneva Call assumes an active role in following up and supporting implementation of the *Deed of Commitment*. Support from Geneva Call has primarily taken the form of organizing training workshops on the mine ban for the rank and file, facilitating technical assistance for mine

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[230] It is interesting to note that, on a number of matters, the substance of the obligations undertaken by NSAs under the *Deed of Commitment* go beyond the obligations contained in the MBT. AP mines are defined by their impact or effect, rather than with regard to the design intention. Article 1 prohibits all "devices which effectively explode by the presence, proximity or contact of a person, including other victim-activated explosive devices and anti-vehicle mines with the same effect whether with or without anti-handling devices." Moreover, there are no exceptions permitted under the *Deed of Commitment*. No AP mines can be retained for training or research purposes. See Santos, Soliman (2003), p. 6 and Clapham, Andrew (2006), p. 295. However, unlike the MBT, the *Deed of Commitment* does not prescribe deadlines for the destruction of stockpiled AP mines (four years) nor for the clearance of mined areas (ten years, with extension possibility).

action and promoting mine action intervention by specialized organizations in areas controlled by signatory NSAs. Monitoring is also an integral part of the engagement process. Geneva Call monitors compliance by requesting signatories to report on the measures they have taken to implement the *Deed of Commitment*,[231] by linking up with relevant stakeholders operating on the ground,[232] and through follow up visits and verification missions.[233]

4. Progress to Date

35 *Deeds of Commitment* signed

Since it was established in 2000, Geneva Call and its partners (mainly ICBL country campaigns and other local NGOs) have been advocating the mine ban to about 60 NSAs worldwide. As of mid-2008, a total of 35 NSAs from ten countries (Burma/Myanmar, Burundi, India, Iraq, Iran, the Philippines, Somalia, Sudan, Turkey, and Western Sahara) have signed the *Deed of Commitment*.[234] Among them are the Moro Islamic Liberation Front (MILF), the Sudan People's Liberation Movement/Army (SPLM/A), the Iraqi Kurdistan Regional Governments, the Puntland authorities, the *Conseil National pour la Défense de la Démocratie/Forces de Défense de la Démocratie* (CNDD-FDD), the Polisario Front, the Chin National Front/Army (CNF/CNA), and the *Kongra-Gelê Kurdistan/Hezen Parestena Gel* (Kongra Gel/HPG), also known as the *Partiya Karkerên Kurdistan* (PKK).[235] Among the signatories, 16 allegedly used and/or produced AP mines before signing the *Deed of Commitment*, 14 admitted they had stocks in their possession, and all reported that the areas in which they operated contained mines and/or explosive remnants of war, all of which makes these commitments particularly significant.[236]

In addition, as a result of Geneva Call and its partners' efforts, eight other NSAs that have not signed the *Deed of Commitment* have nonetheless taken steps against AP mines.[237] Five of them have indicated support for the ban, either unilaterally or as part of a ceasefire agreement with the government. Three others have declared having introduced some form of limitation on their mine use, based on the relevant rules of customary IHL,[238] and one such group has undertaken the removal of landmines previously laid in an area where it operates.

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[231] The information is communicated during field visits and meetings and through written correspondence and phone conversations. In addition, in 2004, Geneva Call designed a standard template, similar to the MBT Article 7 transparency report, to facilitate reporting by signatory NSAs.

[232] These include ICBL country campaigns, Landmine Monitor researchers, mine action NGOs, UN agencies, and other bodies monitoring IHL, ceasefire agreements, and arms embargoes.

[233] Field missions are conducted routinely to monitor progress and assist in the implementation of the *Deed of Commitment* or, if the case arises, to verify allegations of non-compliance.

[234] Since the time of the assessment, a 35th NSA has signed the *Deed of Commitment*.

[235] See the full list of signatories on Geneva Call's website: www.genevacall.org. It is important to note that 13 of the 35 signatories have changed their status since the time of signing and are currently no longer considered NSAs. Four of them have become part of their State's authorities while nine have either dissolved or abandoned armed struggle.

[236] For details, see Geneva Call (2007), p. 7.

[237] Geneva Call (2007), pp. 7–8.

[238] Customary IHL does not prohibit the use of AP mines but imposes the following restrictions: particular care must be taken to minimize their indiscriminate effects; parties to the conflict using landmines must record their placement as far as possible and, at the end of active hostilities, remove or otherwise render them harmless to civilians.

Overall compliance with the *Deed of Commitment*

By and large, signatories have abided by the *Deed of Commitment*'s prohibitions (Article 1). As of mid-2008, three NSAs (the MILF, the SPLM/A, and Kongra Gel/HPG/PKK) have been accused by their respective governments of continuing to use AP mines, while two others (Puntland authorities and the Jowhar Administration in Somalia) have been reported as having received landmines from Ethiopia, a State Party to the MBT.[239] However, in four of these cases, Geneva Call and other independent organizations found no conclusive evidence to support the allegations. In the case of the MILF, it appears that the group did not realize that it was using prohibited weapons by employing what it thought to be command-detonated devices.[240] Up to now, there have been no reports of production and transfer of AP mines against any signatory.

In accordance with Article 2 of the *Deed of Commitment*, most signatory NSAs (20) undertook and/or cooperated in mine action.[241] 14 carried out mine clearance and related activities (marking, surveying, etc.) or cooperated with specialized organizations in that respect. Seven began destroying their AP mines stocks.[242] 11 provided assistance to mine victims or cooperated with organizations active in the field. 12 undertook or facilitated MRE activities.

Nearly all signatory NSAs (29) complied with their obligation to cooperate in the monitoring of their pledge, as required by Article 3 of the *Deed of Commitment*.[243] 29 signatories provided information and reports to Geneva Call on measures they took to implement the *Deed of Commitment*. Moreover, despite some transparency problems, all NSAs visited on the ground (20) facilitated Geneva Call's missions. No signatory ever consistently refused a routine field visit or denied access to its areas of operation. The MILF and the Puntland authorities also fully cooperated in the verification missions conducted by Geneva Call in 2002 and 2007, respectively, the latter providing unprecedented access to its military stockpiles.

Finally, in accordance with Article 4 of the *Deed of Commitment*, most signatory NSAs (21) took self-regulatory measures to enforce their commitment.[244] 19 reportedly issued orders and/or informed their rank and file about their new policy. Nine either participated in or conducted with Geneva Call's support mine ban education workshops for their members. Four adopted decrees or laws to establish mine action coordination structures. In addition, nine reported having provided for internal sanctions[245] in cases of non-compliance.

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[239] Details about these allegations as well as Geneva Call's verification efforts are available in Geneva Call (2007), pp. 15–16. In the case of the SPLM/A, the Government of Sudan withdrew its accusations subsequently.

[240] During Geneva Call's verification mission in 2002, the MILF admitted to having used "string-pulled" IEDs for the defence of its camps against attacks by the Filipino army. The MILF viewed the use of such devices, in trip-wire mode and in no-man's land zones where civilians are forewarned, as consistent with the *Deed of Commitment*. However, the devices laid by the MILF were not *electronically* detonated and, when they were left behind by fighters after withdrawal, they became potentially victim-activated. Thus, they were in fact prohibited under the *Deed of Commitment*. The MILF subsequently agreed to no longer employ "string-pulled" IEDs under any circumstances. See Geneva Call (2002).

[241] Geneva Call (2007), pp. 16–17.

[242] Since the time of the assessment, two of them have completed their stockpile destruction obligation.

[243] Geneva Call (2007), pp. 18–19.

[244] Geneva Call (2007), p. 19.

[245] Imprisonment, demotion, suspension, and expulsion from the NSA are the most commonly cited sanctions.

New mine action activities launched

In several countries, the signing of the *Deed of Commitment* facilitated the launch of much-needed mine action programmes by specialized organizations in areas under NSA control. This was particularly true for Sudan and Western Sahara. In Sudan, Geneva Call initiated contacts between the SPLM/A and UN agencies, which resulted in 2002 in the signing of a landmark Memorandum of Understanding for mine action support between UNMAS, the SPLM/A and the Government of Sudan. SPLM/A mine ban commitment contributed to greater international support for mine action activities in southern Sudan.[246]

In Western Sahara, shortly after the signature of the *Deed of Commitment* by the Polisario Front, the British NGO Landmine Action, with the support of UNMAS, started a survey and clearance project. The ICRC subsequently set up a physical rehabilitation centre in the Saharawi refugee camps. At the time of signature (2005), no formal humanitarian mine action programme was taking place in Western Sahara.[247] Moreover, in compliance with the *Deed of Commitment*, the Polisario Front destroyed more than 8,500 stockpiled AP mines since 2005.

Facilitation of States' accession to and implementation of the Mine Ban Treaty

NSAs that have signed the *Deed of Commitment* have been instrumental in the acceptance and implementation of the MBT by their respective States. In Sudan, the signing of the *Deed of Commitment* by the SPLM/A in 2001 was a key consideration in the government's decision to ratify the Ottawa Treaty two years later.[248] In Iraq, officials of the two Kurdish signatory NSAs, which became members of the national government after the fall of the Saddam Hussein regime in 2003, encouraged it to join the MBT.[249] Iraq acceded in 2007, as one of the very few countries in the region to have done so. In Burundi, the fact that the CNDD-FDD had already committed to abide by the AP mine ban by signing the *Deed of Commitment* facilitated the implementation of the treaty when the movement came to power in 2005.[250] In the Philippines, representatives of the government declared that NSA engagement was important in preventing prohibited activities under the MBT and ensuring its successful implementation.[251]

Increased international support for Geneva Call's initiative

In the early years of Geneva Call, the idea of entering into a dialogue with NSAs and engaging them in a process traditionally perceived as the prerogative of States was deemed controversial within certain quarters of the mine ban movement. Some States were concerned that such a process would "legitimize" NSAs and perhaps even alienate non-signatory States toward the MBT. Others had doubts about the value of NSA engagement work and the feasibility of ensuring their compliance with the ban. Though these concerns have not totally disappeared and some States remain uncomfortable with Geneva Call's initiative, the importance of engaging NSAs in the mine ban is now widely recognized by the international community. States Parties to the MBT, the African Union, the European Union, UN agencies,

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[246] Moszynski, Peter (2005), p. 32.
[247] ICBL (2005), p. 987.
[248] As stated by Martin Barber, former director of UNMAS: "It is clear from conversations with senior officials of the government that they would not have felt able to ratify the Treaty, if the SPLM/A had not already made a formal commitment to observe its provisions in the territory under its control." In Sjöberg, Anki (2005), p. 1.
[249] Geneva Call (2007), p. 9.
[250] Geneva Call (2007), p. 9.
[251] See ICBL (2002), p. 409 and Statement by the Republic of the Philippines (2007).

the ICRC, the ICBL, all have repeatedly acknowledged that progress towards a mine-free world would be enhanced if NSAs observed the MBT's provisions and have welcomed NSA engagement efforts.[252] Moreover, 12 States, the European Commission, and several UN agencies have gone further than giving political support and provided funding to Geneva Call.

5. Challenges

Reluctance of armed non-State actors to renounce AP mines

Many NSAs still have not agreed to the *Deed of Commitment* and continue to resort to AP mines and/or victim-activated IEDs. Among them are major users and producers such as Colombian guerrillas and Burmese opposition groups.[253] In addition, several NSAs retain large stocks of mines in territories under their control. There are various reasons for these groups' continued refusal to embrace the total ban. Some point to the enemy's superior firepower, claiming that AP mines remain necessary for their defence. Others say that they will renounce the weapon once the conflict is resolved, while still others suggest that they will join the ban on condition that the State reciprocates.

Geneva Call is talking with many of these non-signatory NSAs. Faced with their reluctance to relinquish AP mines, it has been looking into ways to at least reduce the impact of continued use on the civilian populations. Some NSAs, like the *Ejército de Liberación Nacional* (ELN), have responded positively to this approach by agreeing to restrict their use and by undertaking limited mine clearance.[254] Such steps are encouraging[255] but yet fall short of reaching the goal of a comprehensive ban. As such, continued pressure is needed to secure full adherence to the MBT's norms.

Fragmentation within armed non-State actors

A challenge that Geneva Call has been facing is how to deal with NSA internal dissensions and factionalism. Some armed groups, such as the Movement of the Democratic Forces of Casamance (MFDC) in Senegal, are deeply fragmented. Over the years, the MFDC has split into multiple factions—between its political and military wings as well as within the wings themselves—which routinely fight each other. In such situations, engaging the political wing or a faction alone is not sufficient, as any commitment made will not necessarily bind all the movement's fighters. It is crucial to engage the splinter factions separately.[256] Similarly, in some groups, the political leaders are far from the battlefield or in exile in foreign countries and have limited authority on military commanders. In other cases, NSAs are loosely organized, with an ill-defined or ever-changing command structure and sub-groups operating autonomously. Engagement with such NSAs is likely to be challenging because the leadership does not have the capacity to enforce its decisions.

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[252] For more details, see Geneva Call (2007), p. 10.

[253] According to the ICBL, the FARC and the Karen National Liberation Army are among the largest users of landmines and IEDs in the world, causing hundreds of casualties each year. ICBL (2007), p. 9.

[254] Reusse-Decrey, Elisabeth (2005), pp. 48–51.

[255] Many NSAs have taken such steps prior to signing the *Deed of Commitment*. See Bongard, Pascal (2007), pp. 24–26.

[256] Geneva Call, PSIO and Armed Groups Project (2005), p. 15.

Access and security challenges

In some countries, Geneva Call and its partners encounter problems in getting access to NSAs. In Nepal, for example, after the collapse of the peace talks in 2003, the Communist Party of Nepal–Maoist went underground; it closed its office in the capital and cut off its telephone lines. It became very problematic to maintain direct contact with the leadership.[257] In other cases, such as in Colombia, Iraq, or southern Philippines, NSAs operate in remote areas that are difficult to access and may also present security risks. Engagement abroad or through their constituencies might be the only possible approach under such circumstances.

Continued fighting and instability have also hampered the implementation and monitoring of the *Deed of Commitment*. A case in point is southern Somalia where a shifting security situation and renewed clashes in 2006 prevented Geneva Call and its technical partners from inspecting mine stocks held by signatory factions and arranging for their destruction. Generally, it has been very challenging to carry out mine action activities during ongoing hostilities. Many signatory NSAs have been involved in fighting since signing the *Deed of Commitment* and such conflict situations have limited their ability to implement Article 2. The same is true for specialized organizations that require some degree of stability to carry out mine action, particularly demining.[258] To mitigate these challenges, Geneva Call and its partners have been trying to seize windows of opportunity to provide technical assistance to signatory NSAs. Even though a country is at war, certain areas may be relatively spared by the effects of the conflict and thus be more conducive to mine action.

Insufficient cooperation, or lack of cooperation, from some concerned States

While most States "affected" by NSAs have cooperated with Geneva Call, a small number have made its work challenging. One State (Turkey) has repeatedly opposed engagement with an NSA (Kongra Gel/HPG/PKK) it considers to be a "terrorist" organization, arguing that this would confer legitimacy upon it. Turkey is of the view that when NSA engagement is contemplated, the consent of the State concerned is necessary for such an engagement to take place.[259] Another State (India), though not objecting to the principle of NSA engagement, has been reluctant to grant travel permits and visas to Geneva Call's staff. Nevertheless, its local partner has been allowed to work freely. A few other States have also temporarily restricted Geneva Call's access to areas in which NSAs operate.[260] In the case of Colombia, the challenge has been linked to the government's refusal to allow specialized international organizations to conduct verification missions in areas cleared by the ELN.[261] According to one legal expert, the fact that a State Party fails to facilitate, let alone obstructs efforts made by third parties or NSAs to carry out mine action on its territory, may be deemed a breach of

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[257] Chitrakar, Purna Shova (2003), p. 85.

[258] Geneva Call and the ICBL NSA Working Group (2005), p. 7.

[259] Statement by the Republic of Turkey on Universalizing the Convention (2007)

[260] This was the case for example during Geneva Call's verification mission to the Philippines in 2002. See Geneva Call (2002). Since then, however, Geneva Call has faced no further travel restrictions in this country.

[261] In December 2004, the ELN announced that it would allow clearance of an area it had previously mined along a 15km long road in Micohumado. The Colombian government refused to authorize a specialized organization to demine the area. In January 2005, the ELN undertook to remove the mines itself. Geneva Call was provided with a map of the cleared zones. The ELN and the local community requested Geneva Call to facilitate independent international verification to ensure that the road could be used again without risk. Geneva Call, with the support of UN agencies, the EU, and several States Parties, tried to organize this verification but the government refused to allow it to take place. See Reusse-Decrey, Elisabeth (2005), pp. 50–51.

its obligations under the MBT.[262] The government of Colombia is otherwise generally supportive of Geneva Call's work.[263]

These challenges illustrate how the cooperation of States, especially States concerned, is key for engaging NSAs. Since its creation, Geneva Call has attached great importance to gaining their support and has continuously worked in a transparent manner, informing them of its activities and working principles (notably the principles of impartiality and neutrality). It has also insisted on the fact that engaging NSAs should not be construed as granting legitimacy to NSAs, but is consistent with Article 3 common to the Geneva Conventions, which expressly states that the application of IHL has no effect on the NSA legal status.

Compliance concerns

Despite the high degree of respect of the *Deed of Commitment* by signatory NSAs, there have been a number of compliance issues over the years. Both the SPLM/A and MILF leadership acknowledged the difficulties they faced in persuading their rank and file to accept their decision to ban AP mines. Some fighters still considered such weapons as legitimate in certain circumstances and were resistant to renounce their use.[264] Similarly, the level of control of some leaders over their troops appears to be limited, thus raising questions as to their ability to enforce compliance with the *Deed of Commitment*. This was the case in southern Somalia. A related challenge has been the practical difficulties for some signatories, such as the SPLM/A, to disseminate their new ban policy over the vast and remote areas under their control.[265]

In the case of the MILF, misconceptions regarding the types of mines covered by the *Deed of Commitment* and a faulty understanding of the concept of "command detonation" contributed to difficulties in implementation.[266] This challenge revealed the importance of ensuring that NSA leaders are clear about the exact scope of their commitment prior to signing. Since 2002, Geneva Call has acted more systematically in this respect, discussing relevant technical concepts in detail with military commanders and translating the *Deed of Commitment* into the NSA native languages.

Lastly—and it is worth mentioning here that the same can be said of States Parties to the MBT—it appears that several signatories have not made their best effort to enforce all their obligations. For instance, a few NSAs have not yet provided details on their AP mines stocks (types, numbers, etc.) nor proceeded with the destruction of such stocks.[267]

Lack of technical capacity and resources

Progress in the implementation of the *Deed of Commitment* has been hampered by the lack of technical capacity and resources available to signatory NSAs, particularly in relation to Article 2. Due to their limited technical knowledge, qualified manpower, equipment, and financial resources, a number of signatories have not been able to undertake mine action *on*

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[262] Lawand, Kathleen (2005b), p. 27. The paper contains the usual disclaimer that the views expressed in the paper do not necessarily reflect the position of the ICRC.

[263] The government has notably allowed Geneva Call to visit ELN leaders jailed in high security prisons in Medellín.

[264] Ayieni, Aleu (2001), p. 75 and Bongard, Pascal (2007), p. 61.

[265] In response, Geneva Call assisted the SPLM/A in its dissemination efforts by conducting workshops on the mine ban for its rank and file. See Geneva Call (2004)

[266] See footnote 240.

[267] For details, see Geneva Call (2007), p. 20 and 28–29.

their own, or only on a limited scale. In the words of an NSA leader, "AP mines are cheap to produce and acquire and they are easy to use. Removing them and destroying stockpiles can be incredibly expensive and requires expertise."[268] Similarly, only a few NSAs have the capacity to provide medical care and rehabilitation services, not to mention socio-economic reintegration, thus resulting in little victim assistance or none at all. Support is needed to enhance the ability of signatories to perform mine action in a safe and efficient manner and to take ownership of that responsibility.[269]

A lack of resources has also affected Geneva Call's work. Engaging NSAs and gaining their confidence is often a time-consuming process. In several instances, Geneva Call and its technical partners have been unable, due to lack of funding, to assist signatories in implementing the *Deed of Commitment* or to send field missions to monitor compliance. Ironically, many donors, albeit supporting engagement work, have been reluctant to fund mine action programmes in areas under the control of armed groups. In some cases, such as in Somalia, failure to secure the necessary resources to destroy stockpiles held by signatories resulted in their seizure by non-signatory forces.[270] Faced with this challenge, Geneva Call has been seeking increased funding for technical assistance and, pursuant to the *Nairobi Action Plan*,[271] has urged States Parties to support mine action in NSA-controlled areas.

Conclusions

While it should be recognized that it is too early in the lifespan of Geneva Call to draw definitive conclusions about the long-term impact of its action, a number of observations can nonetheless be made.

First and most importantly, Geneva Call's experience demonstrates that NSA engagement work can achieve significant progress. Since 2000, 35 NSAs worldwide have signed the *Deed of Commitment*. Their compliance record has been generally good so far. Signatories have by and large abided by their commitment, refraining from using AP mines, cooperating in mine action and, for a number of them, destroying their stockpiles (more than 16'000 AP mines in total). In addition, eight other NSAs have pledged to prohibit or limit the use of this weapon, either unilaterally or through a ceasefire agreement with the government. In some countries, NSA commitments facilitated the launch of mine action programmes in areas under their control, as well as the accession to the MBT by their respective States. Of course, this is not to suggest that the work is complete. Many challenges remain and need to be further addressed, notably the continued use of AP mines and IEDs by non-signatory NSAs, the lack of technical and financial resources to support implementation of the *Deed of Commitment*, the politicization of the issue, and travel restrictions placed by some States, especially in the context of the so-called "war on terror". Yet, the progress made to date shows that efforts to promote NSA adherence to the AP mine ban can be successful.

Second, the *Deed of Commitment* has proven to be a persuasive tool to engage NSAs. Compared with other instruments such as unilateral declarations, it has the advantage of being

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[268] Quoted in Geneva Call, PSIO and Armed Groups Project (2004), p. 14.
[269] Sjöberg, Anki (2006), p. 136.
[270] Geneva Call (2007), p. 17.
[271] Action #46 of the *Nairobi Action Plan*, which was developed at the First Review Conference of the MBT, stipulates that "States Parties in a position to do so will continue to support, as appropriate, mine action to assist affected populations in areas under the control of armed non-State actors, particularly in areas under the control of actors which have agreed to abide by the Convention's norms." The Swiss government has played an active role in promoting a discussion on the role of States Parties in implementing Action #46. See Switzerland (2004, 2005, and 2006).

a formal mechanism, with the Canton of Geneva acting as custodian and a symbolic signing ceremony that builds momentum around the commitment. Moreover, it provides for a comprehensive ban on AP mines, enforcement measures as well as a verification system. Arguably, many NSAs would not have committed to the ban without the *Deed of Commitment*. This mechanism has enabled them to declare their willingness to observe the MBT's provisions even though they are not formally parties to it. Thus, by going beyond the restrictive inter-State framework, Geneva Call has contributed to ensuring respect for existing norms by NSAs without affecting their legal status.[272]

Third, while it has been challenging in some instances to monitor compliance, primarily due to travel restrictions and reasons of security,[273] the mechanisms developed under the *Deed of Commitment* have been quite effective. They have allowed Geneva Call to cross-check information reported by signatory NSAs, to clarify suspected cases of non-compliance, and to verify allegations of mine use and acquisition. Unlike the MBT, the *Deed of Commitment* does not rely only on self-reporting and the activism of States Parties to monitor compliance.[274] Geneva Call has conducted on its own initiative follow up visits to most signatories as well as two verification missions. "This prospect of continual verification and monitoring […] means that, in terms of detecting non-compliance, the [*Deed of Commitment*] regime has the potential to become even more effective than the formal treaty regime."[275] Indeed, despite serious allegations of AP mine use and transfer by States Parties, no fact-finding mission has ever been conducted under the MBT.

Finally, can Geneva Call's approach be applied to other humanitarian and human rights norms? Many organizations dealing with NSAs—whether on the issue of chilren, torture, misuse of small arms, or IHL in general—have expressed interest in Geneva Call's work and presented the *Deed of Commitment* mechanism as an innovative example of NSA engagement. The extension beyond the landmine issue is foreseen in Geneva Call's Statute and the *Deed of Commitment* could provide a basis for engaging NSAs on other norms.[276] However, given the differences between the issues and their legal frameworks, it is not clear how Geneva Call's "model" could be replicated. The challenges faced may be as great, if not greater than on the landmine ban. Together with relevant stakeholders, including NSAs themselves, Geneva Call has been exploring the possibility of extending its activities to the issues of child protection and gender-based violence.[277] The potential for success in these areas remains to be seen but Geneva Call's experience on landmines is certainly proving useful in informing strategies for improving NSA compliance with other humanitarian norms.

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[272] See Clapham, Andrew (2006), p. 294 and Hofmann, Claudia (2006), p. 404.

[273] For a discussion on challenges to monitoring, see Geneva Call (2007), pp. 28–30.

[274] Findlay, Trevor (1999), pp. 46 and 51.

[275] Clapham, Andrew (2006), p. 299.

[276] de Beco, Gauthier (2005), p. 194, McHugh, Gerard and Manual Bessler (2006), p. 57 and Clapham, Andrew (2006), pp. 293–295.

[277] See Geneva Call, PSIO and Armed Groups Project (2004), Mazurana, Dyan (2004 and 2006), Boivin, Alexandra (2006), Sjöberg, Anki (2007) and Gazagne, Philippe (forthcoming).

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Conclusion

By Dr Daniel Warner

The conference *Exploring Criteria & Conditions for Engaging Non-State Actors to Respect Humanitarian Law & Human Rights* dealt with three overarching realities that are central to current international relations and specifically to violent conflicts. The first is that international humanitarian law (IHL) was designed to establish rules and norms in situations that in and of themselves involve violations of rules and norms. IHL seeks to limit behaviour that is outside of acceptable norms; acts of violence and aggression are fundamentally illegal except in extreme cases of self-defence. The second is the reality that most conflicts today take place within States and involve at least one armed non-State actor (NSA), not across States and between States. International law is the law between States, and references to violence within countries have traditionally been the domain *reservé* of domestic State policy. Third, the attempt to establish a humanitarian space outside of the political often flies in the face of the very political nature of a conflict. If war is an extension of the political, then humanitarian space is constantly threatened by both violence and political considerations.

It is within the context of these three realities that the problematic of engaging NSAs is relevant. While the *War on Terror* has certainly influenced many governments in their attitudes toward NSAs, the three realities mentioned above continue to create tensions in all aspects of rendering more the realities of war well beyond the immediate context. Who would argue against trying to prevent any person or group from using anti-personnel (AP) mines? And yet, there is reluctance to move forward with engaging groups such as NSAs in that direction.

In his incisive introductory remarks, Professor Marco Sassòli took an advocacy position that set the tone for the conference. He argued not only for engaging NSAs, but for engaging all armed groups *to obtain or improve their respect of IHL.* While he called his position "extremist," we would argue that to try to engage anyone capable of reducing suffering and pain through the reduction in the use of AP mines makes humanitarian sense. There is nothing at all "extremist" in this position. While the papers and discussions that followed focused on the differences, similarities and difficulties in engaging NSAs in humanitarian negotiations, all participants had the underlying agreement that engagement was important. That threshold was understood but presented through different prisms in the papers and discussions.

In order to understand the different prisms, it is helpful to recall that the field of international relations, the study of international relations, is a fairly new discipline. It began in Wales in 1919 with E.H. Carr, who created the first institute for the study of international relations in Europe. The second was in Geneva in 1927, the Graduate Institute of International Studies. The Institute was to have an input into the League of Nations and to work for peace and security. Following the Second World War, institutions committed to the study of international relations were established throughout the world. I mention this point because certain disciplines such as mathematics or physics have a much longer history and longer traditions. The problem for the young discipline of international relations is that it has become enormously fragmented.

In fact, we have numerous prisms looking at the subject of engaging NSAs in the papers presented in this report. Professor Sassòli is concerned with sub-State actors, specifically in respect of Common Article 3 of the Geneva Conventions. He argues that international humanitarian law applies to all parties, with protection of victims and access having priority.

Michael Miklaucic gives a typology or preliminary typology of NSAs. He is concerned with mapping types of organizations to get a better understanding that will allow us to better deal with the groups. Julian Hottinger, as a negotiator, is concerned about pre-conditions for negotiations and how to move from a logic of violence to a logic of argumentation with no typologies or set rules. Jörn Grävingholt, a development expert, tells us that we cannot separate development from conflict, that conflicts are development killers and that donors have tried to cooperate to put pressure on rebel groups and States in order to allow development activities to continue. Monyluak Kuol, an African expert, describes the NSAs in the Sudan, specifically how problems of dissemination of human rights norms led to problems of monitoring and certainly led to problems of compliance. Marc Knight, an expert on DDR argues that demobilization is important for stability. He promotes continuing political dialogue instead of military involvement. He also emphasizes the particular role of women in the potential movement towards stability in a post-conflict situation. Olivier Bangerter and David Capie look at the practical and theoretical problems of how to engage NSAs. Both deal with socialization processes involved in getting groups to comply by persuasion. Finally, Greta Zeender examines how to protect the internally displaced and Pascal Bongard provides an overview of the experience of Geneva Call in reducing the use of landmines by NSAs. Both are concerned with the content of the engagement.

What would the men from Mars say to the different approaches to the subject? It seemed to be so simple before when international relations was merely the relations between States. The world has evolved. It is encouraging to have a meeting and publication on this topical subject and to share thoughts and experiences that challenge traditional intellectual paradigms and policies.

What is the relationship between the traditional intellectual paradigms and what is happening in the field? Non-State actors, armed groups, intra-State conflicts are dominating the world of security and violence. In these papers, several very practical questions were addressed: Whom to engage? Why engage? When to engage? How to engage? About what to engage? There are no definite answers either in the papers or the discussions. The subject is too vast and too complex.

Nonetheless, academics, practitioners and international experts rarely have the privilege of sitting together for two days to discuss a subject of common interest. The organization of the conference was a rare opportunity to share opinions and best practices learned from experience. The discussions were lively and brought forth new perspectives on a topic that, to fully understand and appreciate, requires many different points of view. The papers contained in this report reflect the core of what was discussed. They served as a solid basis for the discussions. I am sure that they will also serve to move the debate forward on this timely subject and hopefully will help practitioners in the field as well.

In conclusion, it is obvious to point out that a conference and report on engaging NSAs without any NSA participation takes certain risks. There was a decision taken by the organizers to have such a meeting without NSAs, without representatives of armed groups. However, it is hoped that the output and the discussions in the conference and report will be discussed with armed groups among others. This report should be helpful to all practitioners and academics involved in this timely subject.

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