ARMED NON-STATE ACTORS AND LANDMINES

VOLUME III:
TOWARDS A HOLISTIC APPROACH
TO ARMED NON-STATE ACTORS?

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Sleeve of a POMZ-2 AP fragmentation stake mine, Somalia.
Credit: Geneva Call 2004.

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ABSTRACT

Globally, humanitarian and human rights actors are increasingly approaching not only the armed forces of States, but also those of non-State actors (NSAs) to try to reduce the abuses committed during armed conflict. By combining relevant literature with the findings from the analysis of NSA involvement in humanitarian mine action, the report suggests some factors and incentives that might influence the behavior of an NSA and its likelihood of committing itself to respect humanitarian norms, as well as factors that might influence the outcomes of such engagement.

This study is the third volume of a project that investigates the involvement of NSAs in the landmine problem, both in its negative (use of landmines) and positive (contribution to mine action) aspects. The report summarizes and analyzes the main findings of the project, and applies these findings to other related issues - child soldiers and small arms – as well as places the issue in the broader context of NSA engagement. It should be noted that humanitarian engagement does not affect the legal status of the NSA involved. In conclusion, the report argues for a holistic view of NSAs, hence considering both their capacity for destruction as parties to a conflict, but also their potential to contribute to the solution of human security problems. It has been demonstrated that it is possible to work with NSAs in humanitarian action, such as mine action, and that this has direct beneficial effects for the civilian population (reduction of humanitarian suffering and removal of obstacles to development). Notably, one important finding is that although many NSAs used landmines, their contribution to mine action activities was more extensive than expected. This potential could and should be used.

CONTENT

1 Introduction

1.1 Context: Inclusive Approaches to NSAs

Armed conflicts are complex situations. Once under way, they develop their own logic and particularities. This is also true of armed non-State actors (NSAs, also called non-State armed groups or simply armed groups), who are even more heterogeneous than States, and who may transform during the course of conflict. Many NSAs control or heavily influence territory and thereby the lives of hundreds of thousands, sometimes millions, of individuals. Notable examples are the Liberation Tigers of Tamil Eelam (LTTE) in Sri Lanka, the Revolutionary Armed Forces of Colombia (FARC, from *Fuerzas Armadas Revolucionarias de Colombia*), the Sudan People's Liberation Movement/Army (SPLM/A) and, formerly, the Communist Party of Nepal-Maoists (CPN-M). Even though most of them do not have total control over a territory, armed groups may still be able to endanger the lives of a population, for instance by hindering humanitarian aid, planting landmines,[1] recruiting and using child soldiers,[2] and by trafficking and misusing small arms and light weapons.[3]

The above abuses paired with an increased presence of international and transnational actors in internal armed conflicts have made humanitarian negotiations with these actors a topic of vital interest for the protection of civilians. Such negotiations challenge a traditional perception of international relations, which is comprised of a State-centric world view. By dealing directly with NSAs, humanitarian actors pragmatically recognize the reality in most conflict zones. By doing so, they sometimes bypass State authorities to deal directly with NSAs, which the former may perceive as politically unacceptable or even as a threat to State sovereignty. This may be especially true in the current international context of "war on terror."

That there is a need for humanitarian actors to confront abuses committed by NSAs and hence improve the protection of civilians may seem self-evident. Why such abuses would need to be addressed, at least partially, by *international* measures is not always that evident. However, one important argument is that, if a group is fighting a State,[4] it might not have much of an incentive to obey national legislation since by definition it is operating outside of a State's legal system. In fact, the very existence of such groups on the territory of a State is proof that the latter is incapable or unwilling to extend the rule of law all over its territory.[5] In other cases, such as Somalia, there is no functioning domestic legal system, due to a breakdown of State institutions.[6] Hence, in the above-described cases, humanitarian actors have found it increasingly important to complement national legislation with negotiations with NSAs on international norms in order to seek protection for the affected populations. Nevertheless, this does not change the fact that NSAs are subject to international humanitarian law (IHL) when acting as parties to an armed conflict.[7]

As is frequently noted by scholars focusing on NSAs, the existence of armed groups, with or without a defined political agenda, is not just a contemporary phenomenon. In fact, activities by

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1 See Anki Sjöberg, <u>Armed Non-State Actors and Landmines. Volume I: A Global Report Profiling NSAs and Their Use, Acquisition, Production, Transfer and Stockpiling of Landmines</u> (Geneva: Geneva Call and the Program for the Study of International Organization(s), 2005), pp. 23-24 and 32.

2 According to the Coalition to Stop the Use of Child Soldiers, up to 70% of the world's child soldiers are part of armed groups. <u>Non-State Armed Groups and Child Recruitment: Child Soldier Newsletter Winter 2005/06</u> (2005).

3 See for example Nicolas Florquin and Eric G. Berman, eds., <u>Armed and Aimless: Armed Groups, Guns, and Human Security in the ECOWAS Region</u> (Oxford: Oxford University Press, 2005).

4 This is not always the case, for example in so-called "inter-communal violence", i.e. a conflict between two or more NSAs.

5 Pablo Policzer, <u>Neither Terrorists nor Freedom Fighters</u> (2004). p. 2.

6 Nevertheless, Somalia is a remarkable example of successful negotiation with NSAs. with 17 Somali factions having committed to a landmine ban by signing the *Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action* (hereafter *Deed of Commitment*), a mechanism facilitated by the international NGO Geneva Call.

7 See section 1.4.1 "Humanitarian and Human Rights Obligations of NSAs."

armed groups were described as early as the fifteenth century B.C.[8] However, even though the phenomenon of NSAs *per se* is not new, the perception of these groups and how they should be dealt with has changed. For example, with the increasing acceptance of IHL and human rights law, activists have become more vocal about violations of these laws committed by NSAs.[9] In addition, discussions are taking place in various fora concerning the legal responsibility of NSAs, as part of a bigger trend of holding actors that formerly were not perceived as participants in international law more accountable for their actions.[10] However, many authors have tended to focus mainly on international non-governmental organizations (NGOs) and how they influence international law and practice by exerting pressure upon States. Others, especially liberal approaches, have tended to focus on economic actors, such as multinational corporations.

Nevertheless, many international relations scholars continue to pay little importance to non-State actors, and especially armed ones. As such, so-called "inclusive approaches" to NSAs are especially significant challenges to traditional approaches to international relations, since they do not consider such actors solely as threats to State security, but as actors that, however "controversial" they may be, have to be confronted directly.[11] In this context, this report argues for a holistic view of NSAs, hence considering both their capacity for destruction as parties to a conflict, but also their potential to contribute to the solution of human security problems. The following sections explain the background, rationale, content and structure of the report.

1.2 Background and Rationale of the Report

In September 2005, the Geneva International Academic Network (GIAN/RUIG) approved a project called "Involvement of NSAs in the Landmine Problem and Recommendations for their Positive Contribution to a Landmine Ban and Mine Action." This project – aimed at providing a comprehensive picture of the complex role that NSAs play in the landmine problem and their potential role in banning landmines and cooperating in mine action[12] - was led by the NGO Geneva Call in partnership with the Program for the Study of International Organization(s) (PSIO) of the Graduate Institute of International Studies (HEI), Geneva. Other institutions contributing to the project were United Nations Mine Action Service (UNMAS), the Geneva International Centre for Humanitarian Demining (GICHD), the University of Geneva and the HEI *per se*.

This project grew out of the realization that only by understanding NSA- and region-specific dynamics is it possible to address the current and future landmine problem. In its work with NSAs and in discussion with other humanitarian actors, Geneva Call had found that there was a need to further research the landmine issue as it relates to NSAs. No such specific analysis had previously been undertaken. By publishing the two reports "NSAs and Landmines. Volume I: A Global Report Profiling NSAs and Their Use, Acquisition, Production, Transfer and Stockpiling of Landmines"[13] (hereafter "Volume I") and "NSAs and Landmines. Volume II: A Global Report of NSA Mine Action,"[14] (hereafter "Volume II"), the project provided the first complete mapping and

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8   As noted by Ian F. W. Beckett, Modern Insurgencies and Counter-Insurgencies: Guerrillas and Their Opponents since 1750 (London and New York: Routledge, 2001). p. 15.

9   The discussion about engaging NSAs originated in the 1970s and contributed to an amendment of the Geneva Conventions through Protocol II in the 1970s. However, human rights organizations such as Amnesty International and Human Rights Watch waited until the early 1990s to change their definitions of human rights abuses to include acts committed also by NSAs. Policzer, Neither Terrorists nor Freedom Fighters. p. 2.

10   Such non-State actors include but are not limited to international organizations and their agencies, corporations, non-State armed groups, private security companies, NGOs, etc. See for example Andrew Clapham, Human Rights Obligations of Non-State Actors (Oxford and New York: Oxford University Press, 2006).

11   It is not the ambition of this report to tackle the question of if and how the actions of NSAs and humanitarian actors might influence International Relations theory. The interest is rather on how the "good" non-State actors, sometimes in coalition with States and international organizations, work to influence the "bad" ones ("good" and "bad" here refer to the interpretation of the organized international community and in particular to the States which claim to represent it).

12   Following the current UN definition, mine action can be understood as "activities which aim to reduce the social, economic and environmental impact of mines and UXO." A Guide to Mine Action and Explosive Remnants of War, (Geneva: GICHD, 2007). p. 24.

13   Sjöberg, Armed Non-State Actors and Landmines. Volume I.

14   Anki Sjöberg, Armed Non-State Actors and Landmines. Volume II: A Global Report of NSA Mine Action (Geneva: Geneva Call and the Program for the Study of International Organization(s), 2006).

analysis of NSA involvement in the landmine issue in both a negative (mine use) and a positive (contribution to mine action) sense.

One underlying objective of the project was to raise awareness of the issue and encourage the international community to support mine action efforts in all affected territories, including those under the control or influence of NSAs. In addition, the publishing of both reports (but especially of Volume II) was chiefly intended to serve as a resource tool to persuade NSAs of the benefits of a mine ban commitment for the civilian population and in raising the targeted NSAs' awareness of human rights and IHL. As such, the information on NSA involvement in mine action can serve as examples for other NSAs as to the possible benefits of adhering to a mine ban and engaging in mine action or other types of humanitarian action. The long-term aim was therefore to contribute to an increase in the number of NSAs renouncing the use of AP mines, as well as the number of NSAs involved in mine action, by showing NSAs currently taking limited or no part in mine action programs that there are possibilities of different types of support for mine action. For this purpose, both reports were widely distributed to NSA signatories or non-signatories to Geneva Call's "*Deed of Commitment under Geneva Call for Adherence to a Total Ban on Anti-Personnel Mines and Cooperation in Mine Action*" (hereafter "*Deed of Commitment*").

This report is the third and last of the project and as such summarizes and analyzes the main findings for the benefit of stakeholders and policy makers. The following section explains briefly the content and structure of the report.

1.3 Content and Structure of the Report

The present report summarizes and analyzes the main findings of the two mentioned reports on NSA involvement in the landmine issue, and applies these findings to other related issues - child soldiers and small arms – as well as places the issue in the broader context of NSA engagement. Hence, this first chapter discusses the state of the (academic and policy) debate of NSA engagement and adds the contribution of this project to it. The second chapter discusses and analyzes the findings as relates to landmines, given that this was the focus of the two previous reports. The third chapter contains a discussion of the possible application of the findings to other engagement issues. In addition to landmines, the issues discussed are child soldiers and small arms and light weapons. The reason for choosing these particular issues is that they have been identified as areas where NSAs play a major role in the problem and where current solutions have been considered as insufficient.[15] The fourth and last chapter wraps up with a conclusion and some recommendations on NSAs and landmines.

1.3.1 The Concept of NSA

For the purpose of this report, an NSA is defined as any organized group with a basic structure of command operating outside State control that uses force to achieve its political or allegedly political objectives.[16] Such actors include rebel groups and governments of entities which are not (or not widely) recognized as States.[17]

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15   The mere fact of including these two issues, however, does not imply that Geneva Call as such will necessarily expand its work to these issues. The discussion and proposals have to be considered as general, and not particularly directed to Geneva Call. Nevertheless, Geneva Call is in fact preparing to initiate work on the non-use and non-recruitment of child soldiers, in collaboration with key stakeholders.

16   Pablo Policzer suggests the understanding of armed groups as: "... challengers to the state's monopoly of legitimate coercive force," among others, in order to avoid the issue of determining the nature of the objectives. (Policzer, Neither Terrorists nor Freedom Fighters. p. 8.) This means that by virtue of arming themselves, groups challenge the state and its claim to monopolize violence. This is irrespective of who the groups take up arms against or for what purpose. In other words, this definition encompasses NSAs that fight against other NSAs, or which ally themselves with states but remain independent from it. Nevertheless, it would not include groups that are licensed by States; however, criminal groups would be covered by this definition. Elsewhere Policzer has argued that focusing exclusively on armed groups with very clear political aims makes little sense in contexts where the boundaries between criminal and political violence is blurry, given that they pose a challenge to humanitarians and they challenge the State's monopoly of coercive force just as much as "normal" NSAs. Email from Professor Pablo Policzer, received 6 September 2007.

17   Paramilitary groups are excluded from this definition, since they are tied (whether strictly or more loosely) to a State apparatus.

The standard concept used by many authors is the term "armed group" or "non-State armed group," defined as a group that is armed and uses force to achieve its objectives and is not under State control.[18] This definition would exclude paramilitaries that are under the effective control of a State (although, as is well known, "effective control" is notoriously difficult to determine).[19] Normally the focus, specifically for humanitarian engagement, is put on politically motivated groups, i.e. those that articulate a political agenda rather than private goals. Thus, "merely" economically motivated armed groups, such as the mafia, are excluded from the concept.[20] However, this does not mean that elaborate political manifestos are a necessary prerequisite for applying the term "politically motivated group."[21]

Due to the existence of NSAs that exercise *de facto* control over a territory and have reached a level of organization similar to that of States (e.g. Abkhazia, Nagorno Karabakh, Somaliland, Western Sahara) that are in active conflict or in situations of "no war, no peace" with States, this report favors the concept "NSA." These actors are not adequately covered by the more limited notion of "non-State armed group."

Most authors underline the heterogeneity represented by NSAs as to size, behavior, structure, motives, goals, and resources. Some such groups may have clearly defined political objectives, while this may be less clear-cut in other cases. Some may control territory and have established administrative structures parallel to those of the State, while others have loose command structures and weak control over their members. Some concentrate their forces on attacking military targets, while others attack civilians as their war-making strategy.[22] They may be composed of men, women, and children. In some groups, female members are estimated to comprise one-fifth to almost half of the recruits to the group's combatants and other members.[23] Members of these groups may have been recruited forcefully or joined voluntarily.[24] Nevertheless, certain NSAs have set up structures to provide services that aim to protect the human security needs of their members, such as social or psycho-sociological needs.[25] Mine action can constitute such a service.

Consequently, responsibility could be attributed to the State for the actions of these groups.

18   David Petrasek, Ends and Means: Human Rights Approaches to Armed Groups (Geneva: International Council on Human Rights Policy, 2000). p. 5.

19   A manual produced by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) on humanitarian negotiations with armed groups defines such actors as:
   "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 State(s) in which they operate."
This definition also includes criminal groups, but not paramilitaries. Gerard McHugh and Manuel Bessler, Humanitarian Negotiations with Armed Groups: A Manual for Practitioners (New York: United Nations, 2006). p. 87.

20   Petrasek, Ends and Means. p. 7.

21   As highlighted by observers, the political objective is the hardest characteristic to define. For example, Max Glaser underlines that many NSAs do not necessarily aim at regime change or total power seizure, but rather employ strategies to deny control to the adversary (normally a government) by causing insecurity and instability. Max P. Glaser, Negotiated Access: Humanitarian Engagement with Armed Nonstate Actors (Carr Center for Human Rights Policy, Kennedy School of Government, Harvard University, 2005). p. 22. Others, such as Marco Sassòli, argue that, owing to the difficulty of determining political motivation, this criterion is less relevant and that even merely criminal groups should be considered NSAs whenever they manage to entertain a sufficient level of violence to make the situation an armed conflict and the group a party to that conflict. Email from Professor Marco Sassòli, received 16 July 2007.

22   See for example Stathis N. Kalyvas, "Wanton and Senseless? The Logic of Massacres in Algeria," Rationality and Society 11.3 (1999).

23   The National Liberation Army (ELN) in Colombia has stated that it has close to 50% female members (Meeting with Commander Antonio Garcia, La Havana, December 2005 (2005).) Similar estimations (40-50%) have been made for the members of the FARC (Juan Guillerma Ferro Medina and Graciela Uribe Ramón, El orden de la guerra. Las FARC-EP: Entre la organización y la política (Bogotá: Centro Editorial Javeriano, 2002)., p. 67.) Please note that this refers to the members of the organization, not only to the actual combatants.

24   For a good analysis of the FARC's recruitment, see Medina and Ramón, El orden de la guerra. pp. 71-81. The authors highlight that although forceful recruitment, including of minors, does exist, the majority of new recruits join voluntarily, among others, due to the lack of other alternatives or to escape poor or oppressive family conditions.

25   As noted in Caroline Holmqvist, "Engaging Armed Non-State Actors in Post-Conflict Settings," Security Governance in Post-conflict Peacebuilding, eds. Alan Bryden and Heiner Hänggi (Geneva: DCAF, 2005). p. 48.

1.4 Status of the Debate on Engagement with NSAs

The literature relevant to the issue of NSA engagement is very varied. Since the topic has not been well covered *per se*, the project spanned several bordering fields, including:

- literature on NSAs;
- the extensive field of the study of internal armed conflict;
- literature on humanitarian norms and action; and
- literature directly focused on the engagement of NSAs.

As such, the debate has primarily been a legal one rather than from a political scientist's perspective. Security Studies have tended to focus on coercive methods to deal with NSAs (notably from the growing field of "Terrorist Studies").[26] Others have analyzed some of the challenges and possibilities for engagement.[27] In addition to this literature, organizations and institutions with experience from working with NSAs – ICRC (forthcoming 2007), the UN (published by its Office for the Coordination of Humanitarian Affairs, OCHA),[28] and Geneva Call (internal document)[29] – have been making efforts to evaluate their own endeavors and to map out best practices. Below, a brief introductory overview on humanitarian engagement with NSAs, the legal framework, different perspectives, factors and approaches related to it, follows.

1.4.1 Humanitarian and Human Rights Obligations of NSAs[30]

Traditionally, in international law, rebels were only considered as having international rights and obligations from the time they "graduated" to insurgency, i.e. when they (1) have effective control of territory and (2) when the violence reaches a certain level in terms of intensity and duration.[31] Andrew Clapham argues that, although States still possess the theoretical possibility to bestow rights and obligations on rebels by recognizing them as either insurgents or belligerents, it makes more sense today to consider rebels (unrecognized insurgents) simply as "addressees of international law." This is so since "international law imposes obligations on certain parties to an internal armed conflict irrespective of any recognition granted by the state they are fighting against or by any third state."[32]

The position of "national liberation movements" is different from recognized belligerents and insurgents, since the former: "may be able to claim rights, and will be subjects to international obligations, even in the absence of control of territory or express recognition of their adversaries."[33] Such national liberation movements could even make a declaration under Arti-

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26 The debate has also featured some arguments against engagement of NSAs, notably concerning the risks of recognition of groups that do not represent a constituency. Humanitarian actors have been taking this issue seriously and undertake measures to avoid this. Hence, engagement does not take place with all groups, at all times, and at any cost, but is carefully evaluated beforehand. Similar problems are faced by actors involved in peace processes. See for example Dealing with Spoilers in Peace Processes", International Workshop, 26-27 September 2006, Bonn, Germany (German Development Institute, 2006).

27 For example Policzer, Capie, and Glaser.

28 McHugh and Bessler, Humanitarian Negotiations with Armed Groups: A Manual for Practitioners. This manual is the fruit of the study of the interactions of different UN agencies with NSAs, but the development of the manual was coordinated by OCHA.

29 Although the assessment *per se* will remain internal, the main findings will be made available in late 2007-early 2008. Pascal Bongard, Engaging Armed Non-State Actors on a Landmine Ban: The Experience of Geneva Call, presented at the conference "Exploring Criteria and Conditions for Engaging Armed Non-State Actors to Respect Humanitarian Law and Human Rights Law" (Geneva, 4-5 June 2007: 2008 (forthcoming)).

30 This section is chiefly based on Clapham, Human Rights Obligations of Non-State Actors.

31 Ibid. p. 271.

32 As argued by Clapham, "the government may be less willing to acknowledge the situation as one of armed conflict, preferring instead to portray it as a fight against criminals and terrorists. To be clear, the application of the obligation does not depend on any acceptance by the government that the threshold of applicability of humanitarian law has been reached." Moreover, "[t]he problem is that governments are often loath to admit that the conditions have been met for the application of this customary international law; for to admit such a situation is seen as an admission that the government has lost a degree of control, and an 'elevation' of the status of the rebels." Ibid. pp. 272 and 275.

33 Ibid. p. 273.

cle 96(3) of Protocol I or under the *Convention on Certain Conventional Weapons* (CCW).[34] Nevertheless, since no such declarations have been accepted, attention has turned to the customary status of these rules.[35]

The humanitarian law ruling during internal armed conflict gives rise to certain duties for NSAs. The minimum protection is offered by Common Article 3 to the four Geneva Conventions of 1949, which contains obligations for 'each Party to the conflict.' These obligations are to 'persons taking no active part in the hostilities' as well as to the 'wounded and sick'. The actual prohibitions include: murder, violence to the person, cruel treatment, the taking of hostages, humiliating and degrading treatment, and sentences of executions without judicial safeguards. Lastly, the Article includes a positive obligation to collect and care for the sick and wounded.[36] According to Clapham, today, even in the absence of a consensus on a theoretical justification of how a treaty such as Protocol II, entered into by states, can create legal obligations for NSAs, it has become clear that, not only are rebels bound as parties to the conflict by Common Article 3 to the Geneva Convention, but they are also bound by the provisions of Protocol II.[37] Nevertheless, not all legal analysts would agree on that.

In "Human Rights Obligations of Non-State Actors," Clapham argues that different non-State actors (armed and unarmed) not only have IHL but also human rights obligations. He goes on to investigate and suggest ways of addressing accountability. He argues that developments in the field of international responsibility and international criminal law have implications for building a framework for the human rights obligations of NSAs in international law, given that "various non-state entities today have enough international legal personality to enjoy directly rights and obligations under general international law as well as under treaties."[38] The Security Council, for instance, has repeatedly called upon all concerned parties to a conflict to respect human rights law in conflict. For example, Clapham argues, "[t]he human rights demands regarding the treatment of girls and women, access to humanitarian assistance, the use of child soldiers, and respect for the civilian population are situation-specific; but the Security Council presumes that non-state actors have international obligations under the international humanitarian law of armed conflict and human rights law." Hence, Clapham considers that international human rights obligations "apply at all times to all armed opposition groups..."[39]

Compliance with international law is often contingent upon a mix of credible threats of coercive sanctions and positive incentives.[40] A sense of moral obligation is rarely the overriding explanation for compliance, whether by States or NSAs. For NSAs, the fact that a practice is criminalized by domestic law is of little consequence for their very existence as an armed group is likely to be illegal. The reality is that governments rarely exercise control over NSAs and NSAs usually view the domestic legal system as having nothing to offer them or as contrary to their interests.[41] Besides, implementing humanitarian norms is usually of little help to NSAs in avoiding punishment under domestic law for their mere participation in the conflict.[42] International

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34   The full name being *Weapons Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects*.

35   According to Clapham, such a declaration under the Weapons Convention can bring into force, not only the Weapons Convention and its protocols, but also the Geneva Conventions, even where the State against which the liberation movement is fighting is not a party to Protocol I. Clapham, Human Rights Obligations of Non-State Actors. pp. 273-274.

36   Ibid. p. 275.

37   For the applicability of Protocol II one of the conditions is: "the intensity of fighting has to be greater than that traditionally required for the application of Common Article 3." Ibid. pp. 277 and 283.

38   Ibid. p. 82.

39   Ibid. pp. 283-284.

40   This paragraph is based on Alexandra Boivin, A Study on Child Soldiers (Geneva: Geneva Call, 2006: internal document). pp. 34-37.

41   As highlighted by Clapham, it may not be possible to rely on the binding nature of national law "in situations where the rebels seek to challenge the legitimacy of the regime to adopt any law at all." Clapham, Human Rights Obligations of Non-State Actors. p. 288.

42   Improving Compliance with International Humanitarian Law, Summary Report of the ICRC Expert Seminars (Geneva: ICRC, 2003)., p. 20.

criminal law can similarly be ignored by NSAs because of the slim chance that it will ever be enforced against them. As pointed out by Marco Sassòli, "individual criminal responsibility exists only for the most egregious violations and may only be enforced through a fair trial in which the facts and their individual attribution have to be proven beyond reasonable doubt."[43] Having this legal framework in mind, the next section takes us through the concept of and approaches to humanitarian engagement.

1.4.2 Humanitarian Engagement with NSAs

In general terms, humanitarian[44] action can be summarized as activities providing protection and/or assistance – generally medical and relief aid, but also mine action services – to populations in vulnerable situations. Protection refers to the civilian population, but also to wounded combatants, prisoners of war and other persons detained in relation with the conflict. Various current challenges facing humanitarian action have been identified.[45] These challenges can be summarized into four problem areas:

- instrumentalization of humanitarian aid;
- critique of the adequacy of the principle of confidentiality;
- lack of independence of - mainly international - humanitarian NGOs from Western States and military; and
- deteriorated security environment, including deliberate targeting of aid workers.

In many ways, these challenges are related to the fact that, to an overwhelming degree, NSAs are parties to the armed conflicts in which humanitarian actors (e.g. international and national NGOs and organizations),[46] are mandated (and somehow morally obliged) to operate. In order to carry out their activities, humanitarian actors need to know whom to negotiate with, what the groups' structures of command are, and how to approach them, etc. Hence, their situation is especially difficult when there are multiple NSAs present in a conflict or when there are splits in existent groups. This might have important consequences for the security situation and the practicability of humanitarian operations.

David Petrasek has defined humanitarian engagement[47] as "efforts to persuade armed groups to respect humanitarian and human rights principles, including in particular:

- To respect civilian life and property, and to refrain from attacking civilians;
- To treat captured combatants and others hors de combat humanely, without discrimination and with respect for their rights;
- To ensure civilians and victims of war have adequate medical care, food and shel-

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43   Marco Sassòli, Possible Legal Mechanisms to Improve Compliance by Armed Groups with International Humanitarian Law and International Human Rights Law: paper submitted at the Armed Groups Conference, Vancouver, 13-15 November 2003 p. 10.

44   According to the International Federation of Red Cross and Red Crescent Societies, "humanitarian values" can be understood as "values which encourage respect for human beings" through: the protection of life, health and human dignity; the respect for the human being; non-discrimination on the basis of nationality, race, gender, religious beliefs, class or political opinions; mutual understanding, friendship, cooperation and lasting peace amongst all people; and service by volunteers. Principles and Values, 2007, International Federation of Red Cross and Red Crescent Societies, Available: http://wwwuat.ifrc.org/what/values/hvalues/QA.asp, Accessed: 9 August 2007.

45   See for example David Rieff, A Bed for the Night (New York: Simon and Schuster, 2002)., David Keen, The Economic Functions of Violence in Civil Wars, Adelphi Paper No. 320 (Oxford: Oxford University Press, 1998)., Andrew Clapham, "Human Rights," The Prevention of Humanitarian Emergencies, eds. E. Wayne Nafziger and Raimo Väyrynen (Houndsmills and New York: Palgrave, 2002). and Cate Buchanan and Robert Muggah, No Relief. Surveying the Effects of Gun Violence on Humanitarian and Development Personnel (Geneva: Centre for Humanitarian Dialogue and Small Arms Survey, 2005).

46   For food aid, the largest are the ICRC, the Office of the United Nations High Commissioner for Refugees, the United Nations Children's Fund (UNICEF) and the World Food Program. The main organizations that provide medical services in conflict are the ICRC and Médecins Sans Frontières. The main actor providing "protection" to political prisoners is again the ICRC. Other important humanitarian players that provide protection to the population or relief are Save the Children, Oxfam, the Quakers, the Cooperative for Assistance and Relief Everywhere, the International Rescue Committee, and the World Health Organization.

47   Political engagement has been defined as "any effort to explore, instigate, enable or sustain contact (and possibly other conflict resolution processes) between parties to a violent conflict." Engaging Armed Groups in Peace Processes: Joint Analysis Workshop Report (London: Conciliation Resources, 2004).

ter, and to allow humanitarian agencies access for this purpose; and

- To ensure insofar as possible the material and social well-being of civilians within areas they control."[48]

Humanitarian negotiation is one inclusive approach to NSAs, and one of the main engagement approaches (see the below Table 1 for other approaches). Hence, the UN "Guidelines on Humanitarian Negotiations with Armed Groups" define the objectives of humanitarian negotiation as to:

- ensure the provision of humanitarian assistance and protection to vulnerable populations;
- preserve humanitarian space; and
- promote better respect for international law.[49]

In terms of when and with which groups to engage in negotiation for humanitarian access,[50] Glaser establishes "minimum criteria" to qualify NSAs, which are:

- effective control over territory and population;
- a degree of basic command structures;
- independence from State control; and
- the use of violence for political objectives.

Hence, Glaser argues that there are occasions when it is preferable to renounce engagement (for the purpose of humanitarian access), for example when NSAs "do not exercise effective control over territory or population" or when extreme violence such as massacres is taking place.[51] For other types of engagement this is not completely true. NSAs that do not control territory can seriously destabilize humanitarian activities, such as demining. Moreover, engagement on the protection of civilians may be extremely difficult in situations of genocide, but should not be *a priori* excluded.

A humanitarian engagement can be initiated with a decision by a humanitarian actor to commence a dialogue with an NSA. Such decisions are taken on humanitarian, political as well as personal and opportunity grounds. Also, NSAs need to make choices, based on their confidence (or lack thereof) in the humanitarian actors or their eventual intermediaries; the expected interests of the humanitarian actors; the potential consequences for the group of the initiation of a dialogue (out of a security perspective, internally, among the communities close to the group, for the conflict, and internationally), etc. What approaches and modes - direct or indirect; high or low level; open or confidential contacts [52] - are chosen and the outcomes of the practical implementation of such decisions can be largely determined by windows of opportunities, such as third party contacts, changes in the conflict situation, or altered State or NSA policies (see section 1.4.3. "Some Elements for Analyzing Engagement with NSAs").

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48 David Petrasek, Vive la Différence? Humanitarian and Political Approaches to Engaging Armed Groups (Conciliation Resources, 2004).

49 Gerard McHugh and Manuel Bessler, Guidelines on Humanitarian Negotiations with Armed Groups (New York: United Nations, 2006). p. 1.

50 In his study of humanitarian negotiation for access, Max Glaser defines this action as "a balancing act between the internal interest of respectively ANSA [armed non-State actor] and humanitarian agencies, expressing a mutual interest to accommodate respective (internal) pragmatic goals, such as security for aid workers by humanitarian agencies; or control and credibility by ANSA." He continues, "[n]egotiating access, seen as the informal agreement between ANSA and NGHA, therefore means 'influencing behavior' of combatants with regards to the security of aid workers and their respect of IHL, in particular respecting the protected status of civilians." Glaser, Negotiated Access., pp. 4 and 6.

51 Ibid., pp. 20-22.

52 See Ibid., p. 48.

There are numerous engagement options available: who should engage, how and with whom?[53] Different approaches for engagement have been identified, for example by Policzer and Capie,[54] Policzer and Manikkalingam,[55] the ICRC,[56] the International Council on Human Rights Policy,[57] and Conciliation Resources,[58] among others. Authors have identified the main actors that may be involved in engagement processes with NSAs as NGOs (humanitarian or human rights),[59] States or their different agencies, and international or regional organizations.[60] In 2000, David Petrasek created a framework for putting engagement with armed groups and questions of human rights violations in a wider perspective. The framework highlights the interconnectedness between the character of the armed group, the role of the host State, and the strengths and weaknesses of NGOs,[61] and recognized the need for different NGOs to take different approaches to armed groups, depending on their needs and the security situation of their collaborators.[62] He also identified three significant constituencies of NSAs that may have an impact on their behavior: local populations, refugee communities or internally displaced persons (IDPs), and diasporas.[63] Table 1 summarizes some of these approaches, actors and conditions, based on the above mentioned contributions.

NSA soldier on watch.
Credit: Geneva Call 2006.

53   Engaging Armed Groups: Accord, 2005, Power Point presentation for briefing at the U.S. Congress, Conciliation Resources. In addition, in June 2007 Geneva Call, PSIO, UNDIR and GIAN/RUIG organized a conference which explored the criteria and conditions for engaging NSAs. The conference proceedings are expected to be available in late 2007 - early 2008.

54   David Capie and Pablo Policzer, Keeping the Promise of Protection: Holding Armed Groups to the Same Standards as States, A Policy Brief Commissioned for the UN Secretary-General's High Level Panel on Global Security, 2004., p. 2.

55   Ram Manikkalingam and Pablo Policzer, Al Qaeda, Armed Groups and the Paradox of Engagement, Paper presented at the seminar on Transnational and Non-State Armed Groups convened by the Program on Humanitarian Policy and Conflict Resolution at Harvard University in cooperation with the Graduate Institute of International Studies and the Radcliffe Institute for Advanced Study at Harvard University, Cambridge, March 9-10, 2007, 2007, Available: http://www.tagsproject.org/_data/global/images/Policzer%20and%20Manikkalingam.pdf.

56   Jakob Kellenberger, Striving to Improve Respect for International Humanitarian Law, 2004, Internet, Available: http://www.icrc.org/, Accessed 5 February 2005.

57   Petrasek, Ends and Means., p. 15.

58   Engaging Armed Groups in Peace Processes., p. 10.

59   Such approaches include the tool developed by the NGO Geneva Call, the *Deed of Commitment*, with the aim of banning the use of AP mines and facilitating mine action in areas under the control or influence of NSAs. This approach is based principally on direct engagement with the groups' leaderships and on the promotion of the signature of a formal commitment.

60   Claudia Hofmann, Engaging Non-State Armed Groups in Humanitarian Action: State Actor and Non-Governmental Approaches, Background paper, German Development Institute, Bonn., p. 16.

61   The characteristics that are singled out are:
Armed groups: aims and ideology, leadership, openness, military command/control, economy, foreign sponsors, constituency;
States: legitimacy of the State, State-sponsored violations, and tolerance for the State for independent action;
Civil society (called "NGOs"): motivation, capacity, making contact, lack of information, safety, taking sides, insiders and outsiders, and national and international. Petrasek, Ends and Means., p. 14.

62   Ibid., pp. 39-40.

63   Ibid., p. 15.

Table 1. Approaches for Engagement in Humanitarian Norms and Action[64]

Approaches for Engagement with NSAs			
Approach	**Who?**	**When?**	**How?**
Inclusive Approaches			
Dialogue/Negotiation and Dissemination	Humanitarian organizations, international organizations, human rights organizations, NSA constituencies (including diaspora), other NSAs	There is a willingness on behalf of the NSA to discuss the issue	Persuading through dialogue and negotiation.
		There is willingness on behalf of the NSA to limit or stop violations	Teaching IHL and international human rights law
		There is practical access to and direct dialogue with the NSA	Discussing problems in implementation of commitments
		The NSA has to have the resources to stop violations committed by themselves or others and to implement actions	Putting pressure for reform from the inside
			Encourage unilateral declarations
			Encourage the adoption of internal codes of conduct
			Encouraging the signature of formal documents (e.g. *Deed of Commitment*)
Training/Capacity Building	Humanitarian organizations, international organizations, human rights organizations	There is a capacity to be built on and a commitment on behalf of the NSA	Provision of training in IHL and human rights law for different levels of the group members
		The NSA has the will to fight abuse, but lacks cohesion and/or resources	Help develop codes of conduct
		There is direct dialogue and close contact with the NSA	Help develop capacity (for mine action, for peace negotiations, etc.)
			Assistance in reforming internal legal system
Intermediation	Humanitarian organizations, international organizations, human rights organizations, and third party States.	The concerned State and NSA are open to dialogue.	Dialogue with the concerned State and the NSA
		The conflict situation allows for the parties to negotiate	Encourage special agreements on IHL with the concerned State
			Encouraging grants of immunity from persecution for the mere participation in conflict
Direct Services	Humanitarian organizations and international organizations	Particularly suitable during emergencies and/or situations in which responsiveness or resources are lacking on the part of the NSA	Negotiate non-interference in the work of providing different kinds of direct services or material aid directly to victims of violations
		The NSA is indifferent to abuses, or lacks cohesion or resources to assist victims	

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64   This table is partly based on one developed by the ICRC in 2001 for how to deal with parties to conflict. (See Strengthening Protection in War: A Search for Professional Standards, ed. Sylvie Giossi Caverzasio (Geneva: ICRC, 2001).) It is also informed by the authors and organizations mentioned in footnotes 53-60.

Coercive Approaches (Non-Military)			
Denunciation/"Naming and Shaming"	Human rights organizations, humanitarian organizations, international and regional organizations, third party States	The NSA has the resources to stop violations and assist victims	Fact-finding, shaming/denouncing, and use of media
		Violations are deliberate	
Sanctions	International organizations, regional organizations, individual States, and multinational corporations	Violations are deliberate	Economic and political sanctions: freezing of assets, arms embargoes, personal travel restrictions, etc.
Individual Criminal Prosecution	International Criminal Court and ad-hoc tribunals or the judiciary of third States based upon universal jurisdiction		Criminal prosecution

1.4.3 Some Elements for Analyzing Engagement with NSAs

The mentioned literature review on NSAs, internal conflict, humanitarian action and engagement on humanitarian norms and the findings from the analysis of NSA involvement in humanitarian mine action (see section 2.2.3 below) suggested some factors and incentives that might influence the behavior of an NSA and its likelihood of committing itself to respect humanitarian norms, as well as factors that might influence the outcomes of such engagement.[65] The key points are listed below, together with some relevant questions to consider when studying specific cases of engagement.

This list is not complete, nor do all elements listed need to be addressed, but it can be adapted to different issues and conflict situations. These situations are not static, but evolve over time. The factors listed are not independent from each other and it remains to be seen which factors have a stronger impact and when. Hence, the framework below is meant to serve solely as guidance.

Overall guiding questions

1. *Forms of engagement:* Has the NSA formally adhered to a norm/agreed on humanitarian access/implemented humanitarian action? What forms does/did NSA engagement take? What current and former engagement processes has the group been involved in? What engagement approaches have been used? By which actors?
2. *Framing:* How has the engagement discourse been framed, by the different actors involved (notably by the humanitarian actors and the NSAs)?
3. *Challenges:* What are/were the greatest challenges for humanitarian engagement in this particular case, for those who engage and those who are engaged?
4. *Facilitating factors:* How could the adherence to humanitarian norms and the implementation of humanitarian action be facilitated for a particular NSA?
5. *Outcomes:* Did the actions of the NSA comply with the commitments made/are the actions of the NSA in agreement with the norm(s) (without a formal commitment)?

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65 For further literature relevant to NSAs, see Peter Huber and Cordula Reimann, <u>Non-State Armed Groups: An Annotated Bibliography</u> (Swiss Peace, 2006).

Factors that contribute to that NSA are targeted by humanitarian actors for engagement

Some groups, because of their characteristics, are more likely to be approached by humanitarian actors (i.e. territorial control, link to a population, etc.). Others may not be approached by humanitarian actors, but may still attempt to provide services to a community. The aspects having an impact on whether NSAs are targeted or not can be divided into two groups: political and practical.

Political aspects:

- **permission:** the activities are legal/allowed for/requested by State authorities;
- **peace-building:** there are predicted peace-building gains; and
- **reputation:** the NSA has a good reputation among a population/is perceived as *de facto* or legitimate authority.

Practical aspects:

- **humanitarian necessity:** there is a grave humanitarian problem so the humanitarian actor chooses to deal with it as a priority;
- **territorial control:** the NSA is controlling the territory, which makes the group difficult to avoid and which decreases the chances of the concerned State disrupting the activities;
- **security concerns:** the humanitarian actor is working in an area and cannot avoid the NSA or decides that it needs its protection for the operations;
- **access:** there is a channel/link to the NSA and hence a possibility of starting to work with it; and
- **capacity:** donors favor work in specific regions or with specific NSAs. On the contrary, if they do not favor such work, the lack of financial and human resources to work in specific circumstances may stop certain activities.

Factors that influence the decision of humanitarian actors to involve local communities in engagement activities with NSAs

When considering NSA involvement in mine action with reference to the local communities, there are some relevant parallels that can be drawn with the involvement of the regular military in mine action.[66] Sensitive issues that need to be carefully considered in both conflict and post-conflict situations include:

- link between the actor and the population[67] and eventual risks faced by the population;
- the nature of the relationships between the actor and other relevant actors present; and
- the possible outcomes of the actions within a specific political context.

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66 It is not clear to what extent these considerations would apply to other humanitarian action (protection activities, delivery of aid, etc.).

67 For humanitarian access the importance of this issue has been highlighted by Glaser, Negotiated Access. pp. 32-33.

Factors that influence the decision of the NSA to commit to a humanitarian norm and to the implementation of this commitment[68]

Political willingness:

- **participation/ownership:** if the group participates in the negotiation process of the norms or the action to be undertaken, this increases its willingness to respect them.[69] Many NSAs do not recognize international treaties signed by the States they are fighting.[70] As with States, it is more difficult for NSAs to deny the legitimacy of a norm they have themselves participated in forming (through custom)[71] or signed up to (or even been included in negotiating);
- **reciprocity:** "correct" behavior by opponents increases the will to take on and respect commitments;[72]
- **the political/conflict situation:** an improved situation between the group and its (main) opponent(s) increases the will to take on and respect humanitarian norms (e.g. actors could make goodwill "gestures" towards each other or towards other actors);
- **reputation:** the fact of striving to actively improve its internal (members, constituency and/or community) and external (national and/or international) reputation (generally linked to some type of political aspirations) increases the groups' will to take on and respect commitments;[73]
- **humanitarian and developmental considerations:** expected short and long-term beneficial impact on civilians and the territory are potential incentives to take on and respect commitments;[74]
- **material gain:** for example through the facilitation of aid and assistance to conflict-affected areas, employment opportunities and other resources;
- **expected peace-building gains:** greater probability of dialogue with the State;[75]
- **use of violence against civilians:**[76] when armed groups may use means or have aims that contradict humanitarian norms this is clearly a hindrance to negotiations on such norms.[77] On the contrary, strategies that try to avoid the use of vio-

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68 For indicators for estimating the opportunities for and constraints on armed groups' *political* engagement see Sue Williams and Robert Ricigliano, "Understanding Armed Groups," <u>Choosing to Engage: Armed Groups and Peace Processes</u>, ed. Robert Ricigliano, vol. 16, Accord (London: Conciliation Resources, 2005)., p. 16.

69 Marco Sassòli has highlighted the importance of including NSAs in negotiations or norm-creating processes in order to improve the respect for humanitarian norms, for example in Marco Sassòli, <u>Transnational Armed Groups and International Humanitarian Law</u>, 2006, Occasional Paper, Program on Humanitarian Policy and Conflict Research Harvard University, Available: http://www.tagsproject.org/_data/global/images/Sassoli.pdf.

70 For example, the FARC does not consider itself bound by the Optional Protocol of the Convention on the Rights of the Child signed by the Colombian government, but allegedly instead follows the Additional Protocol II of the Geneva Conventions, with a lower standard, allowing children of 15 years to join an armed organization as of the age of 15. Medina and Ramón, <u>El orden de la guerra</u>., pp. 78-79. For further information on the legal framework ruling the child soldier issue, see Appendix III.

71 For example, as argued by Hugh Thirkway, new States that emerged for example in the period of decolonization after the Second World War tried to challenge that they would be bound by customary law established by their predecessors. However, such objections were not accepted by other States. Hugh Thirlway, "The Sources of International Law," <u>International Law</u>, ed. Malcom D. Evans (Oxford: Oxford University Press, 2003)., p.124.

72 While some authors argue that reciprocity could have a positive impact on the implementation of IHL, (see for example <u>Improving Compliance with International Humanitarian Law, Summary report of the ICRC Expert Seminars</u>. and James D. Morrow, "When Do States Follow the Laws of War?"), the observations in situations of conflicts between States and NSAs are rather negative (as has been observed in multiple meetings with NSAs). The actions or non-compliance of the enemy might thus be used as a reason for not taking on a humanitarian commitment, or generally change a behavior. One reason could be that, as it appears, States seldom seem to truly reciprocate towards NSAs, but different demands of concessions are made to NSAs. An ICRC study (<u>Strengthening Protection in War: A Search for Professional Standards</u>.) also indicated reciprocity as a potential hindrance.

73 The importance of reputation came up on many occasions during the work on Volume II. This has been pinpointed also by Petrasek, <u>Vive la Différence?</u>

74 During the work of Volume II, several informants (both humanitarian actors and NSAs) mentioned humanitarianism, including protection of the population, as a reason (and sometimes the main reason) for NSA involvement in mine action.

75 <u>Improving Compliance with International Humanitarian Law, Summary Report of the ICRC Expert Seminars</u>., p. 23., and Sjöberg, <u>Armed Non-State Actors and Landmines. Volume II</u>.

76 The element of the use of violence in contemporary conflict has been discussed in the literature on NSAs and internal conflict. One notable example is Kalyvas' contribution on massacres in Algeria. (Kalyvas, "The Logic of Massacres in Algeria.")

77 Especially interesting are the observations that groups may use means that do not further their final goals for some other short term benefit, such as external funding or short term military gains and hence, in such cases, the existence of a chain of command

lence against civilians increase the will to take on and respect commitments;[78] and

- **financing of conflict:** if the group is dependent on the population for financing its war-making capacities, this increases its will to take on and respect commitments.[79]

Ability:

- **chain of command:** the existence of a clear chain of command increases the ability of a group to respect/implement commitments;[80]
- **territorial control:** the control of territory increases the group's ability to respect/implement commitments;[81] and
- **capacity:** the existence of internal or external expertise (e.g. on humanitarian and human rights' issues and the implementation of such), and resources increases the ability of the group to respect/implement commitments.[82]

The question remains as to what can be done to encourage NSAs that are less prone to humanitarian engagement (following the above arguments, this would be for example groups that employ violence against civilians as a strategy, have independent financing, do not seek to improve their reputation among the population, are not territorially based, etc.) to become more prone to do so.

Role of the concerned State and factors that influence its decision to allow for humanitarian engagement with NSAs

Dealing directly with NSAs may cause three types of reaction from a concerned State:

- **rejection:** the State is not in control of a territory or situation, but refuses to recognize it (denial of non-control and/or fear of recognition to NSA);[83]
- **indifference:** the State neither rejects nor approves of the action; and
- **facilitation:** acceptance of non-control and impossibility of compliance with national and international commitments without assistance.

What determines the reaction of the concerned States?

- **current conflict and/or political situation** between the concerned State and the NSA in question,[84] since this influences the State's perception of and behavior towards the NSA;

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would have no beneficial effect for decreasing violations of IHL. Lucy Hovil and Eric Werker, "Portrait of a Failed Rebellion: An Account of Rational Sub-Optimal Violence in Western Uganda," Rationality and Society 17.1 (2005).

78   The inclusion of this category as well as the quest/lack of quest for a good internal and external reputation here replaces the category "objectives/ideology." Indeed, it is no secret that NSAs (as well as States) representing different orientations and ideologies have committed horrible acts against civilians. Nevertheless, the objectives are highly relevant for the framing of humanitarian messages. For example, the UN Manual highlights the importance of analyzing the "motivation," "principles of action" and "interests" of NSAs, among other factors (McHugh and Bessler, Humanitarian Negotiations with Armed Groups: A Manual for Practitioners., pp. 17-20). The role of NSAs' objectives has been determined as crucial by the ICRC, especially with reference to how violence was used. Strengthening Protection in War: A Search for Professional Standards.

79   Perspectives underlining the importance of economic incentives for armed conflict implicitly suggest that humanitarian norms would be respected by NSAs only if they could profit from them. In so-called "greed" conflicts most parties would choose to prey on civilians instead of seeking their support. The sources of finance, whether external or internal, would thus contribute a potential influence on a group's decision to cooperate with humanitarian actors. See for example Keen, The Economic Functions of Violence in Civil Wars.

80   Pinpointed in Strengthening Protection in War: A Search for Professional Standards and Humanitarian Engagement with Armed Groups: The Colombian Paramilitaries (Geneva: Centre for Humanitarian Dialogue, 2003). pp. 23-24 and 32.

81   As mentioned for example in McHugh and Bessler, Humanitarian Negotiations with Armed Groups: A Manual for Practitioners., pp. 17-20.

82   This was particularly underlined by those interviewed for Sjöberg, Armed Non-State Actors and Landmines. Volume II.

83   Similarly, Clapham discusses how States refuse to admit that an internal armed conflict is taking place on their territory. See section 1.4.1. "Humanitarian Obligations of Armed Non-State Actors."

84   States may often find themselves in different conflict situations with different armed actors on their territory and hence allow for contacts with some, but deny those with others.

- **behavior of the NSA** (reciprocity);[85]
- **behavior of the humanitarian actor;** which could be more or less acceptable/provoking to the concerned State, and
- **attitude of third party States,** which may encourage or discourage such actions.

The above factors are meant to facilitate the analysis of engagement with NSAs on humanitarian or human rights norms. The following chapter discusses the findings of the two reports on NSA involvement in mine use and mine action, from which many of the listed observations were drawn.

The civilian population is the principal beneficiary of humanitarian engagement with NSAs. Credit: Geneva Call 2006.
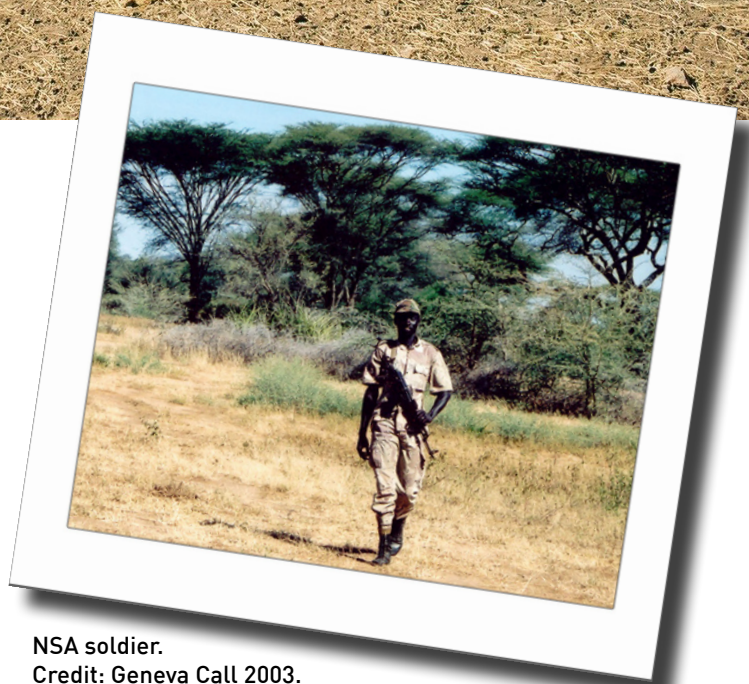
NSA soldier.
Credit: Geneva Call 2003.

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85   See footnote 72 on reciprocity.

2 The Involvement of NSAs in the Landmine Problem and Their Potential for Reducing the Threat of Landmines

2.1 Background to the Problem

AP landmines and similar victim-activated explosive devices are indiscriminate weapons. Their use is increasingly considered to be contrary to universally accepted principles of IHL.[86] They are therefore either prohibited or regulated by widely accepted treaties. In times of war they blindly strike civilians and soldiers, friends and enemies alike. Landmines recognize no cease-fire. They remain active and continue to pose a danger to civilians long after the end of hostilities. Landmine Monitor Report 2006 estimates that landmines and unexploded ordnance (UXO) claim between 15,000 and 20,000 new victims around the world each year.[87]

Apart from the direct threat posed to the physical safety of those who live near them, landmines prevent communities from having safe access to land, water and infrastructure, and constitute a serious obstacle to the return of IDPs and refugees. Landmines also impede, limit or delay the access of humanitarian agencies to vulnerable populations during conflict as well as reconstruction efforts and socio-economic development in post-conflict societies. Due to the disastrous humanitarian and socio-economic consequences of landmines, currently 155 of the world's States have become parties to the "1997 Convention on the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines" (hereafter the "Mine Ban Treaty," also known as the "Ottawa Convention"). Of the 40 States not parties to the Mine Ban Treaty, 16 have accepted restrictions on their landmine use through the signature of Protocol II of the CCW.[88]

Despite these significant steps in the fight against landmines, and the considerable efforts of humanitarian mine action agencies, eight years after the entry into force of the Mine Ban Treaty, landmines and UXO continue to constitute an acute problem threatening human security in numerous countries and territories.[89] One of the important challenges facing a global mine ban is the inclusion of NSAs in the process. Because of their low cost, easy availability and production, landmines have become a weapon of choice for NSAs in many conflicts.[90] This was the rationale behind the launching of the NGO Geneva Call shortly after the coming into force of the Mine Ban Treaty: to engage NSAs in the AP mine ban and in other mine action activities. Geneva Call proposes that NSAs sign a *Deed of Commitment* for a total ban on AP mines and cooperation in mine action. To date, 34 NSAs have signed on.[91]

In its work with NSAs and in discussion with other humanitarian actors, Geneva Call found that there was a need to further research the landmine issue as relates to NSAs. By publishing the two reports "NSAs and Landmine. Volume I: A Global Report Profiling NSAs and Their Use,

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86   According to an ICRC study on customary international law, customary law imposes obligations on the parties to a conflict to take particular care to minimize the indiscriminate effects of landmines. In addition, the parties using landmines must record where they place mines, as far as possible. After the end of a conflict parties that have used mines "must remove or otherwise render them harmless to civilians." Although this customary law regulation follows the logic of the CCW rather than the Mine Ban Treaty, the authors argue that there is an increasing movement towards a total ban. See Louise Doswald-Beck and Jean-Marie Henckaerts, ed., Customary International Humanitarian Law, vol. 1 (Geneva: ICRC, 2005). pp. 280-286.

87   Landmine Monitor Report 2006, (Ottawa: Mines Action Canada, 2006). p. 44.

88   Of these, 11 have signed the Amended Protocol II. One of these countries is also a signatory to the Mine Ban Treaty, although not yet a party: Poland.

89   According to the Landmine Monitor Report 2006, there were new casualties registered in 58 countries and seven non-State territories in 2005. Landmine Monitor Report 2006., p. 43.

90   A preliminary study to this project found that around 60 NSAs allegedly used landmines in 21 countries during 2003-2004. In addition to these groups, groups that were difficult to classify or identify made frequent use of landmines in a number of countries. Anki Sjöberg, The Involvement of Armed Non-State Actors in the Landmine Problem: A Call for Action. Executive Summary (Geneva Call, 2004).

91   Please see www.genevacall.org for an updated list of signatory groups.

Acquisition, Production, Transfer and Stockpiling of Landmines"[92] ("Volume I") and "NSAs and Landmines. Volume II: A Global Report of NSA Mine Action,"[93] ("Volume II") the project provided the first complete mapping of NSA involvement in the landmine problem in both a negative (landmine use) and a positive (mine action) sense. This chapter provides a summary discussion of the main findings of these two reports.

2.1.1 Summary: Volume I: NSA Mine Use

In short, Volume I provides a comprehensive mapping of the use, acquisition, production, transfer, and stockpiling of landmines by NSAs through a presentation of individual group profiles and a global analysis. It records global occurrences of NSA planting of AP and anti-vehicle mines, whether activated by victims, vehicles or at a distance by command-detonation, from 2003 to 2005. NSAs often have more limited military resources than the States against which they fight and therefore use landmines, "the poor man's weapon," more frequently. As a consequence, the number of NSAs using landmines significantly exceeds the number of States deploying this weapon. Around 60 NSAs were reported to have laid landmines in 24 countries across five geographic regions: Africa, Asia, Europe, Latin America, and the Middle East and North Africa. In addition, armed groups difficult to identify as belonging to any specific category of ideology or organizational form made frequent use of landmines in a few other countries. Two thirds of all the groups deployed some type of victim-activated devices. These were both factory-made and handmade, indicating NSA involvement in both the transfer and the production of mines.

Volume I clearly demonstrates that there is a need to discuss the mine issue with NSAs. Many NSAs – as well as States – lack the long-term perspective of the consequences of mine use. It is therefore crucial for the international community to open channels of communication with NSAs on the AP mine issue. Parties to conflict often employ accusations of AP use in order to discredit the other party; this is due not only to the stigmatization of such weapons following the Ottawa process, but also to the natural perception of landmines as an illegitimate type of weapon. NSAs, as well as States, are thus reluctant to admit that they are using a victim-activated weapon. This suggests that an inclusive approach of advocacy based on accurate information could be the key to success for spreading a mine ban among NSAs.

2.1.2 Summary: Volume II: NSA Mine Action

Volume II highlights the need for mine action to help all affected populations, compiles and analyzes data on the involvement of NSAs in the five pillars of mine action and includes stakeholders' views on the benefits, challenges and lessons learned in this regard. The report shows that it is possible to work with NSAs in humanitarian mine action. It also demonstrates that, while various challenges are involved in NSA mine action, they can be, and have been, overcome. The research indicated that the primary benefits of NSA mine action are the same as those arising from other forms of mine action; i.e. principally humanitarian and developmental benefits. It is essential to note, however, that the complementary effects of NSA mine action (employment and stability; peace-building; security and disarmament; and openness to discussing other humanitarian norms) were considered to be different from other forms of mine action, and sometimes even more important than the primary benefits. In addition, the primary benefits for the population in an area under the control or influence of NSAs may be relatively more significant, given that these areas are more often underdeveloped and greatly lack developmental and humanitarian assistance.

92 Sjöberg, Armed Non-State Actors and Landmines. Volume I.
93 Sjöberg, Armed Non-State Actors and Landmines. Volume II.

The report found practical examples of NSA mine action in the areas of each of the mine action pillars. The report also collected information on gender aspects in relation to the mine action, when available. In total, approximately 50 groups were reported to have been involved in some type of mine action. The mine action activities documented have been conducted by the NSA itself, performed by indigenous organizations that have been mandated by the NSA or carried out by independent indigenous or international organizations but facilitated by the NSA. The report hence showed that it is possible to engage in humanitarian mine action with NSAs. Given the benefits of such engagement, it is important not to discriminate against populations in areas under the control or influence of NSAs, which, in comparison to populations in areas controlled by a State, appear to benefit less frequently from mine action programs. The main conclusion of the research was that engaging NSAs in mine action has significant benefits since their involvement supports efforts to reduce the humanitarian impact of AP mines and UXO.

2.2 Summary of the Findings

2.2.1 Some General Conclusions from the Project

Purpose of humanitarian negotiations

In short, humanitarian negotiations with NSAs serve the main purpose of achieving protection of the civilian population and furthering humanitarian norms. The challenges of such inclusive approaches to NSAs are sometimes considerable, since the aim is not only to have NSAs "refraining from" harmful behavior, but also actually engaging in actions that either decrease the threat to the civilian population or build confidence. Since the success of engagement is highly dependent on understanding the NSAs and building trust and communication, it is important for humanitarian actors to have a good and direct channel to the NSAs, which often requires facilitation or at least non-intervention from the concerned State.

Part of the problem, part of the solution?

While the first phase of the project showed the extent of the involvement of NSAs in the landmine problem and their potential to disrupt efforts towards universalization and proper implementation of the Convention's objectives, the second phase showed the extent to which NSAs are already contributing to efforts to eradicate landmines. It also highlighted that the benefits of cooperation are greater than the costs of the challenges. Even in very complex situations, some humanitarian action is always possible, provided there is political will on behalf of the concerned parties. Nevertheless, the problem is when the political will is missing. Pressure must then be put on the NSAs to collaborate more and on the concerned States to allow for and/or facilitate more concrete actions.

For putting pressure on States and NSAs, it is important to have good knowledge of the negative aspects of their actions, without ignoring the potential for actions that increase protection. Knowing the extent to which NSAs contribute to a humanitarian problem does not only open up for less inclusive approaches such as naming and shaming, but it also provides the inclusive approaches with data, strategies and arguments for negotiation. Thus, it has become evident that there is a need for a holistic view of NSAs and their actions, considering not only their capacity for destruction as parties to a conflict, but also their potential for contributing to the solution of humanitarian issues. Positive examples can be used notably to show NSAs' best practices, existing possibilities for assistance for humanitarian activities and to exercise peer pressure.

Channel to and receptivity of the NSAs

Throughout the project it became clear that NSAs can radically change their position – for better or for worse – on humanitarian negotiations and actions. Such changes are sometimes related to a change in the conflict situation or to the general political or military strategy of the NSA. For example, an NSA could see a mine ban not only as a humanitarian commitment, but also as a means to signal a willingness to open up or advance in peace talks with the concerned government. The confidence and peace-building role of mine action has been highlighted by many actors. In addition, a cease-fire or peace agreement may or may not include provisions on non-use of mines and on mine action and lead to a change in behavior. On the other hand, a breakdown in a cease-fire may lead to resumption of mine use, especially in cases where there has not been a commitment to non-use of mines.

During the project it was observed that NSAs have a tendency to engage in negotiations on landmines more often when they are in a situation of cease-fire or negotiation with their principal opponent. There could be three main explanations for this. During armed conflict:

- NSAs' attitudes and perceived needs may be different (i.e. unwillingness to renounce the use of landmines or a difficulty in controlling troops);
- the fear that the opponent(s) will use allegations of a breach of a commitment to discredit the NSA, and
- lack of facilitation on behalf of the concerned State which makes contacts difficult.

Pressure

In general, it appears that NSAs that care about their international or domestic reputation will be more willing to discuss or act on certain humanitarian issues. In such cases the role of community pressure can be crucial. When putting pressure on these key actors, different discourses need to be adopted, according to the actor. The role of the affected communities may be important in putting pressure on the NSA, but only in cases when this does not imply exposing them to danger. Notably, in countries suffering from internal armed conflicts, communities that make demands on NSAs may risk repression from both the NSA concerned and its opponents (concerned governments, in particular), who may treat such efforts with suspicion. Community pressure seems to be an important aspect that encourages NSAs that have not banned landmines to implement mine action. In some cases, where NSAs control territory, mine action may also begin or progress because humanitarian actors approach the NSAs.

Territory

The territorial factor cannot be underestimated. Territory affects not only the eventual use of landmines by NSAs, but also the probability that they will have the willingness and ability to implement mine action. Although NSAs that do not have total control of a territory have also conducted mine action, it appears that such non-control of territory leads to more *ad hoc* action, which is less sustainable. For more in-depth action it is always important to have the agreement (or tacit agreement/non-intervention) of the other important actors in the area. Hence, when an NSA controls a territory, it is easier to take action, and generally there may be greater pressure on the NSA to implement humanitarian action. Nevertheless, there may be limited possibilities for it to do so in terms of resources.

2.2.2 Discussion of the Main Findings of Volume I[94]

Regional disparities

Volume I confirmed earlier findings of important regional disparities, not the least of which was the comparatively higher concentration of mine use by NSAs in Asia, especially of improvised explosive devices (IEDs, i.e. handmade mines).[3] The second most affected region was Africa. One reason for this regional concentration may simply be that the number of ongoing conflicts and active NSAs makes it statistically more probable that more NSAs would use landmines in these two regions. In addition, cases of transfer of mines and the knowledge and technology on how to manufacture landmines between NSAs were observed notably in Asia, as in Burma/Myanmar, India and the Philippines.

Influence of and on State policy

Secondly, it appears that the mine ban policy of States may influence that of NSAs, and vice versa: a greater proportion of NSA mine use occurs in States not parties to the Mine Ban Treaty: 60 percent of the NSAs identified as mine users operated in these countries. Given that 155 of the world's approximately 200 States have become parties to this international treaty, it appears that non-parties are more exposed to NSA mine use than States Parties. It has been observed elsewhere that some States justify non-adherence to the Convention with the presence of armed conflict and NSAs on their territory or the non-control of parts of the territory.[95] The mine use of NSAs in such cases may also depend on the availability of landmines in stocks and in the ground, which may particularly be the case of non-signatories (see below).[96] This is not to say, however, that being a party to the Mine Ban Treaty protects a country from NSA mine deployment. Indeed, two very frequent mine users, the FARC and the National Liberation Army (ELN, from *Ejército de Liberación Nacional*), operate in Colombia, a State Party since 2001.

Insufficiency of access-targeting strategies

Thirdly, the report shows a pattern of widespread production and use of IEDs: approximately 40 groups globally produced and used IEDs between 2003 and 2005.[2] This indicates that a strategy that solely targets access to factory-made landmines and explosives is not sufficient. Easy access to materials necessary for manufacturing IEDs as well as knowledge and technology transfers among NSAs have undoubtedly contributed to spreading the landmine problem. Nevertheless, IEDs do not always constitute indiscriminate weapons as this depends on how they are put to use. In addition, factory-made landmines are accessible to NSAs through at least three sources:

- minefields or stocks;
- certain State sponsors; and
- other NSAs or the black market.

One of the main sources of factory-made landmines for NSAs is the very State against which they are fighting. Incidents of NSAs managing to loot or capture landmines from the State are

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94   This section is largely based on an article published in Anki Sjöberg, "NSAs: The Main Users of the 'Poor Man's Weapon'," Journal of Mine Action 10.1 (2006). Available: http://maic.jmu.edu/journal/10.1/notes/sjoberg/sjoberg.htm.

95   The Impact of Armed Non-State Actors on the Mine Ban Treaty: Research and Analysis by Geneva Call, 2006, Geneva Call, Available: http://www.genevacall.org/resources/testi-publications/gc-sep06-art7.pdf, Accessed: 27 August 2007.

96   NSAs in various countries have been known to undertake military demining to get access to buried mines for stockpiling and/or reuse. States Parties to the Convention are obliged to destroy their stockpiles within four years and demine and destroy all mines on their territory within ten years of entry into force of the Convention.

reported regularly. NSAs have also reported that soldiers from State armies have offered to sell them landmines. Moreover, large areas of the world are not under the effective control of any State, which facilitates the trafficking of arms and IED-making material to NSAs. Nevertheless, it should be noted that in some post-conflict situations there is no need for NSAs or individuals to look for sources of mines since weapons, including mines, are plentiful and easily available.[97]

Understanding the impact and the data

The impact of NSA mine use is in many respects similar to the impact of State mine use. However, it appears that NSA mines are more widely dispersed than State mines and NSAs are usually less prone to mark or map their locations. The humanitarian impact of NSA mine use is difficult to measure, since it takes place in a conflict situation, in areas where little or no mine action is taking place and where civilians may fear reporting mine incidents. In addition, the impact of NSA mine use is difficult to distinguish from that of the conflict itself until the conflict has ended and information becomes available through mine action efforts. Hence, this shows the need for safe and adequate data collection, which facilitates the implementation of mine action programs, without putting individuals or communities in danger.

Data should also be collected from the NSAs themselves to complete and be triangulated with data from government institutions (hospitals, army, police, etc.), communities and mine action organizations. Moreover, NSAs all over the world fall victim to their own mines, as well as those deployed by governments, paramilitaries and other NSAs. The fact that their own combatants are also victimized could be used in negotiations for a mine ban with NSAs. Access to victim assistance for combatants who have suffered mine incidents could also be used as a "carrot" in humanitarian negotiations and as a confidence-building measure in peace negotiations. Nevertheless, it should be remembered that injured or sick combatants are entitled to the same treatment and protection as civilians under IHL.

Prioritization and strategy

In the work of engaging NSAs on the landmine or other issues, priorities must be set as to when and where to allocate scarce resources: if humanitarian actors target a group that is a frequent user and manage to involve it in the mine ban, the benefits for the population are greater; yet a sporadic user or non-user may be more open to renouncing the use of mines since mines are not a crucial part of its military strategy.[98] For States, international NGOs often tend to use the "critical mass" strategy, i.e. with a focus on getting as many States "on board" as possible in order to put pressure on the indecisive or reluctant ones. Nevertheless, in terms of NSAs, humanitarian actors have had a tendency to focus more on the direct humanitarian threat, i.e. choosing to work with the former category of NSAs mentioned above.

Volume I, by explaining the specific characteristics of NSAs and their mine use, intended to provide a background tool for humanitarian actors to strategize in terms of which NSAs to target and what the appropriate approaches might be. One way of conducting advocacy is through direct contact with a group's leadership. Another way is by disseminating mine-ban information within civil society in order to create bottom-up pressure on the group. In addition, understanding regional patterns and using regional strategies can be essential, particularly in cases where regional dynamics appear to fuel the landmine problem or provide possibilities for its solution.

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97   As is the case in Afghanistan, Iraq and Somalia.

98   Here it is not implied that NSAs would renounce mines only because they consider them as non-crucial for their military strategy. Different reasons, including humanitarian and developmental, are presented below in section 2.2.3. "Discussion of the Main Findings of Volume II."

Understanding and listening to the NSAs

Keeping in mind the differences in the characteristics of NSAs and their mine use is crucial in choosing the most appropriate strategy for engaging them in a mine ban. Clearly, there are significant disparities between NSAs, not only in terms of the reasons that motivate their mine use and the types of mines they choose to employ, but also with respect to the frequency of use.[99] Although deemed by many as lacking decisive military utility and despite their disastrous humanitarian consequences, landmines clearly serve different purposes for each NSA that employs them. Knowing why and how NSAs use these weapons can contribute to developing a successful strategy for engaging such groups in the landmine ban. Understanding does not mean, however, a justification of the use of landmines or other activities that create human security threats to the population. Rather, it is simply a means for strategizing for and framing the negotiations.[100]

According to a majority of NSAs, landmines are mainly utilized for defensive purposes, generally of camps. Nevertheless, surprisingly, many NSAs were reported to use landmines in an offensive manner; however, offensive use is probably significantly over-reported since it is more visible (notably when it involves attacks on Western military personnel). Defensive mines are also rarely discovered unless activated. This shows the need for international actors not only to have a dialogue with NSAs but to link up closely with local organizations on the ground, conduct field visits and use multiple information channels in their engagement work.

In many cases in which NSAs have used landmines offensively (targeting the security forces or other individuals linked to the State), they have been present at the time and place of the landmine attacks. This suggests that, for these NSAs, command-detonated landmines may be an alternative, and hence, a total ban on AP mines may be possible. There is currently a trend in many conflicts towards increased use of command-detonated mines. However, although command detonation is clearly less condemnable from a humanitarian point of view to victim and vehicle activation (since the former allows for discrimination between civilians and combatants), this does not constitute a guarantee that civilians and humanitarian actors will not be victimized.[101]

Volume I clearly demonstrates a need to discuss the mine issue with NSAs. Many NSAs – as well as States – lack a long-term perspective of the consequences of mine use, and it is therefore crucial for the international community to find channels of communication with NSAs on the AP mine issue. Parties to conflict often use accusations of AP mine use to discredit the other party because of the stigmatization of such arms following the Ottawa process, but also because of the natural perception of landmines as an illegitimate type of weapon.[102] NSAs, as well as States, are thus reluctant to admit to using a victim-activated weapon. This suggests that an inclusive approach – involving advocacy based on accurate information – could be the key to success for spreading a mine ban among NSAs.

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99 The frequency of mine use is related to the number of reported incidents (i.e., mine blasts) allegedly caused by an NSA. However, an NSA could also place many mines but have few reported incidents attributed to it. Low reporting of incidents could mean that there are actually not many incidents, due to mined areas being scarcely populated, the population being afraid to go into the area, the population being warned about where mines are, etc. However, it could also mean that incidents that occur are not reported. The lack of reporting could be due to a scarcity of institutions or organizations gathering such information or to the fear of reprisal if the incident is reported.

100 Four reasons for mine use were identified as the purpose of the report: offensive, defensive, economic gain and so-called "nuisance mining."

101 Command-detonated landmines have caused many civilian victims in both Nepal and Sri Lanka.

102 Kristian Berg Harpviken and Bernt A Skåra, "Humanitarian Mine Action and Peace Building: Exploring the Relationship," Third World Quarterly 24.5 (2003)., p. 813.

2.2.3 Discussion of the Main Findings of Volume II

This summary discussion of the main findings of Volume II focuses on three main elements (which are tied to the discussion of the state of the debate in chapter 1):

- why humanitarian actors target specific NSAs for engagement;
- why NSAs engage in humanitarian negotiations and action; and
- the main challenges and lessons learned in this interaction.[103]

Why humanitarian actors target specific NSAs

Humanitarian actors engage with NSAs on the landmine issue mainly based on the conviction that the primary benefits of such action are the same as those arising from other forms of mine action; i.e. principally humanitarian and developmental. In general, the direct benefits of such actions, along with reopened access to other resources and infrastructure, can significantly improve the living conditions of affected communities. Besides, the primary benefits for the population in an area under the control or influence of NSAs may be relatively more significant, given that these areas are more often underdeveloped and greatly lack developmental and humanitarian assistance. In addition, complementary effects were identified for NSA mine action that were perceived as different to those derived from other types of mine action and equally as important, if not more so, than the primary benefits of working with NSAs in mine action. The main complementary effects cited were:

- employment and stabilizing effects;
- peace-building;
- security and disarmament; and
- receptivity to discussing other humanitarian norms.

Other factors mentioned were "ownership" of the situation, capacity-building, and a "watchdog" effect. It has been underlined that, in particular, the creation of a sense of ownership among and within the NSAs is important both in terms of successfully promoting humanitarian norms such as a mine ban and in other aspects of mine action.[104]

In addition to the beneficial aspects for the population and a possible improvement in the conflict situation as described above, the main factors that encourage humanitarian mine action organizations to implement activities with NSAs are both practical and political. The main practical aspects include:

- the NSAs' military training and possession of information about the mines in an area;
- political, military, and territorial factors; and
- the utility in terms of security and cost-effectiveness of working with these actors.

In other cases, in addition to these practical factors, the NSA may also be considered by the local population as the legitimate authority, or may enjoy the widespread respect of the constituency, which influences the decision to work with it.

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103   For a summary of the main findings of Volume II, see also Anki Sjöberg, "Armed Non-State Actors," Journal of Mine Action 11.1 (2007). Available: http://maic.jmu.edu/journal/11.1/notes/sjoberg/sjoberg.htm.

104   As mentioned in section 1.4.3 "Some Elements for Analyzing Engagement with NSAs."

One feature that might prove to have specific implications for mine action is the need to involve NSAs in the implementation of activities. As compared to other humanitarian activities, there are three aspects that seem to make the involvement of NSAs particularly important here:

- the mentioned aspects of creating ownership of the action to enhance sustainability (the armed groups may have used mines and might do so again);
- the territorial aspects of mine action; and
- the fact that mine action is a long-term action (there might be emergency phases, but dealing with the problem may take years).

Why NSAs engage in humanitarian negotiations and action

There are different explanations for why NSAs become involved in mine action. Recurring themes are humanitarian and development concerns and self-interest. Community pressure is sometimes highlighted as a main factor. The themes are not mutually exclusive, and an NSA's decision to engage in mine action could be motivated by a combination of factors.

As noted, both humanitarian/developmental and "interest" arguments[105] were identified during the work on Volume II. This is interesting mainly because the humanitarian/developmental aspects were identified not only by the NSAs themselves, but also by the humanitarian actors. Although the "true" intentions behind NSAs' decisions cannot be identified (since this is notoriously challenging for most human actions), the value of discourse and its impact on the action should not be underestimated. This especially appears to be the case when the actions by the NSA are scrutinized by:

- a constituency;
- an (organized) affected community;
- the concerned government; and
- international and national humanitarian actors, as well as third party States.

One advantage that mine action might have in comparison with other humanitarian action is that there has been a global campaign stigmatizing the use of AP mines, culminating in a clear legal framework that is the Mine Ban Treaty, which totally prohibits the use of these mines and stipulates the implementation of mine action activities. In addition, the very nature of AP mines in terms of their indiscriminate triggering mechanism and long-lasting negative effects facilitates the framing of negotiations.[106]

Main challenges and lessons learned

For humanitarian mine action it was found that working with NSAs in the implementation is possible, although not always easy. Various challenges were identified, mainly relating to the political context (including the role of the concerned State) and the NSA itself. However, challenges can be, and have been, overcome. The challenges and corresponding lessons learned related to: (i) the political context; (ii) the NSAs; (iii) third parties; and (iv) others. The main lessons learned documented include the need for:

- understanding and adapting to the political and conflict situation;
- cooperation by the concerned State;
- capacity-building and training of NSAs;

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105   For mine action the latter included self-interest arguments such as: military reasons, material gain, and internal and international reputation.

106   The successful framing of the landmine issue has been discussed in Richard Price, "Reversing the Gun Sights: Transnational Civil Society Targets Land Mines," International Organization 52.3 (1998).

- priority and financial control;
- increased political and financial support;
- confidence-building, commitment[107] and cooperation;
- transparency;
- organization and coordination; and
- the involvement of the local communities.

As has been highlighted in studies on engagement with NSAs, the concerned States often constitute the main difficulty for engagement and – above all – the practical implementation of humanitarian mine action. In spite of significant advances, political considerations are often allowed to override humanitarian ones. States are frequently jealous of their sovereignty and third party States are cautious in putting pressure on them. Nevertheless, as concerns mine action, there has been considerable progress in comparison to other areas. The need to engage NSAs is generally recognized[108] and the NGO Geneva Call and its *Deed of Commitment* mechanism are seen as models for engagement on other humanitarian issues.

One important conclusion of the report refers to the various limitations of NSAs and how these limitations are perceived – by NSAs themselves and by the humanitarian actors working with them – to restrict effective implementation of mine action. For example, it has been found that some NSAs conduct mine action without or with very little international involvement. However, this kind of mine action often lacks professional standards and equipment, which makes it dangerous for those involved in mine action (generally members of NSAs) and potentially dangerous for the beneficiaries (i.e. the local communities). Generally, the provision of different types of training and adequate equipment has been suggested as a means to deal with this problem, by both humanitarian actors and NSAs. Some limitations related to NSAs are more difficult to address with training, notably the lack of transparency. However, humanitarian actors have gained experience in working with these types of actors and are exploring ways of dealing with this problem. As above, one difference with mine action and other areas, as refers to capacity-building and training, might be the different levels to which humanitarian actors need to involve NSAs in the implementation of activities.

The chapter that follows discusses how the findings here summarized could apply to other issues that constitute human security threats, exemplified by the issues of child soldiers and small arms and light weapons.

Mines belonging to an NSA, prepared for destruction. Credit: Geneva Call 2006.

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107   The importance of a formal commitment on landmines for the facilitation of activities, such as the *Deed of Commitment*, was mentioned by several informants for Volume II.

108   This is shown for example in Noel Stott, Negotiating in Practice What is Non-Negotiable in Principle: Development Policy and Armed Non-State Actors: Discussion Paper 8/2007 (Bonn: German Development Institute, 2007). pp. 15-16. Some resolutions and declarations in support of such work can be found also on Geneva Call's website, http://www.genevacall.org/resources/testi-reference-materials/official-documents.htm.

3 The Potential Role of NSAs in Reducing Other Human Security Threats

3.1 Applying the Findings to Other Issue Areas

In the previous sections, some of the main findings that could go beyond landmines have been outlined, as well as those that would appear to be specific, or to have a specific dynamism for landmines. Nevertheless, these conclusions are preliminary and would need to be studied in more detail in the light of the specificities of the different humanitarian issues. All the same, it may be valuable to apply the identified findings to other humanitarian engagement with NSAs, such as combating small arms misuse, the protection of children in armed conflict (with a focus on child soldiers), the protection of women and IDPs, and issues such as torture, forced labor, etc. This chapter briefly discusses the status of NSA engagement and the applicability of the reports' findings to the first two issues: child soldiers and small arms and light weapons. The reason for choosing these particular issues is that they have been identified as areas where NSAs play a major role in the problem and where current solutions have been considered as insufficient by practitioners.[109]

3.2 Child Soldiers[110]

3.2.1 Introduction

NSAs play a central role in contemporary armed conflicts, in which violations against children are perpetuated. 70% of the children involved in armed conflict were estimated to serve in ranks of NSAs in 2004.[111] Therefore, achieving a universal ban on the involvement of children in armed conflict requires the inclusion of NSAs in the debate. For ascertaining a protective environment for children, it is crucial to convince NSAs to comply with IHL and secure these and other child rights. Consequently, in addition to "naming and shaming" strategies, complementary approaches that aim to encourage NSA shifts in attitudes toward the recruitment and use of children need to be developed.

Hence, it is important to better understand when, how and why armed groups recruit and use child soldiers and what the options are to alleviate such impacts. This section briefly discusses how some of the findings of the project could apply to engagement with NSAs on the child soldier issue.

In terms of the legal framework applicable to the child soldier issue, this has been regulated in IHL, human rights law, criminal law and labor law.[112] Nevertheless, in engaging NSAs, it has been argued that the legal basis remains IHL. The *Convention on the Rights of the Child* (CRC) and its *Optional Protocol on the Involvement of Children in Armed Conflict* (hereafter "Optional Protocol") are relevant to the extent that they have contributed to the development of the norms

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109   As mentioned previously, the mere inclusion of these two issues, however, does not imply that Geneva Call as such will necessarily expand its work to these issues. See footnote 15.

110   This report uses the concept "child soldiers" in the same sense as the concept "children associated with fighting forces/armed forces and groups", i.e. going beyond the concept of a child soldier as solely an arms carrier (see footnote 119). This section is largely based on a forthcoming article that explores how Geneva Call's experience with NSAs in mine action can inform and contribute to addressing some of the challenges of engaging these groups on the issue of child protection. (Philippe Gazagne, "Engaging Armed Non-State Actors on the Issue of Child Recruitment and Use," Children in an Insecure World (Geneva: DCAF, 2007 (forthcoming)). and on an internal assessment on if and how Geneva Call could expand its work to child soldiers (Boivin, A Study on Child Soldiers.)

111   According to Armed Opposition Groups and Child Recruitment: Terms of Reference (Coalition to Stop the Use of Child Soldiers, 2005).

112   Given its complexity, this framework is further developed in Appendix III.

protecting children in armed conflict. However, these instruments are first and foremost human rights treaties that set out the obligations of States. Customary IHL contains sufficiently strict standards with which NSAs must conform. The question of the minimum age is the object of some debate but it seems secondary to the heart of the problem, which continues to involve children below the minimum age of 15.[113]

3.2.2 Applicability of the Findings

There are clear similarities between AP mines and the issue of child recruitment and use, notably the role played by NSAs in ongoing violations of both norms and the fact that the two issues affect children. In both cases, the role of NGOs has been very influential in getting the issues on the agenda of States and of the international community. In both cases, NSAs are neither part of, nor consulted in, the process of developing treaties, conventions and protocols.[114]

In contrast, vast differences exist between the issue of banning AP mines and setting up a child protection framework. Firstly, the intensity of "naming and shaming" is much more acute as regards to the question of child recruitment. When Geneva Call and the ICBL NSA working group started to call attention to the use of AP mines by NSAs, very few organizations knew about this phenomenon or were emphasizing that fact. On the contrary, reports and denunciations stigmatizing the use of child soldiers by NSAs are constant. There is even a UN Security Council Working Group that reviews and recommends action on the information reported through a Monitoring and Reporting Mechanism on child rights violations in conflict areas.

An important difference between the use of child soldiers, on the one hand, and the use of landmines and small arms and light weapons, on the other, is that recruitment of child soldiers under 15 is a war crime under the International Criminal Court (ICC), while the use of such weapons is not. It is therefore difficult to "negotiate" with an NSA on the issue of not committing war crimes. Refusal by an NSA to undertake a commitment in negotiations with a humanitarian organization might make the latter an important witness in war crime trials, which in turn may make armed groups reluctant to negotiate in good faith with humanitarian organizations on this issue.[115]

Beyond these observations, the most fundamental difference between the two issues lies in their subject: whereas an AP mine is a mere object that can be destroyed, a child has rights and needs and an agency of its own. Clearly, the necessary responses cannot be as simple as when one clears and destroys AP mines. Having considered these obvious divergences, there are some common points where the findings from the project on NSA mine use and mine action could help stimulate the debate on the issue.

Purpose of humanitarian negotiations

In terms of humanitarian negotiations, engagement with NSAs on the child soldier issue could, as with the landmine issue, focus on both the negative responsibility (i.e. "refraining from" recruiting and using child soldiers) and the actions undertaken by NSAs to improve protection for children in armed conflict. The improvement in the NSAs' human rights and IHL record, or possibly the adoption of a code of conduct or a formal mechanism on the non-recruitment and non-use of child soldiers, would require more active efforts from the NSAs. The interaction required for such actions might potentially build confidence with humanitarian actors, the affected communities and the opponent(s). As for mine action, there would be a need to under-

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113 Boivin, <u>A Study on Child Soldiers</u>., p. 16.

114 Gazagne, "Engaging Armed Non-State Actors on the Issue of Child Recruitment and Use.", p. 8.

115 This potential problem has been highlighted by Professor Marco Sassòli, Professor of Public International Law. Email from Professor Marco Sassòli, received 16 July 2007.

stand the motivations and real impact of the NSAs on the issue area, as well as creating trust and communication with them on this issue.

Part of the problem, part of the solution?

As highlighted above, it is clear that NSAs are part of the problem of the recruitment and use of child soldiers. This has been widely documented by the Coalition against the use of Child Soldiers, as well as the UN Reporting and Monitoring Mechanism.[116] However, it would be important to look into what trends can be observed in these studies. Comparing them with some of the findings from Volume I on the NSA mine use leads us to the following issues:

- **Regional disparities:** are there regional patterns of the recruitment and use of child soldiers? If yes, why? Is there a need for regional strategies to mitigate the impact? One strategy could be to involve third party States such as neighboring countries that may have an interest in the conflict.
- **Influence of and on State policy:** is there a link between the States' policy and behavior and that of the NSAs? For instance, is there a link between the voluntary mobilization of child soldiers and periods of State repression of communities?[117]
- **Understanding the impact and the data:** Where does the data come from, what biases does it have and why?
- **Prioritization and strategy:** how to determine which NSAs to prioritize for engagement on the issue.
- **Understanding and listening to NSAs:** understand the possible political, military, and socio-economic reasons for recruitment and use of child soldiers (including the reasons why children would volunteer) and the possibilities and strategies for addressing the issue (NSA political willingness and ability, socio-economic factors).

Channel to and receptivity of the NSAs

Cooperation on the child soldier issue would probably need to take place both during active conflict as well as during cease-fires or post-conflict situations. NSAs might radically change their position – for better or worse – on the child soldier issue during a conflict, for example due to a change in the conflict situation or to an alteration in their general political or military strategy. An engagement on the child soldier issue might also be a sign of openness towards advancing in peace negotiations with the concerned government or a way of getting closer to the international community. Similarly, the breakdown of a cease-fire might lead to new recruitment of child soldiers by the NSA.

Pressure

For putting pressure on NSAs to stop the recruitment and use of child soldiers and governments to facilitate humanitarian actions for the benefit of children, it appears that such pressure will have a bigger effect if the NSA (and government) in question cares about its international or domestic reputation.

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116 See for example Coalition to Stop the Use of Child Soldiers: Library, 2007, Coalition to Stop the Use of Child Soldiers, Available: http://www.child-soldiers.org/library/, 12 September 2007.

117 For example, a study by Daniel Muñoz-Rojas of the ICRC suggests a link between having experienced abuses and becoming an abuser, i.e. abusive use of force by state forces increases the risk that armed groups will also misbehave in retaliation. See Daniel Muñoz-Rojas, Violations of International Humanitarian Law: Their Psycho-Sociological Causes and Prevention. Paper presented at the Armed Groups Project's conference on 'Curbing human rights violations by armed non-state actors, Vancouver, 14-15 November 2003, 2003, Armed Groups Project, Available: http://www.armedgroups.org/index.php?option=content&task=view&id=30, Accessed: 27 August 2007.

Territory

Although less territorially rooted than landmines, it remains to be observed whether the fact of controlling territory or not has an impact on the behavior of NSAs and the possibility of implementing actions related to child soldiers.

3.2.3 Engaging NSAs on the Non-Recruitment and Non-Use of Child Soldiers?

Humanitarian norms that are clear and straightforward are more likely to be accepted by relevant actors. Whereas there is clear agreement on the elements covered by the legal tools on AP mines – the Mine Ban Treaty and the *Amended Protocol II* of the CCW for States and Geneva Call's *Deed of Commitment* for NSAs – it is hard to find such consensus with respect to the non-use and non-recruitment of child soldiers. The Monitoring and Reporting Mechanism established by the UN Security Council highlights six violations against children:

- killing and maiming;
- abduction;
- attacks against schools and hospitals;
- sexual violence;
- recruitment or use in hostilities; and
- denial of humanitarian access.

Nevertheless, there is a tendency among concerned activist and human rights and humanitarian organizations to separate the child soldier issue from the broader context of children and armed conflict, thus using the *Optional Protocol* of the CRC. For the purpose of the report, this approach is adopted and the focus is solely on child soldiers.[118]

Moreover, there is no consensus regarding the ways in which notions of childhood, child soldier and child recruitment are conceptualized within IHL and human rights law.[119] The same is true for distinguishing between voluntary and forced recruitment, between direct and indirect participation in hostilities, and the differentiation of treatment granted to States and NSAs (mainly on the question of age limit for involvement in hostilities and voluntary recruitment).[120] The issue of child recruitment by NSAs is hence multi-faceted and challenging in ways that the landmine issue is not. The fact that children are active agents makes the issue more complex, with respect to the causes of the phenomenon and the actions to be taken in response to it.[121]

In addition, there is great sensitivity about raising the military "utility" of child soldiers with military commanders. Nevertheless, while it can be acknowledged that NSAs may derive some benefit from having children in their ranks, the picture varies considerably from one situation to the next. With landmines, third parties – especially those with a military background – can approach NSAs and tell them that the humanitarian impact of landmines by and large surpasses their military utility. Invoking the military "utility" of child soldiers assumes that (a) NSAs have a policy of recruiting children and that this is part of their military strategy; (b) one is willing to stray from the discourse of child protection in order to discuss the pros and cons of child sol-

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118   A number of NSAs situate the debate beyond the issue of child soldiers towards the broader question of child protection. They justify this position by the fact that children seek to join them because they face various violations (notably from the State armed forces) when staying outside the group.

119   Discussions are ongoing for example concerning whether age is an appropriate measure for defining childhood as opposed to non-childhood, the agency versus victimization of children, etc. No legal definition of "child soldier" exists as such. Generally, the expression not only designates combatant boys and girls, but also children that play a variety of military activities and support functions within armed forces, e.g. scouting, spying, sabotage, and acting as couriers, porters, cooks, assistants or children exploited for sexual purposes.

120   For more detailed accounts of these debates and analyses of the UN CRC and the Optional Protocol: Kristina A. Bentley, "Can There be Any Universal Children's Rights?," International Journal of Human Rights 9.1 (2005).; Boivin, A Study on Child Soldiers.; Andy Dawes and Ed Cairns, "The Machel Study: Dilemmas of Cultural Sensitivity and Universal Rights of Children," Peace and Conflict: Journal of Peace Psychology 4.4 (2001).

121   Gazagne, "Engaging Armed Non-State Actors on the Issue of Child Recruitment and Use.", p. 10.

diers; and (c) the humanitarian impact of recruiting and using children is a problem that can move NSAs.[122]

In addition, while the use of AP mines is a military decision, which can be taken by one individual, the recruitment of children by NSAs is rather the result of a more complex process. The responsibility for the recruitment and use of child soldiers may be in the hands of military commanders but a range of other factors related to the rationale of the children and their families come into play.[123] Most of the young ex-soldiers interviewed by researchers defined themselves as "volunteers." In spite of the abuse they may suffer in the armed groups and the dangers that they may be exposed to, in fact it has been documented that children may perceive more gain in joining an NSA than in staying out.[124] In the short term, they may feel better off with the income, occupation, status, respect and sense of belonging, education and/or protection that NSAs may offer.[125] There are indeed numerous elements of the question that need to be considered: from the sources of the child soldier problem, recruitment and the treatment of children in camps, to the release and reintegration of children.[126]

The human nature of children and the many causes of their recruitment by NSAs make the work of releasing child soldiers and supporting their transition into civilian life a more complicated challenge than clearing a mine field or destroying stockpiles. Intense debate therefore focuses on the type of assistance that would be most appropriate in conjunction with the release of children.[127] First, the success of such action seems to be conditioned by the engagement of all parties in conflict. The non-implication of one of the stakeholders is likely to nullify any release efforts made by the other. Second, the sustainability of release and reintegration programs ultimately depends on prospects of more long-term social and economic development. As a matter of fact, re-recruitment of released child soldiers appears to be common, specifically in situations of continuing armed conflict.[128] Reintegrating children requires the creation of viable alternatives for them and, as such, refers more to a development process. NSAs have been widely involved in mine action, as a decisive component conferring them a sense of ownership. How and to what extent one can engage NSAs in release and reintegration processes appears to be more delicate, but nonetheless essential.

In spite of the challenges, human rights and humanitarian actors have expressed an interest in the development of a formal mechanism for engaging NSAs on the child soldier issue, for example by exploring how Geneva Call's *Deed of Commitment* could be converted into a mechanism to address the issue of child recruitment and the use of child soldiers.

Given the challenges referred to above, the project proposes two alternative steps to further the debate on engagement with NSAs on the child soldier issue: consultations with NSAs on the child soldier issue and studies of best practices.

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122   Boivin, A Study on Child Soldiers., pp.35-36.

123   Trying to understand the so far limited outcomes achieved by programs attempting to limit the use of child soldiers, some contributions have looked at the recruiters' point of view (Susan Shepler, The Social and Cultural Context of Child Soldiering in Sierra Leone, paper for the PRIO sponsored workshop on Techniques of Violence in Civil War, Oslo, August 20-21 2004.) while others have considered factors that motivate the children. See Rachel Brett and Irma Specht, Young Soldiers: Why They Choose to Fight (Boulder: Lynne Rienner Publishers, 2004)., and Krijn Peters, Re-examining Voluntarism: Youth Combatants in Sierra Leone (Institute for Security Studies, 2004).)

124   The reasons for children to join NSAs may include structural reasons, poverty/hunger, socio/economic incentives, lack of other alternatives, the possibility for an education/a career/learning new skills, need of protection (from other armed actors or from an abusive family situation), revenge or payback, kin or peer pressure, the presence of relatives in the NSA, political motivation, etc.

125   Gazagne, "Engaging Armed Non-State Actors on the Issue of Child Recruitment and Use.", p. 10.

126   Ibid., p.11.

127   Jo Becker, "Children as Weapons of War," Human Rights Watch: World Report 2004: Human Rights and Armed Conflict (New York: Human Rights Watch, 2004). Belinda B. Bernard, Brewer B. Bernard, S. Dharmapuri, E. Dobor, A. Hansen and S. Nelson, Assessment of the Situation of Women and Children in the Liberian Post-Conflict Period and Recommendations for Successful Re-Integration (USAID/Development Alternatives Inc., 2003)., Emily Delap, No Place Like Home? Children's Experiences of Reintegration in the Kailahun District of Sierra Leone (London: Save the Children, 2004)., Mats Utas, "Building a Future? The Reintegration and Remarginalization of Youth in Liberia," No Peace, No War: An Anthropology of Contemporary Armed Conflicts, ed. P. Richards (Oxford: James Currey, 2005).

128   Becker, "Children as Weapons of War."

3.2.4 Proposal I: Consultations with NSAs on the Child Soldier Issue

In view of Geneva Call's experience, understanding the concerns and motives articulated by NSAs is fundamental. What would encourage (incentives) or prevent (obstacles and challenges) NSAs from making commitments towards the non-recruitment and non-use of child soldiers? Would the prospect of viable alternatives to war for children constitute an incentive for them to adhere to binding humanitarian agreements? A number of authors seek to understand the problem from the point of view of the children themselves.[129] Far more rare are contributions that offer insights into NSAs' perspectives.

These questions cannot be addressed without considering the economic, social, ideological, cultural or religious context in which the concerns, choices and perspectives of children and NSAs are embedded.[130] Fundamental to any effort to encourage shifts in attitudes and coopera-tion is identifying arguments (so called "framing") that will be relevant to an NSA and adaptable to the local reality.[131]

Benefiting from its relationship with NSAs, Geneva Call has started to seek their insights and has been able to observe their receptivity to sharing their policies on this issue.[132] In the light of preliminary consultations with a number of NSAs, Geneva Call has noted recurrent concerns, among them a fear of re-recruitment of children by other armed forces, and the apprehension that children might be recaptured and forced by others to divulge information about the group.[133] Other concerns raised include the lack of occupational alternatives for children, the desire to have children educated in their own tradition and culture, the poor results of past release and reintegration programs and the fact that NSAs are by and large not consulted about this phase. These are only initial observations and investigation must continue to be carried out in a more systematic and context-specific way. However, what is evident about these concerns is the fact that they tend to focus on violations that children might face when staying outside the group and on what happens to children once they are released.[134]

3.2.5 Proposal II: Study of Best Practices

In addition to continuing and deepening the study of the recruitment and use of child soldiers by NSAs (as mentioned above), there is also a need to know more about the eventual efforts of NSAs to deal with this problem (including actions in response to pressure from affected com-munities) through codes of conduct, unilateral declarations, etc.[135] Knowing about and under-standing how this has been dealt with and spreading this information to other NSAs might be of particular assistance to NSAs facing the problem of child recruitment and use and wanting to deal with it.

For child soldiers, it would be useful to have a document similar to that produced on landmines (like Volume II), collecting the best practices in terms of what NSAs have done – on their own or with the cooperation of national and international organizations – in order to confront the

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129   Brett and Specht, Young soldiers: Why They Choose to Fight., Peters, Re-examining Voluntarism: Youth Combatants in Sierra Leone.

130   As indicated by the Special Representative of the Secretary-General on Children and Armed Conflict, "there is an acute lack of definitive and reliable information and data on many aspects of the problem of children and armed conflict […]. The lack of reliable data represents a critical gap in knowledge that severely hampers our collective protection and programme responses." Report of the Special Representative of the Secretary-General for Children and Armed Conflict (A/61/275) 17 August 2006 (General Assembly, 2006)., p. 6.

131   Gazagne, "Engaging Armed Non-State Actors on the Issue of Child Recruitment and Use.", pp. 13-14.

132   Boivin, A Study on Child Soldiers.

133   Ibid.

134   Gazagne, "Engaging Armed Non-State Actors on the Issue of Child Recruitment and Use.", pp. 14-15.

135   Possibly some light will be shed on this issue by the publication of the ICRC study on best practices in terms of NSA engage-ment (forthcoming late 2007).

problem of recruitment and use of child soldiers. Such a document could be used for strategizing the work with NSAs, but also for showing them what other NSAs have been doing in this respect. What has worked, what have been the main problems and why? For example, have interim (step-by-step, such as a commitment on "no new recruitment") measures been successful? What were the implications of differentiating roles, levels of commitment and activities? What actions have opened the door to further commitments? What have been the outcomes of pragmatic dialogue such as distinguishing between different categories of children involved with NSAs, as regards to their age, gender or roles?[136] Has the maintenance of dialogue helped prevention? What were the most receptive constituencies within the groups, with what kind of effects?

In addition, based on the issues studied for the NSA mine action report, the project suggests the study of the following questions:

- Which NSAs have been targeted for engagement on child soldiers? Why these ones?
- Why did the NSAs engage in humanitarian negotiations and action on the child soldier issue?
- What are the main challenges and lessons learned in the interaction between humanitarian actors and NSAs on the child soldier issue? Could the main lessons learned from NSA mine action be helpful?

In this section, it has been shown that some of the findings from the NSAs and landmines project could also be useful for the study of NSA involvement in the child soldier issue, both in negative (i.e. use and recruitment) and positive (e.g. release and eventual protection activities) terms. The following section discusses the application of the findings to the question of small arms and light weapons.

3.3 Small Arms and Light Weapons [137]

3.3.1 Introduction

In 2004, all active conflicts involved at least one NSA.[138] Being involved in active or frozen conflicts, small arms and light weapons (hereafter "small arms")[139] are the weapon of choice of NSAs, who are *de facto* key potential (ab)users. According to a study by the Centre for Humanitarian Dialogue:

> "[a]lthough armed groups hold just a fraction of the world's total small arms, the devastation they leave in their wake is disproportionate. According to one study,

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136 High-risk children could be identified, so that they could benefit from assistance specific to their needs. Their situation should then be openly discussed with NSAs. A number of accounts have highlighted the vulnerability of girls during their enrolment, but not least when they return to civilian life. The question of gender-sensitive measures needs to be addressed, considering the specific challenges girls face. How release and reintegration programs actually fail to incorporate (or attract) them has been documented. (For example in The Disarmament, Demobilisation and Reintegration of Children Associated with the Fighting Forces: Lessons Learned in Sierra Leone, 1998-2002 (New York: UNICEF, 2003).)

137 In preparation for a presentation for a European Cooperation in the Field of Scientific and Technical Research (COST) seminar, Nicolas Florquin, Geneva Call, studied ways of minimizing the humanitarian impact of small arms held by NSAs based on the experience of humanitarian NGOs who engage armed groups on IHL and human rights issues. This section is largely based on this presentation. Nicolas Florquin, Armed Groups and Engagement on Small Arms: Presentation prepared for the COST Action 25 Meeting on Small Arms Acquisition and Conflict, Nicosia, Cyprus, 28-29 May 2007.

138 Lotta Harbom, ed., States in Armed Conflict (Uppsala: UNDP, 2004).

139 Following the Small Arms Survey, this report uses the term "small arms and light weapons" or simply "small arms" to cover both military-style small arms and light weapons as well as commercial firearms, such as handguns and long guns. The definition used is based on the 1997 UN Report on the Panel of Governmental Experts on Small Arms, according to which small arms are "revolvers and self-loading pistols, rifles and carbines, assault rifles, sub-machine guns, and light machine guns" and light weapons "heavy machine guns, hand-held under-barrel and mounted grenade launchers, portable anti-tank and anti-aircraft guns, recoilless rifles, portable launchers of anti-tank and anti-aircraft missile systems, and mortars of less than 100 mm caliber. Small Arms Survey 2006: Unfinished Business, (Oxford: Oxford University Press, 2006). p. 9.

armed rebel groups for example accounted for more than half the world's new displacement during 2003. Armed groups also present serious challenges in post-conflict settings: weapons collection, disarmament and demobilization efforts are all complicated by their loosely structured nature."[140]

The small arms community has thus far mostly sought to deal with NSAs through the control of small arms transfers. Nevertheless, progress on an international instrument is slow, and research shows that groups can operate with few weapons, which they often obtain from domestic sources.[141] As compared to landmines, there are several obvious differences. Firstly, while small arms unfortunately are unavoidable elements in all conflicts, landmines are generally not used in all conflicts. Also, a total ban on the use of small arms will not be achievable during an ongoing conflict. The focus has instead been on how to avoid "misuse" of these weapons.[142]

Hence, it is important to better understand when, how and why armed groups misuse small arms and what the options are to mitigate such impacts through humanitarian engagement by employing IHL and human rights law as opposed to national law. This section briefly discusses how some of the findings of the project could apply to engagement with NSAs on the small arms issue.

The international legal framework for the small arms issue is defined mainly by human rights law and IHL. As mentioned in section 1.4.1 "Humanitarian and Human Rights Obligations of NSAs," international law is evolving to account for the actions of individuals and other non-State actors. Observers find the establishment of the ICC to be of particular importance in any analysis of small arms.[143]

3.3.2 Applicability of the Findings

There are some additional specificities of the small arms issue that make it different to the landmine issue. For instance, one advantage in the promotion of a ban on AP mines is that the agent is only present when the device is planted: after that she or he loses control over it. Hence, there is no agency after the mine is in the ground. This clearly indiscriminate aspect of landmine use facilitates the framing of negotiations.[144] In addition, landmines are a mainly rural phenomenon, while urban populations are rarely affected. On the other hand, urban populations are also very affected by small arms misuse. Another important distinction, as highlighted by a GICHD study,[145] is that while responses to the landmine problem are well defined and operationalized into the widely accepted five mine action pillars, responses to "the small arms problem" are much less clear-cut and more multidimensional.

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140 Putting Guns in Their Place: A Resource Pack for Two Years of Action by Humanitarian Agencies (Geneva: Centre for Humanitarian Dialogue, 2004)., p. 48:

141 See, for example, Anna Khakee and Nicolas Florquin, "Sourcing the Tools of War: Small Arms Transfers to Conflict Zones," Small Arms Survey 2005: Weapons at War (Oxford: Oxford University Press, 2005).

142 By "misuse," we refer to the use of weapons in violation of human rights and humanitarian law. It does not confer any value statement about the legitimacy of the use of force as such. The concept of misuse can be interpreted in different ways, as highlighted by Barbara A. Frey:
    "The act of discharging a weapon has varying legal significance based on the identities of the shooter and the victim, and the circumstances under which the shot was fired. The human rights and humanitarian norms that guide state action with regard to small arms differ in the following situations: misuse of small arms by state agents; misuse of small arms by private persons when the state fails to exercise due diligence; misuse of small arms by state agents in armed conflict; misuse of small arms by non-state actors in armed conflict; and small arms transfer with knowledge that arms are likely to be used to commit serious violations of international human rights and humanitarian law."
Barbara A. Frey, "Small Arms and Light Weapons: the Tools Used to Violate Human Rights," Disarmament Forum (2004)., pp. 38-39.

143 Ibid., pp. 38-39.

144 See footnote 106.

145 Identifying Synergies between Mine Action and Small Arms and Light Weapons, (Geneva: GICHD, 2006)., p. 64.

In terms of synergies between mine action and small arms and light weapons, the GICHD study on the topic did not find many, although some potential for them was considered to exist.[146] Nevertheless, mine action practitioners have identified that mine action could build confidence and lead to the destruction or securing of stocks of weapons other than landmines (unsafe, unreliable weapons and ammunition).[147] In addition, some mine action agencies – especially those specialized in demining – are expanding their operations to include the destruction of small arms and light weapons within the framework of disarmament and demobilization programs ("conflict recovery").[148]

Purpose of humanitarian negotiations

In terms of humanitarian negotiations, engagement with NSAs on the small arms issue would mainly focus on the negative aspects (i.e. "refraining from" misuse of these weapons) rather than taking active steps to protect the civilian population. Nevertheless, an improvement in an NSA's human rights and IHL record, or possibly the adoption of a code of conduct, would require more active efforts from the NSA and potentially build confidence with humanitarian actors, the affected communities and the opponent(s). Another aspect is the possible negotiation to elicit commitments for the destruction/securing of excess/unsafe stocks, where experience from negotiating a landmine ban or the trust built by working on mine action activities could be invested. As for mine action, there would be a need to understand the motivations and real impact of NSAs on the issue area, as well as creating trust and communication.

Channel to and receptivity of the NSAs

Real cooperation with NSAs on the small arms issue (with the possible exception of the destruction of excess or unsafe stockpiles) would probably be most likely during cease-fire or post-conflict situations. The problem is that command structures are often challenged during such periods, and splinter groups – dissatisfied with the political developments – may appear. Hence, the implementation of any commitment may be challenging.[149]

Part of the problem, part of the solution?

As highlighted above, it is clear that NSAs are an integral part of the problem of small arms misuse[150] and hence should be part of the solution. However, it would be important to look into

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146   The study determined that when synergies do exist, this is rather due to the "daily realities of mine and explosive ordnance clearance and SALW [small arms and light weapons] mitigation in a post-conflict environment." Furthermore, that "synergies tend to exist where mixed ordnance has been laid, fired, abandoned, stored and hidden, and where large numbers of SALW are present rather than following a strategic decision to tackle both issues at an operational level." However, the study sees that the greatest potential for future synergy is in "the provision of technical expertise to manage the explosive threat through mine/ERW clearance, SALW collection programmes and ammunition stockpile reduction, including by destruction and demilitarization." Also the potential for joint SALW awareness and MRE programs is highlighted. (Ibid., pp. 3 and 62-63).

147   Sjöberg, Armed Non-State Actors and Landmines. Volume II., p. 21.

148   These deal not only with weapons belonging to NSAs, but also with abandoned stocks, arms in the hands of individuals, etc.

149   For example, David Capie discusses the problems caused by armed groups to post-conflict activities such as disarmament and demobilization programs, thus giving an idea of the problems faced also by humanitarian actors, for example, in negotiating access to victims:
   "To the extent that disarmament, demobilization and weapons collection programs are facilitated by coercive and well-organized command-structures, armed groups often present significant complications. First and most basically, it can be hard to identify the members of groups. Fighters are usually irregular and often do not wear uniform or military insignia. There are rarely accurate or complete statistics about the size of the group's membership, its order of battle, or total weapons stock. Armed groups are frequently in flux and there can be rapid changes in their numbers depending on the nature of the conflict and related political and economic conditions."
David Capie, Armed Groups, Weapons Availability and Misuse: An Overview of the Issue and Options for Action., Background Paper for a Meeting Organized by the Centre for Humanitarian Dialogue, in Advance of the Sixth Meeting of the Human Security Network, Bamako, Mali, 2004., p. 9.

150   This has been widely documented for example in Capie (2004), Florquin and Berman, eds., Armed and aimless., James Bevan, "Fuelling Fear: The Lord's Resistance Army and Small Arms," Small Arms Survey 2006: Unfinished Business (Oxford: Oxford University Press, 2006)., pp.272-293. Louisa Lombard, "A Constant Threat: Armed Groups in West Africa," Small Arms Survey 2006:

what trends can be observed in different studies. A comparison with some of the findings from Volume I on NSA mine use would lead us to include the following issues:

- **Regional disparities:** are there regional patterns of small arms misuse?
- **Influence of and on State policy:** is there a link between the States' policy and behavior and small arms misuse by the NSAs?[151]
- **Insufficiency of access-targeting strategies:** are there patterns of access to small arms in spite of access-targeting strategies (transfer, self-production, etc.)?
- **Understanding the impact and the data:** where does the data come from, what biases does it have and why?
- **Prioritization and strategy:** how to determine which NSAs to prioritize for engagement on the issue and what strategy to employ.
- **Understanding and listening to NSAs:** understand the reasons for small arms misuse and the possibilities and strategies for addressing the issue (political willingness, ability, etc.).
- **Pressure:** for putting pressure on NSAs to stop misuse of small arms and governments to facilitate such actions, this will have a bigger effect if the NSA in question cares about its international or domestic reputation.[152]
- **Territory:** Although less territorially rooted than landmines, it remains to be observed whether the fact of controlling territory or not has an impact on the behavior of NSAs and the implementation of actions related to small arms.

3.3.3 Engaging Armed Groups on Small Arms?[153]

Engagement of NSAs on small arms through a formal commitment (like a *Deed of Commitment*) would most probably be difficult, partly due to the lack of an international treaty such as the Mine Ban Treaty. Rather, the norm on small arms is much weaker and more complex. In addition, creating an instrument without an international treaty might be considered equivalent to creating norms with NSAs instead of States, and all the controversy that this involves. Hence, the lack of an international convention providing clear directions for States to address small arms makes the engagement of NSAs difficult.

As mentioned above, small arms are not banned internationally and are a key weapon type for most armed groups. This means that, conceptually, engaging armed groups on a total ban on small arms would be asking them to come to the negotiation table and eventually to renounce the armed struggle. Such efforts might be perceived as a disarmament campaign against NSAs. Hence, this would more or less be equivalent to existing conflict resolution/peace-making and post-conflict disarmament, demobilization and reintegration (DDR). Consequently, with the potential exception of some types of small arms that are deemed unstable, NSAs will not surrender small arms before peace has been achieved.

The principal angle for engaging armed groups thus appears to be through the prevention of small arms misuse. Many of the principles protecting civilians that this would cover or address are included in IHL and human rights law. Thus, in a sense, NSAs are already being engaged on small arms "misuse" indirectly through IHL and human rights law advocacy carried out by the ICRC and NGOs. For example, humanitarian and development NGOs often have to deal with armed groups to ensure access to target populations living in areas under the control of armed

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Unfinished Business (Oxford: Oxford University Press, 2006)., pp. 246-271.

151   As mentioned in footnote 117, a link has been found between having experienced abuses and becoming an abuser.

152   Evaluating the risks faced by the affected community for participating in such advocacy activities might be even more important than in cases of landmine use, especially in terms of repression from the concerned NSA itself and other armed actors (including the concerned government).

153   Based on Florquin, Armed Groups and Engagement on Small Arms: Presentation prepared for the COST Action 25 Meeting on Small Arms Acquisition and Conflict, Nicosia, Cyprus, 28-29 May 2007.

groups. Some international principles exist to regulate the use of small arms by State armed forces. These include the UN *Basic Principles on the Use of Firearms*, as well as the *Human Rights Council Standards to Prevent Human Rights Violations Committed with Small Arms*. Nevertheless, these apply primarily to internal policing (which would be relevant only to armed groups policing areas and populations under their control and would be controversial for affected States) and to stockpile management (an area that would be difficult to engage armed groups on, as it might be seen as providing military training). Nevertheless, as mentioned above, there is also the possibility of the negotiation to elicit commitments for the destruction of excess or unsafe stocks.

Given these limitations, the project proposes two possible alternative steps to further engagement with NSAs on the small arms issue: research on NSAs concerning small arms during conflict and studies of best practices.

3.3.4 Proposal I: Research on NSAs concerning Small Arms during Conflict

Naming and shaming is a key instrument used by advocacy NGOs. As such, documenting and bringing such behavior to public knowledge is critical in many ways, including for engagement.[154] Nevertheless, harsh naming and shaming can also ostracize armed groups and might make dialogue with them on humanitarian and human rights issues more difficult for some actors. Hence, how do we move forward towards helping armed groups who recognize and deplore their abuses to improve their behavior?

A burgeoning yet probably underestimated way of engaging NSAs on small arms is through research during conflict times. Most research to date occurs after a peace treaty is signed, and therefore groups tend to exaggerate the number of fighters and weapons they want demobilized and collected and to provide inaccurate information on the true motivations behind weapons possession (due to calculations of potential monetary and political benefits). Research during times of conflict on armed groups' structures, motivations and weapons holdings would enable better informed and more efficient DDR as well as post-conflict small arms control initiatives, even if some of the results need to be kept confidential until peace is achieved.

More studies on the impact of small arms on local populations during the conflict – especially as a result of use by the group, could lead to an acknowledgement and willingness to review their policies to try to further protect the population from abuses. Such research should draw on the armed groups themselves as well as the unique expertise of the humanitarian and development actors that have to deal with them during the conflict period.

Dialogue with NSAs on small arms during the conflict may also facilitate *ad hoc* agreements on the destruction and safe storage of excess or unsafe weapons stocks, when feasible.

3.3.5 Proposal II: Study of Best Practices

In addition to studying small arms possession and behavior by NSAs, there is also a need to know more about the eventual efforts by NSAs to deal with the problem of small arms misuse internally or with the help of humanitarian and/or human rights organizations (as well as acting under the pressure of affected communities) through practical measures, codes of conduct, unilateral declarations to the Geneva Conventions, etc.[155] Knowing about and understanding

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154 Paul Bonard proposed a "spirit of complementarity" between organizations using different modes of action - such as "persuasion"/negotiation and "denunciation"/"naming and shaming" - already in 1999. Paul Bonard, <u>Modes of Action Used by Humanitarian Players: Criteria for Operational Complementarity</u> (Geneva: ICRC, 1999).

155 Possibly further light will be shed on this issue by the publication of the ICRC study on best practices in terms of NSA engagement (forthcoming late 2007-early 2008). For NSAs internal sanctions see Jonathan Somer, "Jungle Justice: Passing Sentence on the Equality of Belligerents in Non-International Armed Conflict," 2006. Nicolas Florquin and Stéphanie Pézard, "Insurgency, Disarmament, and Insecurity in Northern Mali," <u>Armed and Aimless: Armed Groups, Guns and Human Security in the ECOWAS Region</u>,

how this has been dealt with and spreading this information to other NSAs might help NSAs that are facing a problem of small arms misuse and want to deal with it.

In addition to these questions and based on the issues studied for the NSA mine action report, the project suggests the study of the following questions:

- Which NSAs have been targeted for engagement on small arms misuse? Why these ones?
- Why did the NSAs engage in humanitarian negotiations and action on small arms misuse?
- What are the main challenges and lessons learned in the interaction between humanitarian actors and NSAs on small arms misuse? Could similarities be found with the main lessons learned from NSA mine action?

In this chapter, it has been shown that some of the findings from the NSAs and landmines project could also be useful for the study of NSA involvement in the small arms problem, both in negative (misuse) and positive (measures taken to improve protection or decrease misuse) terms. The following chapter summarizes the main findings of the report and presents some recommendations elaborated to improve mine action efforts with NSAs.

**Ammunition rounds, South Sudan.
Credit: Peter Mozynski.**

eds. Nicolas Florquin and Eric G Berman (Oxford: Oxford University Press, 2005).

4 Conclusion

4.1 Conclusion of the Report

The best way of stopping IHL and human rights abuses during armed conflict is to stop the conflicts that are fuelling such abuses. Nevertheless, while conflict rages, humanitarian and human rights actors take a pragmatic position of trying to reduce abuses committed by all parties to a conflict. Globally, humanitarian and human rights actors are thus increasingly approaching not only the armed forces of States, but also those of NSAs.

The main message of this report is the need for a holistic view of NSAs, hence considering both their capacity for destruction as parties to a conflict, but also their potential to contribute to the solution of humanitarian problems. Many NSAs – as well as States – lack the long-term perspective of the consequences of their actions, hence the need to engage with them. They may also be reluctant to admit that their actions are causing suffering to the civilian population. This suggests that an inclusive approach of advocacy based on accurate information could be vital for spreading humanitarian and human rights norms to NSAs, always keeping in mind that such humanitarian engagement does not affect the legal status of the NSA involved.

Consequently, it is important to be well aware of the negative roles of NSAs (for instance through research), without ignoring their potential for humanitarian actions. Notably, one important finding is that although many NSAs used landmines, their contribution to mine action activities was more extensive than expected. This potential could and should be used and improved. Hence, NSAs should be encouraged to take up responsibilities and accept that they have obligations under IHL and human rights law.

By combining relevant literature with the findings from the analysis of NSA involvement in humanitarian mine action, the report suggests some factors and incentives that might influence the behavior of an NSA and its likelihood of committing itself to respect humanitarian norms, as well as factors that might influence the outcomes of such engagement. A positive impact might be achieved, for example, by fostering ownership of the norms: through dissemination and peer pressure; collection and dissemination of best practices; consultations and capacity-building. On the other hand, marginalizing and ostracizing NSAs may bring about radicalization and further violations.

When dealing directly with NSAs, a variety of approaches are available, ranging from inclusive approaches (dialogue/negotiation and dissemination; training/capacity building; intermediation; direct services) to more coercive, non-military measures (denunciation/"naming and shaming"; sanctions, criminal prosecution). In order to achieve results, there may be a need for complementary approaches, combining different inclusive approaches with naming and shaming, etc. Such complementary approaches often require division of labor between humanitarian and other actors. When implementing different methodologies, it is useful to consider the adaptation of step-by-step measures (rather than an "all or nothing" approach) that suit the existing situation: with a pragmatic take on the issue, but without diverting from the final objective.

Given the potential role of reciprocity to both reduce and aggravate violations, there is also a need to confront States that commit violations of IHL and human rights: for the sake of reducing the actual abuses they commit, but also to influence the behavior of the NSAs. Here too, a division of labor between different humanitarian and human rights organizations might be fruitful, in order to avoid any negative impact on the operational work of these actors.

It has been demonstrated in many cases that it is possible to work with NSAs in humanitarian actions such as mine action and that this may have direct beneficial effects for the civilian

population. Moreover, the primary benefits for the population in an area under the control or influence of NSAs may be even more significant, given that these areas are more often under-developed and greatly lack developmental and humanitarian assistance.

The report discusses how these and other findings could apply to other issues that constitute human security threats, exemplified by the questions of child soldiers and small arms and light weapons. The key differences between the three issue areas include:

- the nature of the issues and the measures needed to deal with them;
- the divergences presented by the respective legal frameworks (as clear norms make it easier to engage on an issue); and
- the need for different levels of involvement of the NSAs as compared to the land-mines issue, with a focus on "refraining from" certain actions (recruitment and use of child soldiers, misuse of small arms) and little agreement on what the contribution to the solution would look like.

Some key similarities and proposals for action include the need:

- to further gather and analyze information on the extent of the problem and the nature of the involvement of NSAs in it;
- to understand what is causing a particular harmful behavior by NSAs (through research and direct consultations);
- to foster ownership of NSAs of the norm (see above); and
- to collect best practices.

Nevertheless, in order to fully comprehend and lay a basis for fruitful engagement with NSAs on other human security concerns, these issue areas should be further explored, and NSAs consulted, since consultation and dialogue are vital to inclusive approaches.

4.2 Recommendations on NSAs and Landmines

The following recommendations have developed from a reflection process led by the Government of Switzerland on the implementation of *Action 46* (see below) of the *Nairobi Action Plan*[156] over the past few years. They have benefited from expert advice and from the reports produced by the present project on NSAs and landmines.[157] The recommendations are intended to facilitate the implementation of *Action 46* by States, whether they are parties to a conflict (concerned States) or not (third parties). They also address NSAs and neutral, independent and impartial humanitarian organizations carrying out mine action in areas under the control or influence of NSAs.

Action 46

Action 46 of the *Nairobi Action Plan* states 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.*"

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156   In late 2004, States Parties met in Nairobi, Kenya, for the first Review Conference of the Mine Ban Treaty. At this occasion, States Parties adopted the Nairobi Action Plan, a framework for the achievement of the humanitarian objectives of the Convention until 2009.

157   These recommendations have been very slightly modified in format from those presented in Implementing Action 46: 'Non Paper' presented by the Swiss Government at the 7th Meeting of the States Parties to the Mine Ban Treaty, Geneva (2006).

Action 46 of the *Nairobi Action Plan* is the only operational recommendation regarding mine action and NSAs in the *Nairobi Action Plan* and it addresses all States parties to the Mine Ban Treaty, whether they are party to an armed conflict or not. It addresses, in particular, areas under the control of NSAs which have "*agreed to abide by the Convention's norms,*" as for instance through signing the *Deed of Commitment* promoted by Geneva Call.

Concerned States

- show readiness to maintain open channels of communication with NSAs in order to be in a position to raise humanitarian issues, such as mine action;
- encourage and create incentives for NSAs to agree to abide by the Mine Ban Treaty's norms;
- allow for humanitarian organizations to establish contact with NSAs on issues concerning mine action;
- facilitate safe and unhindered access for humanitarian organizations and their equipment to mine-affected areas and populations, including through prompt visa and internal travel permit issuance procedures for staff of international humanitarian organizations involved in mine action;
- facilitate the establishment of appropriate independent evaluation mechanisms for mine action according to international mine action standards, in particular with regard to de-mining activities;
- facilitate mechanisms for monitoring the implementation of the mine ban in territories affected by AP mines, in particular when NSAs have agreed to abide by the Mine Ban Treaty's norms;
- do not instrumentalize humanitarian organizations.

Third parties (States)

- make sure that political priorities do not override humanitarian considerations;
- provide political support by facilitating contacts with concerned governments and NSAs, be aware also of a conflict transformation perspective;
- use, if in a position to do so, existing channels to NSAs, in order to convince them of the importance to agree to abide by the Mine Ban Treaty's norms;
- use, if in a position to do so, existing channels to NSAs, to discuss and facilitate, where and whenever appropriate, safe access of humanitarian organizations to affected areas and populations, in particular with a view to facilitating mine action activities;
- provide financial and political support to mine action activities also in areas where NSAs are present;
- establish mechanisms of coordination among governments in view of a concerted action;
- grant visa for members of NSAs to travel in order to allow for Headquarter contacts with humanitarian organizations active in mine action;
- encourage, support and facilitate the establishment of appropriate independent evaluation mechanisms for mine action according to international mine action standards, in particular with regard to de-mining activities;
- facilitate mechanisms for monitoring the implementation of the mine ban in territories affected by AP mines, in particular when NSAs have agreed to abide by the Mine Ban Treaty's norms;
- promote the implementation of *Action 46* in appropriate fora (Meetings of States Parties, regional seminars or bilateral dialogue, etc.) and organize debates on lessons learned and best practices among governments and humanitarian organizations active in mine action in appropriate fora;

- understand the necessity of the long term needs for mine action to be carried out effectively and to lay the ground for sustainable development.

Humanitarian organizations

- stay neutral and impartial. Humanitarian mine action addresses first and foremost the plight of the civilian population. Mine action in areas where NSAs are present must therefore not be construed as taking sides;
- be transparent. There is a need for information and for coordination with governments and NSAs concerned;
- take all precautionary measures not to be instrumentalized by governments or NSAs;
- ensure coordination and transparency between the humanitarian organizations involved in mine action;
- work in accordance with cultural sensitivities, for example by cooperating closely with local organizations;
- stay flexible as this is a prerequisite when working with NSAs who might not be as well-organized as States and whose structures of command (hierarchy) may be opaque;
- adopt, if necessary, a step-by-step approach, as it may be impossible to implement mine action activities from all five pillars from the beginning. Success in a first activity may build the necessary trust to carry on.

NSAs

- agree to abide by the Mine Ban Treaty's norms;
- ensure proper transmission to and respect of orders by the rank and file with regard to the protection of civilians, in particular on the ban on AP mines;
- mark and map mined areas and transmit the relevant information to humanitarian organizations involved in mine action activities;
- show readiness to maintain open channels of communication with governments and humanitarian organizations in order to be in a position to raise and discuss humanitarian issues, such as mine action;
- facilitate unhindered access for humanitarian organizations and their equipment to mine affected areas and populations;
- facilitate the establishment of appropriate independent evaluation mechanisms for mine action according to international mine action standards, in particular with regard to de-mining activities;
- implement mechanisms for monitoring the implementation of the mine ban in territories affected by AP mines; and
- do not instrumentalize humanitarian organizations.

APPENDICES

5.1 Appendix I - *Abbreviations and Acronyms*

AP	Anti-Personnel
AV	Anti-Vehicle
CCW	Convention on Certain Conventional Weapons
COST	European Cooperation in the Field of Scientific and Technical Research
CPN-M	Communist Party of Nepal-Maoist
CRC	Convention on the Rights of the Child
DCAF	Geneva Centre for the Democratic Control of Armed Forces
DDR	Disarmament, Demobilization and Reintegration
ELN	National Liberation Army
EOD	Explosive Ordnance Disposal
ERW	Explosive Remnants of War
FARC	Revolutionary Armed Forces of Colombia
GIAN/RUIG	Geneva International Academic Network
GICHD	Geneva International Centre for Humanitarian Demining
ICC	International Criminal Court
ICBL	International Campaign to Ban Landmines
ICRC	International Committee of the Red Cross
IDP	Internally Displaced Person
IED	Improvised Explosive Device
IHL	International Humanitarian Law
LTTE	Liberation Tigers of Tamil Eelam
MRE	Mine Risk Education
NGO	Non-Governmental Organization
NSA	Armed Non-State Actor
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
PRIO	International Peace Research Institute, Oslo
PSIO	Program for the Study of International Organization(s)
SALW	Small Arms and Light Weapons
SPLM/A	Sudan People's Liberation Movement/Army
UN	United Nations
UNDP	United Nations Development Program
UNMAS	United Nations Mine Action Service
UNICEF	United Nations International Children's Emergency Fund
UXO	Unexploded Ordnance

5.2 Appendix II - *Methodological Aspects*

5.2.1 Methodology and Material

This section gives an overview of some important methodological issues encountered during the work on the project, notably the methodology and material used.[158] Volume I provided a survey of NSA use, production, acquisition, transfer and stockpiling of landmines as well as the basic characteristics of individual NSAs (conflict situation, objectives, area of operation, leadership structure, military strength and support base, etc.). The groups analyzed in the profiles were some of those that had been identified as alleged mine users in 2003 to 2005. A template was prepared for group and mine use profiles in order to facilitate a comparative analysis. The emphasis was on the mine use profiles of the NSAs and on the overall global analysis of the trends observed. The group profiles served to give a general understanding of the NSAs and thus did not provide a complete picture of the groups.

Though the research for Volume I was largely based on secondary sources, efforts were made to consult with field-based actors (in particular UN agencies, Landmine Monitor researchers, academics, conflict analysts, local and national NGOs active in mine action, disarmament and conflict resolution, etc.) as well as NSAs and concerned governments. Information gathered by Geneva Call staff during field missions and engagement work as well as previously gathered information was also taken into account. In order to deal with the limitations of the sources, three levels of reliability were introduced during the research process: confirmed, substantiated and unconfirmed allegations of mine use.[159] The report was mainly prepared with publicly available information which can be consulted. However, regarding interviews and meetings, in some situations, information was provided by individuals that for their own safety or due to other circumstances could not be named or acknowledged. In addition, the information available about NSAs is unevenly distributed. For some countries and for certain NSAs, abundant material exists. For others, the available material is scarce. This situation increased the difficulty of drawing complete group and mine use profiles for each NSA. In this sense, the limitations of the project reflect the limitations of the information available.

Volume II provided information on mine actions efforts by NSAs divided into the five widely accepted mine action pillars: mine ban advocacy, stockpile destruction, mine clearance, mine risk education (MRE), and victim assistance (following a template). It also gave an overall analysis of the involvement of NSAs in mine action, notably of the advantages, challenges, and lessons learned of such activities. The material used came mainly from relevant literature on mine action or conflict-recovery,[160] as well as semi-structured interviews. The most important part of the findings stem from interviews and meetings with experienced humanitarian mine action practitioners, NSAs, participation in humanitarian negotiations, field visits, general Geneva Call missions, etc. The principal methodologies used in the information-collection process were questionnaires and structured and semi-structured interviews with key respondents. Key respondents ("informants") were international and national mine action practitioners with experience from working with NSAs. Information was also collected in consultation with NSAs, mine action NGO representatives, international organizations (mainly UN agencies), academics, local researchers for Landmine Monitor and NGOs.

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158   For further information on the methodology, please see Sjöberg, <u>Armed Non-State Actors and Landmines. Volume I</u>., pp. 9-12 and Sjöberg, <u>Armed Non-State Actors and Landmines. Volume II</u>., pp. 5-10. For a discussion on some challenges for the research on NSAs, see the following section 5.2.2.

159   These levels of reliability were employed also when investigating the other four aspects of the NSA contribution to the landmine problem (acquiring, production, transfer and stockpiling). However, the focus on "use" is due firstly to the importance of this aspect and secondly to the difficulty in accessing reliable information concerning the other four.

160   See for example <u>Mine Action: Lessons and Challenges</u>, (Geneva: GICHD, 2005).; Alan Bryden and Heiner Hänggi, eds., <u>Security Governance in Post-Conflict Peacebuilding</u> (Geneva: DCAF, 2005).; Kristian Berg Harpviken and Rebecca Roberts, eds., <u>Preparing the Ground for Peace: Mine Action in Support of Peacebuilding</u> (Oslo: PRIO, 2004).; Kristian Berg Harpviken, "The Future of Humanitarian Mine Action: Introduction," <u>Third World Quarterly</u> 24.5 (2003).; and Ian Mansfield and Eric Filippino, "The Role of the Military in Mine Action " <u>Journal of Mine Action</u> 8.1 (2004).

5.2.2 Challenges When Researching NSAs

In addition to general issues of validity and reliability that always present themselves when research is undertaken, there are some additional methodological problems when dealing with NSAs.[161] For example, contacts with them might be illegal in the concerned country or practically difficult. Also, interviewing parties to a conflict implies not only a rich data source, but also risks. Clearly some or most of the information will be biased if deriving from an area in conflict or in a post-conflict situation. Not only may the parties/former parties to a conflict try to portray themselves in a positive light and hide sides that do not fit such an image, but also civilians (or even humanitarian actors) may want to conceal information that would make them suspect of cooperating with the rebels.[162] Information is also difficult to obtain since the NSAs do not normally "publicize" their actions, even those that fall under the humanitarian umbrella. In addition, generally the concerned government does not have any incentive to disseminate non-negative information on these actors, but rather prevent them from obtaining public attention. To overcome these problems, the project worked closely with independent groups and experts, as well as inquiring into the perspectives of both the concerned governments and NSAs.

During the research for Volume I, difficulties were often encountered in accessing and verifying data. It became evident that retrieving reliable data on NSA mine use could be a very sensitive issue. International and national staff members of mine action agencies or other organizations were sometimes reluctant to share information for fear of jeopardizing their work in areas controlled by the NSA. Sharing experiences regarding the difficulties and non-cooperation in mine action proved to be equally sensitive. Hence, informants were kept anonymous and countries and armed groups unnamed, in order not to create collaboration or safety problems for the involved actors. However, the anonymity of the informants did have the advantage of enabling them to share information that they might otherwise have been unwilling to provide. While in some cases it was difficult to assess the reliability of information provided by NSAs that operate outside internationally-supported mine action programs, mine action operators could generally substantiate the information provided.

5.3 Appendix III - *Legal Framework for Child Soldiers*

International Humanitarian Law

The first international treaties to address the problem of child soldiers were the 1977 Additional Protocols to the 1949 Geneva Conventions. The issue is addressed in both Additional Protocol I and II, of which the latter goes further in imposing two distinct obligations of result: it expressly prohibits both the recruitment – voluntary and forced – and the participation – direct and indirect – in hostilities of children under 15 years of age. The ICRC's study on customary IHL lays down three distinct rules on the protection of children in armed conflict, hence considering these as being applicable to all parties to an armed conflict. The first rule states that all children affected by armed conflict are entitled to special respect and protection. The second rule states that children must not be recruited into armed forces or groups. The third rule states that children must not be allowed to take part in hostilities. For the purpose of interpreting the second and the third rule, the study indicates that there is still no uniform practice regarding age but that 15 is an agreed minimum.[163]

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161   For a complete and interesting analysis of methodological problems as refers to internal armed conflict, see Stathis N. Kalyvas, "The Urban Bias in Research on Civil Wars," Security Studies 13.3 (2004).

162   These methodological problems were underlined in Hovil and Werker, "Portrait of a Failed Rebellion.", p. 15.

163   Boivin, A Study on Child Soldiers., p. 13

Human Rights Law

The novelty of the CRC is the scope of application of the obligations, which become applicable in peace as well as during international or internal armed conflict. Its article 38 reaffirms the IHL regime. Nevertheless, its 2000 *Optional Protocol* establishes the minimum age of 18 as a principle. It also draws a distinction between voluntary and compulsory recruitment. A prohibition was achieved for all *compulsory* recruitment of persons under 18 years of age. However, States may still accept *voluntary* recruits below 18 years of age as long as the minimum age is raised by at least one year. Another novelty introduced in the *Optional Protocol* is the provision on armed groups, which totally prohibits all recruitment under 18 years for these actors.[164] To date, the only regional agreement tackling this issue is the African Charter on the Rights and Welfare of the Child, agreed in 1999. Like the *Optional Protocol*, the Charter establishes 18 as the minimum age for compulsory recruitment into the military and participation in combat roles.[165]

International Labor Law

The 1999 *Convention on the Worst Forms of Child Labor* (International Labor Organization Convention 182) declares that forced or compulsory recruitment of children for use in armed conflict is among "the worst forms of child labor," calls for programs of action to eliminate child soldiering[166] and prohibits the forced or compulsory recruitment of children less than 18 years of age.[167]

International Criminal Law

The Statute of the ICC gives it jurisdiction over the war crime of conscription or enlisting children under 15 years into national armed forces or armed groups, or using them to participate actively in hostilities.[168]

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164 The final version of Article 4 states: 1. 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. 2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices. The drafters hence chose a traditional human rights approach to dealing with the problem of child recruitment by NSAs: rather than referring to armed groups as parties to a conflict and obliging them under IHL, the drafters decided to treat the issue as one that States had a responsibility to penalise. In other words, the behaviour of NSAs should be regulated by domestic law. Ibid., pp. 14-15.

165 Putting Guns in Their Place: A Resource Pack for Two Years of Action by Humanitarian Agencies., p. 23.

166 Boivin, A Study on Child Soldiers., pp. 15-16.

167 Putting Guns in Their Place: A Resource Pack for Two Years of Action by Humanitarian Agencies., p. 23.

168 Boivin, A Study on Child Soldiers., p. 14

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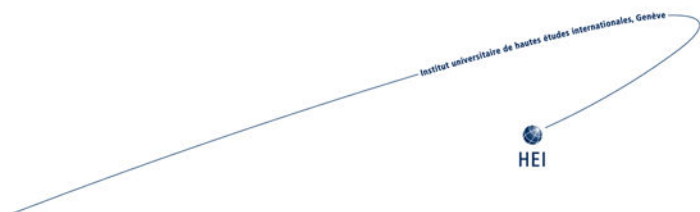
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