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**Engaging Non-State Armed Groups  
in Humanitarian Action.  
State Actor and  
Non-Governmental Approaches**

Claudia Hofmann

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## Annex 27

*Report of the Secretary-General to the Security Council on the protection of civilians in armed conflict, S/2002/1300, 26 November 2002*

*European Parliament resolution on measures to promote a commitment by non-State actors to a total ban on anti-personnel landmines, Text adopted by the European Parliament on 6 September 2001*

*Deed of Commitment under Geneva Call for Adherence to a total ban on anti-personnel mines and for Cooperation in Mine Action*

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## Abbreviations

|          |                                                                      |
|----------|----------------------------------------------------------------------|
| ANC      | African National Congress                                            |
| APM      | Anti-Personnel Mines                                                 |
| ARNO     | Arakan Rohingya National Organization                                |
| BMZ      | Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung |
| CSC      | Coalition to Stop the Use of Child Soldiers                          |
| DRC      | Democratic Republic of Congo                                         |
| ECHO     | Humanitarian Aid Office of the European Commission                   |
| EITI     | Transparency of Payments Initiative for the Extractive Industries    |
| EP       | European Parliament                                                  |
| ETA      | Euskadi Ta Askatasuna                                                |
| EU       | European Union                                                       |
| FARC     | Fuerzas Armadas Revolucionarias de Colombia                          |
| IASC     | Inter-Agency Standing Committee                                      |
| ICBL     | International Campaign to Ban Landmines                              |
| ICC      | International Criminal Court                                         |
| IHL      | International Humanitarian Law                                       |
| IHRL     | International Human Rights Law                                       |
| IRA      | Irish Republican Army                                                |
| LTTE     | Liberation Tigers of Tamil Eelam                                     |
| LURD     | Liberians United for Reconciliation and Democracy                    |
| MJP      | Mouvement pour la Justice et la Paix                                 |
| MODEL    | Movement for Democracy in Liberia                                    |
| MPIGO    | Mouvement Populaire Ivoirien du Grand Ouest                          |
| NGO      | Non-Governmental Organisation                                        |
| NSA      | Non-State Actor                                                      |
| NSAG     | Non-State Armed Groups                                               |
| NUPA     | National United Party of Arakan                                      |
| OCHA     | Office for the Coordination of Humanitarian Affairs                  |
| PDSB     | Policy Development and Studies Branch                                |
| PLO      | Palestine Liberation Organisation                                    |
| RAF      | Rote Armee Fraktion                                                  |
| RCD-Goma | Rassemblement Congolais pour la Democratie                           |
| RFDG     | Rassemblement des Forces Démocratiques de Guinée                     |
| RUF      | Revolutionary United Front                                           |
| SALW     | Small Arms and Light Weapons                                         |
| SPLA     | Sudan People's Liberation Army                                       |
| SWAPO    | South-West Africa People's Organisation                              |
| UN       | United Nations                                                       |
| UNESCO   | United Nations Educational, Scientific and Cultural Organization     |
| UNITA    | União Nacional para a Independência Total de Angola                  |
| UNSC     | United Nations Security Council                                      |
| WMD      | Weapons of Mass Destruction                                          |

## **Executive Summary**

The persistent rise of intra-state conflict and the concerns for national and human security across borders that accompanies this trend makes the need for giving heightened attention to non-state armed groups unavoidable. In the humanitarian field, however, organisations are faced with vast shortcomings regarding an articulative and universal legal foundation, so that international relations with non-state armed groups have primarily been reliant on cease-fire agreements and peace treaties, which in many cases used to be the only legal way of interaction with non-state armed groups. However, recently, the urgency of engaging non-state armed groups has been increasingly addressed mainly by non-governmental organisations, which are less bound by state-centric frameworks. This paper addresses the differences, commonalities, and difficulties for state and non-state actors engaging non-state armed groups. The paper will demonstrate how non-governmental organisations present the possibility to fill a gap in the international legal regime by employing lower-key initiatives that avoid political issues like legitimisation or recognition of non-state armed groups. Moreover, the paper argues that “small agreements” in the humanitarian field with regard to engaging non-state armed groups bear the capacity to contribute enormously to prospective peace processes.

## 1 Introduction

It is today's changed political and security aggravation that commands greater international attention to non-state armed groups (NSAG) than ever before. A growing realisation of the importance and impact of NSAG on violent discord is attained through the persistent rise of intra-state conflict. Accordingly, the 2002 *Human Security Report* quantified only one inter-state conflict (between India and Pakistan), but 31 civil wars including at least one non-state actor, and 35 internal conflicts between only non-state actors.<sup>1</sup> Other studies point to upwards of 176 armed groups in 64 countries worldwide, including conflicts of lesser intensity.<sup>2</sup> The mere number of NSAG involvements in contemporary conflict demonstrates their importance for national as well as human security across borders.

Concurrently, the terminology surrounding a definition of a term like non-state armed groups is controversial and extremely politically oriented. The sheer number of active NSAG in contemporary conflicts makes a clear and useful definition difficult, as the groups differ widely in size, behaviour, structure, motives, goals, and resources. The concept of NSAG in this context, however, will be neutral so as to avoid partiality and ambiguity inherent in terms like "terrorist" or "freedom fighter". The *International Council on Human Rights Policy* developed a useful definition in this context, which describes NSAG as groups that are "armed and use force to achieve their objectives and are not under state control".<sup>3</sup> The focus lies with NSAG, which do not pursue a private agenda but rather political and economical objectives. Thus, criminal organisations like the mafia, drug cartels or mercenaries are excluded from the analysis, as well as private security companies.

The paper presented here will analyse the difficulties and thereby the differences as well as commonalities of external state actor and non-governmental organisations (NGOs) approaches engaging NSAG in humanitarian action. The paper will focus on humanitarian action owing to the fact that engaging NSAG in this arena presents a challenging aspect due to vast shortcomings regarding an articulative legal foundation, a factor, which will be emphasised in this paper. In contrast, engaging NSAG in peace processes represents a much more open arena, as a legal foundation can be created informally by the participants through legally binding documents such as cease-fire agreements or peace treaties. Humanitarian action, on the other hand, represents a setting where violence is still present in society and that demands more diplomatic susceptibility as it remains an arena where NSAG are generally defined as insurrectionist, while the state remains the legitimate actor with regard to the international sphere. This will be done with reference to policies on child soldiers and anti-personnel landmines where humanitarian assistance remains necessary independent from cease-fire agree-

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1 *Human Security Report 2004: War in the 21st Century*, as cited in David Capie, *Armed Groups, Weapons Availability and Misuse: An Overview of the Issues and Options for Action*, 2004, p. 1.

2 Amnesty International, *Annual Report 2004*.

3 International Council on Human Rights Policy, *Ends and Means: Human Rights Approaches to Armed Groups*, 1999, p. 5.

ments or peace treaties, although “small agreements” in the humanitarian field can naturally contribute to a future peace process. In an attempt to demonstrate the difficulties in engaging NSAG in a humanitarian setting the paper will, in a first step, analyse the general features of state and non-state approaches to NSAG, perpetuating the dichotomous indications mentioned above. As a second step, the paper will demonstrate its findings with elaborations on the United Nations (UN), the European Union (EU) with special mention of Germany, and selected NGOs, like Geneva Call and the Coalition to Stop the Use of Child Soldiers (CSC) in order to display the restrictions, differences, and similarities of the approaches. A final step will be to draw conclusions and tendencies from these findings.

## 2 Situational Analysis

As NSAG usually operate outside the national legal framework, national as well as international security provisions are confronted with having to adjust to the challenges NSAG pose on their territory. Moreover, it is NSAG that often have acquired control over large parts and populations of the country and in some cases are even considered to be a *de facto* government. With this in mind NSAG have proven to be important international actors not only while fighting is going on, but also during a following peace process, disarmament and demobilisation programmes, weapons collection and destruction initiatives. Although, thus, contact and dialogue with armed groups can be a means of addressing violence and its consequences, the international community has often met complex controversies with regard to NSAG, particularly in acute conflict environments. State actors see themselves in a dichotomy, as diplomacy or strategies like “sticks and carrots” prove to be insufficient. For the government side, a complementary process might give legitimacy, recognition and status of belligerency to rebel groups. The process might also be used as a forum for rebel propaganda. For the NSAG side, the main concern is that a complementary process might make them vulnerable to intelligence gathering and surveillance.<sup>4</sup> In this context, it is thought that non-governmental organisations have more freedom to engage with NSAG, as they are less restricted than states, which may possess diplomatic and trade relations with governments who are in conflict with NSAG. Concurrently it was suggested that there is more room for creative work where NSAG are involved with regards to NGO education and monitoring.<sup>5</sup> So, in the last 15 years human rights organisations have changed their definitions of human rights violations in a way so as to also apply to NSAG.

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4 Soliman M. Santos, Jr., *The Ottawa Treaty and Non-State Actors*, 1999.

5 International Campaign to Ban Landmines (ICBL), *Engaging Non-State Actors in a Landmine Ban: A Pioneering Conference – Summary Proceedings*, 2000.

## 2.1 States Approaches

Many states have been reluctant to support initiatives that directly engage NSAG, fearing for the disruption of foregoing customary political and diplomatic conventions due to the lack of formal status held by NSAG. By engagement a state actor, through its own standing, can enhance a NSAG's status in inapt ways or even find itself taking side of the NSAG as a result of its weaker capacity and/or sympathy with their cause. The degree of respectability, which a state actor possesses as well as action taken with regard to the NSAG can to some degree be conferred to a NSAG and can give a modicum of legitimacy to a NSAG with regard to a particular cause or a particular community, which is mostly only tolerated by state actors with regard to cease-fire agreements or peace treaties. Such a move would signal the inability to exercise effective control over state territory and, thus, the admission of a credible challenge to government authority. Moreover, interaction between a state actor and a NSAG operative on its territory could imply that there is a basis for the grievance the NSAG articulates. A direct consequence of such a perception could be a form of legitimisation of a NSAG or, from an outside view, the reward of "terrorist" activities. In this context, the recent "war on terror" has made engaging NSAG even more difficult as violence, which is inherent in most NSAG's mode of operations, de-legitimises efforts to engage with that group, especially when mass violence is used against society. Moreover, the war against Al Qaeda has provided significant political "cover" for many state actors to further de-legitimise NSAG operating in their territories. Concurrently, it has also been feared by state actors that interaction between states and NSAG can be used by NSAG to further illegitimate political objectives, as defined by state actors.

Despite potential and common spillover effects of NSAG activities, in the past, human rights abuses for example were mostly seen as a domestic challenge. Accordingly, international humanitarian law (IHL) is mostly aimed at state actors: International humanitarian law and human rights standards offer only limited mechanisms to push NSAG to comply, whereas a collection of legal mechanisms has been developed to supply state actors with a comprehensive framework, guiding their adherence to IHL. Additionally, human rights law is *de jure* only applicable to state entities and it is only state entities that can accede to international treaties or participate in their constitution.<sup>6</sup> The dichotomy can be seen prominently in the cases of anti-personnel landmines and child soldiers, where in almost all cases NSAG are subject, yet, not contributors to international conventions.<sup>7</sup> In turn, the relevant mechanism for states to

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6 „The fact that only states can formally sign and ratify human rights treaties has not stopped many actors in the field from using provisions in those treaties as a basis for discussion with armed groups.” in International Council on Human Rights Policy, *Ends and Means*, p. 63.

7 With regard to landmines Art. 16(2) of the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction ("the Ottawa Convention") states that the Convention "shall be open for accession by *any State* which has not signed the Convention" (emphasis added). Although the incorporation of Protocol II in 1996 constituted that the Ottawa Convention applies in internal as well as in international armed conflict, it remains only state actors that can be party to the Convention. Similarly, the 1989 Convention on the Rights of the Child states in Art. 77(2) that "*States Par-*



implement certain provisions against specific violations by entities or individuals on its territory, however, is restricted to a criminalisation of respective violations.<sup>8</sup> This, however, has demonstrated to be ineffective as NSAG are particularly favouring clandestine or guerrilla tactics so as to counter state power. Thus, in case the state concerned is not able to prevent or punish violations it is necessary to be able to hold NSAG themselves liable of such violations. Therefore, common Art. 3 of the four Geneva Conventions, the second Additional Protocol relating to the Protection of Victims of Non-International Armed Conflicts, and more recently Art. 8(2) of the Statute of the International Criminal Court (ICC) explicitly apply to NSAG in the context of non-international armed conflicts.<sup>9</sup> But at the same time, even the Statute offers very few provisions for engaging NSAG, imposing obligations only on states.<sup>10</sup>

More than customary political and diplomatic conventions it is more often than not political interest that directly influences attempts of engaging NSAG. In October 1998, the Canadian government initiated a discussion paper calling for a global Convention Against the International Transfer of Military Small Arms and Light Weapons to Non-State Actors. Although various state actors as well as non-governmental organisations for the reason of inflicting the inherent right to self-defence for people fighting repressive regimes rejected the proposal; one of the strongest oppositions came from the US. The US argued that US policy required the possibility of transferring arms to non-state actors as an instrument of foreign affairs.<sup>11</sup> Concurrently, the US *Iraq Liberation Act of 1998* provided for the transfer of weapons to opposi-

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*ties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities*” (emphasis added).

- 8 An example of the scope of potential measures is demonstrated by Art. 9 of the Ottawa Convention, which states that “[e]ach State Party shall take all appropriate legal, administrative and other measures, including the imposition of penal sanctions, to prevent and suppress any activity prohibited to a State Party under this convention undertaken by persons or on territory under its jurisdiction or control”.
- 9 Common Art. 3 of the four Geneva Conventions of 12 August 1949 states: “In the case of armed conflict *not of an international character* occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions: [...]”. The Rome Statute of the International Criminal Court of 17 July 1998 states in Art. 8(2) section c: “In the case of an armed conflict *not of an international character*, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, [...]” (emphasis added).
- 10 Claudia Bruderlein, *The role of non-state actors in building human security: the case of armed groups in intra-state wars*, Centre for Humanitarian Dialogue, Geneva, 2000, p. 7. This being said it is important to note that the law is in a state of flux. A full analysis would require reference to numerous treaties as well as customary law, authoritative and judicial pronouncements on the applicability of different rules and much more, which exceeds the scope and purpose of this paper. Striking, however, is the existence of a precedent with regard to so-called national liberation movements: The *Palestine Liberation Organisation* (PLO), the *South-West Africa People's Organisation* (SWAPO), and the *African National Congress* (ANC) were all granted observer status at the UN. Furthermore, Additional Protocol I to the Geneva Conventions included provisions to which these parties could assent.
- 11 As cited in David Capie, *op. Cit.*, p. 10.

tion groups fighting the regime of Saddam Hussein.<sup>12</sup> Further examples include alleged Guinean support to *Liberians United for Reconciliation and Democracy* (LURD), reported Ivorian support to the *Movement for Democracy in Liberia* (MODEL), and apparent Liberian support to the *Rassemblement des Forces Démocratiques de Guinée* (RFDG) as well as the *Mouvement pour la Justice et la Paix* (MJP) and the *Mouvement Populaire Ivoirien du Grand Ouest* (MPIGO) in Côte d'Ivoire. These examples show that even after the end of the Cold War it is still foreign policy practice to covertly or openly supply specific non-state actors with arms in order to advance own political or economic ambitions, a clandestine strategy that is specifically denied to NSAG and feared by state actors.

In addition, many have argued that the major difficulty for state actors in engaging NSAG is the fact that after the end of the Cold War, when NSAG sometimes had a “state address” through external sponsoring, it has become increasingly difficult to track down a reliable contact for dealings with NSAG that do not have an open state sponsor. Concurrently, as NSAG often do not possess formal organisation or control over the individual cadres, neither the NSAG leadership nor any other group or institution is likely to be very informed about the activities of their agents, which decimates the number of reliable contacts. Additionally, the international community cannot expect the cadres of NSAG to invariably follow the leadership’s commands. However, once a contact has been identified through intelligence resources, access to this contact has been alleviated through the increased use of technology. NSAG often utilise websites and email as well as cell or sat phones for their own purposes.<sup>13</sup> Although NSAG are also cautious with regards to advanced technology due to its susceptibility to tracking, this provides a means of communication nevertheless.

As a result, although NGOs like *Conciliation Resources* further research on state involvement with NSAG considerably by launching research projects on engaging NSAG within or short of a peace process, it remains NGO initiatives that complement discrepancies in the international setting, and utilise the channels that exist for engaging NSAG.<sup>14</sup> This will be demonstrated in the following section, when elaborating on NGO approaches to engaging NSAG.

## 2.2 NGO Approaches

The foregoing analysis demonstrated the difficulties for states in engaging NSAG in humanitarian matters. Yet, NSAG remain key actors in humanitarian activities as they often function as a *de facto* government of a certain territory and, thus, have a crucial role in the protection of humanitarian operations, and eventually may become political parties to a peace agree-

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12 *Iraq Liberation Act of 1998*, U.S. Public Law 105-338, H.R.4655. US President Bill Clinton signed the Act into law on 31 October 1998.

13 See for example the *Liberation Tigers of Tamil Eelam* (LTTE), the *United Liberation Front of Assam*, the *Revolutionary People’s Front of Manipur*, *Sendero Luminoso* (“Shining Path”) via the *Committee to Support the Revolution in Peru* and many more.

14 For further information see *Conciliation Resources Website*.

ment. Hence, the need to engage NSAG remains but can, however, not be fully tackled by state actors. Therefore, NGOs become increasingly accepted supplementation instruments and it is hoped that they will be able to fill the gap in the international legal regime.

As one of the main issues of state actors is presented by a perceived conferment of legitimacy through engaging NSAG, lower-key initiatives like those of NGOs bear the capacity of engaging NSAG without being associated international diplomatic or political status. In this way, NGOs also bear the capacity to be more problem-solving and policy-oriented, using a “soft approach” that appeals to a humanitarian perspective in issues like child soldiers or anti-personnel mines (APMs). Concurrently, it is methods of informal and unofficial diplomacy (also called Track Two diplomacy) that are often adopted by NGOs engaging NSAG. This approach eases the pressure on the groups involved by addressing humanitarian issues with NSAG, but being independent from the state-centred international political sphere. Benefiting from this independence, many NGOs committed themselves to engaging NSAG to respect and to adhere to humanitarian norms, utilising an innovative mechanism for NSAG to express adherence to international norms. By addressing the impossibility of NSAG to participate in the drafting of international treaties or to legally assent to international treaties, the NGO *Geneva Call* has provided a legal document (the “Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action”) that allows NSAG to express adherence to international norms through their signature, in this case the 1997 Ottawa Convention. In the scope of this deed, signatories declare that they will not purchase, stock-pile or use APMs. Geneva Call, in turn, pledged to provide support for the implementation of NSAG’s commitments and to monitor progress, while the Government of the Republic and Canton of Geneva serves as the guardian of the deeds.<sup>15</sup> Geneva Call has, thus, not only made progress with regard to the banning of APMs but also provided a forum for communication between NSAG and humanitarian initiatives and filled a gap in the international legal regime by proposing answers to the questions of what type of coordinating mechanism might work and where it should be located.

At the same time, while monitoring, public education, networking and capacity building is proceeding, NGOs have found it difficult to convince NSAG to demobilise child soldiers given the limited range of pressure points available to the international community.<sup>16</sup> A UN treaty banning child soldiers entered into force in February 2002 but the *Coalition to Stop the Use of Child Soldiers* warned of the danger of excluding armed groups from this process.<sup>17</sup>

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15 Although the deed can be seen as a trilateral agreement or memorandum of understanding, the mechanisms presented in the deed regarding adherence, assistance, accountability, and participation is more than a sum of its parts and may be considered *sui generis* (a class in itself).

16 David Capie, *op. Cit.*, p. 9.

17 The treaty is known as the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. It establishes that no one under 18 shall be compulsorily drafted into military service and also requires that governments raise the minimum age for voluntary enlistment in military institutions to 16. The treaty entered into force on 12 February 2002.

The Coalition is calling for the establishment of a process that would enable non-state actors to commit themselves to the Optional Protocol and open themselves to ongoing, independent monitoring and accountability. In absence of this possibility various NSAG have, nevertheless, pledged to commit to abstain from the use of child soldiers. So, for example, the Colombian government and the *Fuerzas Armadas Revolucionarias de Colombia* (FARC) agreed in June 1999 not to use child soldiers any longer; the *Sudan People's Liberation Army* (SPLA) pledged to demobilise children under the age of 18 in October 2000 and also signed the Maputo Declaration on the Rights of the Child, and armed groups of the Shan ethnic minority on the Thai-Burma border pledged to stop the recruitment of children under 18.

The following section will extend an analysis of state and non-state approaches and, thus, directly demonstrate the different policies utilised by the different actors. The first part will focus on state-centred and UN approaches to engaging NSAG, while the second part will centre on regional approaches on the example of the EU, and finally the third part will complete the analysis with NGO approaches on the instance of Geneva Call and the Coalition to Stop the Use of Child Soldiers as examples for different departure points with regard to engaging NSAG.

### 3 Policy Analysis

This section of the paper will elaborate on the different approaches of engaging NSAG with regard to specific state or non-state actors. For the purpose of a general comparison between the different actors the examples of child soldiers and anti-personnel landmine policies will be utilised.

#### 3.1 The UN

In times when strategies of NSAG are often of terrorist nature and, thus, aimed in particular at deliberately murdering as many civilians as possible in order to gain as much national as well as international attention as possible, it is not surprising that armed, insurrectionary violence in general loses legitimacy.<sup>18</sup> Indeed, civilians have become an estimated 75 percent of all casualties of conflict. Concurrently, it is the nature of the UN system that no matter on which grounds fighting is taking place, “the targeting of innocent civilians is illegal, as well as morally unacceptable.”<sup>19</sup> Moreover, the UN Secretary-General has, in turn, called on member states to thoroughly enforce international law and “deal firmly” with NSAG and other non-

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18 Notably, certain forms of insurrectionary violence are regulated by the Preamble of the Universal Declaration of Human Rights, which expresses that “whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.” This suggests that where human rights are not protected by the rule of law, people may be compelled to rebel against tyranny.

19 “Secretary-General, addressing Assembly on Terrorism, calls for ‘immediate, far-reaching changes’ in UN response to terror”, *UN Press Release*, 2001.

state actors who refuse to adhere to “common principles of human dignity.”<sup>20</sup> This standpoint implies, however, two different features that need to be considered with regard to UN action for engaging NSAG: Firstly, the UN is a system composed of nation-states and, secondly, the UN as an organisation is devoted to the universal applicability of human rights. In terms of engaging NSAG this demands the combination of diplomatic and political demurs with concerns about the protection of civilians in armed conflict.

This is mirrored in UN policy: UN Security Council (UNSC) resolutions are often utilised as a means of building multinational coalitions against forms of violence in general, and as a call on states to take effective counter-action, while the UN itself remains at the centre of these multilateral efforts. Much of its success to date is based on Chapter VII resolutions, utilising the imposition of economic sanctions as the principal tool. So, as a response to ongoing insurrectionary fighting of the *União Nacional para a Independência Total de Angola* (UNITA) against government forces, UNSC resolutions, beginning in September 1993 with resolution 864, called for states and organisations to take action against arms, petroleum and diamond trade with UNITA and put into effect financial and travel restrictions against the rebel group. The sanctions were upheld until December 2002, when after the death of UNITA leader Jonas Savimbi in February 2002 UNITA collapsed as an effective fighting force and entered a cease-fire agreement with the Angolan government. Also, UN resolution 1343, which came into effect in March 2001, condemns Liberia’s support of the *Revolutionary United Front* (RUF) in Sierra Leone and imposes arms and diamonds embargos as well as travel restrictions for senior members of the government in case the Liberian government does not comply. Similarly, in July 2004 an arms embargo was imposed on all non-governmental combatants in Darfur, including the Janjawid militias. Moreover, the UNSC threatened to consider further actions under Article 41, which permits a complete or partial interruption of economic relations, in case the government of Sudan fails to disarm the Janjawid within 30 days.

At the same time, while governments are concerned that engagements might legitimise NSAG (concurrently, sanctions are aimed directly at states rather than respective NSAG), these concerns are balanced against the urgent need for humanitarian action in conflict areas. A loss of territorial control to NSAG does not release a government from their humanitarian responsibility for all civilians within their jurisdiction. In this respect it has become a growing tendency of the UNSC to address *all* parties to armed conflict: While the 1998 resolution 1209 stressed the importance of all Member States in restricting arms transfers, the 1999 resolution 1261 on the Children and Armed Conflict called upon all parties to ensure the protection, welfare and rights of children. Moreover, the UN Secretary-General’s 2002 Report to the UNSC on the protection of civilians in armed conflict explicitly called “all parties, including non-State actors” to protect refugees, internally displaced persons and other civilians from combat operations.<sup>21</sup> Furthermore, the Secretary-General in his 2001 Report to the UNSC on the pro-

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20 Ibid.

21 *Report of the Secretary-General to the Security Council on the protection of civilians in armed conflict*, 2002, p. 7.

tection of civilians in armed conflict has requested the Inter-Agency Standing Committee (IASC) to organise a working group for the development of a manual of best practices for engagement with NSAG, which has been launched by the Policy Development and Studies Branch (PDSB), though no results have been published yet.<sup>22</sup> Besides an analysis of specific NSAG demands and constraints, the manual is to give guidance on how to promote a better understanding of the principles and operational requirements of humanitarian activities in conflict situations. This demonstrates a certain dichotomy within the UN with regard to engaging NSAG, accounting for state-based interests and concerns as well as for the exigency to engage NSAG in order to improve humanitarian operations.

Although the increasing acknowledgement of the importance of NSAG to humanitarian affairs and successful operations is visible in official documents' rhetoric, action taken in this regard remains meagre. It appears that decision-makers within the UN remain uncertain as to diplomatic and political implications when engaging NSAG. Counteractively, the UN has emphasised that aid agencies reaffirm the fundamental principles of international humanitarian and human rights law (IHL) in their codes of conduct and in any agreements they conclude with NSAG on the ground. Additionally, efforts to disseminate information on international humanitarian and human rights law to NSAG and initiatives to enhance their practical understanding of the implications of human rights law are specifically embraced by the UN in general.<sup>23</sup> Thus, while recognising own shortcomings in the adaptation to new actors, the UN emphasises the need and support for other non-state actors (NSA) to close this gap.

### 3.2 Regional Approaches: The EU

Efforts for engaging non-state armed groups have been more successful on the regional level, and on the EU level especially, than on the UN level. The attitude taken by EU member states and their governments towards NSAG can be seen to be much more open in comparison to the UN's, while the risk of acknowledgement and legitimisation of NSAG is accounted for nonetheless. Accordingly, in December 1998 the European Council adopted a Joint Action on the basis of the European Union's commitment to combating the destabilising accumulation and spread of Small Arms and Light Weapons (SALW), recorded in Art. J.3 of the Treaty on European Union. While not directly naming NSAG at this point, Art. 3b of the Joint Action expresses that the sale of military-style small arms to sub-state or non-state groups is not permitted. Furthermore, in the same article, EU member states renounce this form of military

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22 *Report of the Secretary-General to the Security Council on the protection of civilians in armed conflict*, 2001, p. 16; results regarding the manual of best practices for engagement with NSAG will be available at the end of 2004. The UN Secretary-General has up until now issued three reports on the protection of civilians, the first report being issued in September 1999. However, this first report merely noted that "non-state actors, including irregular forces and privately financed militias" represented important perpetrators with regard to "civilian casualties and the destruction of civilian infrastructure." see *Report of the Secretary-General to the Security Council on the protection of civilians in armed conflict*, 1999.

23 *Report of the Secretary-General to the Security Council*, 2001, p. 16.

assistance as an instrument in their foreign and security policy.<sup>24</sup> However, while the 1998 Joint Action only refers to weapons “specially designed for military use” and, thus, is not covering pistols, revolvers, shotguns and many rifles, which are frequently used in civil conflicts, the Joint Action’s small arms definition was modified in July 2002 to include ammunition so as to broaden it to a useful extent.<sup>25</sup> Moreover, the European Parliament (EP) issued a resolution on measures to promote a commitment by non-state actors to a total ban on anti-personnel landmines in September 2001, which expresses in Art. F that in order to achieve a universal ban on landmines, NSAG would have to be involved in the process and therefore naming NSAG explicitly.<sup>26</sup> Furthermore, the 2001 EP resolution states in its Art. G that although NSAG are addressed specifically, “this does not imply support for, or recognition of the legitimacy of, non-State actors or their activities”. Thus, opposed to UN resolutions, the EU has found a possibility to address NSAG directly but also accounting for concerns about perceived international legitimacy of NSAG commonly harboured by state actors. Also, as measures for engaging NSAG, the 2001 resolution in Art. H not only calls for state actors to put pressure on NSAG that remain openly reluctant to adhere to a ban of anti-personnel landmines but it also calls for the elimination of the use, production, stockpiling and transfer of APMs by NSAG. Furthermore, it calls on the Managua and Ottawa Conferences to give closer attention to and support efforts to obtain strong commitments from NSAG, and therefore calls for an international and general engagement with NSAG with regard to pressing humanitarian issues.<sup>27</sup>

Accordingly, EU action with regard to engaging NSAG in a landmine ban splits into two initiatives: The first initiative is the promotion of existing channels, which in the case of a landmines ban, are represented by the Managua and Ottawa Conferences. To make matters even clearer, the EP in a resolution on the harmful effects of unexploded ordnance (landmines and cluster submunitions) and depleted uranium ammunition, adopted in February 2003, in Art.

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24 “A commitment by exporting countries to supply small arms only to governments (either directly or through duly licensed entities authorised to procure weapons on their behalf) in accordance with appropriate international and regional restrictive arms export criteria, as provided in particular in the EU code of conduct, including officially authorised end-use certificates or, when appropriate, other relevant information on end-use;” *Joint Action of 17 December 1998*. A Joint Action is legally binding on the member states, though it is implemented through national laws and procedures.

25 See Annex to the Joint Action.

26 “Whereas the international community has a moral duty to seek commitments from all the parties involved in such conflicts, *States and non-State actors*, to ban the use of anti-personnel landmines, in order to achieve a truly universal ban on these inhumane weapons,” (emphasis added). *European Parliament resolution on measures to promote a commitment by non-State actors to a total ban on anti-personnel landmines*, 2001.

27 While the Ottawa Convention serves as the centrepiece of the landmines ban, the Managua Declaration of December 2001 presents a reaffirmation of the states party to the Ottawa Convention of their “unwavering commitment both to the total eradication of anti-personnel mines and to addressing the insidious and inhumane effects of these weapons” (Art. 1). The Declaration also reaffirms the four-year maximum time period for the destruction of stockpiled anti-personnel mines as well as the ten-year maximum time period “after the entry into force of the Convention, [in which] each State party undertakes to destroy or ensure the destruction of all anti-personnel mines in mined areas under its jurisdiction or control.” (Art. 9).

N.10 calls on the States Parties to the Ottawa Treaty to address the issue of the use, production, stockpiling and transfer of anti-personnel landmines by NSAG at their following meeting in Bangkok. Thus, reviewing the Ottawa Treaty, the European Parliament adopted a resolution in April 2004, which in Art. K further recognises that armed non-state actors should show their respect for humanitarian norms and, additionally, lists concrete steps for NSAG to achieve this (“stopping the use and production of and trade in anti-personnel landmines; signing the Geneva Call Deed of Commitment; making public declarations; and facilitating demining, mine risk education, victim assistance and humanitarian mine action in areas under their control”).<sup>28</sup> Furthermore, in Art. K.10 the 2004 resolution calls on the Nairobi Review Conference of the Ottawa Convention to make a strong commitment on all NSAG to sign Geneva Call’s Deed of Commitment. By referring to Geneva Call’s efforts within the realm of the EU but also in the international realm as such, the EU has opened channels, which bear the capacity to make communication between state actors and NSAG less of a diplomatic taboo. Nevertheless, while this initiative rests on the commitment of NSAG, this only represents one arena where the EU is active.

The other initiative pursued by the EU with the aim of engaging NSAG is represented by the 2397<sup>th</sup> Council meeting among other, which proposed to hold a meeting in Brussels (which eventually took place on 17 January 2002) with the unarmed political opposition and representatives of civil society in the Democratic Republic of Congo (DRC) in order to support the rapprochement between the conflict parties in that country.<sup>29</sup> A result of this meeting was the signing of a 14-page document aiming at paving the way towards the inter-Congolese dialogue. Additionally, the European Troika (representatives of the previous, current and successive presidencies) during its visit in Burundi urged the armed rebels in Burundi to suspend hostilities forthwith, negotiate a cease-fire and take their place at the negotiating table. Thus, as was demonstrated, the EU and its member states appear to have acknowledged the importance of engaging NSAG in humanitarian issues to such an extent so as to explicitly address the issue in resolutions and point to ways for NSAG, the EU member states, as well as the international sphere as such to work together with regard to humanitarian issues. Additionally, the EU itself presses for interaction between NSAG and state actors for the dispersion of humanitarian norms, as was demonstrated by the cases of the DRC and Burundi. In comparison with reaction by the UN, therefore, action taken by the EU is less concerned with political implications but rather concentrates on addressing the problems at hand. This notion will be taken up in the following chapters, when analysing NGO approaches and ways to combine the different tactics in order to find a strategy for engaging NSAG that accounts for as many concerns as possible.

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28 Review of the Ottawa Treaty on anti-personnel mines, *European Parliament resolution on anti-personnel mines*, 2004.

29 2397<sup>th</sup> Council Meeting, 2001.



**Box: Germany**

Germany, as an example of a country legislating within the European Union, acts in compliance with EU legislation and practices with regard to engaging NSAG. Within the scope of these policies, the German government especially emphasises the combination of the comparative advantages and specific competences that the various actors in the field demonstrate. Thus, Germany's policy with regard to humanitarian action, coordinated by the Federal Ministry for Economic Cooperation and Development (*Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung*, BMZ), aspires to cultivate alliances, which consist of long-term cooperation with national and international partners. An example of such an initiative is the support of Federal Minister Heidemarie Wieczorek-Zeul for the British Transparency of Payments Initiative for the Extractive Industries (EITI), which aims at transparency for international companies with regard to revenues and disbursements, so as to disclose economic interweavement between companies and conflict. The main connections between some companies' disbursements and revenues and the operations of NSAG are to be found with regard to oil, diamonds, exotic woods, and arms.<sup>30</sup> So, despite engaging NSAG through EU channels, Germany as a member state also addresses issues regarding NSAG by complementing EU efforts through national cooperation initiatives.

Source: own conception

### 3.2.1 Non-governmental Organisations

Recent years have seen a considerable growth in the number and influence of NGOs, especially owing to the global reach of the media and the possibilities of information technology. Accordingly, the concern to protect human rights is to a great extent represented by NGOs and their activities with regard to NSAG, and has demonstrated to bear a greater role than only that of a stakeholder. In this respect, Geneva Call has first and foremost demonstrated a working example of how to engage NSAG in humanitarian action. Additionally, NGOs such as the Coalition to Stop the Use of Child Soldiers have provided a different but prominent attempt of engaging NSAG. The following section will analyse methods and mechanisms of NGOs engaging NSAG as a counterpart to the previously discussed UN and EU arenas.

#### *Geneva Call*

NGOs have become a driving force behind greater international cooperation through the active mobilisation of public support for international agreements. More than that, Geneva Call has become an active force for international agreements by engaging NSAG to respect and to adhere to humanitarian norms, starting with the ban on APMs and, thus, representing an alternative or parallel instrument to the 1997 Ottawa Treaty, which does not provide a mechanism for adherence by NSAG at all.<sup>31</sup> Geneva Call provides an innovative mechanism for NSAG,

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30 Heidemarie Wieczorek-Zeul, *Rede anlässlich des Aktuellen Forums zur Sicherheitspolitik für Chefredakteure und Ressortleiter*, 2004.

31 Notably, while the 1997 Ottawa Treaty characterises a humanitarian and disarmament measure, Geneva Call's Deed of Commitment represents both a humanitarian and human rights measure. Additionally, Geneva Call describes its own approach as complementary, inclusive, participative, dialogical, and persuasive regarding NSAG, in contrast to the coercive and repressive approaches of military action and criminal prosecution.

which cannot participate in the drafting treaties due to a lacking recognition and legitimacy in the international sphere and, thus, may not feel bound by their obligations, to express adherence to the norms embodied in the 1997 Ottawa Convention through their signature to the “Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action”.<sup>32</sup> Under the Deed of Commitment, signatories commit themselves to a total prohibition on the use, production, acquisition, transfer and stockpiling of APMs and other victim-activated explosive devices, under any circumstances. Furthermore, the deed demands the undertaking, cooperation, facilitation, or other programmes to destroy stockpiles, clear mines, provide assistance to victims and promote awareness. Signatories to the deed agree to cooperate in the monitoring and verification of their commitments by Geneva Call and to issue the necessary orders to commanders and the rank and file for the implementation and enforcement of their commitments. Finally, the Deed of Commitment treats the signatories’ commitment as one step or part of a broader commitment in principle to the ideal of humanitarian norms.<sup>33</sup> Hence, Geneva Call not only offers a platform for NSAG to sign an internationally binding document but also aims at providing support for the implementation of the commitments made by NSAG as well as monitoring their progress. One part of these efforts is represented by measures such as constituency building, research and public advocacy. The ultimate indicator of progress, however, is not the number of deeds signed but an effective ban and the practice of humanitarian mine action. Thus, Geneva Call “pledges to promote the implementation of mine action programmes in mine-affected areas under NSA control, to assist signatory groups fulfil their obligations under the Deed of Commitment and to monitor compliance.”<sup>34</sup> Under these factors, various NSAG in countries like Burundi, Somalia, Sudan, Burma/Myanmar, North East India, the Philippines, and Iraqi Kurdistan signed the deed.<sup>35</sup> So, for instance, on 5 December 2003, Geneva Call announced an agreement by *Burmese Arakan Rohingya National Organization* (ARNO) and the *National United Party of Arakan* (NUPA) to ban all use of antipersonnel mines and victim activated explosive devices. Both groups previously signed the Deed of Commitment.

Without the restrictions regarding an engaging of NSAG perceived by state actors, NGOs are able to gain freer access to NSAG. Accordingly, the four-fold mechanism embedded in the Deed of Commitment accounts for adherence (to humanitarian norms), assistance (for compliance), accountability (for non-compliance), and participation (in norm-building) as much as

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32 “Given the consensual nature of international law, non-state entities can only be bound by the law if they have participated in the making of it and consent to be bound by it.” Timothy McCormack, “From Solferino to Sarajevo: A Continuing Role for International Humanitarian Law?”, *Melbourne University Law Review*, 1997, p. 640-1.

33 Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action.

34 Geneva Call Website.

35 For case-related additional and more detailed information please see Geneva Call’s press releases.

for a basis for future commitments.<sup>36</sup> Regarding practical implementation, measures include implementing guidelines, written orders, info dissemination, military doctrine change, military manuals, military training, mine ban education and disciplinary sanctions, so as to also inform and educate the individual cadres of one NSAG. Furthermore, mine action takes the various forms of stockpile destruction, mine clearance, victim assistance and mine awareness and risk education. The Deed of Commitment then becomes a mechanism for facilitating access to technical support and expert resources such as from independent international and national organisations. As an accountability mechanism the deed features compliance reports (submitting a reporting format designed by Geneva Call), independent monitoring (in existing networks already monitoring IHL on a long-term basis), as well as field verification (field missions of Geneva Call to visit and inspect actual sites as well as to evaluate the progress of implementation). Additionally, the Deed of Commitment provides a paragraph on the non-affectedness of legal status of NSAG as well as a sanction mechanism in the case of non-compliance to the deed.<sup>37</sup>

Thus, the innovation the Deed of Commitment represents, in contrast to treaties like the 1997 Ottawa Treaty, can be shown on the effect- or impact-oriented definition of anti-personnel mines (APM) strategies, including the feature of no possible exceptions to the commitment, as well as various mechanisms for accountability in the deed. Additionally, higher standards are demonstrated by allowing and cooperating in monitoring and verification (compared to no such provision in the 1997 Ottawa Treaty) as well as the publicity and promotion clauses in the deed. Thus, by engaging NSAG fully in the efforts for a universal ban of APMs, Geneva Call manages the coordination of the endeavour from all sides in order to ban landmines and end the suffering they produce.

### *Other NGO Approaches*

Geneva Call's initiative to legally bind NSAG to adherence to humanitarian norms by enabling international deeds remains the first and only of its kind. However, strong campaigning on humanitarian issues by NGOs, including the Coalition to Stop the Use of Child Soldiers (CSC), has led to new international legal standards, national reforms, and action by the UNSC. Thus, the CSC has played an instrumental role in the negotiation, adoption and entry

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36 Paragraph 5 of Geneva Call's Deed of Commitment reads "to treat this commitment as one step or part of a broader commitment in principle to the ideal of humanitarian norms, particularly of international humanitarian law and human rights, and to contribute to their respect in field practice as well as to the further development of humanitarian norms for armed conflicts."

37 Paragraph 6 on legal status of NSAG refers to Art. 3 of the 1949 Geneva Convention, which states that "the application of the preceding provisions shall not affect the legal status of the Parties to the conflict." Paragraph 7 of the deed concerning sanctions in case of non-compliance reads, "We understand that Geneva Call may publicize our compliance or non-compliance with this Deed of Commitment." For a much more detailed appraisal of Geneva Call's Deed of Commitment please see Soliman M. Santos, Jr., "A Critical Reflection on the Geneva Call Instrument and Approach in engaging Armed Groups on Humanitarian Norms: A Southern Perspective", *Curbing Human Rights Violations by Non-State Armed Groups Conference*, 2003.

into force of international legal instruments prohibiting child soldiering, including the Optional Protocol to the Convention on the Rights of the Child. Additionally, CSC has promoted active engagement between international actors, such as the UNSC, the Human Security Network, and the Committee on the Rights of the Child. Furthermore, CSC has compiled the first Child Soldiers Global Report, as well as other research reports and briefings, detailing military recruitment laws, practice and the use of child soldiers in conflict by both governments and NSAG, which is supported by the publication of geographic and thematic research on child soldiering. At the same time, CSC has employed more direct measures in order to tackle the issue of child soldiers, such as family tracing and providing children with educational and vocational opportunities.

Concurrently, heightened attention to the issue of child soldiers has prompted a growing number of armed groups to make public commitments to end their use of children as soldiers. Among these are RCD-Goma in the DRC, the FARC in Colombia, the *Liberation Tigers of Tamil Eelam* (LTTE) in Sri Lanka, LURD in Liberia, the SPLA in Sudan, and several ethnic armed opposition groups in Burma. In some cases, such commitments have led to actual demobilisations of child soldiers, but more commonly, the groups concerned continue to recruit and use children. Nevertheless, following a massive recruitment drive by the RCD-Goma in 2000, *Save the Children* UK sought the agreement of RCD-Goma commanders to attend a series of workshops on international provisions related to child soldiers, as well as the demobilisation and rehabilitation programs organised by Save the Children, which by 2001 prompted a noticeable increase in the number of child soldiers demobilised. Unfortunately, thousands of additional child soldiers also remain in RCD-Goma's ranks.<sup>38</sup> The fundamental problem in securing compliance with legally non-binding pledges is that armed groups perceive a public relations benefit from making public commitments not to recruit child soldiers, but this benefit does not outweigh the military advantage child soldiers provide. Also, even if a political will exists, NSAG often lack resources to actually demobilise children from their ranks. Gaining further possibility to utilise international resources through contact and dialogue, which NGOs like CSC and Save the Children aim to provide, and combining advocacy, shaming and accountability measures with practical assistance similar to the measures introduced by Geneva Call through their Deed of Commitment, pressure on NSAG to demobilise child soldiers will increase.

#### 4 Implications

As was demonstrated in the previous analysis different actors employ different approaches regarding an engagement of NSAG. The different approaches mainly stem from the different environments or settings, in which the different actors operate. So, it is not surprising that the UN displays larger difficulties in engaging NSAG directly compared to NGOs. The UN, as a

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38 Jo Becker, "Child Soldiers and Armed Groups", *Curbing Human Rights Violations by Non-State Armed Groups Conference*, 2003, p. 3.

union of nation-states, operates within a state-centric and state-based system. Therefore, interaction with non-state actors remains complicated. Strategies with regard to NSAG concentrate not only on humanitarian action but rather must account for the complete political crisis situation. In this respect, it remains essential to UN member states to re-establish or stabilise state sovereignty. The aim here is to consolidate a peaceful environment within the boundaries of the state. In order to do so, the UN often employs Chapter VII resolutions to impose sanctions on the state based on the principle that the state is the sole legitimate monopoly of power. Therefore, state authority bears higher priority than that of NSAG. Despite these restrictions, which are imposed on the UN per definition, the UN aims to tackle the issue of NSAG within this international setting. By addressing all parties to the conflict, the UN is moving away from its state-centric foundation to involve all actors in a certain conflict situation, which enables a more effective utilisation of humanitarian action.

Similarly, the EU has visibly moved beyond its state-centric basis. In contrast to the UN system, EU member states transfer more authority to supra-national organs and, thus, it becomes simpler for these organs to adapt to new situations or, as in this case, actors. Having dealt with NSAG in Europe before, engaging NSAG has become less of a diplomatic taboo, while simultaneously the state remains highest priority within the system.<sup>39</sup> Additionally, as the EU has fewer member states compared to the UN, reaction time with regard to decision-making processes as well as adaptation to new features is lesser. However, although the approach taken by the EU is more open to engaging NSAG, the process of actually involving NSAG in humanitarian action or international agreements is in as much only just commencing as UN efforts to engaging NSAG.

NGOs, however, benefit from almost complete legal freedom when engaging NSAG. This freedom naturally applies only for legal activities with regard to IHL and IHRL, as well as national legislation within the hosting country.<sup>40</sup> However, national legislation can differ from country to country, implying potential restrictions for international NGO activities engaging NSAG dependent on the respective national legislation. Nevertheless, NGOs are as such able to engage NSAG directly in humanitarian action, which becomes necessary in order to protect personnel and material in territories where NSAG present the *de facto* government. These efforts can only be constrained by the acting organisation itself, which is often done owing to moral perceptions concerning a conflict situation and its parties. Nevertheless, as NGOs are not bound by international law to refrain from contact to NSAG *per se*, it is possible for them to initiate programs for the reintegration of former child soldiers, the banning of APMs with the support of NSAG, and the like. Secondly, Geneva Call has developed an in-

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39 Europe has had its own experience with NSAG, such as most prominently the *Irish Republican Army* (IRA) in Northern Ireland and Great Britain, the *Rote Armee Fraktion* (RAF) in Germany, and the *Euskadi Ta Askatasuna* (ETA) in Spain and France.

40 Notably, there is, however, no coherent set of rules throughout the UN system governing their status and rights of participation. The principal UN organs have all evolved their own arrangements for NGO participation.

novative option enabling NSAG to enter the international sphere legally by signing an international agreement, the Deed of Commitment, creating a possibility for NSAG to adhere to the 1997 Ottawa Convention. This approach is hardly restricted by diplomatic conventions, although accounting for them, but rather utilises its assets in order to concentrate on problem-oriented practices.

Similarly, the instruments the investigated actors have at their disposal for engaging NSAG are diverse, contingent to the legal and political environment in which they are located. Thus, the UN member states are bound by the provisions of IHL and IHRL, which are among other set down in the UN Charter, as well as in the Geneva Conventions and their Additional Protocols, and recently the Rome Statute of the International Criminal Court. With regard to specific issues like child soldiers and landmines, UN member states have set up additional resolutions and conventions in order to be able to deal with them in a more detailed fashion, such as the Managua and Ottawa Declarations concerning a ban of APMs. Outside these provisions, the UN Office for the Coordination of Humanitarian Affairs (OCHA) regulates all humanitarian action within the UN and is bound by the provisions mentioned above. Similarly, the EU member-states have to abide to IHL and IHRL as members to the respective treaties. Within the EU specifically, provisions are set down primarily by the Treaty on European Union, European Parliament resolutions, as well as the European Court of Human Rights and the European Social Charter of the Council of Europe. The Humanitarian Aid Office (ECHO) coordinates all humanitarian action within the EU. Additionally, EU and UN have developed a partnership for humanitarian assistance (EU@UN).

Despite apparent short-comings concerning reaction time of large political unions such as UN and EU, it remains only state actors that bear the capacity to deal with issues that are of diplomatic or political nature, such as legitimacy and recognition of actors. Although these issues arguably represent a topic that can only be secondary with regard to urgent humanitarian action within conflict situations, it remains an issue that needs to be addressed nevertheless. Additionally, it is only state actors that can draw treaties with NSAG and define a lasting relationship with non-state actors in the international sphere through cease-fire agreements and peace treaties. Finally, if need be, only state actors bear the material capacity to take up arms and fight against NSAG in the name of the protection of civilians in armed conflict. Thus, put differently, pragmatists would argue that state actors are left with no choice in the issue, as the risks of legitimisation of NSAG are offset by the benefits of engagement. Benefits of engaging NSAG could be the opening of negotiation channels, which could lead to a reduction of violence in conflict, as well as the possibility of NSAG accepting international norms through the perception of being taken seriously.

However, the foregoing analysis has demonstrated that the law enforcement mechanism that state actors employ by criminalising NSAG action should not be the only appropriate one for fashioning government responses to NSAG. The UN Secretary-General has referred to this problem in his 2002 report to the UNSC on the protection of civilians in armed conflict, where he criticises the unwillingness of states “to engage non-State actors in dialogue, either on the peace process or on their obligations to civilian populations under the Geneva Conven-

tions”.<sup>41</sup> Rather, state actors should employ multilateral law enforcement mechanisms, like intelligence sharing, police cooperation, and joint action against sources of funding, to ease tension between the IHL framework, premised on the moral equivalence of the combatant, and the criminal law framework, reflective of claims to unambiguous moral supremacy.<sup>42</sup> Instead, the need for identification and better implementation of the already existing normative framework should be satisfied, rather than the need for further codification. In this endeavour, supporting state actor as well as NGO practice is crucial and could lead to the adoption of a “soft law” document, incorporating the already existing norms, which could be utilised as a frame of reference for engagement initiatives with NSAG. The advantages of such an approach would be the re-confirmation of the validity of the relevant legal framework as well as the introduction of a flexible non-legally binding instrument, which will facilitate the identification of appropriate “entry points” for dialogue with NSAG and provide adaptability in a variety of situational contexts.

Realising such cooperation between NGOs and state actors would represent a means of utilising the advantages of both actors. NGOs as opposed to state actors bear a higher capacity to initiate unofficial negotiations with NSAG, which can also be utilised in order to address humanitarian issues. Additionally, Geneva Call’s mechanism can legally bind NSAG, as discussed in detail already. Both these measures demonstrate higher successes in reaching any sort of agreement with NSAG because unofficial environments bear the advantage of putting less pressure on the parties involved than official negotiations. Unofficial meetings between international representatives of civil society and NGOs can serve as an exchange of opinions and a way of finding constructive solutions to problems at hand without being accompanied by diplomatic side-effects like legitimacy or recognition of certain actors, which would be unavoidable during official negotiations. This represents the distinct advantage NGOs have when engaging NSAG, and preparatory work done by NGOs in this respect often serves as a foundation for later official negotiations. Furthermore, with Geneva Call’s mechanism NSAG can be incorporated into the international legal sphere, which has remained a feature that could not be achieved by state actors.

Put into different terms, NGOs bear the capacity to facilitate between state actors and NSAG and act to a certain extent as Track Two mediators with regard to humanitarian matters. Track Two here refers to an unofficial and informal interaction between members of opposing groups with the aim of developing strategies in order to organise human and material re-

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41 *Report of the Secretary-General to the Security Council*, 2002, p. 6.

42 Combatant status is defined as provided in the Third 1949 Geneva Convention in Art. 4(A2): “Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions: (a) that of being commanded by a person responsible for his subordinates; (b) that of having a fixed distinctive sign recognizable at a distance; (c) that of carrying arms openly; (d) that of conducting their operations in accordance with the laws and customs of war.”

sources, which can assist in the delivery of humanitarian aid.<sup>43</sup> By stimulating interaction with NSAG away from the issues of “high politics” and by utilising NGOs’ position of flexibility with regard to engaging NSAG, NGOs can facilitate the idea that interaction with NSAG is less of a diplomatic taboo. This can imply repercussions for the perceptions of both sides, state actors as well as NSAG. If interaction with NSAG becomes less extraordinary and more “normal routine”, the stakes that formal interactions bear, such as recognition or legitimacy, decrease, making interaction between state actors and NSAG less status-enhancing. Thus, informal relations with NSAG not only present the opportunity to tackle humanitarian issues on all levels involved, namely programmes dealing with consequences as well as prevention programmes, but also present the prospect of institutionalising contact with NSAG to a certain extent. If this contact consolidates, more issues concerning necessary humanitarian action can be approached and successfully tackled, and in a later process, issues other than that of humanitarian concern can be approached. By doing so, it should be possible to find ways to encourage NSAG to make declarations committing themselves to IHL and IHRL principles. In this way, NGOs can serve as an outrider for official contact, which remains so difficult a matter for state actors at the moment. Concurrently, the UN Secretary-General’s 2001 Report to the UNSC explains that “[i]n many conflicts non-governmental organisations are among the first to bear witness to violations of international humanitarian and human rights law, to conduct rigorous assessments of the humanitarian situation on the ground, and to solicit a coherent international response. [...] Finally, non-governmental organisations play an important and active role in negotiating humanitarian corridors and access to distressed populations, and in some cases, in bringing warring parties to the negotiation table.”<sup>44</sup>

This suggestion is not to imply that NGOs can or should be responsible for official Track Two pre-negotiations with regard to matters like recognition and legitimacy but, nevertheless, progress made by NGOs in engaging NSAG might be useful to facilitate progress on the state level and states’ concerns about engaging NSAG. Additionally, increased communication with NSAG can mean increased information sharing and understanding of problems on both sides, which in turn might increase a vested interest in arrangements on both sides. Building on these possible developments, a way could be developed to allow “soft representation” for NSAG in one of the UN’s less-threatening areas of concern, such as the UN’s cultural and educational framework (UNESCO). Nevertheless, while NGOs bear the ability of facilitating NSAG compliance with international norms and treaties as well as a certain normalisation of communication between state actors and NSAG, the final step to be made rests in the hands of state actors: In order to find a solution for a conflict between NSAG and the state in which they operate, the cooperation of state actors remains vital so as to create an environment that enables the re-establishment of a functioning state power that can provide political, economic, social, and physical protection for the people that live within its territory.

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43 Derived from a definition set down by Burton and Dukes, in John Burton and Frank Dukes, *Conflict: Practices in Management, Settlement and Resolution*, 1990.

44 *Report of the Secretary-General to the Security Council*, 2001, p. 17.



## 5 Conclusion

This paper demonstrated the difficulties in engaging NSAG with respect to state actors and NGOs as well as the progress that has been made. It showed the different perceptions of state actors and NGOs with regard to the necessity and well as possibilities of engaging NSAG, but also demonstrated the legal background for perceptions that accompany the issue. While state actors are constrained to a state-centric environment, which limits the possibility of engaging NSAG in humanitarian affairs due to political and diplomatic implications such as recognition and legitimacy of such groups, NGOs have demonstrated that contact with NSAG is possible by avoiding such issues and focus solely on humanitarian matters. Especially the approach taken by Geneva Call demonstrates this chance: By allowing NSAG to adhere to international provisions on a landmine ban and providing monitoring mechanisms, the humanitarian issue can be tackled with the support of NSAG. Moreover, steps taken by Geneva Call have included NSAG in international efforts to universally ban landmines, while not affecting their international status. Thus, the gap between the need for humanitarian action and the possibilities within a state-centric system can be reduced by NGO initiatives that engage NSAG and contribute to a future possibility for increased interaction between state actors and NSAG. By even normalising this kind of interaction, humanitarian issues could be addressed in a way that decrease the sufferings of non-combatants in a conflict and convey political or economic agendas with less violence, so as to enable the increased application of problem-solving strategies in international conflict.

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# **Annex**

**European Parliament**  
**Texts Adopted by Parliament**  
**06/09/2001**

**Anti-personnel mines**

B5-0542, 0561, 0568, 0575, 0590 and 0599/2001

**European Parliament resolution on measures to promote a commitment by non-State actors to a total ban on anti-personnel landmines**

**The European Parliament,**

- having regard to its resolutions of 17 December 1992 on the injuries and loss of life caused by mines<sup>(1)</sup>, of 29 June 1995 on landmines and blinding laser weapons<sup>(2)</sup> and on anti-personnel landmines: a murderous impediment to development<sup>(3)</sup>, of 18 December 1997 on the 1997 Convention on the prohibition and destruction of anti-personnel mines<sup>(4)</sup> and of 25 October 2000 on anti-personnel landmines<sup>(5)</sup>,

- having regard to the communication from the Commission to the European Parliament and the Council on action against anti-personnel landmines: reinforcing the contribution of the European Union; and the proposal for a European Parliament and Council Regulation concerning action against anti-personnel landmines (COM(2000) 111),

A. whereas the use of anti-personnel landmines, in addition to resulting in the loss of human life, especially among the civilian population, represents a serious obstacle to the social and economic recovery of affected countries,

B. whereas today the majority of landmines are laid in the context of armed conflict and/or civil war where both State armed forces and non-State armed groups may be involved in the use of landmines,

C. whereas the 1997 Mine Ban Treaty has been ratified by 119 States and signed by 141,

D. whereas 52 States have not yet signed and ratified the Ottawa Convention,

E. having regard to the importance of the Conference of States signatories to the Ottawa Convention to be held from 18 to 22 September 2001 in Managua,

F. whereas the international community has a moral duty to seek commitments from all the parties involved in such conflicts, States and non-State actors, to ban the use of anti-personnel landmines, in order to achieve a truly universal ban on these inhumane weapons,

G. whereas this does not imply support for, or recognition of the legitimacy of, non-State actors or their activities,

H. recognising the efforts made by governments, international institutions and specialist NGOs to encourage non-State actors to ban the use of anti-personnel landmines,



1. Asks the European Union to consider all possible means of putting pressure on those non-State actors openly reluctant to undertake to adhere to a total ban on anti-personnel landmines;
2. Calls for the elimination of the use, production, stockpiling and transfer of anti-personnel landmines by non-State actors;
3. Urges the Council and the Commission to identify the sources of supply of anti-personnel landmines to non-State actors;
4. Calls for increased resources for humanitarian demining and mine awareness and landmine victim rehabilitation and assistance programmes;
5. Welcomes proposals to seek commitments from non-State actors, for example through a Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Landmines and for Cooperation in Mine Action;
6. Calls on the Managua Conference to support the efforts to obtain strong commitments from non-State actors;
7. Calls on the States party to the Ottawa Convention to give closer attention to the problem of anti-personnel mines in relation to non-State actors and to support the efforts made by specialist NGOs and international institutions to commit non-State actors to the mine ban process;
8. Instructs its President to forward this resolution to the Commission, the Council, the governments of the Member States, the Secretary-General of the United Nations, the International Committee of the Red Cross, the Committee for the International Campaign to Ban Landmines, the ACP-EU Joint Parliamentary Assembly, and the governments of the United States of America, the Russian Federation and the People's Republic of China.

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<sup>(1)</sup> OJ C 21, 25.1.1993, p. 161.

<sup>(2)</sup> OJ C 183, 17.7.1995, p. 44.

<sup>(3)</sup> OJ C 183, 17.7.1995, p. 47.

<sup>(4)</sup> OJ C 14, 19.1.1998, p. 201.



## Security Council

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### **Report of the Secretary-General to the Security Council on the protection of civilians in armed conflict**

#### **Introduction**

1. The present report, the third report on the protection of civilians in armed conflict, is submitted in accordance with the request of the President of the Council, contained in his letter dated 21 June 2001 (S/2001/614).

2. The first report, dated 8 September 1999 (S/1999/957), presented the facts about the reality confronted by millions of civilians around the world in situations of armed conflict and recommended that the Security Council act to encourage parties to a conflict to better protect civilian populations. The second report, dated 30 March 2001 (S/2001/331), focused on some additional steps Member States could take to strengthen their own capacity to protect civilians in armed conflict.

3. In the 18 months since those reports were tabled, the Office for the Coordination of Humanitarian Affairs of the Secretariat has worked to ensure a more consistent and systematic presentation of these issues to the various organs of the United Nations, particularly the Security Council and the Economic and Social Council. Much interest has been demonstrated through the increased number of briefings to the Security Council during the past 18 months, highlighting issues of humanitarian concern in matters of peace and security, including the protection of civilians. The one-day workshop on the Mano River region convened by the Council on 18 July 2002, at which the Department of Political Affairs, the Department of Peacekeeping Operations and the Office for the Coordination of Humanitarian Affairs made presentations, provided a practical stocktaking of the effectiveness and adequacy of the mandate of the United Nations Mission in Sierra Leone (UNAMSIL). It also ensured a comprehensive review of the protection needs of civilians alongside peace-building and political objectives. It would be useful to conduct further regular reviews of Security Council mandates from the point of view of the impact on civilians and in the context of a joint political, security and humanitarian analysis.

4. Much work has also been done to strengthen and enhance the policy agenda outlined in the first two reports. At the request of the Security Council, the Office for the Coordination of Humanitarian Affairs developed an aide-memoire, which was adopted by the Council in the statement by its President of 15 March 2002 (S/PRST/2002/6). The aide-memoire is a practical tool that provides a basis for improved analysis and diagnosis of key civilian protection issues that arise out of

conflict. It was based on the deliberations of a series of round tables held with Member States, the United Nations system, the International Committee of the Red Cross (ICRC), non-governmental organizations and academic experts, with all contributing to its formulation. Since its adoption, the aide-memoire has served as a common framework and a point of reference for supporting the protection of civilians.

5. Closer cooperation and coordination between the Department of Peacekeeping Operations and the Office for the Coordination of Humanitarian Affairs has facilitated much of the work that has been conducted since the previous report. Collaboration between these two departments of the Secretariat was particularly useful for the design and launch of the aide-memoire. Discussions are presently under way to deepen the cooperation between the Department and the Office and to facilitate joint planning through the implementation of standard operating procedures. Like the aide-memoire, these standard operating procedures will aim to mainstream issues pertaining to the protection of civilians into work dealing with the establishment, closure and change of peacekeeping missions and mandates.

6. The round tables also contributed to the design of a "roadmap", requested by the Security Council in resolutions 1265 (1999) of 17 September 1999 and 1296 (2000) of 19 April 2000. A provisional version of the roadmap is set out in the annex to the present report for consideration by members of the Security Council. This version has reorganized the recommendations along action-oriented themes identified in the round tables and echoed in the aide-memoire. In early 2003, the Office for the Coordination of Humanitarian Affairs will work with other parts of the Secretariat and the United Nations system to develop further the roadmap concept by outlining specific activities to support implementation by States, and by organizing these activities into a coherent plan of action, with time frames for completion and identification of institutional responsibilities.

7. The primary focus now will be towards implementation, as called for by the Security Council and the Economic and Social Council. In its resolution 2002/32 of 26 July 2002, the Council specifically invites Member States to participate actively in workshops on the protection of civilians in order to share knowledge and experience and to improve practice. The Office for the Coordination of Humanitarian Affairs is coordinating a series of six regional workshops that bring together relevant representatives from the United Nations, non-governmental organizations, and academic institutions with leaders from key government ministries, in particular the ministries of foreign affairs, defence and internal affairs. The workshops introduce and outline fundamental concepts concerning the protection of civilians, provide participants with experience in using diagnostic tools such as the aide-memoire and provide a regional perspective on the threats to the security and protection of civilians.

8. With the assistance of the Government of South Africa, the first of these workshops was recently held at Pretoria, with strong participation from eight countries in the southern African region. Their observations and conclusions about the protection of civilians reflected the experience of a region in which countries had either undergone and emerged from conflict or had been affected by regional conflicts and their consequences, such as sizeable refugee flows.

9. The southern Africa workshop highlighted the importance of regional actions and of the need to engage regional institutions in the protection of civilians. The

establishment of the African Union (AU) and the New Partnership for Africa's Development provide an important new platform for securing greater commitment to an improved framework for the protection of civilians. The Government of South Africa proposes to introduce this issue within AU. The workshop also emphasized that effective control of small arms and demining programmes requires common regional policies and regional enforcement structures for control and destruction. This region's experience with integration of combatants into the armed forces serves to underline the importance of establishing codes of conduct defining the relationship between individual members of military forces and the civilian populations and the need to reinforce such codes through proper systems of accountability. The separation of armed elements from refugee populations is one of the highest priorities for the region. Participants noted an increasing trend in the militarization of the refugee and the local host populations where refugee camps were located in border areas and in close proximity to areas of conflict. There has been large-scale involvement of armed non-State actors in conflicts in the region, and the workshop underscored the importance of engaging them in conflict negotiations and in securing acknowledgement of their own responsibility and obligations for the protection of civilians.

10. The second workshop, held in Japan, involved officials and civil society representatives from 11 countries of East Asia and the Pacific. It noted that the region does not have strongly developed regional structures, and that the context of conflict differs from other regions and is usually communal or ethnic in nature. Regional concerns, therefore, focus on the potential problems caused by the spillover of refugees and the absence of regional capacity to respond. The region is also characterized by a strong interest and support for peacekeeping, although there is little sharing of experience in this area. The workshop demonstrated the need to promote the protection of civilians as a key element in conflict prevention. This extends to training in peacekeeping because peacekeepers may not be fully aware of the challenges and responsibilities involved in the protection of civilians and a common approach is required. The recent bomb attacks in Bali, Indonesia, underscored the concerns of all countries in the region about terrorism and its relationship to the protection of civilians. Countries in the region are involved in drafting new legislation to address this challenge to security. This is also an area where Governments may welcome guidance and support to ensure that new measures provide a focus for the protection of civilian victims of terrorism and remain compatible with overall responsibilities for the protection of civilians. The regional workshops have initiated the important process of developing understanding and support for a culture of protection called for in the first report and have provided an opportunity for engaging regional entities in this task.

11. It is also important to look at changing trends and the new contexts they provide for the protection of civilians in armed conflict. Since the previous report, some of the world's most protracted and violent conflicts are reaching resolution or coming to an end. Angola is now on the road to peace after three decades of civil war that left thousands dead and millions displaced. In Sierra Leone, where the most egregious acts of violence were committed against civilians, there are clear signs of an end to armed conflict. Afghanistan is yet another remarkable example of a seemingly intractable conflict coming to an end. All three cases, however, confirmed the critical nature of the protection of civilian populations, including their right to humanitarian access, even in conflicts approaching resolution and through the

transitional phase when peace is consolidated. An important aspect of the implementation of the protection of civilians is the observation, monitoring and verification of human rights throughout. This requires close cooperation between the Department of Political Affairs, the Office for the Coordination of Humanitarian Affairs, the Office of the United Nations High Commissioner for Human Rights (OHCHR) and relevant United Nations protection-mandated agencies to ensure that negotiated peace agreements are comprehensive, with humanitarian and human rights principles and priorities well integrated into the political framework.

12. As is now well known, civilians, rather than combatants, are the main casualties of conflicts today, with women and children constituting an unprecedented number of the victims. More than 2.5 million people have died directly as the result of conflict in the last decade, and over 10 times this number (31 million people) have been displaced and uprooted by conflict. This represents human suffering on an immense scale. With the upsurge of global terrorism, a new kind of threat to civilians has emerged, one that may significantly increase the scale of suffering in the future and severely impact on the efforts of the international community to protect civilians, particularly the need to separate civilians from combatants. This new challenge is examined in depth in the conclusion of the present report.

13. Since the previous report, an increasing number of States, United Nations organizations and regional and non-governmental organizations are making use of the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2, annex) to strengthen legal frameworks on the protection of internally displaced persons. Angola and Uganda have incorporated, or are in the process of incorporating, aspects of the Guiding Principles into legal and regulatory frameworks for resettlement and return. In the Sudan, both the Government and the Sudan People's Liberation Movement Army (SPLMA) participated in separate workshops held by the inter-agency internally displaced persons unit housed in the Office for the Coordination of Humanitarian Affairs to contribute to the formation of policy frameworks. In Belgrade, officials at the federal (Federal Republic of Yugoslavia) and republic (Serbia) levels have expressed an interest in developing a legal framework for response. In Afghanistan, the Guiding Principles have been used as a reference for the drafting — still under way — of a decree for the safe return of internally displaced persons. Moreover, agencies are using them as the basis for discussion with local authorities and for dissemination as well as guidance in projects and programmes implementation. In Indonesia, the authorities have begun a process of public education using the Guiding Principles to promote actively their better understanding.

14. The adoption of agreed standards for the humane treatment of internally displaced persons must, of course, be followed by careful implementation when internally displaced persons are able to return to their homes. In Angola and Burundi, for example, efforts are under way to ensure the necessary preconditions for safe and sustainable return, thereby integrating the protection needs of returning internally displaced persons and refugees.

15. In the emerging context of the transition from conflict, practical actions to ensure the protection of civilians will be required in three key areas, both as setting the stage for an effective transition to peace and remaining essential throughout the process: secure humanitarian access, the clear separation of civilians and

combatants, and the swift re-establishment of the rule of law, justice and reconciliation during transition. The present report examines several new challenges — sexual exploitation, commercial exploitation and terrorism — and their impact on the protection of civilians.

16. The present report does not address in detail the issues relating to women and children in armed conflict, as those issues are dealt with in the report on women, peace and security (S/2002/1154) and the report on children and armed conflict (S/2002/1299).

### **Access to vulnerable populations**

17. Carefully negotiated humanitarian access does much to improve the protection of civilian populations in the short term and to improve prospects for a successful transition to reconciliation. The presence of humanitarian actors reinforces the idea of neutrality — a concept fundamental to the protection of civilians. Unimpeded access for humanitarian agencies to all populations in need, regardless of group or status, also removes a basis for grievance and does much to confirm that issues of difference, disagreement or grievance can be resolved. Access is also likely to remind populations affected by conflict of the longer-term benefits that can be gained from peace. By de-escalating the conflict, lowering its intensity and foreshadowing the benefits of peace, access both affords civilians immediate short-term protection benefits and sets the stage for an effective and sustainable transition to peace.

18. The positive impact of unimpeded humanitarian access on the transition to peace was demonstrated most recently in the Sudan during October 2002 where unimpeded access was a cornerstone for a memorandum of understanding between the Sudanese authorities and SPLMA, the first in 19 years, marking the cessation of hostilities. A subsequent technical agreement for implementation signed two weeks later extended the cessation of hostilities and the removal of access restrictions until the end of 2002, with the possibility of a further extension.

19. In most conflict situations, however, securing humanitarian access continues to be a challenge. In many conflicts, protection and assistance for millions of vulnerable civilians continues to be manipulated, delayed and even denied, with devastating consequences. A number of obstacles undermine efforts to secure access, including the physical insecurity of aid workers, denial of access by authorities and a lack of structured engagement with non-State actors.

20. The impact of insecurity and the consequent lack of access for humanitarian agencies is clearly evident in the Democratic Republic of the Congo, where limited humanitarian access resulted in massive loss of life, with reports of over 2 million deaths, of which an estimated 350,000 were the direct result of violence. In the Ituri region of the eastern part of the Democratic Republic of the Congo, six ICRC staff members were brutally killed in April 2001, leading to the reduction and withdrawal of humanitarian staff. There is now grave concern over the situation in Ituri, where there is the potential for a return to the widespread ethnic killings of early 2001. In Liberia, where the humanitarian situation has deteriorated considerably as the result of continued fighting, only 120,000 people are receiving humanitarian assistance and a much larger group of vulnerable and displaced persons remain inaccessible. In Afghanistan, security remains a major concern. Some areas are still characterized by

sporadic factional fighting, causing interruption in access and hence assistance and monitoring programmes.

21. Despite institutional efforts by the United Nations to strengthen staff training and capacity to meet security needs, humanitarian workers as well as civilians continue to be targeted as a way of denying humanitarian access. In addition to countless civilian deaths, four United Nations staff members have been killed and two abducted in 2002. International organizations such as ICRC have also suffered fatalities and abductions. Other humanitarian workers have been attacked in Burundi, the Sudan, Chechnya and the Occupied Palestinian Territories.

22. Such acts do not simply destroy individual lives. They are an attack on the emblem of the United Nations and ICRC and other humanitarian organizations, an attempt to drive them out and to deny their role as protectors of civilians in conflict. When committed in the context of armed conflict, such acts should be recognized as war crimes and dealt with accordingly by the relevant national judicial authorities or the International Criminal Court.

23. Humanitarian access is sometimes restricted because the access itself is perceived as a potential threat to other populations. The grave humanitarian situation in the Occupied Palestinian Territories is an example. The humanitarian crisis is inextricably linked to measures adopted by Israel in response to suicide bombings and other attacks against Israeli military and civilian targets. Access remains entirely at the discretion of the Israeli Defence Forces and is often denied to the United Nations and other humanitarian personnel.

24. Ms. Catherine Bertini, the Secretary-General's Personal Humanitarian Envoy to the Occupied Territories, reported in August on the mounting humanitarian crisis, describing it as a crisis of access and mobility. She highlighted the impact on civilian populations of loss of access to basic needs and services, including medical treatment and education, because of curfews and closures, while other services, such as food supplies and water, are blocked from reaching communities.

25. A further constraint on securing humanitarian access is a lack of structured contact with non-State actors. There are two levels to the problem. First, States may be unwilling or unable to engage non-State actors in dialogue, either on the peace process or on their obligations to civilian populations under the Geneva Conventions. Consequently, very few non-State actors recognize their responsibilities regarding humanitarian access as a component of international humanitarian law, and this leads to access being restricted, unpredictable or denied altogether. This lack of awareness and observance is exacerbated by the plethora of warring parties in many civil conflicts — ranging from de facto authorities and warlords, to military entities active in combat, to formal political entities — which may eventually become a party to the peace accord.

26. Second, it is critically important that humanitarian actors are able freely to make contact with non-State actors to negotiate fundamental issues like humanitarian access, regardless of the relationships between the State and the rebel groups. In conflicts with no clearly delineated front line, however, such contact is often made under pressure by a number of humanitarian bodies, including United Nations agencies, ICRC and non-governmental organizations. The risks of fragmented, piecemeal or parallel negotiations on humanitarian access are high.

Rebel groups may play one organization against another, thus increasing the risks to security and further endangering access.

27. In order to be effective, negotiations should be conducted in a structured, coordinated manner based on agreed standards and mechanisms. Comprehensive framework agreements provide a stronger and more transparent basis for humanitarian access. The aide-memoire can be a useful guide to the issues that need to be addressed. United Nations agencies are also preparing a manual on terms of engagement with armed groups, to better assist coordination and to facilitate more effective negotiations.

28. If skilfully crafted in a principled manner, negotiations for unimpeded humanitarian access may also become the basis for a future transition to peace and recovery, in no small measure by simply being one of the few, if not the only, forums where the parties to the conflict are talking to one another. National immunization days and “days of tranquillity”, to provide targeted services, particularly for children, have proved to be a good starting point in several conflicts, including Liberia and Sierra Leone. Two models of effective comprehensive frameworks include Operation Lifeline Sudan (OLS) and the Somalia Aid Coordination Body (SACB). OLS provides an operational framework for United Nations agencies and non-governmental organizations in the Sudan to secure access to civilians regardless of their location, and serves as a bridge to securing commitment to the principles underlying the protection of civilians in the current peace talks at Machakos, Kenya. SACB integrates the efforts of the United Nations system with a consortium of international non-governmental organizations. It has served in the same sustained manner as a vehicle for providing essential assistance during an ongoing and devastating conflict. Although civilians in both the Sudan and Somalia have continued to be attacked, these frameworks provide a platform for continuing negotiations on humanitarian access.

29. As a creative means of securing humanitarian access — a fundamental basis for protection during a crisis and a foundation for the transition to peace — States are urged to support greater use of inclusive framework mechanisms, particularly in circumstances where there are no peace operations or other agreements that provide a basis for access. In many cases this can only happen with significant bilateral pressure on the warring parties. In this, the support and influence of the Security Council and Member States is vital.

30. To summarize, the following practical measures can improve access to civilians in armed conflicts and can support the development and consolidation of transitional processes:

- All parties to a conflict, including non-State actors, must understand their obligations and responsibilities to civilians;
- There should be clearly defined conditions for humanitarian access in any terms of engagement;
- Contact should be undertaken on a coordinated basis by humanitarian and United Nations agencies based on agreed conditions;
- The aide-memoire should be used as a tool for structuring and guiding response to access negotiations;



- Contact between warring parties on humanitarian access issues should be structured. Framework agreements are the best option when no peacekeeping mission is present;
- Governments should not subordinate the basic rights of civilians in response to perceived security threats.

### **Separation of civilians and armed elements**

31. Conflict often leads to mixed movements of populations, comprising not only refugees, internally displaced persons and other civilians, but also armed elements seeking sanctuary in neighbouring countries. The continued presence of combatants undermines the transition towards peace. Moreover, the presence of armed elements in refugee camps and internally displaced person settlements has very specific and serious humanitarian consequences. Women and children are particularly vulnerable to serious human rights violations, such as trafficking, forced recruitment, rape and other forms of physical and sexual abuse.

32. Over the past year, there have been successful relocation exercises separating civilians and combatants. In the northern part of the Democratic Republic of the Congo, the authorities, working collaboratively with the Office of the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), successfully separated armed elements from a civilian community which had given shelter to 26,000 refugees from the Central African Republic and relocated them. In Sierra Leone, the authorities, assisted by UNHCR, were able to persuade refugees to move away from the borders, and, in a more secure environment, were able to screen and separate combatants from refugees and establish a separate regime for the internment of combatants.

33. There are two distinct issues of concern: one relates to the intermingling of combatants and civilians in a range of situations and the other concerns, specifically, the movement of combatants into refugee and internally displaced person camps and settlements.

34. When combatants are intermingled with civilians, Governments sometimes resort to extraordinary measures to address the problem, some of which may seem disproportionate or to be punitive to the civilian population. Examples of such responses, which have themselves resulted in further threats to civilian security and rights to protection, include regroupement camps, forced relocation, protected villages and, in the Middle East, punitive measures directed at civilians. Such actions violate international humanitarian and human rights law and should be condemned.

35. Where refugees are involved, experience has demonstrated that it is essential to separate civilians from armed elements in refugee camps and elsewhere immediately. The longer the camps remain militarized, the more difficult the problem will be to redress. This situation also creates major difficulties in the post-conflict transition, impeding refugee returns and reintegration. The establishment of refugee camps at a reasonable distance from the border is essential to preserving the civilian and humanitarian character of these camps.

36. Removing refugee camps from border areas is often complex and difficult to achieve. Sometimes Governments, fearing instability, prefer to contain the problem at the border. The authorities may also wish to leave refugees at the border for strategic political or military reasons. Refugees themselves may be reluctant to leave the border area, wishing to return home periodically or to be in a position to take flight again if necessary. This problem challenges the hospitality of host communities and receiving States, which find that conflict not only draws in local populations, but inevitably spills over, beyond the local host communities, affecting security in border areas. Civilian populations on both sides of a border can be coerced into courier activities and children are at risk of being militarized. When these mass movements also include armed elements, regional security is at stake and conflicts risk becoming internationalized. The Democratic Republic of the Congo, Zambia and West Africa are clear examples of this danger. It is in this difficult and fluid context that the international community must pursue its goal of maintaining the humanitarian and civilian nature of camps for refugees and internally displaced persons.

37. Agenda for Protection,<sup>1</sup> recently released by UNHCR, contains an array of measures designed to preserve the humanitarian character of asylum. A concrete outcome of the Agenda is the conclusion on the civilian and humanitarian character of asylum,<sup>2</sup> recently adopted by the Executive Committee of UNHCR, which sets out important understandings for Member States to ensure the physical safety of refugees, particularly in refugee camps. The conclusion emphasizes the primary responsibility of host States to ensure the civilian and humanitarian character of asylum, calls for the disarmament of armed elements and covers the identification, separation and internment of combatants.

38. UNHCR, working with Member States, other United Nations agencies and ICRC, will develop specific measures for the disarmament of armed elements and for the identification, separation and internment of combatants. These measures will serve to clarify standards and procedures agreed by all responsible parties. States will be asked specifically to support the deployment of security officers into insecure refugee situations. In this context, the United Nations will deploy, with the consent of host States, multidisciplinary assessment teams to areas of emerging crisis to assess the situation on the ground, evaluate threats to refugee populations and make practical recommendations.

39. Some States argue that a major constraint in their efforts physically to separate armed elements from civilians is a lack of resources and capacity. If this task is beyond the capacities of local authorities, their genuine concerns must be recognized and wherever possible addressed. Assistance from international civilian police and military forces is vital, particularly in disarming and demobilizing militias and in transferring them elsewhere. One practical solution would be to establish a roster of experts who could be seconded by their Governments for a limited period of time in order to assess the situation, design the strategy, assist the local authorities and, if feasible, pilot the exercise together with local authorities. Member States with such capacity are urged to provide the necessary practical support. It must be understood, however, that it remains the responsibility of States to grant asylum to victims of violence to ensure that they receive protection, relief and assistance.

40. To summarize, in order to facilitate the effective separation of civilians from armed elements, the following practical actions or requirements are needed:

(a) Commitment by Governments to remove refugee camps and internally displaced person settlements from border areas and to the separation and internment of combatants;

(b) Rapid deployment of United Nations multidisciplinary assessment teams to assist and support the separation of combatants and civilians;

(c) Provision of support to States hosting refugees in order to strengthen the capacity of law enforcement authorities through an appropriate security package, notably to strengthen police units in insecure refugee situations;

(d) Promotion of the use of the aide-memoire and the Agenda for Protection by Governments in situations where combatants and civilians are intermingled, as a means of ensuring that their responses to perceived security threats meet international legal standards.

### **Rule of law, justice and reconciliation**

41. Restoration of the rule of law is fundamental to a country's capacity to emerge from a period of conflict into a sustainable peace, based on the assured protection of civilians and the return of order. The institutions for security, law and order and justice are frequently the first to weaken or collapse in contemporary civil conflicts, thus creating a vacuum for human rights protection. This vacuum is sometimes filled on an interim basis by multidimensional peacekeeping operations — such as those deployed in Kosovo and Timor-Leste — where international civilian police are deployed to deal with law enforcement and international military forces provide an environment of security.

42. There can be no long-term solution to security problems on this scale unless and until a well-trained, well-equipped and regularly paid national army and national police, within the context of a fully functioning criminal justice system, are in place. Recent efforts to achieve this have been crucial, as in Timor-Leste, where the relatively speedy and internationally supported transformation of the Armed Forces of National Liberation of East Timor (FALINTIL) into the core of a national defence force was critical in the smooth transition to independence.

43. The international community is now striving to achieve this transition in Afghanistan, where the most serious challenge to the fragile peace remains a lack of security in much of the country. In the absence of a stable security environment, the human rights situation in Afghanistan remains worrying in many respects, principally owing to the weakness of the central government, warlordism, factional conflicts and a very rudimentary and dysfunctional justice system. The situation of women continues to be a matter of concern in many parts of the country. It is vital that donors support, with the necessary resources, the efforts of the Government and people of Afghanistan to ensure security in their country.

44. For a secure environment to be sustained and the rule of law to take hold in any transitional situation, one of the first priorities must be a comprehensive disarmament, demobilization and reintegration programme. In Sierra Leone, an official disarmament, demobilization and reintegration programme was a central tenet of the Lomé Peace Accord. This accord was also the first such agreement to recognize the special needs of children in the disarmament, demobilization and reintegration process, with almost 7,000 child soldiers successfully demobilized and

disarmed. This process, completed in January 2002, and the ongoing reintegration efforts are essential components of the improved security conditions so vital for a lasting peace.

45. The United Nations Development Programme (UNDP) has been promoting national ownership of the disarmament, demobilization and reintegration processes, supporting national capacity to reabsorb combatants and providing technical advice on policy frameworks in such countries as Afghanistan, Sierra Leone, Angola, the Democratic Republic of the Congo and Somalia. Similarly, the United Nations Children's Fund (UNICEF) and its partners have been engaged in the prevention of recruitment, demobilization and social reintegration of child soldiers in these and other countries. The key to successful reintegration and prevention of re-recruitment of child soldiers is long-term investment in education, vocational training and family and community support programmes, taking into account the special needs of girls.

46. The entry into force on 1 July 2002 of the Rome Statute of the International Criminal Court (A/CONF.183/9) marks an important deterrence against war crimes, crimes against humanity and genocide. The culture of impunity is being challenged. Over the past few years, the United Nations has placed considerable emphasis on issues of transitional justice in the former Yugoslavia, Rwanda, Sierra Leone and Timor-Leste. In these situations, re-establishing the rule of law and reactivating basic criminal justice systems has been critical to holding together fragile peace agreements and protecting civilians during the transition to peace. It has led to the establishment of ad hoc international tribunals in the case of Rwanda and the former Yugoslavia and, most recently, the creation of a Special Court for Sierra Leone. At the recommendation of the Department of Peacekeeping Operations, the Executive Committee on Peace and Security established in April 2002 an interdepartmental/agency task force for the development of comprehensive rule of law strategies for peace operations, and fully endorsed its final report and recommendations at the end of September.

47. The issue of accountability for past atrocities and human rights abuses — who should be held accountable and how — has been increasingly recognized by the international community as fundamental from the beginning. An inability to address these issues of justice in Kosovo led to widespread retribution by former victims, including new killings and a renewed cycle of refugee outflows, which even the over 40,000 North Atlantic Treaty Organization (NATO)-led troops were unable to prevent. Justice systems need to address past abuses quickly if the rebuilding process after violent upheaval is to have a solid basis. While it is argued, however, that amnesties for members of armed forces are needed for a cessation in hostilities to take effect, they remain unacceptable to and unrecognized by the United Nations unless they exclude genocide, crimes against humanity and war crimes from their provisions.

48. The rebuilding of essential rule of law institutions should have the most immediate priority in situations of transition from conflict to peace if the protection of civilians is to be ensured. This is not a role that can be performed by military forces alone. It requires civilian justice experts backed by civilian police. In the absence of adequate local capacity, rapid deployment of international civilian law enforcement and criminal justice experts is vital. UNDP is building capacity and supporting reforms to justice and security institutions, for example in Afghanistan,

Kosovo, El Salvador, Rwanda, Guatemala and Haiti. In areas where the United Nations has the mandate to provide an interim administration, such as Kosovo and Timor-Leste, it has been able to provide such international support to the local judiciary and other structures of government. In Afghanistan, for instance, OHCHR has been supporting the United Nations Assistance Mission in Afghanistan (UNAMA) in building the capacity of the independent Afghan national human rights commission, which focuses on monitoring and investigation, human rights education, women's rights and transitional justice.

49. It is important to draw a distinction between punitive and restorative justice. The work of the various international tribunals, as well as national courts, falls into the former category. Restorative justice, which can be seen as including the return of refugees and displaced persons to their former places of residence in safety and dignity, coupled with the full restoration of national protection, is equally important to the transition to peace and recovery. The right to return, applicable to all citizens and former habitual residents, as well as the restitution of property, housing and land, are of key importance. Indeed, the resolution of property and housing issues before and subsequent to return is often vital to political stability, economic security, the protection of human rights and the establishment and strengthening of the rule of law.

50. The demand for justice and accountability must be balanced with the political pressures to move forward, away from the conflict, based on new alliances and agreements. Reconciliation between former combatants, whether internal or external, can be as important as justice for longer-term stability. This has been the experience of Timor-Leste.

51. There are, however, no reconciliation templates. Each situation has unique requirements. Timing is also critical. Kosovars found it impossible to discuss reconciliation in the period following the departure of the Serbs, and in Timor-Leste its leaders spoke of reconciliation soon after Indonesia's withdrawal. In Timor-Leste there was also a significant effort made to strike an appropriate balance between prosecuting some perpetrators of serious abuse while reintegrating lesser offenders. The Commission for Reception, Truth and Reconciliation is a complementary measure, with the objective of truth-telling and community based reconciliation, possibly with compensation, by lesser offenders. With assistance from OHCHR, Sierra Leone has also established a similar structure with its Special Court and the Truth and Reconciliation Commission. These complementary mechanisms serve a valuable function, by beginning the process of reviewing the past truthfully, thus combining the imperatives of justice and reconciliation. Moreover, by recognizing and involving women and children in their work, these particular bodies have been able to put in place special procedures, thereby facilitating the successful reintegration of women and children. Justice and truth-seeking mechanisms also offer opportunities to combine internationally-mandated prosecution processes with more traditional mechanisms of confession, reparation and acceptance by the community. At the same time, further comparative analysis of such functions by the international community is needed.

52. Justice and reconciliation must work together to address the underlying causes of conflict and to prevent possibly violent retribution. Local actors should be involved from the outset in the process of reconciliation and in reforming and restoring the justice system. Reconciliation efforts may begin even in the midst of

conflict and need to be undertaken in a culturally sensitive way. Education in conflict and post-conflict situations can provide a window of opportunity for building tolerance and social justice in communities.

53. To summarize, the practical recommendations that address the needs of rule of law, justice and reconciliation and thereby provide better protection for civilians in conflict, it is necessary:

(a) To provide the resources for and to reform national institutions for security, law and order and justice for better enforcement of the rule of law and human rights standards as soon as possible when conflict ends;

(b) To ensure that the necessary disarmament, demobilization and reintegration of combatants is conducted as early as possible with full recognition of the elements required for reconciliation at the community level;

(c) To ensure that laws and regulations inconsistent with international legal standards, in particular the right to return, restitution of property rights and the right to adequate housing, are repealed and that effective and impartial mechanisms are put in place to allow for the return and restoration of property;

(d) To ensure that reliable, sufficient and sustained funding is provided to existing international tribunals and the International Criminal Court, as well as other initiatives to bring to justice perpetrators of grave violations of international humanitarian and human rights law.

## Observations

54. In the 18 months since the previous report to the Security Council, three global issues have emerged that will seriously challenge the capacity of Member States to protect civilians. The first relates to an increased focus on gender-based violence in humanitarian crisis and conflict situations, a grave and continuing problem that has been heightened by reports of sexual exploitation and abuse and trafficking of women and girls perpetrated by humanitarian workers and peacekeepers.

55. Acknowledging that this serious problem went beyond the United Nations system, it was agreed that the Inter-Agency Standing Committee — representing not only United Nations agencies but also the Red Cross movement and non-governmental organizations — was the appropriate forum to address the problem on a global basis. The Standing Committee immediately set up a Task Force on Protection from Sexual Exploitation and Abuse in Humanitarian Crises, co-chaired by the Office for the Coordination of Humanitarian Affairs and UNICEF. The Task Force was explicitly charged with assessing weaknesses or gaps in existing procedures and standards of behaviour, and proposing specific measures for their remedy. In carrying out its assessment, the Task Force consulted widely with humanitarian partners, Member States and other interested stakeholders, including the Department of Peacekeeping Operations.

56. The causes of abuse, including trafficking and gender-based violence, stem from the unequal power relationships that are endemic in situations of mass displacement, conflict or civil strife. The United Nations, together with a range of partners in the humanitarian community, is implementing a number of preventive and remedial measures aimed at strengthening and enhancing the protection and care

of vulnerable persons in situations of humanitarian crisis and conflict. These include the adoption of core principles that represent the minimum standards of conduct for all United Nations civilian personnel and the establishment of clear reporting procedures. The core principles are: (a) sexual exploitation constitutes gross misconduct and is grounds for dismissal; (b) sexual activity with persons under 18 years of age is prohibited; (c) the exchange of money, employment, goods or services for sex is prohibited; (d) sexual relationships between humanitarian workers and beneficiaries are strongly discouraged; (e) there is an obligation to report concerns about possible abuses by co-workers; and (f) an environment that prevents sexual exploitation must be created, and managers have particular responsibilities to support and develop systems, which maintain this environment.

57. In addition, the United Nations is working to ensure that the design of peacekeeping and relief operations incorporates protection measures for groups vulnerable to abuse and exploitation. It is unfortunately the case, however, that other parties associated with the United Nations, including civilian police and military forces working under United Nations auspices and humanitarian non-governmental organizations, also perpetrate such violations. As the Secretary-General stated recently: "Men, women and children displaced by conflict or other disasters are among the most vulnerable people on earth. They look to the United Nations and its humanitarian partners for shelter and protection. Anyone employed by or affiliated with the United Nations who breaks that sacred trust must be held accountable and, when the circumstances so warrant, prosecuted" (A/57/465, para. 3). To this end, there are a number of measures which if taken by Member States would further strengthen the culture of protection in humanitarian crises:

(a) Respect for the "Ten Rules: Code of Personal Conduct for Blue Helmets" by all uniformed personnel contributed for service with the United Nations;

(b) The Security Council should consider the inclusion of a standard paragraph in relevant resolutions that require the reporting of follow-up actions and prosecutions undertaken in response to allegations of sexual abuse and exploitation;

(c) Member States should be encouraged to use the core principles in their standards and codes of conduct for national armed forces and police forces, thereby ensuring due attention is placed on protection from sexual abuse and exploitation;

(d) Donor countries should insist that all their implementing partners include the core principles in their codes of conduct prior to release of donor funding.

58. The second issue that has increasing impact on the protection of civilians relates to the commercial exploitation of conflict. The illicit and illegal exploitation of natural resources is a growing problem that serves to fuel conflict and increasingly involves and harms the security of the civilian population. This has been a hallmark of the conflict in the Democratic Republic of the Congo, but is common to many conflict situations. Individuals and companies take advantage of, maintain and have even initiated armed conflicts in order to plunder destabilized countries to enrich themselves, with devastating consequences for civilian populations.

59. The two recent reports, by the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (S/2002/1146, annex) and the Panel of Experts on Liberia (S/2002/1115, annex) have dramatically documented this impact. The panellists called upon

Member States to mobilize sustained efforts to deter and combat such illegal activities. In parallel, coercive measures directed at companies and individuals involved in plundering of resources in conflict situations should be considered by the Security Council. These should include:

- (a) Travel bans on identified individuals;
- (b) The freezing of personal assets of individuals involved in illegal exploitation;
- (c) The barring of selected companies and individuals from accessing banking facilities and other financial institutions and from receiving funding or establishing a partnership or other commercial relations with international financial institutions.

60. Often the parties involved in the illegal exploitation have no incentive to alter their behaviour. It is necessary, therefore, to identify measures to target their fears of losing revenue and, at the same time, encourage the legal use of resources. It is essential that the socio-economic aspects of a transition are adequately addressed and that there exist a fair system of distribution of wealth in a fractured society. Regional economic integration and legitimate and transparent commercial development need to be promoted and supported. Economic activities need to be stimulated, including the creation of employment opportunities, while supporting simultaneous political processes in which these initiatives will be embedded.

61. Finally, the rise of terrorism and the involvement of terrorist organizations in armed conflicts adds a new and difficult set of challenges to our work on the protection of civilians. Terrorism must be condemned without reservation and energies must be focused on effectively combating this grave threat to international peace and security. The responses of States to acts of terrorism must remain cognizant of the need to protect civilian life and property and be undertaken with full respect to international humanitarian and human rights law. Every effort to strengthen the international protection of civilians in armed conflict is a victory against terrorism which, by its very nature, seeks to undermine civilian status and weaken the legal and institutional frameworks through which civilian men, women and children are shielded from the violence of war.

62. To pursue security at the expense of human rights will ultimately be self-defeating. In places where human rights and democratic values are lacking, disaffected groups are more likely to opt for a path of violence, or to sympathize with those who do. Greater respect for human rights, along with democracy and social justice, will, in the long term, prove the only effective safeguard against terror. The targeting of civilians and the disproportionate use of force beyond legitimate military objectives are violations of international humanitarian law and must be strongly condemned.

63. Past statements to the Security Council have discussed terrorism and the role of the United Nations in the fight against terrorism. It is important to note in the context of the present report the special problems that arise when terrorist organizations become involved in armed conflicts. The efforts of the United Nations to ensure access to vulnerable populations and to structure appropriate contact with armed actors for this purpose will be vastly more complicated if those armed actors are engaged in terrorist activities or are seen as being so involved. Efforts to begin the processes of reconciliation and to strengthen transitions from war to peace will



be made immeasurably more difficult if terrorist attacks have killed or continue to kill indiscriminately and without warning. The United Nations will need to formulate clear guidelines for its future work on the protection of civilians in armed conflicts where terrorist organizations are active.

64. The present report has highlighted the changing environment for the protection of civilians. It has noted the development of transitional processes towards peace in a number of countries that were previously the scene of long-standing conflicts. The effective protection of civilians is a critical element in laying the foundations for the peace process. The durability of peace is dependent on a commitment to the protection of civilians from its very inception. In the current environment, the report outlines a number of practical measures in three key areas where implementation will have an immediate and positive effect on transitional peace processes. The first, and underlying all others, is the awareness and understanding of Member States of their obligations and responsibilities for the protection of civilians in conflict situations. Second is a commitment to structured and inclusive negotiations on issues of humanitarian access, to the separation of armed elements from civilians, particularly in refugee situations, and a determination to ensure the physical safety of humanitarian personnel and the civilians they are working to assist. Thirdly, there is a need to appreciate better the interdependence between humanitarian assistance, peace and development. Finally, collective will is required to address the profound challenges to civilian protection posed by the commercial exploitation of conflicts, the sexual exploitation of civilians in conflict and the global threat of terrorism.

65. The report concludes with a number of practical initiatives that will serve to heighten awareness of the need for the protection of civilians in the daily work of the United Nations. The regional workshops of the Office for the Coordination of Humanitarian Affairs will provide an opportunity for those Member States that are best placed to do so to identify threats to regional peace and security and ways in which to address them collectively, through existing regional bodies and mechanisms. The report encourages the adoption and use of the aide-memoire to develop frameworks and more structured approaches to the protection of civilians by United Nations country teams in areas of conflict. Since its adoption, the aide-memoire has provided a useful framework for analysis and action. Its further application is encouraged to provide a consistent basis for training of security and peacekeeping personnel in meeting the challenges and responsibilities they face in the protection of civilians in conflict. In addition, it is important to continue the process of review initiated by the Security Council with its workshop on 18 July 2002 on the Mano River region. Consideration should be given to further reviews of key mandates and resolutions where the protection of civilians remains an important concern. This requires further strengthening of joint cooperation between the Office for the Coordination of Humanitarian Affairs, the Department of Political Affairs, the Department of Peacekeeping Operations, OHCHR, UNDP and other relevant United Nations entities on the integration of the protection of civilians into planning frameworks for peace missions and peace processes.

#### *Notes*

<sup>1</sup> *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 12 A (A/57/12/Add.1)*, annex IV.

<sup>2</sup> *Ibid.*, *Supplement No. 12 A (A/57/12/Add.1)*, chap. III, sect. C.

## Annex

### Roadmap for the protection of civilians

| <i>Document symbol</i>                          | <i>Recommendation</i> | <i>Theme</i>                                                                                                                                                                                                                                                                                                                                                             |                                              |
|-------------------------------------------------|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------|
| <b>Enhancing the architecture of protection</b> |                       |                                                                                                                                                                                                                                                                                                                                                                          |                                              |
| S/1999/957                                      | 1                     | Urge Member States to ratify and implement the major instruments of international humanitarian law, human rights law and refugee law and to report to the Council on action taken                                                                                                                                                                                        | Extending the legal framework                |
| S/1999/957                                      | 2                     | Call upon Member States and non-State actors to adhere to international humanitarian, human rights and refugee law                                                                                                                                                                                                                                                       | Ensuring compliance                          |
| S/1999/957                                      | 6                     | Urge Member States to adopt national legislation for the prosecution of individuals responsible for genocide, crimes against humanity and war crimes and to prosecute, on the basis of universal jurisdiction, persons under their authority or on their territory responsible for grave breaches of international humanitarian law and to report thereon to the Council | Extending the legal framework                |
| S/2001/331                                      | 3                     | Encourage Member States to introduce or strengthen legislation and arrangements providing for the investigation, prosecution and trial of those responsible for systematic and widespread violations of international criminal law, and support Member States in building credible judicial institutions equipped to provide fair proceedings                            | Establishing mechanisms to implement justice |
| S/1999/957                                      | 8                     | Urge Member States to support the proposal to raise the minimum age for recruitment and participation in hostilities to 18, and to accelerate the drafting of an optional protocol to the Convention on the Rights of the Child on the situation of children in armed conflict                                                                                           | Extending the legal framework                |
| S/1999/957                                      | 10                    | Urge Member States to ratify and fully implement the 1994 Convention on the Safety of United Nations and Associated Personnel                                                                                                                                                                                                                                            | Extending the legal framework                |
| S/1999/957                                      | 11                    | Invite the General Assembly to develop urgently a protocol to the 1994 Convention, which would extend the scope of legal protection to all United Nations and associated personnel                                                                                                                                                                                       | Extending the legal framework                |
| S/2001/331                                      | 13                    | Urge Member States to adopt and enforce measures to prevent private-sector actors from engaging in commercial activities with parties to armed conflict that might contribute to violations of international humanitarian and human rights law                                                                                                                           | Extending the legal framework                |

| <i>Document symbol</i> | <i>Recommendation</i> | <i>Theme</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                              |
|------------------------|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------|
| S/2001/331             | 12                    | Continue investigating linkages between illicit trade in natural resources and the conduct of war and urge Member States and regional organizations to take appropriate measures against corporate actors, individuals and entities involved in illicit trafficking in natural resources and small arms                                                                                                                                                              | Ensuring compliance                          |
| S/1999/957             | 4                     | Urge Member States to ratify the Rome Statute of the International Criminal Court                                                                                                                                                                                                                                                                                                                                                                                    | Establishing mechanisms to implement justice |
| S/1999/957             | 5                     | Encourage the development of judicial and investigative mechanisms to be used when the prosecution of those responsible for genocide, crimes against humanity and war crimes appears unlikely due to the unwillingness or inability of the parties involved, pending the establishment of the International Criminal Court                                                                                                                                           | Establishing mechanisms to implement justice |
| S/2001/331             | 11                    | Develop a regular exchange between the Security Council and the General Assembly and other United Nations organs on issues pertaining to the protection of civilians in armed conflict                                                                                                                                                                                                                                                                               | Increasing organizational capacities         |
| S/2001/331             | 14                    | Establish a more regular cooperation between the Security Council and regional organizations to ensure informed decision-making, the integration of additional resources and the use of their comparative advantages, including through the establishment of a regular regional reporting mechanism and briefings to the Security Council and high-level consultations to further develop cooperation on strengthening the protection of civilians in armed conflict | Increasing organizational capacities         |
| S/1999/957             | 28                    | Take steps to strengthen the Organization's capacity to plan and deploy rapidly, including by enhancing participation in the United Nations Stand-by Arrangements System and providing rapidly deployable units of military and police and the capacity to quickly deploy a mission headquarters                                                                                                                                                                     | Increasing organizational capacities         |
| S/1999/957             | 29                    | Ensure that these units are trained in human rights and international humanitarian law, including child and gender-related provisions, civilian-military coordination and communications and negotiation skills                                                                                                                                                                                                                                                      | Increasing organizational capacities         |
| S/1999/957             | 30                    | Urge Member States to disseminate instructions on international humanitarian and human rights law among their personnel serving in United Nations peacekeeping operations and in authorized operations conducted under national or regional command and control                                                                                                                                                                                                      | Training and preparedness                    |

| <i>Document symbol</i>                        | <i>Recommendation</i> | <i>Theme</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                  |
|-----------------------------------------------|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|
| S/1999/957                                    | 27                    | Encourage Member States to give political and financial support to other States in order to facilitate compliance with the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and Their Destruction (the “Ottawa Convention”)                                                                                                                                                                                       | Mitigating potential impact      |
| S/1999/957                                    | 23                    | Establish a permanent technical review mechanism of United Nations and regional sanctions regimes to ascertain the probable impact of sanctions on civilians                                                                                                                                                                                                                                                                                                            | Mitigating potential impact      |
| S/1999/957                                    | 24                    | Further develop standards and rules to minimize the humanitarian impact of sanctions and ensure especially that sanctions are not imposed without provision for humanitarian exemptions                                                                                                                                                                                                                                                                                 | Mitigating potential impact      |
| <b>Protection through conflict prevention</b> |                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                  |
| S/1999/957                                    | 14                    | Establish Security Council working groups relating to specific volatile situations to improve the understanding of the causes and implications of conflict, as well as to provide a consistent forum in which to consider options to prevent the outbreak of violence                                                                                                                                                                                                   | Preparedness                     |
| S/1999/957                                    | 15                    | Make use of the human rights information and analysis emanating from independent treaty body experts, mechanisms of the Commission on Human Rights and other reliable resources as indicators for potential preventive action by the United Nations                                                                                                                                                                                                                     | Preparedness                     |
| S/1999/957                                    | 13                    | Increase Security Council use of relevant provisions in the Charter of the United Nations, such as Articles 34 to 36, by investigating disputes at an early stage, inviting Member States to bring disputes to the Security Council’s attention and recommending appropriate procedures for dealing with disputes; and strengthen the relevance of Article 99 by taking concrete action in response to threats against peace and security identified by the Secretariat | Prevention                       |
| S/1999/957                                    | 12                    | Consider deployment in certain cases of a preventive peacekeeping operation or of another preventive monitoring presence                                                                                                                                                                                                                                                                                                                                                | Prevention                       |
| <b>Protection during conflict</b>             |                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                  |
| S/1999/957                                    | 18                    | Underscore in Security Council resolutions the imperative for civilian populations to have unimpeded access to humanitarian assistance and for concerned parties, including non-State actors, to cooperate fully with the United Nations humanitarian coordinator in providing such access and in guaranteeing the security of humanitarian organizations with non-compliance resulting in targeted sanctions                                                           | Obligate parties to the conflict |

| <i>Document symbol</i> | <i>Recommendation</i> | <i>Theme</i>                                                                                                                                                                                                                                                                                                                                                               |                                           |
|------------------------|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|
| S/2001/331             | 9                     | Emphasize in Security Council resolutions the direct responsibility of armed groups under international humanitarian law                                                                                                                                                                                                                                                   | Obligate parties to the conflict          |
| S/2001/331             | 10                    | Urge Member States and donors to support efforts to disseminate to armed groups information on international humanitarian and human rights law and initiatives to enhance their practical understanding                                                                                                                                                                    | Obligate parties to the conflict          |
| S/1999/957             | 9                     | Demand that non-State actors involved in conflict not use children below the age of 18 in hostilities, with non-compliance resulting in targeted sanctions                                                                                                                                                                                                                 | Obligate parties to the conflict          |
| S/1999/957             | 20                    | Ensure that the special protection and assistance requirements of children and women are fully addressed in all peacekeeping and peace-building operations                                                                                                                                                                                                                 | Mission mandate and design (as necessary) |
| S/1999/957             | 21                    | Systematically require parties to conflicts to make special arrangements to meet the protection and assistance requirements of children and women                                                                                                                                                                                                                          | Obligate parties to the conflict          |
| S/1999/957             | 7                     | Encourage States to follow the legal guidance provided in the Guiding Principles on Internal Displacement, in cases of massive internal displacement                                                                                                                                                                                                                       | Obligate parties to the conflict          |
| S/1999/957             | 19                    | Urge neighbouring Member States to ensure access for humanitarian assistance and call upon them to bring to the attention of the Security Council any issues that might threaten the right of civilians to assistance, as a matter affecting peace and security                                                                                                            | Obligate parties to the conflict          |
| S/2001/331             | 5                     | Conduct more frequent fact-finding missions to conflict areas, with a view to identifying the specific requirements for humanitarian assistance, in particular obtaining safe and meaningful access to vulnerable populations                                                                                                                                              | Secure access to vulnerable populations   |
| S/2001/331             | 4                     | Actively engage the parties to each conflict in a dialogue aimed at sustaining safe access for humanitarian operations and demonstrate the Council's willingness to act where such access is denied                                                                                                                                                                        | Secure access to vulnerable populations   |
| S/2001/331             | 7                     | Develop clear criteria and procedures for the identification and separation of armed elements in situations of massive population displacement                                                                                                                                                                                                                             | Secure access to vulnerable populations   |
| S/1999/957             | 39                    | Establish, as a measure of last resort, temporary security zones and safe corridors for the protection of civilians and the delivery of assistance in situations characterized by the threat of genocide, crimes against humanity and war crimes against the civilian population and ensure the demilitarization of these zones and the availability of a safe-exit option | Secure access to vulnerable populations   |

| <i>Document symbol</i> | <i>Recommendation</i> | <i>Theme</i>                                                                                                                                                                                                                                                                                                                                                                                                               |                                           |
|------------------------|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|
| S/1999/957             | 33                    | Establish a peacekeeping presence early in the movement of refugees and displaced persons, where appropriate, in order to ensure that they are able to settle in camps free from the threat of harassment or infiltration by armed elements                                                                                                                                                                                | Separate civilians and armed elements     |
| S/1999/957             | 35                    | Deploy international military observers to monitor the situation in camps for internally displaced persons and refugees when the presence of arms, combatants and armed elements is suspected and to take appropriate measures in response                                                                                                                                                                                 | Separate civilians and armed elements     |
| S/1999/957             | 37                    | Mobilize international support for the relocation of camps to a safe distance away from the border with refugees' countries of origin                                                                                                                                                                                                                                                                                      | Separate civilians and armed elements     |
| S/1999/957             | 16                    | Ensure that appropriate measures are adopted to control or close down hate media assets in situations of ongoing conflict                                                                                                                                                                                                                                                                                                  | Control hate media                        |
| S/1999/957             | 26                    | Impose arms embargoes in situations where civilians and protected persons are targeted by the parties to the conflict, or where the parties are known to commit systematic and widespread violations of international humanitarian and human rights law, including the recruitment of child soldiers; and urge Member States to enforce these embargoes in their own national jurisdictions                                | Sanctions                                 |
| S/1999/957             | 22                    | Make greater use of targeted sanctions to deter and contain those who commit egregious violations of international humanitarian and human rights law, as well as those parties to conflicts which continually defy the resolutions of the Security Council                                                                                                                                                                 | Sanctions                                 |
| S/1999/957             | 25                    | Request regional organizations or groups of countries to submit complete information regarding humanitarian exemption mechanisms and clearance procedures prior to authorizing the imposition of regional sanctions; monitor the ability of regional sanctions authorities to implement the exemptions and clearance procedures and establish procedures for exercising Security Council authority to address inadequacies | Sanctions                                 |
| S/2001/331             | 6                     | Develop the concept of regional approaches to regional and subregional crises, in particular when formulating mandates                                                                                                                                                                                                                                                                                                     | Mission mandate and design (as necessary) |
| S/1999/957             | 34                    | Confirm that regional organizations have the capacity to carry out an operation according to international norms and standards before authorizing their deployment, and put in place mechanisms whereby the Council can effectively monitor such operations                                                                                                                                                                | Mission mandate and design (as necessary) |

| <i>Document symbol</i> | <i>Recommendation</i> | <i>Theme</i>                                                                                                                                                                                                                                                                                                                                                                                     |                                           |
|------------------------|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|
| S/1999/957             | 17                    | Ensure that United Nations missions aimed at peace-making, peacekeeping and peace-building include a mass media component that can disseminate information about international humanitarian law and human rights law, including peace education and children's protection, and about the activities of the United Nations, and encourage authorized regional missions to include such a capacity | Mission mandate and design (as necessary) |
| S/2001/331             | 8                     | Make provision for the regular integration in mission mandates of media monitoring mechanisms to ensure the effective monitoring, reporting and documenting of hate media                                                                                                                                                                                                                        | Mission mandate and design (as necessary) |
| S/1999/957             | 38                    | Ensure that peace agreements and the mandates of all United Nations peacekeeping missions include, where appropriate, specific measures for disarmament, demobilization and the destruction of unnecessary arms and ammunition, with particular attention given to demobilization and reintegration of child soldiers, and that early and adequate resources are made available                  | Mission mandate and design (as necessary) |
| S/2001/331             | 2                     | Establish, during the crafting of peacekeeping mandates, arrangements addressing impunity and/or truth and reconciliation, in particular in situations of widespread and systematic violations of international humanitarian and human rights law                                                                                                                                                | Mission mandate and design (as necessary) |
| S/1999/957             | 31                    | Support a public "ombudsman" with all peacekeeping operations to deal with complaints from the general public about the behaviour of United Nations peacekeepers and establish an ad hoc fact-finding commission, as necessary, to examine reports on alleged breaches of international humanitarian and human rights law                                                                        | Mission mandate and design (as necessary) |
| S/1999/957             | 32                    | Request the deploying Member States to report to the United Nations Secretariat on measures taken to prosecute members of their armed forces who have violated international humanitarian and human rights law while in the service of the United Nations                                                                                                                                        | Mission mandate and design (as necessary) |
| S/1999/957             | 40                    | Consider the imposition of appropriate enforcement action in response to massive and ongoing abuses on the basis of certain fundamental considerations such as the scope of the violations of human rights and international humanitarian law and the exhaustion of peaceful or consent-based efforts to address the situation                                                                   | Enforcement                               |
| S/2001/331             | 1                     | Provide, from the outset, reliable, sufficient and sustained funding for international efforts to bring to justice perpetrators of grave violations of international humanitarian and human rights law                                                                                                                                                                                           | Justice and reconciliation                |

| <i>Document symbol</i>           | <i>Recommendation</i> | <i>Theme</i>                                                                                                                                                                                                                                                                         |
|----------------------------------|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Protection after conflict</b> |                       |                                                                                                                                                                                                                                                                                      |
| S/1999/957                       | 36                    | Mobilize international support for national security forces, including logistical and operational assistance, technical advice and supervision where necessary                                                                                                                       |
| S/1999/957                       | 3                     | Consider using enforcement measures contained in Chapter VII of the Charter to induce, where necessary, compliance with orders and requests of the two existing ad hoc tribunals for the former Yugoslavia and Rwanda, respectively, for the arrest and surrender of accused persons |



## **Deed of Commitment under Geneva Call for Adherence to a total ban on anti-personnel mines and for Cooperation in Mine Action**

"We, the undersigned rebel movement or armed group («Non-State Actor»), through our duly authorized representative".

Recognising the global scourge of anti-personnel mines which indiscriminately and inhumanely kill and maim combatants and civilians, mostly innocent and defenceless people, especially women and children, even after the armed conflict is over;

Realising that the limited military utility of anti-personnel mines is far outweighed by their appalling humanitarian, socio-economic and environmental consequences, including on post-conflict reconciliation and reconstruction;

Rejecting the notion that revolutionary ends or just causes justify inhumane means and methods of warfare of a nature to cause unnecessary suffering;

Reaffirming our determination to protect the civilian population from the effects or dangers of military actions, and to respect their rights to life, to human dignity, and to development;

Resolved to play our role not only as actors in armed conflicts but also as participants in the practice and development of legal and normative standards for such conflicts, starting with a contribution to the overall humanitarian effort to solve the global landmine problem for the sake of its victims;

Accepting that international humanitarian law and human rights apply to and oblige all parties to armed conflicts;

Acknowledging the norm of a total ban on anti-personnel mines established by the 1997 Ottawa Treaty, which is an important step toward the total eradication of landmines;

NOW, THEREFORE, hereby solemnly commit ourselves to the following terms:

1. TO ADHERE to a total ban on anti-personnel mines. By anti-personnel mines, we refer to those devices which effectively explode by the presence, proximity or contact of a person, including other victim-activated explosive devices and anti-vehicle mines with the same effect whether with or without anti-handling devices. By total ban, we refer to a complete prohibition on all use, development, production, acquisition, stockpiling, retention, and transfer of such mines, under any circumstances. This includes an undertaking on the destruction of all such mines.
2. TO COOPERATE IN AND UNDERTAKE stockpile destruction, mine clearance, victim assistance, mine awareness, and various other forms of mine action, especially where these programs are being implemented by independent international and national organisations.
3. TO ALLOW AND COOPERATE in the monitoring and verification of our commitment to a total ban on anti-personnel mines by Geneva Call and other independent international and national organisations associated for this purpose with Geneva Call. Such monitoring and verification include visits and inspections in all areas where anti-personnel mines may be

present, and the provision of the necessary information and reports, as may be required for such purposes in the spirit of transparency and accountability.

4. TO ISSUE the necessary orders and directives to our commanders and fighters for the implementation and enforcement of our commitment under the foregoing paragraphs, including measures for information dissemination and training, as well as disciplinary sanctions in case of non-compliance.

5. TO TREAT this commitment as one step or part of a broader commitment in principle to the ideal of humanitarian norms, particularly of international humanitarian law and human rights, and to contribute to their respect in field practice as well as to the further development of humanitarian norms for armed conflicts.

6. This Deed of Commitment shall not affect our legal status, pursuant to the relevant clause in common article 3 of the Geneva Conventions of August 12, 1949.

7. We understand that Geneva Call may publicize our compliance or non-compliance with this Deed of Commitment.

8. We see the desirability of attracting the adherence of other armed groups to this Deed of Commitment and will do our part to promote it.

9. This Deed of Commitment complements or supercedes, as the case may be, any existing unilateral declaration of ours on anti-personnel mines.

10. This Deed of Commitment shall take effect immediately upon its signing and receipt by the Government of the Republic and Canton of Geneva which receives it as the custodian of such deeds and similar unilateral declarations.

Done this 4th of October 2001 in Geneva, Switzerland.

*Signatories are grouped by region and appear listed alphabetically by organisation.*

AFRICA - Burundi:

Conseil National pour la Défense de la Démocratie-Forces pour la Défense de la Démocratie (CNDD-FDD), signed 15 December 2003.

AFRICA – Somalia:

Banidiri, signed 11 November 2002.

HPA, signed 11 November 2002.

Jowhar Administration, signed 11 November 2002.

Puntland State of Somalia, signed 11 November 2002.

Rahanweyn resistance Army 1, signed 11 November 2002.

Rahweyn Resistance Army (RRA), signed 11 November 2002.

Somali National Front/Somali Reconciliation and Restoration Council, signed 11 November 2002.

Somali Patriotic Movement, signed 11 November 2002.

Somali Reconciliation and Restoration Council, Co-Chair Hilowle Imam Omar, signed 11 November 2002.

Somali Reconciliation and Restoration Council, Co-Chair Hussein Farah Aideed, Chairman Somali National Alliance, signed 11 November 2002.

Southern Somali National Movement/Somali National Army (SSNM/SNA), signed 11 November 2002.

United Somali Congress (USC), signed 11 November 2002.

AFRICA – Sudan:

Sudan People's Liberation Movement and Sudan People's Liberation Army (SPLM/A), signed 4 October 2001.

ASIA - Burma/Myanmar:

Arakan Rohingya National Organisation (ARNO), armed wing is the Rohingya National Army (RNA), signed 2003.

National United Party of Arakan (NUPA), armed wing is the Arakan Army (AA), signed 2003.

ASIA – North East India:

National Socialist Council of Nagalim (NSCN), signed 17 October 2003.

ASIA – Philippines:

Moro Islamic Liberation Front (MILF), Implementing Guidelines Pursuant to its Deed of Commitment, signed 7 April 2002.

Revolutionary Workers Party of Mindanao (RPM-M, Rebolusyonyong Partido ng Manggagawa ng Mindanao ), armed wing is the Revolutionary People's Army - Alex (RPA), signed September 2003.

Revolutionary Proletarian Army – Alex Boncayao Brigade (RPA-ABB), signed 10 September 2002.

MIDDLE EAST: Iraqi Kurdistan:

Regional Kurdistan Government – Erbil, signed 11 August 2002.

Regional Kurdistan Government – Sulaimanyia, signed 10 August 2002