

# Engaging Non-State Armed Groups in Humanitarian Action

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Formal actors are faced with vast shortcomings in articulating a legal foundation for engaging non-state armed groups. This essay addresses the difficulties, differences and commonalities for state and non-state actors in engaging with non-state armed groups. It demonstrates how non-governmental organizations offer the potential to fill the gap in the international legal regime by employing lower-key initiatives that avoid political issues such as the legitimization or recognition of non-state armed groups. The essay concludes that ‘small agreements’ in the humanitarian field bear the capacity to contribute enormously to prospective peace processes.

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A growing realization internationally of the importance and impact of non-state armed groups (NSAGs) on violent conflict is a consequence of the persistence of intra-state conflict.<sup>1</sup> The 2005 *Human Security Report* quantified only two inter-state conflicts but 26 civil wars involving at least one non-state actor, and 30 internal conflicts between non-state actors only. Other studies point to 176 armed groups in 64 countries worldwide.<sup>2</sup> The sheer number of NSAG involvements in contemporary conflict signifies their importance for human security nationally and across borders. Engaging with NSAGs and entering into legal obligations with them therefore becomes as important as peace treaties in traditional wars and the Geneva Conventions with regard to humanitarian concerns.

The terminology surrounding the definition of NSAGs is controversial and highly political. The sheer number of active NSAGs makes a clear and useful definition difficult because the groups differ widely in size, behaviour, structure, motives, goals and resources. The International Council on Human Rights Policy has developed a useful, though broad, definition, which describes them as groups that are ‘armed and use force to achieve their objectives and are not under state control’.<sup>3</sup> Additionally, the term NSAG refers to groups that do not pursue a private agenda but rather political and/or economic objectives. It includes armed groups, rebel groups, liberation movements and de facto governments; it excludes criminal organizations (mafiosi, and drug cartels), mercenaries, private security companies and terrorists.

This essay analyses the difficulties, differences and commonalities of state actors and non-governmental organizations (NGOs) when engaging with NSAGs in humanitarian action.<sup>4</sup> It first contextualizes the analysis in relation to the means used by states and NGOs. It elaborates on the shortcomings regarding a legal foundation in ‘high politics’ outside of peace processes and other legally

binding documents such as ceasefire agreements. The essay then establishes how humanitarian NGOs and 'low politics' can act as supplement to state involvement and 'high politics'. I utilize the analytical framework established for track two and multi-track diplomacy and apply them to NGOs engaging with NSAGs.<sup>5</sup> The article then examines policies on child soldiers and anti-personnel landmines to show how 'small agreements' in the humanitarian field can contribute to a political peace process, with reference to the UN, the EU, and selected NGOs such as Geneva Call and the Coalition to Stop the Use of Child Soldiers.

### **Situational Analysis**

NSAGs usually operate outside the national legal framework, confronting national as well as international security provisions with new challenges. NSAGs can be a cause and a symptom of fragile or failed states, in which they have often acquired control over large parts and populations of a country or are even considered to be the *de facto* government.<sup>6</sup> In these cases NSAGs present themselves as important actors not only while fighting is going on but also during peace processes, disarmament and demobilization programmes and weapon collection initiatives. At the same time, NSAGs are not acknowledged as legitimate actors before international law but rather are considered subject to state sovereignty.

Within this conceptual framework, the international community has often courted complex controversies with regard to NSAGs, particularly in acute conflict environments. State actors find themselves in a dichotomy – between the need to engage NSAGs and the political repercussions of engagement, as strategies such as 'sticks and carrots' prove to be insufficient. For the government side, formal dialogue might give legitimacy, recognition and belligerent status to rebel groups. State engagement with NSAGs can also be used as a forum for rebel propaganda. Alternatively, from an NSAG perspective, formal dialogue with states might make them vulnerable to intelligence gathering and surveillance.<sup>7</sup> In this context, NGOs have more freedom to engage NSAGs than states, which may possess diplomatic and trade relations with governments who are in conflict with an NSAG. Concurrently, it has been suggested that there is more room for creative work between NSAGs and NGOs with regard to education and monitoring processes.<sup>8</sup> Indeed, as the following section demonstrates, states and NGOs are equipped with distinctly different tools to engage with NSAGs.

### *State Approaches*

Many states have been reluctant to support initiatives that directly engage NSAGs, fearing the disruption of customary political and diplomatic conventions due to the lack of formal status held by NSAGs. By engaging with an NSAG a state actor, through its own standing, can enhance an NSAG's status in inapt ways or even find itself taking the side of the NSAG as a result of its weaker capacity and/or sympathy with its 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 on an NSAG and give it a modicum of legitimacy

with regard to a particular cause or a particular community. Such a move would signal the inability to exercise effective control over state territory and the admission of a credible challenge to government authority. Moreover, interaction between a state actor and an NSAG operative on its territory could imply that there is a basis for the NSAG's grievance. A direct consequence of such a 'legitimation' could, from an external outside perspective, even amount to rewarding 'terrorist' activities. Concurrently, it has also been feared by state actors that such interaction can be used by NSAGs to further their political objectives.

Despite common and potential spillover effects of NSAG activities, issues of illegality are seen as a domestic challenge. Accordingly, international humanitarian law is aimed mostly at state actors. It offers only limited mechanisms to push NSAGs to comply, whereas a collection of legal mechanisms has been developed to supply state actors with a comprehensive framework guiding their adherence. The dichotomy can be seen prominently in the cases of anti-personnel landmines and child soldiers, where in almost all cases NSAGs are subject, yet are not contributors, to international conventions.<sup>9</sup> The mechanism for states to implement provisions against legal violations by entities or individuals on their territory is restricted to a criminalization of respective violations. This, however, has been demonstrated to be ineffective because NSAGs favour clandestine or guerrilla tactics so as to counter state authority. Nevertheless, in case the state concerned is not able to prevent or punish violations it is necessary to be able to hold NSAGs liable for such violations. Common Art. 3 of the 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 NSAGs in the context of non-international armed conflicts. At the same time, even the Statute offers very few provisions for engaging NSAGs, imposing obligations only on states.<sup>10</sup>

Moreover, it is often political interest that directly influences attempts at engaging NSAGs. 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. Various state actors as well as NGOs rejected the proposal because it was seen as contravening the inherent right of self-defence for people fighting repressive regimes. One of the strongest objections came from the United States, which argued that it required the possibility of transferring arms to non-state actors as an instrument of foreign policy.<sup>11</sup> Indeed, the US Iraq Liberation Act of 1998 provided for the transfer of weapons to opposition groups fighting the regime of Saddam Hussein. Further examples include alleged Guinean, Ivorian and Liberian support for NSAGs. Even after the end of the cold war it remains foreign policy practice to covertly or openly supply specific non-state actors with arms in order to advance political or economic ambitions, a clandestine strategy that is specifically denied to NSAGs and feared by state actors.

In addition, many have argued that the major difficulty for state actors in engaging with NSAGs is that they sometimes had a 'state address' through external sponsoring. It has become difficult to track down reliable contacts for dealings with NSAGs that do not have an open state sponsor. As NSAGs often do not

possess formal organization, or control over the individual cadres, NSAG leaderships are unlikely to be well informed about the activities of their agents, which adversely affects the number of reliable contacts. Equally, the international community cannot expect the cadres of an NSAG to invariably follow a leadership's commands. However, once a contact has been identified through intelligence resources, access has been facilitated through modern communications technology. NSAGs often use websites and email as well as cell or sat phones for their own purposes.<sup>12</sup>

The following section will examine the role NGOs may play in filling the gap in the state-centred international legal regime.

### *NGO Approaches*

Contrary to state approaches, lower-key initiatives like those of NGOs bear the capacity to engage NSAGs without being attributed 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 on issues like child soldiers or anti-personnel landmines. The methods of informal and unofficial diplomacy (or track two diplomacy) are often adopted by NGOs engaging with NSAGs. This eases the pressure on the groups involved by addressing humanitarian concerns with NSAGs, while being independent from the state-centred international political sphere. Benefiting from this independence, many NGOs committed themselves to engaging NSAGs to respect and to adhere to humanitarian norms, utilizing an innovative mechanism for NSAGs to express adherence to international norms. By accepting the impossibility of NSAGs assenting to international treaties, an 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 NSAGs 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, stockpile or use anti-personnel landmines. Geneva Call, in turn, pledges 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>13</sup> Geneva Call has, thus, not only made progress with regard to the banning of anti-personnel landmines but also provided a forum for communication between NSAGs and humanitarian initiatives. It fills a gap in the international legal regime by answering the question of what type of coordinating mechanism might work and where it should be located. Similarly, addressing the limited range of pressure points available to the international community with regard to child soldiers, the Coalition to Stop the Use of Child Soldiers calls for the establishment of a process that would enable non-state actors to commit to the Optional Protocol and open up to ongoing, independent monitoring and accountability.<sup>14</sup>

The following section expands on the relationship between states and NGOs in engaging with NSAGs to demonstrate how track one and track two initiatives may supplement each other and that no one track is more important than, or independent of, the other; they can operate together as a system. In analysing the

policies utilized by the different actors, we focus first on state-centred and UN approaches.

### *The UN*

When the strategies of NSAGs are aimed at deliberately murdering civilians in order to gain as much national as well as international attention as possible, it is not surprising that armed, insurrectionary violence loses legitimacy. Indeed, civilians have become an estimated 75 per cent of all casualties of conflict.<sup>15</sup> Of course, no matter on what grounds fighting occurs, 'the targeting of innocent civilians is illegal, as well as morally unacceptable'.<sup>16</sup> The UN Secretary-General has called on member states to thoroughly enforce international law and 'deal firmly' with NSAGs and other non-state actors who refuse to adhere to 'common principles of human dignity'.<sup>17</sup> This standpoint implies, however, two features that need to be considered with regard to UN action for engaging NSAGs. First, the UN is an organization composed of nation-states, and, second, it is devoted to the universal applicability of human rights. In terms of engaging NSAGs this demands a combination of diplomatic and political efforts regarding the protection of civilians in armed conflict, as mirrored in UN policy.

Security Council resolutions are often the basis for building multinational coalitions against forms of violence and as a call on states to take effective counter-action. Much of the UN's success to date is based on Chapter VII resolutions, using economic sanctions as the principal tool, of which examples abound.<sup>18</sup> While governments are concerned that engagements might legitimize NSAGs (hence, sanctions are aimed directly at states rather than NSAGs), these concerns are balanced against the urgent need for humanitarian action in conflict areas. A loss of territorial control to an NSAG does not release a government from its humanitarian responsibility for all civilians within its jurisdiction. In this respect there has been a growing tendency for the Security Council to address *all* parties to armed conflict. While resolution 1209 (1998) stressed the importance of *states* restricting arms transfers, resolution 1261 (1999) on 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 Security Council 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>19</sup> Furthermore, in his 2001 Report on the protection of civilians in armed conflict, he requested the Inter-Agency Standing Committee to organize a working group for the development of a manual of best practices for engagement with NSAGs. It identified that the main problems of engaging NSAGs arise in the humanitarian implications of negotiations, the commitment to peace agreements, enforcement, dispute resolution mechanisms and dealing with non-compliance.<sup>20</sup> The dichotomy in which state-based actors operate becomes visible again: state-based interests and concerns versus the exigency to engage with NSAGs.

The diplomatic and political implications of engaging NSAGs remain uncertain. Instead, the UN has emphasized that aid agencies reaffirm the fundamental principles of international humanitarian law in their codes of conduct and in

any agreements they conclude with NSAGs.<sup>21</sup> While recognizing its own shortcomings in the adaptation to new actors, the UN emphasizes the need for NGOs to close the gap.

### *Regional Approaches: The EU*

Efforts to engage with NSAGs have been more prominent at the regional level, and in the EU especially. The attitude taken by EU governments towards NSAGs is much more open in comparison to the UN's, though the risk of legitimizing NSAGs is acknowledged. In December 1998 the European Council adopted a Joint Action on the basis of the EU's commitment to combating the destabilizing accumulation and spread of small arms and light weapons, recorded in Art. J.3 of the Treaty on European Union. While not directly labelling NSAGs, Art. 3b of the Joint Action forbids the sale of military-use small arms to sub-state or non-state groups. Furthermore, in the same article, EU member states renounce this form of military assistance as an instrument in their foreign and security policy.<sup>22</sup> The 1998 Joint Action only referred to weapons 'specially designed for military use', and thus did not cover pistols, revolvers, shotguns and various rifles frequently used in civil conflicts. However, the Joint Action's small arms definition was modified in July 2002 to include ammunition so as to broaden it to a useful extent. Moreover, the European Parliament 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 states that in order to achieve a universal ban on landmines, NSAGs would have to be involved in the process.<sup>23</sup> Furthermore, the 2001 resolution states (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'. The EU thus found it possible to address NSAGs directly while accounting for concerns about the perceived international legitimacy of NSAGs commonly harboured by state actors. Additionally, the 2001 resolution calls for state actors to put pressure on NSAGs that remain openly reluctant to adhere to a ban of anti-personnel landmines and calls for the elimination of the use, production, stockpiling and transfer of anti-personnel landmines by NSAGs (Art. H). Furthermore, it calls on the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (the 'Ottawa Convention) and the 2001 Declaration of the States Parties to the Ottawa Convention (the 'Managua Declaration') to give closer attention to and support efforts to obtain strong commitments from NSAG.

EU action with regard to engaging NSAGs in a landmine ban involves two initiatives. The first promotes existing channels, which in the case of a landmines ban are represented by the Managua and Ottawa Conferences. In a resolution of February 2003 on the harmful effects of unexploded ordnance (landmines and cluster submunitions) and depleted uranium ammunition, the European Parliament called on the state parties to the Ottawa Treaty to address the issue of the use, production, stockpiling and transfer of anti-personnel landmines by NSAGs at their following meeting in Bangkok (Art. N). Reviewing the Ottawa Treaty, the European Parliament adopted another resolution in April 2004 that

further recognizes that NSAGs should show their respect for humanitarian norms (Art. K). It lists concrete steps for NSAGs 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>24</sup> By referring to Geneva Call's international efforts, the EU opened channels which bear the capacity to make communication between state actors and NSAGs less of a diplomatic taboo. Nevertheless, while this initiative rests on the commitment of NSAGs, it only represents one arena where the EU is active.

The second initiative is signified by the EU Council's proposal for a meeting in Brussels (which 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>25</sup> Consequently a document was signed to pave the way for the inter-Congolese dialogue, beginning on 25 February 2002. Additionally, the European Troika (representatives of France, Germany and Russia) urged the armed rebels in Burundi to suspend hostilities forthwith, negotiate a ceasefire and take their place at the negotiating table.<sup>26</sup>

In sum, the EU and its member states acknowledged the importance of engaging NSAGs by explicitly addressing them and pressed for interaction between NSAGs and state actors for the dispersion of humanitarian norms. The EU also emphasized the role of NGOs in advancing engagement with NSAG. The following section will analyse NGO approaches and ways to combine the different tracks in order to find an encompassing strategy for engaging NSAGs.

### *Non-governmental Organizations*

The concern to protect human rights is to a great extent represented by NGOs. Their activities with regard to NSAGs often play a greater role in a peace process than that of other stakeholders. In this respect, Geneva Call and The Coalition to Stop the Use of Child Soldiers exemplify engagement with NSAGs in humanitarian action.<sup>27</sup>

Geneva Call has become an active force by engaging with NSAGs to respect and adhere to humanitarian norms, starting with the ban on anti-personnel landmines. This represents an alternative to the 1997 Ottawa Treaty because being unable to participate in the drafting of international treaties, NSAGs may not feel bound by them.<sup>28</sup> Geneva Call provides an innovative mechanism for NSAGs to express adherence to the norms embodied in the Ottawa Convention through their signature to the 2001 'Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action'. Under the Deed of Commitment, signatories commit to a total prohibition on the use, production, acquisition, transfer and stockpiling of anti-personnel landmines and other victim-activated explosive devices. Furthermore, the deed demands cooperation and facilitation 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. The deed treats the signatories' commitment as a step towards the ideal of humanitarian norms. Geneva Call not only offers a platform for NSAGs to sign an internationally binding document but also aims at providing support for the implementation of the commitments made by NSAGs as well as monitoring their progress. One part of these efforts is represented by measures such as constituency building, research and public advocacy. Geneva Call 'pledges to promote the implementation of mine action programmes in mine-affected areas under [NSAG] control, to assist signatory groups fulfil their obligations under the Deed of Commitment and to monitor compliance'.<sup>29</sup> Under these terms, various NSAGs in, for example, Burundi, Somalia, Sudan, Burma/Myanmar, North East India, the Philippines and Iraqi Kurdistan signed the deed.

Without the obstacles raised by states, NGOs have been able to gain freer access to NSAGs. A four-fold mechanism embedded in the Deed of Commitment includes adherence (to humanitarian norms), assistance (for compliance), accountability (for non-compliance), and participation (in norm-building) as much as a basis for future commitments. Implementation measures include guidelines, written orders, information dissemination, military doctrine change, military manuals, military training, mine ban education and disciplinary sanctions (such as 'naming and shaming'), so as to inform and educate the individual cadres of NSAGs. Mine action includes stockpile destruction, mine clearance, victim assistance, mine awareness and risk education. The Deed of Commitment also becomes a mechanism for facilitating access to technical support and expert resources from international and national organizations. As an accountability mechanism the deed features compliance reports (submitting a reporting format designed by Geneva Call), independent monitoring (in existing networks already monitoring international humanitarian law on a long-term basis), as well as field verification (visits by Geneva Call to inspect sites and evaluate implementation). Additionally, the deed has a paragraph on the non-affectedness of legal status of NSAGs, maintaining the legal status states assigned to NSAGs, as well as a sanction mechanism in the case of non-compliance to the deed.<sup>30</sup>

The impact-oriented anti-personnel landmine strategies and the deed's accountability mechanisms are innovative. 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 indicate such effectiveness and impact. By fully engaging NSAGs in the efforts for a universal ban of anti-personnel landmines, Geneva Call manages the coordination of diplomatic, legal and informal tracks in order to ban landmines and end the suffering they produce. The overall effect has been that 28 armed groups in Burma, Burundi, India, Iraq, the Philippines, Somalia, Sudan and Western Sahara have agreed to ban anti-personnel landmines through this mechanism.

### *The Coalition to Stop the Use of Child Soldiers*

Strong campaigning by the Coalition to Stop the Use of Child Soldiers has led to new international legal standards, national reforms and action by the UN Security

Council. The Coalition has played an instrumental role in the negotiation, adoption and entry into force of international legal instruments prohibiting child soldiering, including the 2002 Optional Protocol to the Convention on the Rights of the Child. The Coalition has promoted active engagement between international actors, such as the UN Security Council, the Human Security Network and the Committee on the Rights of the Child. It has compiled the first Child Soldiers Global Report in 2004, as well as other geographic and thematic research reports and briefings, detailing military recruitment laws, practice and the use of child soldiers in conflict by both governments and NSAGs. At the same time, the Coalition 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.

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 *Fuerzas Armadas Revolucionarias de Colombia* (FARC), the Liberation Tigers of Tamil Eelam (LTTE) in Sri Lanka, Liberians United for Reconciliation and Democracy (LURD), the Sudan People's Liberation Army (SPLA), and several ethnic armed opposition groups in Burma/Myanmar. Although many groups continue to recruit and use children, such commitments have led to demobilizations of child soldiers. In 2000, Save the Children UK got the agreement of RCD-Goma commanders to attend a series of workshops on international provisions related to child soldiers. This arrangement was similar to agreements made by the Coalition, and led to RCD-Goma participation in demobilization and rehabilitation programmes thereafter, prompting an increase in demobilized child soldiers by 2001.<sup>31</sup>

The approaches taken by Geneva Call and the Coalition demonstrate an opportunity. By allowing NSAGs to adhere to international provisions on a landmine ban and providing monitoring mechanisms, humanitarian concerns are tackled with the support of NSAGs. Moreover, steps taken by Geneva Call have included NSAG in international efforts to universally ban landmines, while not affecting their international status. The gap between the need for humanitarian action and the possibilities within a state-centric system may be reduced by NGO initiatives that engage with NSAGs. By normalizing this kind of interaction, humanitarian concerns could be addressed in a way that decreases the sufferings of non-combatants in conflict and conveys political or economic agendas with less violence and thus increase the application of problem-solving strategies in international conflict. However, initiatives that formally engage NSAGs remain peripheral in humanitarian action. Although Geneva Call has official cantonal support it remains an outrider. The potential of otherwise valued NGO work in places restricted to state actors remains underused.

## Conclusion

The different approaches by various international actors stem from the different environments or settings in which they operate. It is not surprising that the UN displays greater difficulties compared to NGOs in engaging NSAGs directly.

The UN operates in a state-centric system, and interaction with non-state actors remains complicated. Strategies with regard to NSAGs concentrate not only on humanitarian action but also must account for the complete crisis situation. The aim is to consolidate a peaceful environment within the boundaries of the state.<sup>32</sup> 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 orders a legitimate monopoly of power. Despite these restrictions, the UN aims at tackling the issue of NSAGs and addressing all parties to conflicts – a modification of the UN's state-centric framework to enable a more effective use of humanitarian action. Similarly, the EU has moved beyond its state-centric basis, thanks to the transfer by states of authority to its supra-national organs. Engaging with NSAGs has become less of a diplomatic taboo though the state maintains the highest priority within the system. Both the UN and EU, however, rely heavily on a second, informal track provided by NGOs.

NGOs benefit from almost complete legal freedom when engaging with NSAGs.<sup>33</sup> First, they are able to engage NSAG directly in humanitarian action, which becomes necessary in order to protect personnel and material in territories where NSAGs present the de facto government. It is possible for NGOs to initiate NSAG programmes for the reintegration of former child soldiers, the banning of anti-personnel landmines and the like. Second, Geneva Call has developed an innovative option enabling NSAGs to enter the international sphere legally by signing an international agreement, the Deed of Commitment, creating a possibility for NSAGs to adhere to the 1997 Ottawa Convention. This approach uses NGO assets in order to concentrate on problem-oriented practices.

The instruments for engaging NSAGs are diverse and contingent on the legal and political environments in which they are located. Despite apparent shortcomings concerning the reaction time of large political bodies such as UN and EU, state actors bear the main capacity to deal with issues of a diplomatic or political nature, such as the legitimacy and recognition of actors. Although these issues arguably represent a topic that can only be secondary with regard to urgent humanitarian action in conflict situations, they remain important. State actors can draw up treaties with NSAGs and define a lasting relationship with non-state actors in the international sphere through ceasefire agreements and peace treaties. They bear the material capacity to take up arms and fight against NSAGs in the name of the protection of civilians in armed conflict. Pragmatists would argue that state actors are left with no choice in the issue as the risks of legitimizing NSAGs are offset by the benefits of engagement. They contend that state-based legal instruments were sufficient to deal with NSAGs. However, the law enforcement mechanism that state actors employ to criminalize NSAGs may not always be appropriate or effective. The UN Secretary-General referred to this problem in a 2002 report to the Security Council by criticizing 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 Conventions'.<sup>34</sup> While being restricted by political and diplomatic limitations, state actors should employ multilateral law enforcement mechanisms, like intelligence sharing, police cooperation and joint action against sources of funding to ease tensions

between the legal framework, acknowledging the moral equivalence of the combatant, and the criminal law framework, reflecting claims of unambiguous moral supremacy.<sup>35</sup> The need for identifying and improving implementation of the existing normative framework should be satisfied, rather than the need for further codification. The advantages of this approach would be a confirmation of the validity of the relevant legal framework as well as the introduction of flexible non-legally binding instruments, facilitating the identification of appropriate 'entry points' for dialogue and providing adaptability in a variety of situations.

Using unofficial tracks to engage NSAGs can supplement state approaches. Instead of putting 'track one' at the top of the hierarchy, with all unofficial tracks poised to change the direction of track one, the two (or multiple) tracks need to be connected. Each track has its own resources, values and approach, and coordinating them would create a powerful effort for achieving their aims. Realizing cooperation between NGOs and state actors would draw on the advantages of both sets of actors. Compared to state actors NGOs bear a higher capacity to initiate unofficial negotiations with NSAGs to address humanitarian concerns. Geneva Call's mechanism can bind NSAGs to international legal agreements and monitor their implementation. Both measures demonstrate higher successes in reaching any sort of agreement with NSAGs because unofficial environments put less pressure on the parties involved than official negotiations. Unofficial meetings between representatives of international civil society and NGOs serve as an exchange of opinions and a way of finding constructive solutions to problems at hand without being accompanied by diplomatic implications like legitimacy or recognition of actors. This distinct advantage of NGOs engaging with NSAGs as well as the preparatory work done by NGOs may serve as a foundation for later official negotiations.

Put differently, NGOs bear the capacity to facilitate contact between state actors and NSAGs and act as track two mediators with regard to humanitarian concerns,<sup>36</sup> by stimulating interaction with NSAGs away from the issues of 'high politics' and by using NGO flexibility in engaging NSAGs. Informal relations with NSAGs not only present the opportunity to tackle humanitarian concerns on all levels but also present the prospect of semi-institutionalizing contact with NSAGs. If interaction consolidates, more issues concerning humanitarian action may be approached and successfully tackled. Thus, NGOs may serve as an outrider for official contact. The UN Secretary-General acknowledged that 'non-governmental organizations 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>37</sup>

The role of NGOs in delivering humanitarian aid to distressed populations and the groundwork necessary to negotiate access can become a first step for engaging NSAGs internationally. This is not to imply that NGOs should be responsible for track two negotiations on matters of recognition and legitimacy, but progress made by NGOs in engaging NSAGs might be useful to facilitate progress at the state level. Increased communication with NSAGs can mean increased information sharing and understanding of problems on both sides, which in turn might increase mutual vested interests in peace processes.

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## NOTES

1. Although the 2005 *Human Security Report* reveals a steep decline in conflicts since the early 1990s it also records an increased 'reliance on child soldiers and a growth in paramilitary organisations and private military firms'. See Human Security Centre, *Human Security Report 2005 – War and Peace in the 21st Century*, Oxford: Oxford University Press, 2005, pp.16, 23.
2. Amnesty International, *Annual Report 2004* (accessed at <http://web.amnesty.org/report2004/index-eng>).
3. International Council on Human Rights Policy, *Ends and Means: Human Rights Approaches to Armed Groups*, Geneva, 1999, p.5.
4. The principles of humanitarian action generally comprise the right to life with dignity, the distinction between combatants and non-combatants and the principle of non-refoulement (see especially Wolf-Dieter Eberwein, 'Terrorismus und humanitäre Hilfe – Kontinuität und Wandel des Politikfeldes der humanitären Hilfe' ['Terrorism and Humanitarian Aid – Continuity and Change within Humanitarian Aid Policies'], *Discussion Paper P 2004-301*, Wissenschaftszentrum Berlin (WZB), 2004; Nicholas Leader, *The Politics of Principle: The Principles of Humanitarian Action in Practice*, Humanitarian Practice Group (HPG) Report 2, 2000; Kate Mackintosh, *The Principles of Humanitarian Action in International Humanitarian Law*, HPG Report 5, 2000.
5. While literature on the complementary function of unofficial diplomacy is plentiful, literature relating it to NSAGs is minimal. On track two diplomacy see especially John W. McDonald and Diane Bendahmane, *Conflict Resolution: Track Two Diplomacy*, Arlington: Institute for Multi-Track Diplomacy, 1995. On multi-track diplomacy see Louise Diamond and John W. McDonald, *Multi-Track Diplomacy: A Systems Approach to Peace*, West Hartford, CT: Kumarian Press, 1996.
6. The terrorist attacks of 11 September 2001 brought the issue of fragile states back on the international agenda after it was originally debated in the 1990s. See Ulrich Schneckener, *States at Risk. Fragile Staaten als Sicherheits- und Entwicklungsproblem* [Fragile States as a Security and Development Problem], Berlin: Stiftung Wissenschaft und Politik (SWP), 2004; Robert H. Jackson, 'Surrogate Sovereignty? Great Power Responsibility and "Failed States"', Working Paper Nr. 25, Institute of International Relations, University of British Columbia, 1998; Robert H. Jackson, *Quasi-States: Sovereignty, International Relations and the Third World*, Cambridge: Cambridge University Press, 1990; and Robert I. Rotberg (ed.), *When States Fail: Causes and Consequences*, Princeton: Princeton University Press, 2004. For the connection between NSAGs and failed states see especially William Reno, *Warlord Politics and African States*, Boulder, CO: Lynne Rienner, 1998; and Christopher Clapham, *Africa and the International System: The Politics of State Survival*, Cambridge: Cambridge University Press, 1996.
7. Soliman M. Santos, Jr., *The Ottawa Treaty and Non-State Actors*, public background paper, 1999 (accessed at [www.genevacall.org/resources/testi-referencematerials/otherdocuments.htm](http://www.genevacall.org/resources/testi-referencematerials/otherdocuments.htm)).
8. International Campaign to Ban Landmines, 'Tools for Engaging NSAs', in *Engaging Non-State Actors in a Landmine Ban: A Pioneering Conference – Summary Proceedings*, Geneva, 24–25 Mar. 2000 (accessed at [www.icbl.org/wg/nsa/library/nsaconf.html#anchor495150](http://www.icbl.org/wg/nsa/library/nsaconf.html#anchor495150)).
9. With regard to landmines, art. 16(2) of the Ottawa Convention states that the Convention 'shall be open for accession by any State which has not signed the Convention' [emphasis added]. Similarly, the 1989 Convention on the Rights of the Child states in art. 77(2) that 'States Parties 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].
10. Claude Bruderlein, *The role of non-state actors in building human security: the case of armed groups in intra-state wars*, background paper for Centre for Humanitarian Dialogue, Geneva, May 2000 (accessed at [www.hadcentre.org/?aid=52](http://www.hadcentre.org/?aid=52)), p.7.
11. David Capie, *Armed Groups, Weapons Availability and Misuse: An Overview of the Issues and Options for Action*, background paper for the Centre for Humanitarian Dialogue Meeting, Bamako, Mali, 25 May 2004, p.10.

12. International Council on Human Rights Policy (see n.3 above), p.42. For example, the LTTE is represented online through its Peace Secretariat (accessed at [www.ltteps.org](http://www.ltteps.org)) and the FARC through the FARC-EP (accessed at [www.farcep.org](http://www.farcep.org)).
13. The deed can be seen as a trilateral agreement or memorandum of understanding. Its mechanisms regarding adherence, assistance, accountability and participation, however, are more than a sum of their parts and may be considered *sui generis*.
14. Capie (see n.11 above), p.9.
15. 'Secretary-General, addressing Assembly on Terrorism, calls for "immediate, far-reaching changes" in UN response to terror', *UN Press Release*, SG/SM/7977, GA/9920, 1 Oct. 2001 (accessed at [www.un.org/News/Press/docs/2001/sgsm7977.doc.htm](http://www.un.org/News/Press/docs/2001/sgsm7977.doc.htm)).
16. *Ibid.*
17. *Ibid.*
18. For example, on the trades in arms, fuel and diamonds, and financial and travel restrictions against the *União Nacional para a Independência Total de Angola*, the UN Security Council called for states and organizations to take action, from September 1993; arms and diamonds embargoes against Liberia and travel restrictions on senior members of the Liberian government in 2001 for Liberia's support of the Revolutionary United Front in Sierra Leone; the arms embargo of July 2004 on Sudan regarding all non-governmental combatants in Dafur, including the Janjaweed militias.
19. 'Report of the Secretary-General to the Security Council on the protection of civilians in armed conflict', UN doc. S/2002/1300, 26 Nov. 2002, p.7.
20. OCHA, *Humanitarian Negotiations with Armed Groups – A Manual and Guidance for Practitioners* (accessed at <http://ochaonline.un.org/humanitariannegotiations/Chapter6-6.htm>).
21. 'Report of the Secretary-General to the Security Council on the protection of civilians in armed conflict', UN doc. S/2001/331, 30 March 2001, p.16.
22. 'A commitment by exporting countries to supply small arms only to governments ... in accordance with appropriate international and regional restrictive arms export criteria, as provided in particular in the EU code of conduct, including officially authorized end-use certificates or, when appropriate, other relevant information on end-use'. See Council of the European Union, Joint Action of 17 Dec. 1998, Acts adopted pursuant to Title V of the Treaty on European Union (1999/34/CFSP) (accessed at <http://europa.eu.int/cgi-bin/eurllex/udl.pl?REQUEST=SeekDeliver&SERVICE=eurllex&COLLECTION=oj&LANGUAGE=en&DOCID=1999p00010005>).
23. '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]. See European Parliament resolution on measures to promote a commitment by non-State actors to a total ban on anti-personnel landmines, art. F, Text adopted by the European Parliament, 6 Sept. 2001 (accessed at [www.genevacall.org/resources/testi-referencematerials/testiofficialdocuments/epr06sep01.pdf](http://www.genevacall.org/resources/testi-referencematerials/testiofficialdocuments/epr06sep01.pdf)).
24. Review of the Ottawa Treaty on anti-personnel mines, European Parliament resolution on anti-personnel mines, Text adopted on 22 April 2004 (provisional edn), accessed at [www.genevacall.org/resources/testi-referencematerials/testi-officialdocuments/epr22apr04\(resolution\).doc](http://www.genevacall.org/resources/testi-referencematerials/testi-officialdocuments/epr22apr04(resolution).doc)).
25. EU, 2397th Council Meeting, General Affairs, Brussels, 10 Dec. 2001, PRES/01/460 (accessed at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=PRES/01/460&format=HTML&aged=1&language=EN&guiLanguage=en>).
26. *Ibid.*
27. Knowledge networks played a decisive part in the development of NGO engagement mechanisms. Examples are: the Armed Groups Project of the University of British Columbia, Humanitarian Dialogue (Geneva) and the Programme for the Study of International Organisations (Graduate Institute of International Studies, Geneva).
28. Timothy McCormack, 'From Solferino to Sarajevo: A Continuing Role for International Humanitarian Law?', *Melbourne University Law Review*, Vol.21, No.2, 1997, pp.640–41.
29. Geneva Call Website: [www.genevacall.org/home.htm](http://www.genevacall.org/home.htm)
30. Para.6 on the legal status of NSAGs refers to art. 3 of the 1949 Geneva Convention. See also 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 at the Centre of International Relations, University of British Columbia, Vancouver, 13–15 Nov. 2003 ([www.armedgroups.org/\\_media/Santos\\_paper.pdf](http://www.armedgroups.org/_media/Santos_paper.pdf)).
31. Jo Becker, 'Child Soldiers and Armed Groups', (*ibid.*, [Becker\\_paper.pdf](#)), p.3.

32. In this attempt, the 2004 Secretary-General's High Level Panel on Threats, Challenges and Change identifies terrorism as prohibited by the Geneva Conventions and Protocols and as requiring 'empathetic responses' (para. 237) from the international community and the Security Council. No other mention is made regarding an engagement of NSAGs. Similarly, the Secretary-General's Report 'In Larger Freedom' confines the engagement of NSAGs to the realm of the rule of law of states.
33. This freedom applies naturally only for legal activities of NGOs with regard to international humanitarian law and international human rights law.
34. Report of the Secretary-General 2002 (see n.19 above), p.6.
35. Combatant status is defined as provided in the Third 1949 Geneva Convention in art. 4(A2).
36. John Burton and Frank Dukes, *Conflict: Practices in Management, Settlement and Resolution*, Basingstoke: Macmillan, 1990.
37. Report of the Secretary-General 2001 (see n.15 above), p.17.