Humanitarian Engagement with Non-state Armed Groups

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Preface

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All parties to a conflict are obliged by international law to meet the needs of civilians under their control. Equally, humanitarian actors are entitled to offer to carry out relief actions that are humanitarian and impartial in character. The increased presence and activity of non-state armed groups (NSAGs) in conflicts worldwide is, however, complicating and hindering the effective implementation of this basic aspect of international humanitarian law (IHL) and humanitarian action.

In January 2016 Chatham House published a briefing[1] in which the authors, Michael Keating and Patricia Lewis, called for all states, whether caught in conflict or funding humanitarian aid, to work towards developing a principled approach to engagement by humanitarian actors with NSAGs so as not to impede the delivery of humanitarian aid. That briefing drew on the work of the papers now brought together in this collection, which frames four aspects of why such an approach is both necessary and exigent.

In his paper, Andrew MacLeod sets out how obstacles to engagement by humanitarian actors with NSAGs will result in significant numbers of civilians being effectively discriminated against because of where they live. This threatens to undermine the humanitarian principle of impartiality, which requires that humanitarian action is carried out solely on the basis of need, with priority given to the most urgent cases of distress and no distinction made on the basis of nationality, race, gender, religious belief, class or political opinions.[2] The issue is often complicated by the political dimensions of a conflict, which may result in the principle of impartiality challenging that of neutrality, and vice versa.

The landscape is increasingly complicated both by those perpetrating conflict and by those responding to conflict. The nature of conflicts has evolved to include ever more and diverse actors with an interest in carrying out humanitarian activities, among them militaries, politicians and, in some cases, NSAGs themselves. All such actors to a conflict, be they categorized as NSAG, humanitarian, military or (occasionally) a combination of these, vary extensively in terms of their mandate, mission and modus operandi; and, as such, finding a single approach or solution to engaging with NSAGs for humanitarian purposes is all the more challenging. The reality is that any effective humanitarian response will require a collaboration and coordination of a variety of approaches made by states, international organizations and non-governmental organizations (NGOs).

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[1] Keating, M. and Lewis, P. (2016), *Towards a Principled Approach to Engagement with Non-state Armed Groups for Humanitarian Purposes*, Briefing, London: Royal Institute of International Affairs, https://www.chathamhouse.org/sites/files/chathamhouse/publications/research/20160108EngagementNSAGsHumanitarianPurposesKeatingLewis.pdf.

[2] United Nations Office for the Coordination of Humanitarian Affairs (2012), 'OCHA on Message: Humanitarian Principles', https://docs.unocha.org/sites/dms/Documents/OOM-humanitarianprinciples_eng_June12.pdf, p. 1.

There are already a variety of models and means of engagement that facilitate the delivery of humanitarian aid in areas controlled by NSAGs. In her paper, Claudia Hofmann considers approaches taken by NGOs and private actors in the context of conflict mediation to reduce the humanitarian consequences of armed conflict: engagement with NSAGs to facilitate the immediate delivery of humanitarian aid; promotion of international norms related to protection of civilians aimed at influencing NSAG behaviour; and longer-term engagement that focuses on conflict resolution through dialogue, mediation and negotiation. There is no single solution or dominant model, but rather a recognition that usually a multifaceted approach to conflict resolution, leveraging the different strengths and advantages of each method, is most likely to be successful.

This is also true when considering how to encourage improved compliance and respect for IHL by NSAGs. Although such groups are bound to respect IHL norms, actual compliance is problematic and difficult to enforce. A variety of tools and frameworks do however exist that can be adapted to promote compliance with IHL, encouraging and reinforcing basic norms and behaviours. One such example is the adoption by, to date, 49 NSAGs of the Deed of Commitment under Geneva Call for adherence to a total ban on anti-personnel (AP) mines and for cooperation in mine action.[3] This Deed of Commitment was launched in 2000, following the adoption in 1997 of the Mine Ban Treaty.[4] It has resulted in pledges to moderate behaviour in order to reduce the impact of AP mines on civilians, and, *inter alia*, in the destruction of stockpiled AP mines and improvised explosive devices. In some cases, furthermore, adherence by NSAGs to the Deed of Commitment has acted as a catalyst for concerned states to accede to the Mine Ban Treaty.[5]

The challenges that face humanitarian actors when engaging with NSAGs include impediments in national laws, such as counterterrorism legislation. In his paper, Ben Saul observes that the designation of certain NSAGs as terrorists, and the subsequent restrictions on engagement required by counterterrorism legislation in certain countries, threatens to undermine the humanitarian principles of neutrality and impartiality. There is often a lack of clarity as to what would constitute an infringement of counterterrorism legislation, and this legal ambiguity may be enough to deter many humanitarian organizations – which bear the brunt of the risk – from engagement with NSAGs.

While it is clear that disengaging with NSAGs is not guaranteed to cause them to improve their behaviour, a lack of engagement will almost certainly further the exclusion and isolation of civilians living in NSAG-controlled territories. It is the voices of these disenfranchised populations that are often not heard in the dialogue around humanitarian needs and responses. Yet it should surely be the actual needs and priorities of conflict-affected civilians that drive the humanitarian agenda and define the criteria of successful humanitarian assistance. In their paper, Joshua Webb and Charu Lata Hogg argue that technology – particularly mobile technology – presents opportunities for improved engagement and a deepened understanding of the expressed needs of affected communities, and that the international humanitarian community must improve its efforts to systematize and learn through their listening processes.

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[3] Geneva Call (2016), 'Deed of Commitment', http://www.genevacall.org/how-we-work/deed-of-commitment/. There are two other Deeds of Commitment: protecting children in armed conflict (2010, 18 signatories); and prohibiting sexual violence and gender discrimination (2012, 16 signatories).
[4] International Committee of the Red Cross (2016), 'Treaties, States Parties and Commentaries', https://www.icrc.org/ihl/INTRO/580.
[5] Geneva Call (2016), 'Landmine ban', http://www.genevacall.org/what-we-do/landmine-ban/.

The current state of affairs as it affects civilians in conflict is unnecessarily unjust, prejudicing an already vulnerable group based on factors largely beyond their control. However, unless there is an improved effort on the part of states, international organizations, NGOs and NSAGs to find effective means of engagement to facilitate the delivery of humanitarian aid to all areas in need, then access to basic humanitarian assistance may be determined by where people live and who controls that territory, rather than by the level of need. The failure by states and international organizations to address this anomaly could now result in unintended changes to the fundamental principles that underpin humanitarianism.

Engaging Non-state Armed Groups for Humanitarian Purposes

Experience, Constraints and Ways Forward

Andrew MacLeod

Summary

- Non-state armed groups (NSAGs) need to be engaged for humanitarian purposes because they control or impact on access to territory in which people in need of assistance or protection find themselves.

- NSAGs have obligations under international humanitarian law with regard to the way they conduct hostilities and treat the civilians who live in the areas they control.

- NSAGs need to be engaged for effective and impartial provision of assistance and to promote adherence to the rule of law in armed conflict, for the sake of the people who live in the territories they control.

- In territory controlled by NSAGs, the delivery of essential humanitarian assistance requires their acceptance of civilians' need for humanitarian aid or protection.

- The military focus on counter-insurgency has led to the increased use of humanitarian assistance as a military strategy. This has served to undermine traditional perceptions of the neutrality and impartiality of humanitarian assistance and humanitarian organizations.

- The concept of the 'humanitarian space' is in a state of flux, due to growing numbers of both humanitarian actors and NSAGs. Equally, new types of conflict have complicated the determination of the humanitarian space.

- Peacekeeping operations and natural disaster settings lend themselves to a more straightforwardly neutral humanitarian space where NSAGs can be engaged for humanitarian purposes. However, in complex mixed disaster/conflict settings the delivery of humanitarian aid can impact on the conflict's dynamics post-emergency.

- Since there is no internationally agreed definition of terrorism, the label may be applied, accurately or otherwise, to a wide range of NSAGs, leading to erroneous public perceptions of ideological fanatics with whom negotiations are impossible. Such labelling rarely helps humanitarian agencies seeking to deliver assistance to those in need.

- Aid is no longer the preserve of Western agencies. Organizations delivering humanitarian assistance from other donor bases – in the Middle East, for example – may be able to negotiate with NSAGs to deliver humanitarian assistance where Western agencies cannot. None the less, it may be difficult particularly for Western governments to perceive these actors as 'neutral'.

- There is a greater need for professional humanitarian players with deeper political training in order to navigate the nuances of the changing humanitarian space. Such professionalism is needed in order for humanitarian negotiations to steer through complex situations.

- The time may be ripe for a set of internationally agreed guidelines for humanitarian actors that would build on and codify the sets of standards and guidelines already in existence.

Introduction

The office of the UN High Commissioner for Refugees (UNHCR) estimated that in mid-2015 there were 58 million refugees and internally displaced persons (IDPs) worldwide who had been uprooted by persecution and conflict.[6] The vast majority of IDPs are in the five main conflict zones of Iraq, Syria, South Sudan, the Democratic Republic of the Congo (DRC) and Nigeria.[7] Although these people remain within their own country, they are nevertheless fleeing or seeking protection from either non-state armed groups (NSAGs), their own government, or the military forces of other governments. It is hard to determine precise numbers of those who are either fleeing NSAGs or seeking the protection of such groups. The Internal Displacement Monitoring Centre estimates that some 38 million people worldwide remain internally displaced having fled violence and NSAGs.[8]

The total number of those who have fled across borders from the various factions of the Syrian crisis alone now exceeds 4 million.[9] More than one-half of all Syrians have been forced to flee their homes, often multiple times, making Syria the largest displacement crisis globally. According to the UN Office for the Coordination of Humanitarian Affairs (UN OCHA), at 31 July 2015 some 12.2 million people remained in need of humanitarian assistance in Syria, 'a 12-fold increase since 2011 – including more than 5.6 million children', and 7.6 million people had been displaced by the conflict.[10] Furthermore, an estimated 4.8 million people were reported to be in need of humanitarian assistance in hard-to-reach and besieged locations.[11] Also according to UN OCHA, of these 4.8 million in hard-to-reach areas, an estimated 2.7 million in need were living in areas under the control of Islamic State of Iraq and Syria (ISIS), where humanitarian access continued to decline.[12]

In far too many situations today, people are living among – and either in fear of or protected by – NSAGs. Examples include: Boko Haram capturing villages in Nigeria; drugs-related gangs controlling territory in various South American states; ISIS taking whole swathes of Syria and Iraq; the Taliban or Al-Qaeda living within communities from Pakistan to Afghanistan; and warlords seeking power in eastern areas of the DRC.

The International Institute for Strategic Studies (IISS) Armed Conflict Database[13] estimates that worldwide there are currently 87 conflicts involving NSAGs that pose an actual or potential threat to the stability of the state or region in which they operate.[14] By the end of 2014 some 38 million IDPs globally had been forcibly displaced by violence (compared with 33.3 million in 2013).[15] Increases in the numbers of refugees and IDPs during 2014 – early 2016 are primarily the result of the protracted crises in Iraq, South Sudan, Syria, the DRC and Nigeria. These five countries accounted for 60 per cent of new displacement worldwide in 2014, and, in all except Nigeria, more than 1 million people fled

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[6] United Nations High Commissioner for Refugees (2015), *Mid-year trends 2015*, http://www.unhcr.org/56701b969.html#_ga=1.266796622.137 2022211.1453742742, *Global Trends Report: World at War*, http://www.unhcr.org/558193896.html.
[7] Internal Displacement Monitoring Centre (2015), 'Worldwide displacement hits all-time high as war and persecution increase', http://www.internal-displacement.org/assets/library/Media/201505-Global-Overview-2015/201505-Global-Overview-Highlights-document-en.pdf.
[8] Ibid.
[9] ABC News (2015), 'Number of exiled Syrians tops 4 million, most refugees for single conflict in 25 years: UNHCR', 9 July 2015, http://www.abc.net.au/news/2015-07-09/number-of-syrian-refugees-tops-four-million-un-reports/6608860.
[10] United Nations Office for the Coordination of Humanitarian Affairs, 'About the Crisis', http://www.unocha.org/syrian-arab-republic/syria-country-profile/about-crisis.
[11] Ibid.
[12] United Nations Office for the Coordination of Humanitarian Affairs, '2015: The Year So Far', June 2015, http://www.humanitarianresponse.info/en/system/files/documents/files/wos_bulletin_issue_2_ocha_final_150623.pdf.
[13] International Institute for Strategic Studies, Armed Conflict Database, https://acd.iiss.org/en/nonstatearmedgroups?tags =5DD93BC29727494A8A233747F6B97624.
[14] Internal Displacement Monitoring Centre, 'Global figures', http://www.internal-displacement.org/global-figures#conflict.
[15] United Nations High Commissioner for Refugees, 'Internally Displaced People Figures', http://www.unhcr.org/pages/49c3646c23.html.

their homes during that year.[16] These are all states with regions that are under the effective control of NSAGs, and which rank very high on the Fund for Peace's 2015 Fragile States Index.[17]

There is no clear definition of an NSAG. Claudia Hofmann and Ulrich Schneckener[18] have offered the following characterization:

> distinctive organizations that are (i) willing and capable to use violence for pursuing their objectives and (ii) not integrated into formalized state institutions such as regular armies, presidential guards, police, or special forces. They, therefore, (iii) possess a certain degree of autonomy with regard to politics, military operations, resources, and infrastructure.

Some NSAGs control territory; others rely on protection from the local community. Many are engaged in hostilities that amount to an armed conflict. Some see themselves as governments-in-waiting; others are mere criminal organizations. Some populations manage to maintain a degree of normal life within the constraints imposed by NSAGs or a conflict situation; others are subject to brutal physical repression and economic hardship, and try to flee if they can.

Regardless of how NSAGs are defined, the conditions in which hundreds of millions of people live in complex situations across the globe differ so greatly that simple one-size-fits-all models for response, negotiation and assistance are not applicable. Each population impacted by NSAGs has to be dealt with and assisted within the constraints of specific economic realities, geopolitics, available funding, and the prevailing security situation.

Where there are urgent humanitarian needs in territories controlled or otherwise impacted by NSAGs, then the groups must be engaged in negotiations for humanitarian purposes. If the NSAG is not engaged in discussion, and acceptance of humanitarian aid or humanitarian protection is not agreed, then either the delivery of essential help will be extremely hazardous – likely to expose humanitarian workers to unacceptable risks – or humanitarian assistance will not be delivered at all.

When looked at from the perspective of those in urgent need of humanitarian assistance, the character of the conflict – whether civil war or crossing international boundaries, or whether between NSAGs or between NSAGs and governments – may be immaterial. Perspectives of those in need vary according to specific situations and cultures, and are likely to include such provisions as security, sanitation, shelter, healthcare, food, water, protection of cultural heritage and sacred places, and emotional/spiritual support, as well as provisions for the longer term, such as education and employment.

The International Committee of the Red Cross (ICRC) has long claimed that humanitarian assistance to civilians and those *hors de combat* must be delivered in a 'neutral' and 'impartial' way, this view being enshrined within the seven fundamental principles of the Red Cross Movement and in its Statutes.[19] 'Neutrality', to the Red Cross, is constructed as not taking sides in hostilities or engaging at any time in controversies of a political, racial, religious or ideological nature. The essential 'neutrality of the objective' of humanitarian assistance and non-interference in the surrounding armed conflict then became the hypothetical 'humanitarian space' in which humanitarian action took place. Neutrality is fundamental to the Red Cross and the humanitarian principles, and is embedded in voluntary codes in

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[16] Internal Displacement Monitoring Centre, 'Global Overview 2015', http://www.internal-displacement.org/assets/library/Media/201505-Global-Overview-2015/20150506-global-overview-2015-en.pdf.
[17] Fund for Peace, 'Fragile States Index 2015', http://fsi.fundforpeace.org/rankings-2015.
[18] Hofmann, C. and Schneckener, U. (September 2011), 'Engaging non-state armed actors in state- and peacebuilding: options and strategies', *International Review of the Red Cross*, 93 (883): pp. 603–621.
[19] The Seven Fundamental Principles of the Red Cross Movement were proclaimed in 1965, and are: Humanity, Impartiality, Neutrality, Independence, Voluntary Service, Unity and Universality. See https://www.icrc.org/eng/resources/documents/misc/fundamental-principles-commentary-010179.htm.

the humanitarian sector, but not all humanitarian organizations would claim to be neutral or even aspire to neutrality, in that they may espouse clear political aims. Whereas impartiality – action that makes no discrimination as to nationality, race, religious beliefs, class or political opinions to relieve suffering, giving priority to the most urgent cases of distress[20] – is a stated aim of almost all humanitarian actors.

Conflicts involving NSAGs that cross borders, and NSAGs operating in multiple jurisdictions, represent a fundamental change in the nature of armed conflicts today. In stark contrast to the last century, which was shaped by large-scale inter-state wars that resulted in millions of direct and indirect deaths[21] and anti-colonial conflicts,[22] several 21st-century conflicts can be characterized by entrenched operations across national borders in which NSAGs are fighting governments within and across several nations.[23]

The traditional distinction between combatant and civilian is becoming increasingly blurred – people cross from one category to the other as battle zones and residential zones mix. In addition, lines are being blurred in the delivery of – or prevention of – humanitarian assistance. Indeed, humanitarian assistance can be, and in some cases has been, part of the military strategy.

During the occupation of both Afghanistan and Iraq in the early 2000s, US and other coalition forces tried many counter-insurgency strategies, all of which had, in part, an objective to 'win over' the civilian population. As Hugo Slim wrote in 2004:

> … much enlightened counter-insurgency strategy focuses on improving people's lives through relief and development work.'[24]

In such a case, the impartial delivery of humanitarian supplies by humanitarian actors can form part of the military strategy, impacting negatively on neutrality and on the perception of neutrality.

> This is a serious question today and one which has been forced upon humanitarians by each of the warring parties (in Afghanistan and Iraq) who both describe UN agencies and NGOs as 'collaborators' – albeit with rather different meanings. Coalition authorities have welcomed humanitarians positively as partners while resistance groups have killed humanitarians as treacherous agents of the enemy.[25]

The notion of 'neutral and impartial humanitarian actors' has two components. First, the actors and the action must *in fact* be neutral and impartial. Second, and perhaps more important, such action must be *perceived* to be neutral and impartial by all participants to a conflict. If the delivery of humanitarian aid is part of a military strategy, then the perception – and perhaps the reality – of neutrality is compromised. The neutrality and perception of neutrality is critical for many humanitarian players as it will impact on their ability to deliver humanitarian assistance impartially and effectively.

Changing approaches, and good intentions

In August 2003 a bomb exploded outside the UN compound in the Iraqi capital, killing 24 humanitarian workers and injuring another 150; and in October the same year at least 12 were killed at the ICRC office in Baghdad. In the following month 29-year-old Bettina Goislard was murdered while on duty with UNHCR in Afghanistan. In December 2007 two car bombs

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[20] Ibid.
[21] The First World War is a good example.
[22] Many African conflicts, for example the Rhodesian wars.
[23] ISIS and Al-Qaeda are examples.
[24] Slim, H. (2004), 'With or Against? Humanitarian Agencies and Coalition Counter-Insurgency' in Opinion, Geneva: Centre For Humanitarian Dialogue.
[25] Ibid.

exploded in Algiers within minutes of each other, killing nearly 70 people and destroying the UNHCR and other UN offices and the city's Constitutional Council building. More recently there have been targeted attacks on aid workers in, for example, Syria,[26] Afghanistan,[27] Pakistan[28] and southern Sudan.[29]

Each of these attacks was targeted and intentional. None was a case of 'wrong place and wrong time', 'caught in the crossfire', or just unlucky. The UN and its agencies, the ICRC and many other humanization organizations are being targeted by NSAGs precisely because they are providing humanitarian aid or protection.[30]

The ICRC has had a long history of relations with armed forces, principally around its mandate to disseminate knowledge about the provisions of international humanitarian law. In Bosnia in 1995 UN agencies and organizations such as the ICRC and Médecins Sans Frontières (MSF) employed several thousand expatriate staff. However, cooperation between occupying forces, peacekeeping forces and the NGO actors was low. Following the conflict in Bosnia and the massive expansion of national forces participating in the peace operations, the ICRC and leading military forces increased focus on the development of 'civil-military' cooperation representations, both within ICRC delegations and within military Civil-Military Cooperation (CiMiC) units. There was growing recognition that, particularly in peacekeeping operations such as in Bosnia, the peacekeepers' military objectives and the humanitarian actors' objectives, at least in part, crossed over. Peacekeeping forces and NGOs realized that cooperating in the same theatre of operations with similar objectives would increase efficiencies and effectiveness.

CiMiC structures in Bosnia helped fulfil the peacekeeping obligations by assisting in coordinating the delivery of vital supplies and protection efforts, and by aiding the return of national stability and 'normality'. Certainly, in the case of peacekeeping operations in Bosnia, the perception of neutrality of humanitarian actors, and the need for peacekeeping military units to be perceived as neutral, was in alignment.

The conflicts in Afghanistan and Iraq were different, however. Many humanitarian actors then, as now, relied on funding from traditional sources, i.e. Western governments. In the case of Afghanistan and Iraq, the military forces of these governments were not neutral peacekeepers, but parties to the conflict. If humanitarian actors accept funds from one or more of the parties to the conflict, there is a possibility of a real or perceived conflict of interest, especially if humanitarian assistance or protection efforts form part of the counter-insurgency strategy.

In Iraq and Afghanistan during the occupation of the early 2000s the objective of the United States, and its coalition of occupying powers, was to restore stability in those countries. Humanitarian actions that promoted that goal were seen as not only supporting the population, but also as assisting US and allied forces. Humanitarian workers – although carrying out their primary duties of delivering

26 The Telegraph (2014), 'David Haines – obituary', 14 September 2014, http://www.telegraph.co.uk/news/obituaries/11095290/David-Haines-obituary.html.

27 Afghanistan Sun (2014), 'Militants gun down Finnish aid workers in Afghanistan', 25 July 2014, http://www.afghanistansun.com/index.php/sid/224095835.

28 World Food Programme, 'Fear of attacks persist for United Nations workers', 17 November 2009, https://www.wfp.org/content/fear-attacks-persist-united-nations-workers.

29 World Food Programme, 'UN humanitarian chief condemns attacks on aid workers in southern Sudan', 26 April 2011, https://www.wfp.org/content/un-humanitarian-chief-condemns-attacks-aid-workers-southern-sudan.

30 Andrew MacLeod (2003), 'Why Aid Workers are Now in the Cross-Hairs', *The Melbourne Age*, 26 November 2003, http://www.theage.com.au/articles/2003/11/25/1069522602801.html?from=storyrhs.

humanitarian assistance to all – were not always *perceived* as neutral or impartial by those who opposed the military action and subsequent 'nation-building' processes.

When the delivery of humanitarian supplies and protection of civilian efforts becomes part of a military or political strategy, or is perceived as such, then those who deliver humanitarian supplies risk becoming more vulnerable to being caught up in conflict, including being deliberately targeted by opposing sides.

Attacking aid workers is not just a matter of perception of neutrality or impartiality. The objective is often to disrupt the supply of assistance to the civilian population and maintain disorder in the country. More disorder and disruption of resources and supplies can serve to increase disquiet within the civilian population. Disquiet hinders economic growth, decreases the effectiveness of the government, increases the dissatisfaction of the population, and can thus increase the susceptibility of some of the population to NSAG recruitment.

In addition, if the attacks by NSAGs cause aid agencies to scale back or to pull out, then pressure reverts to military forces to deliver the aid needed by the population. This risks drawing the military out into open territory, and would require them to move bulky cargo in strategically vulnerable convoys that are open to easy attack and, in addition, would stretch scarce military resources and reduce military effectiveness.

In Afghanistan, for example, NSAGs disrupt aid supply by attacking the UN, the Red Cross and other humanitarian agencies. They also increase disquiet in the community, enhance the opportunity for recruitment to their cause, and increase the number of vulnerable, 'soft' military targets on the road. At the same time, NSAGs, including the Taliban, at times put effort into developing positive relations with humanitarian organizations, particularly the ICRC, as they can see the benefit in humanitarian deliveries to territory under their control. Throughout the whole period, the security of humanitarian agencies has been directly impacted by the strategy of insurgents either to encourage or to discourage the delivery of humanitarian assistance.

If aid organizations were to withdraw from humanitarian operations, either through fear of their neutrality being compromised or when international staff are killed, this would likely encourage the ongoing targeting of the undefended humanitarian workers. But if staff are not pulled out in such situations, the nature of their work will make them the target of attacks and undermine or even destroy the delivery of humanitarian aid. Indeed, over the last decade, the numbers and severity of attacks against aid workers have increased, and the number of aid workers subject to violent attacks has risen steadily.[31]

For combatants, more confusion is created by the considerable expansion in recent years in NGOs that are labelled humanitarian. Conflict environments now involve large organizations such as the ICRC, UN agencies and programmes, sizeable international NGOs such as MSF, World Vision, Save the Children, Goal, Oxfam, etc., and very many small international and local organizations. Further confusion may be created by the presence of government actors that claim a humanitarian purpose but may be perceived as having a mixed agenda, e.g. the US government agency USAID, which delivers humanitarian aid in supporting US foreign policy.

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[31] For recent data, see *Aid Worker Security Report 2015*, https://aidworkersecurity.org/sites/default/files/HO_AidWorkerSecPreview_1015_G.PDF.

Religion muddies the water still further. In religious or ideologically-based conflicts, Western-based organizations and Christian faith-based charities may encounter significant challenges in engaging with Islamic NSAGs. Western military actors and non-Islamic NSAGs are forced to ask similar questions about engagement with humanitarian organizations from Islamic backgrounds. Likewise, Islamic NSAGs may not readily accept the neutrality or impartiality of Western-based or Christian faith-based NGOs. Mercy Malaysia, Islamic Relief (United Kingdom), al-Haramain (Saudi Arabia), Deniz Feneri (Turkey) and MDI (Sudan) are examples of new and growing aid agencies that are blurring the characterization of humanitarian action still further in a world dominated by discourse around the 'war on terror'.

Humanitarian action and genocide

The 20th century was pockmarked with wars and atrocities widely recognized as genocide.[32]

Humanitarian action in the case of the genocide in Rwanda was severely compromised. The delivery of humanitarian assistance and the protection of civilians required humanitarian organizations to work against Hutu perpetrators aiming to 'cause the complete disappearance of the Tutsi'.[33]

Whatever the effort an aid agency exerts to be seen as neutral and impartial in a situation such as Rwanda, a Hutu perpetrator trying to kill Tutsi civilians may not accept the assistance to Tutsis as an example of impartiality, even though such assistance is being provided on the basis of needs. The prevention of killing, as in the case of the ICRC giving safe refuge to Tutsis within its compound, would likewise not be perceived by Hutus as a neutral act. By preventing a genocidal murder of a Tutsi, the ICRC could be perceived as taking sides against the Hutu objective. Such essential life-saving action may not therefore be wholly perceived on the ground as either neutral or impartial, even though such actions were in line with these humanitarian principles.

Given the extreme nature of the crime of genocide, assisting a target of genocide can lead to false accusations of taking sides against the perpetrator. Or indeed the converse: in not taking the side of the oppressed, the humanitarian actor can be wrongly accused of colluding with genocide. Likewise, standing by when crimes against humanity are committed and in other similar situations can be characterized by biased actors as equivalent to taking the side of the oppressor, and thus as a form of collusion.

The example of Rwanda relates to perception of both impartiality and neutrality, as the Tutsi civilian population was most in need because of oppression.[34]

BBC journalist Nik Gowing has made the case that failure by both the international aid world and the international media to understand ground realities, such as the use by Hutu attackers of refugee camps, contributed to poor international responses that ultimately led to a decade-long war in the region, especially in eastern DRC:

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[32] Decision, The Prosecutor v Jean Paul Akayesu Case No. ICTR-96-4-T, 2 September 1998.
[33] Ibid.
[34] Gerard Prunier raises the difficulty of Hutu genocide perpetrators fleeing across the border into what was then Zaire, only to continue to launch genocidal attacks into Rwanda from firm bases inside refugee camps. When returning from operations they would line up, looking and acting like every other refugee, to be fed by the international community. Feeding Hutu attackers was characterized by Tutsi survivors of the genocide and by the post-conflict Tutsi-led Rwandan government as collusion. It is not the role of humanitarian organizations to remove and/or investigate suspected war criminals, and governments and humanitarian organizations need to be clear on this issue. Humanitarian action is not equivalent to, nor is it a substitute for, political and judicial action. Prunier, G. (1995), *The Rwanda Crisis: History of a Genocide*, New York: Columbia University Press.

> No longer are the agencies in the Humanitarian Community seen as impartial and in the zone of conflict solely for humanitarian purposes. Increasingly in recent years, warring factions and other interested parties have assumed that HOs and HAs [humanitarian organizations and humanitarian agencies] are partial adversaries and intelligence gatherers. The traditional sprinkling of former military officers and government officials inside HOs and HAs heightens that suspicion, despite the obvious value of their organisational and logistics skills to humanitarian operations.
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> …
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> Many in the humanitarian community find offensive the accusation that they are effectively 'humanitarian spies'. However they must live with this reality of how the warring factions now view them.[35]

The delivery of neutral and impartial humanitarian aid to civilians is challenging when it is difficult to determine who is and who is not a fighter. It is more difficult to be neutral and impartial in the most extreme examples of human brutality, like genocide, but these remain key principles that humanitarian organizations strive for. Indeed, in the cases where the principle of neutrality and impartiality may be challenged, the need for humanitarian action is likely to be even greater.

Delivering assistance in territory controlled by NSAGs labelled as 'terrorist'

Even more difficult for aid agencies are the ambiguous positions they confront in counter-insurgency situations, in particular engagement or negotiation with terrorists.

There is no internationally recognized definition of 'terrorism'. Definitions in national legislation vary. For example, the United Kingdom Terrorism Act (2000, as amended), includes in its characterization: actions or threats of action designed to influence the government or an international governmental organization, or to intimidate the public or a section of the public, for the purpose of advancing a political, religious, racial or ideological cause.

As a consequence of there being no internationally agreed definition of terrorism, the label can be applied in public discourse, accurately or otherwise, to a wide range of NSAGs, leading to erroneous public perceptions of ideological fanatics with whom negotiations are impossible. Such public perceptions may be useful politically for a government to gain popular support to fight NSAGs, but such labelling rarely helps humanitarian agencies seeking to deliver assistance to those in need.

There are many examples – among them Northern Ireland and South Africa – where peace has only been achieved by negotiating with actors that had at one stage been labelled terrorists. For example, US policy softened in Iraq when General David Petraeus recognized that winning over the Iraqi population was the only long-term strategically viable way to win the war in that country, and that simply targeting insurgents with weapons and military action would not work. Petraeus summed up his view that in Iraq:

> … we would not be able to kill or capture our way out of the industrial-strength insurgency that was tearing apart the very fabric of Iraqi society.[36]

For Petraeus, to win over elements of the Iraqi population, it was necessary to talk to them.

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[35] Both extracts from Gowing, N., 'Dispatches from Disaster Zones', paper delivered to 'New Challenges and Problems for Information Management in Complex Emergencies', London, 27 May 1998.
[36] Quoted in Powell, J. (2014), *Talking to Terrorists: How to end armed conflicts*, London: Bodley Head.

Jonathan Powell points out that terrorist groups are defeated in negotiation rather than in conflict.[37] Following conflict, rebel, terrorist or NSAGs often end up in government and leadership roles. For example, former paramilitary leaders now sit in parliament in the Northern Ireland Assembly. The Rwandan Patriotic Front won the civil war and became the government of Rwanda. South Africa's leadership serves as an example of one that includes figures once labelled as 'criminals'. While the above examples focus more on political negotiation for peacebuilding, the peacebuilding aspects cannot be cleanly separated from humanitarian aid delivery or from programmes providing for the protection of civilians if those humanitarian activities form part of either counter-insurgency or peacebuilding strategies. For example, in the case of the Sri Lankan conflict (see below), proscribing the militant Liberation Tigers of Tamil Eelam (LTTE, or Tamil Tigers) accelerated the movement's downfall, but the resulting humanitarian consequences were dire. In addition, the drivers of the conflict remained unaddressed and unresolved.

Having a blanket rule to 'never negotiate with terrorists' is often a fallacy in political settings. To expect humanitarian organizations to follow the 'no negotiations' approach, when political leaders often do not, is unrealistic and unworkable when humanitarian agencies need to negotiate access to territory controlled by NSAGs – even those labelled 'terrorists' – in order to respond to humanitarian needs.

The case of natural disasters

For many countries, one of the military's roles is to assist civilian powers in the event of overwhelming natural disaster. The US military was relied on heavily in 2005 in the response to Hurricane Katrina, as was the UK military when severe flooding affected particularly southern England in late 2013 and early 2014. Irish troops assisted local civil defence authorities during the floods caused by Storm Desmond at the end of 2015, and Australian forces are deployed when wild forest fires occur. In response to the massive earthquake in southwest China in 2014, the People's Liberation Army was deployed to assist in rescue and humanitarian assistance operations. In the second half of 2015 Indonesian army personnel and troops were dispatched to South Sumatra in an effort to bring the severe forest fires there under control, and the Indonesian authorities requested and received assistance from Singapore in the form of military equipment and personnel, as well as useful satellite imagery.

When massive natural disasters hit fragile states with territories in which NSAGs – some of which are labelled as terrorists – operate, the delivery of emergency humanitarian aid is complicated.

In October 2005 a massive, 7.6-magnitude earthquake hit Pakistan impacting large parts of Kashmir and North-West Frontier Province, across many areas with heavy Taliban and Lashkar-e-tiba influence. Half-a-million homes, 500 medical facilities, most government buildings, many roads, bridges, electricity supplies, water services and sanitation facilities were all destroyed in less than two minutes. Some 3.5 million people were made homeless; and more than 75,000 – mainly children – were killed.

> In terms of scale, a greater territory was affected than that affected by the Asian tsunami. There were more injuries, although less deaths. The terrain, rather than flat and coastal, was mountainous and rugged. The weather, rather than temperate and tropical, was Himalayan, threatening and lethal. The freezing temperature of the mountainous winter was less than two months away. Predictions of massive second waves of death caused by infection, starvation and cold were realistic and frightening. Disease could be expected, calamity was thought certain.

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[37] Ibid.

The situation for Pakistan was overwhelming, and there were huge constraints for disaster-relief planners. While billions of dollars were donated to support the victims of the 2004 tsunami in southern and southeast Asia, funds for the Pakistan earthquake relief were both slow and scarce; so, therefore, was the international response. As funds were so tight, one of the key strategies initially was to 'humanitarianize' the Pakistan military planning process.[38]

The internal response to the earthquake was immediate, and was characterized by a close collaboration between military and non-military actors – but this closeness had to be forged, based on negotiation and engagement.

> Aid workers, for their part, often have deep institutional mistrust of the military. In many countries 'army' does not mean 'professional organized force'; rather it might describe a 12-year-old boy, drugged and carrying a Kalashnikov. Although this is clearly not the case in Pakistan, institutionally many organizations find it impossible to work closer than 'at arms length' with the military. Added to this the requirements of earmarked funding, mandates, and principles of neutrality and independence, mean that many institutions, and many individual aid workers, have never worked, nor ever wanted to work, with the military.[39]

One of the ways through which the level of trust was increased was to reinforce the perception of a humanitarian space. In Pakistan the argument was put:

> One of the key principles is that of independence of the humanitarian objectives. Some aid workers can interpret this principle as one requiring independence of institutions – military from humanitarian. In fact there is no limitation on coordination and cooperation between military and humanitarian institutions, so long as the objective of actions is humanitarian, not military.[40]

In the Pakistan earthquake response, the concept of humanitarian space quickly became complicated by the fact that NSAGs were also delivering aid, not just NGOs. Hence the Pakistan military had to find ways to handle the various NSAGs linked with fundamentalist ideology, and to determine NSAG access to deliver aid.

Several groups that had been designated by the UN 1267 sanctions regime – concerned with Al-Qaeda and affiliated groups (such as Lashkar-e-tiba) – operated in, and partially controlled, territory in the areas affected by the earthquake. Questions quickly arose as to whether such organizations should be allowed to deliver humanitarian aid despite the fact that they were listed terrorist organizations. The Pakistan military authorities thus found themselves in a dilemma that often faces governments in a humanitarian crisis, *vis-à-vis* the interaction with NSAGs and the delivery of essential aid.

Allowing NSAGs to deliver humanitarian assistance to victims of the earthquake would deliver a propaganda 'win' to such groups. There was considerable risk that NSAGs would seek legitimacy through cooperation with humanitarian agencies. However, blocking the NSAGs presented the risk of a 'lose-lose' situation. Furthermore, blocking NSAGs would also likely make foreign humanitarian workers more of a target, and the delivery of aid even more difficult. If a nation's military force can deliver humanitarian aid as part of its function, claiming 'impartiality of the humanitarian objective', then it is arguable that an NSAG could deliver aid using the same basis of claim.

After rapid consideration, the Pakistan authorities allowed the delivery of humanitarian goods by NSAGs, but kept a close watch on their activities. At the same time, UN OCHA officials had to ensure that Western humanitarian actors delivered their supplies in ways that were sensitive to government and NSAG concerns.

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[38] See Nadeem, A. and MacLeod, A. (2008), 'Non-Interfering Coordination: The Key to Pakistan's Successful Relief Effort', *The Liaison*, 40(1).
[39] Cahill, K. (ed.) (2007), *The Pulse of Humanitarian Assistance*, Fordham University Press: New York.
[40] Ibid.

The 'war on terror' created additional severe risks for humanitarian organizations in the Pakistan earthquake relief effort:

> The US, in particular, made a very conscious effort to use the earthquake response to 'win hearts and minds' and reward an important ally. While in this case Pakistani earthquake survivors (and many aid agencies) were beneficiaries of the instrumentalization of aid, it could well prove fatal for victims of humanitarian crises in countries that are not perceived to be of similar strategic importance.[41]

US forces had clear, non-neutral – indeed highly partial – objectives in assisting the humanitarian relief effort. But, if only for the enormous logistical capacity and the amount of material aid that the United States can bring to bear, US assistance cannot be easily refused.

The humanitarian space thus became increasingly complicated, with international aid agencies, a host of government actors, homegrown NSAGs and foreign military forces all undertaking 'humanitarian action' in a post-natural disaster setting, and this complexity further compounded by the geo-politics of the 'war on terror'.

As a consequence of the severity of the Pakistan earthquake, multiple actors, some of whom in another setting might very well have been be fighting each other, were instead undertaking the same strategic objective: keeping people alive. The scale of the challenge that the earthquake created provided the impetus for what was later termed 'non-interfering coordination'.[42]

However, many humanitarian actors do not always fully understand the nuances of the political territory that they must navigate:

> … humanitarians are not always adept at navigating political shoals, despite political and strategic interests – whether international, national or local – never being far below the surface.[43]

In an environment so politically charged, where national armies, foreign military forces and NSAGs are all operating, huge security challenges are manifest, and humanitarian actors – however politically astute – will from time to time get it wrong:

> While many agencies have invested considerable resources to enhance the security of their staff and assets, there is still a need for more and better analysis of local contexts and of the place that humanitarians, wittingly or not, occupy in the political landscape.[44]

In Pakistan, through a growing understanding of the political context, Western-based aid workers found themselves changing their behaviour. Christmas celebrations at the end of 2005 and subsequent (Western) new year functions were held in Islamabad only, and not in conservative areas. Cuban doctors, numbering more than 2,000 (mainly housed in tents provided by USAID), were instructed to separate their accommodation for men and women. Rare cases of proselytizing by Christian NGOs were immediately stopped.

This was a complex engagement that saw sometimes unorthodox partners working together to address a mutual problem. More than 100 aircraft from the US, UK, Pakistan and Australian militaries, plus UN air support, were tasked from a common 'Air Operations Cell', under a Strategic Oversight Group made up of military and humanitarian actors together.

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[41] Wilder, A. (2008), *Humanitarian Agenda 2015: Perceptions of the Pakistan Earthquake Response*, Pakistan Country Study, Feinstein International Center.
[42] See Nadeem, A. and MacLeod, A. (2008), 'Non-Interfering Coordination: The Key to Pakistan's Successful Relief Effort' *The Liaison*, 40(1).
[43] Wilder (2008), *Humanitarian Agenda 2015: Perceptions of the Pakistan Earthquake Response*.
[44] Ibid.

It is important to note, however, that the Strategic Oversight Group did not include NSAGs.[45] The humanitarian response might have been even more effective if humanitarian actors had been able to negotiate and work with NSAGs to the same degree as they did with the state actors. However, the increased perception of credibility that would have arisen from formal participation might have changed the nature of the post-disaster environment.

The agreed acceptance of humanitarian assistance for earthquake victims did not result in lasting changes in relationships between NSAGs and the Pakistan authorities. Indeed, following the earthquake, the Pakistan Taliban took control of some affected areas, including the Swat Valley. Therefore, while an agreement could be reached for engagement for humanitarian purposes in response to the earthquake, the new goodwill was temporary and did not extend beyond the emergency.

None the less, the case of Pakistan demonstrates that humanitarian negotiations with both the national authorities and NSAGs in earthquake-affected territory resulted in clear humanitarian benefits to the civilian victims of the natural disaster.

A different dynamic played out in Sri Lanka following the 2004 tsunami. There, the LTTE had deeper and more effective control over territory they controlled, and delivered visible humanitarian assistance to considerable effect.[46]

The informal arrangements in Pakistan meant that visible displays of authority on behalf of the NSAGs were less marked than was the case in Sri Lanka, which may then have impacted the ability of the NSAGs to use the natural disaster as a springboard in the armed conflict. In Sri Lanka the LTTE's increased confidence post-tsunami led it to become 'more intransigent' at the negotiating table, which contributed to the breakdown of the ceasefire and the resumption of conflict – and the ultimate defeat of the Tigers.[47] Creating a humanitarian space for the delivery of humanitarian aid at a time of natural disaster cannot be disconnected from the post-disaster political opportunities. Concerns over post-disaster scenarios may well impact on both the broader conflict situation and security concerns for aid workers.

Far from being static, the security environment for humanitarian workers changes over time. Just as Western humanitarian agencies collaborate with NSAGs to deliver humanitarian assistance, likewise NSAGs may also collaborate for a short-term and specific purpose.

The political consequences of a slow withdrawal of aid following the emergency period are rarely well thought out and planned for:

> As the less contentious life-saving humanitarian phase transitions into a more politicized reconstruction and recovery phase, the role of military forces is likely to become more politicized and disputed. It is therefore important for military actors to not only develop their capacity to respond to disasters, but also to develop their capacity to exit from disaster responses and hand over responsibility to civilian authorities – a notable weakness of the Pakistan Army.[48]

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[45] Cahill, K. (ed.) (2007), *The Pulse of Humanitarian Assistance*, New York: Fordham University Press.

[46] Enia, J. (2008), 'Peace in its wake? The 2004 tsunami and internal conflict in Indonesia and Sri Lanka', *Journal of Public & International Affairs*, 19: pp. 7–27.

[47] '[I]n the case of Sri Lanka, where the Tamil Tigers were able to perform relief and recovery functions relatively successfully and the Sri Lankan government was not able to thwart such efforts, the separatists' success served as a signal that their claim to legitimate governmental authority had some merit. As a result, they were able to approach the bargaining table from a stronger relative position, resulting in more separatist intransigence, and in the end, renewed civil conflict', Enia, J. (2008), 'Peace in its wake? The 2004 tsunami and internal conflict in Indonesia and Sri Lanka', p. 10.

[48] Wilder (2008), *Humanitarian Agenda 2015: Perceptions of the Pakistan Earthquake Response*.

At some point in a post-disaster operation in a conflict region – just as in complex military environments – humanitarian organizations can overstay their welcome; and there is a discernable shift from being regarded as vital humanitarian actors to being perceived as participants in the conflict and thus legitimate military targets. Political awareness and good communication remains of critical importance through the entire operation. Understanding when to stay, when to go and when to negotiate are an ongoing set of security considerations for humanitarian organizations.

Two competing trends are emerging. There is a greater need for professional humanitarian players with deeper political training to allow them to understand the nuance of the changing humanitarian space. Such professionalism is needed in order for humanitarian negotiations to steer through complex situations.

Undermining this need is the growing number of aid agencies with short histories, little training, and well-meaning but amateur staff. Such organizations cannot possibly hope to engage NSAGs in complex negotiations. Perhaps it is time to draft a set of internationally agreed regulations for humanitarian actors that would build on the sets of standards and guidelines already in existence.[49]

The rise of non-traditional donors, aid from the Middle East, and current conflict

Aid is no longer the preserve of Western agencies. New organizations are springing up to deliver humanitarian assistance from other donor bases, notably among them, in the case of the Middle East, Saudi Arabia, Turkey and the United Arab Emirates.

It may be possible that such agencies can negotiate with NSAGs to deliver humanitarian assistance where Western agencies cannot. None the less, it may be difficult for governments – particularly Western governments – to perceive these actors as 'neutral'. Western military forces may agree to respect the neutrality of an Islamic faith-based humanitarian organization that is working to deliver aid in territory controlled, for example, by ISIS, but Western media outlets and governments may not share the same view.

Today, even if a Western humanitarian agency were able to negotiate the delivery of humanitarian assistance in all areas of Syria, recent security legislation in certain Western states is problematic, potentially placing both the organization and its employees at risk of criminal penalty for operating in certain countries and dealing with particular actors. Humanitarian actors operating within a claimed 'humanitarian space' run the risk that governments perceive the assistance as providing support to terrorists. Donors may be concerned about the implications of counterterrorism legislation and therefore withhold funding.

An aid worker may well join a credible organization, go to a conflict zone to do humanitarian work, and survive the war, hardship and conflict, only to come home and be liable to arrest. The case of Adam Brookman, an Australian nurse, is illustrative. He is subject to criminal charges in Australia for allegedly assisting ISIS. Brookman asserts that he was forced into performing humanitarian nursing

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49 See, for example, the Joint Standards Initiative by the Humanitarian Accountability Partnership, People In Aid, and the Sphere Project, http://www.jointstandards.org.

work after being kidnapped.[50] The Australian authorities are also investigating whether his work as a nurse overlapped with more traditional military roles such as reconnaissance and guard duty.

In 2010 the US Supreme Court ruled on *Holder v. Humanitarian Law Project*.[51] The Humanitarian Law Project was held to have fallen foul of the 2001 USA PATRIOT Act, in that the provision of training and support for peacebuilding activities met the definition of providing 'material support' to 'terrorism'. The impact on more traditional humanitarian aid or protection activity of the 'material support' provision in this legislation has not yet been fully tested in the courts.

Humanitarian negotiations are perceived as being largely driven by long-standing neutral actors that derive largely from accepted organizations such as the UN, the Red Cross and large multinational NGOs. As new humanitarian organizations develop in different cultural settings, such as faith-based Islamic charities, how they are perceived in such negotiations in terms of neutrality, impartiality and effectiveness remains to be explored. If Western policy-makers insist on respect for Western humanitarian workers by NSAGs, then it is important that Western governments must also continue to respect humanitarian actors that do not come from Western political or ethnic traditions, but that do abide by the principles of neutrality and impartiality, even if they may be perceived as giving support indirectly to opposing causes.

Conclusion: preserving humanitarian impartiality

The world has evolved since Henri Dunant conceived of humanitarian action in *A Memory of Solferino*.[52] The principal recipients of humanitarian assistance are now civilian populations, not soldiers on the battlefield. Equally, civilian populations are often the targets of military operations aimed either at killing, or at winning hearts and minds.

There is no 'one-size fits all' approach to humanitarian aid delivery. Natural disaster operations in areas free from conflict are perhaps a less highly charged context in which to see humanitarian actors and the military forces of a state cooperating. In cases of disasters in conflict regions, such as in Pakistan in 2005, agreements can and must be negotiated, including with NSAGs, to ensure the ongoing delivery of impartial humanitarian assistance. Sri Lanka in 2004 also shows that ceasefires negotiated in concurrent armed conflicts for the purpose of delivering humanitarian relief can be effective. Peacekeeping environments can provide a space for humanitarian work, and humanitarian organizations can work closely with the military as well as NSAGs in a peacekeeping context, as exemplified in Bosnia.

Peace enforcement, however, or counter-insurgency operations – when 'winning hearts and minds' becomes a military objective – changes the military and humanitarian context. As do situations of genocide. In these circumstances, the delivery of humanitarian assistance can become perceived and portrayed as 'taking sides', by helping one or more parties achieve their goal, thus compromising the perception of impartiality.

Even more stark choices have to be made when the delivery of humanitarian aid itself becomes a military strategy. Should a party to a conflict – whether a state or an NSAG – decide that delivery of

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[50] Grant Geary, B. and Cheer, L. (2015), 'Australian nurse who claims he was forced to work for ISIS 'undertook guard duty and reconnaisance' for the terrorist group in Syria – as he is extradited to Melbourne to face terror charges after landing in Sydney', 25 July 2015, http://www.dailymail.co.uk/news/article-3174001/Australian-nurse-claims-forced-work-ISIS-arrested-Sydney-Airport-flying-Syria.html.
[51] 561 U.S. 1 (2010), 130 S.Ct. 2705.
[52] An account of Dunant's contribution to the establishment of the Red Cross in 1863 is available online. International Committee of the Red Cross, 'Founding and early years of the ICRC (1863–1914)', 12 May 2010, https://www.icrc.org/eng/who-we-are/history/founding/overview-section-founding.htm.

humanitarian assistance is part of a military strategy, then maintaining the perceived neutrality and impartiality of humanitarian assistance may be impossible, no matter how much an aid agency might proclaim these.

In these circumstances, both state and NSAGs on the one hand, and humanitarian organizations on the other, need to ask at what point is humanitarian space impossible to maintain, and how the delivery of humanitarian assistance continues if that delivery is *not* characterized as impartial by all sides.

Humanitarian actors themselves are mixed in terms of capacity and professionalism: some agencies have sufficient capacity and a long-standing reputation, with highly competent staff; some agencies do not. It is perhaps time to consider how to build on existing voluntary codes of conduct for humanitarian actors so as to strengthen the professionalism of their staff working in complex environments including the development of international guidelines with regard to safety and security including new codes of conduct from both governments and NSAGs.

Governments, parliamentarians, UN agencies and humanitarian NGOs are struggling with the complexities of dealing with NSAGs in complex conflicts. Decision-makers, residing in countries far from the mayhem of war, may not always fully understand the impact that their laws and policies may have on people affected by conflict who are in need of assistance, and on the agencies and individuals who are delivering aid.

When a humanitarian organization has to negotiate with, for example, ISIS to deliver humanitarian aid to territory under its control – normal practice for a humanitarian agency – it may be that some Western governments will criticize that engagement. The latter may interpret the negotiation as providing material support to terrorism, either by assisting ISIS's strategy of winning the propaganda war, or by freeing up scarce resources for military activities.

Aid delivery in conflict and in non-conflict situations are not equivalent. In conflicts there are multiple authorities and additional severe dangers for humanitarian workers: there are, therefore, shifting boundaries and complexities that can be hard to fathom.

When natural disasters strike countries that are embroiled in conflict, such as Pakistan in 2005 or Sri Lanka in 2004, the disaster response is almost impossible to separate from the extant conflict. The response will have an impact on the conflict dynamics, and vice versa, and will thus present additional challenges to the delivery of aid.

The humanitarian space is increasingly complex and at the same time it is shrinking; by contrast, humanitarian need is increasing. In extreme examples, in circumstances where neutrality or perceived neutrality cannot exist, the humanitarian space may not function. Policy-makers and humanitarian actors are recognizing the more complex environment, and they are adjusting training and operational protocols to suit this.

Alongside the increasing complexity, the fundamental reason why NSAGs need to be engaged for humanitarian purposes is simply that they control, or impact on access to, territory in which there are people in need of assistance or protection. NSAGs also have obligations under IHL in respect of the way they conduct hostilities, and also regarding the treatment of civilians who live in the areas they control. Even if they gain some political legitimacy as a result of taking their obligations seriously, NSAGs need to be engaged for effective and impartial provision of assistance, and need to adhere to the rule of law in armed conflict, for the sake of the human beings who live in the territories they control.

Acronyms

CiMiC	Civil-Military Cooperation
DRC	Democratic Republic of the Congo
ICRC	International Committee of the Red Cross
IDPs	internally displaced persons
LTTE	Liberation Tigers of Tamil Eelam
MSF	Médecins Sans Frontières
NSAGs	non-state armed groups
UNHCR	UN High Commissioner for Refugees
UN OCHA	United Nations Office for the Coordination of Humanitarian Affairs
USAID*	

* Standalone acronym; USAID was established as the United States Agency for International Development

About the author

Professor Andrew MacLeod is a visiting professor at Kings College London, and an affiliate senior associate of the Center for Strategic and International Studies in Washington, DC. *Inter alia*, he has led or served in multinational humanitarian teams in conflict and natural disaster settings. At the UN, his work included as chief of operations for the 2005 South Asian earthquake relief and reconstruction operation, working between Pakistan, Afghanistan and Iran. For the International Committee of the Red Cross, MacLeod undertook similar roles in Rwanda and the former Yugoslavia. He has also led business engagement with commercial, political and community stakeholders in economies including Mongolia, Peru and Australia.

Acknowledgments

Engaging Armed Actors in Conflict Mediation

Consolidating Government and Non-government Approaches

Claudia Hofmann

Summary

- Non-state armed groups (NSAGs) are the main protagonists in contemporary conflict, but approaches employed by states and by international organizations in dealing with them have presented drawbacks and limitations. Specialized non-governmental organizations (NGOs) involved in conflict mediation and resolution have independently sought ways in which they can leverage their specific capabilities to fill some of the gaps.

- To reduce the humanitarian consequences of conflict for civilian populations, specifically, NGOs and private actors involved in conflict mediation/resolution employ one of three general approaches: some pursue the more immediate approach of facilitating the delivery of humanitarian assistance in territory controlled by NSAGs; some promote international norms concerning the protection of civilians and combatants, with the goal of persuading NSAGs to change their behaviour; others seek the resolution of the conflict through dialogue, mediation, mediation support and negotiation.

- In practice, states, international organizations, and specialized NGOs and private actors conduct their approaches in the same locations at the same time. To avoid duplication of effort, instrumentalization and unintended consequences, actors need to improve communication, coordination, collaboration and cooperation. This could additionally alleviate existing trust issues between states and NGOs.

- Moreover, a consolidation of the approaches of states and international organizations with those of NGOs and private actors, and an appropriate mix and timing of strategies, may provide a more effective means of consistently engaging NSAGs and decreasing violence in contemporary conflict.

- NGOs and private actors may supplement and support official policy that is designed to reduce humanitarian impact and foster political agreements, and may provide their specialized knowledge, capacities and access in support of official initiatives and policies.

- Specialized NGOs may be capable of balancing shortcomings of state actors and international organizations by assuming responsibility for specific policy components entirely.

- Specialized NGOs and private actors may be able to anticipate windows of opportunity for specific engagement in conflict that has the potential to decrease levels of violence, especially against civilian populations. Their practical experiences and first action on the ground may develop such opportunities for official initiatives.

- External actors need to take into account the entire range of approaches and protagonists that exist and that may contribute, in a coordinated manner, to achieving specific goals and lasting solutions regarding NSAGs. The capacity for these approaches may differ considerably between specialized organizations and other humanitarian actors active in conflict areas.

Introduction and problem statement

This paper is based on research funded by the German Foundation for Peace Research and conducted at the German Institute for International and Security Affairs, and the University of Osnabrück ('Non-State Conflict Management. Opportunities and Limits of INGOs Engaging Non-State Armed Groups', 2008–11).

Since the end of the Second World War, the face of warfare the world over has gradually changed. Today we see only a small number of conflicts, if any, between states, but more within states, some of which have spread into neighbouring countries. Moreover, the number of conflicts in which one or more states have contributed troops to one or both sides has gradually increased.[53] In 2014 border skirmishes between India and Pakistan (causing fewer than 50 fatalities) represented the only interstate conflict recorded.[54] The remaining 39 conflicts were fought within states, and 13 of these conflicts became internationalized in the sense that one or more states contributed troops to one or both sides of the conflict.[55] This number of internationalized conflicts is the highest measured since the end of the Second World War. Concurrently, the number of battle-related deaths increased to 101,400 in 2014 (best estimate), representing the highest number of fatalities per year recorded since 2000.[56]

The main characterizing feature of these contemporary conflicts is the involvement of at least one – but often several – non-state armed groups (NSAGs), challenging the state's monopoly of legitimate coercive force.[57] NSAGs are actors that are not integrated into formalized state institutions, such as regular armies, presidential guards, police or special forces, but that are willing to use and capable of using violence in pursuing their objectives. They make use of an organizational structure, resources and infrastructure that allows them to conduct military operations over a specific period of time.[58] In 2007 the International Institute for Strategic Studies' *Military Balance* listed more than 345 NSAGs as active in all regions of the world.[59] Not only are NSAGs party to the most common type of conflict today, but they are also often responsible for violence against civilians, in breach of international humanitarian law (IHL), have a role in facilitating the establishment of criminal and informal economies, and are in a position to disturb, undermine and completely truncate state – and peacebuilding processes, leading to further violence and endangering the efforts of humanitarian aid workers, development professionals and peacekeepers.[60]

To curb the development and involvement of non-state armed actors in contemporary conflict, international organizations and states – affected governments as well as third countries involved in the conflict – have employed a number of strategies, ranging from counter-insurgency and containment, to negotiation and mediation, to integration and co-option.[61] However, they often

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[53] Pettersson, T. and Wallensteen, P. (2015) 'Armed conflicts, 1946–2014', *Journal of Peace Research,* 52(4): p. 536.

[54] Ibid., p. 537.

[55] Ibid., p. 537.

[56] Ibid., p. 539.

[57] Policzer, P. (2005), 'Neither Terrorists nor Freedom Fighters', paper presented at the International Studies Association Conference, Honolulu, Hawaii, 3–5 March 2005.

[58] Schneckener, U. (2006), 'Fragile Statehood, Armed Non-State Actors and Security Governance', in Bryden, A. and Caparini, M., (eds) (2006), *Private Actors and Security Governance,* Berlin: Lit, pp. 23–41.

[59] Hackett, J. (ed.) (2007), *The Military Balance 2007*, London: International Institute for Strategic Studies, pp. 422–38.

[60] Hofmann, C. and Schneckener, U. (2011), 'Engaging non-state armed actors in state- and peace-building: options and strategies', *International Review of the Red Cross* 93(883): pp. 1–19.

[61] Dudouet, V. (2010), *Mediating Peace with Proscribed Armed Groups*, Special Report no. 239, Washington, DC: United States Institute of Peace; Hofmann, C. (2006), 'Engaging Non-State Armed Groups in Humanitarian Action', *International Peacekeeping* 13(3): pp. 396–409; Hofmann, C. and Schneckener, U. (2011), *NGOs and Nonstate Armed Actors. Improving Compliance with International Norms*, Special Report no. 284, Washington, DC: United States Institute of Peace; Schneckener, U. (2009), *Spoilers or Governance Actors? Engaging Armed Non-State Groups in Areas of Limited Statehood*, SFB Working Papers no. 21, Berlin, October 2009.

find themselves faced with an unpleasant dichotomy. On the one hand, NSAGs are the predominant feature of contemporary conflict and need to be engaged if a viable cessation of hostilities is to be reached. On the other hand, the public and the armed groups themselves may perceive an official dialogue with NSAGs as conferring a certain degree of legitimacy, or as conveying the impression that their grievances are legitimate. This may result in public pressure on states and international organizations to act on such public perceptions, which these official actors may want to avoid. Dialogue between NSAGs and external actors may also undermine the authority and sovereignty of the host government, if the dialogue diverts from any official policy of the latter.[62] Accordingly, the approaches undertaken by states and international organizations still pose challenges in dealing with NSAGs.

Often operating outside the state-centric system, non-governmental organizations (NGOs) and private actors – such as elder statesmen, including influential international figures and retired high officials – have independently sought ways in which they can leverage their specific capabilities to decrease the impact NSAGs have on violence, especially when committed against a civilian population.[63] They often attempt to use their existing contacts to facilitate talks with NSAGs, conduct informal pre-negotiations, prepare 'non-papers', and mediate directly between the non-state armed actor and the host government.[64] Despite considerable limitations to their approaches, NGOs and private individuals have offered constructive new avenues through which states and international organizations can engage with NSAGs. States and international organizations should not only be aware of this work, but should also improve communication, coordination, collaboration, and communication with NGOs and private actors, in order to avoid duplication of effort, instrumentalization of the different approaches and actors, and unintended consequences in a field where myriad protagonists – states, international organizations, NGOs and private actors – are engaged at the same time and in the same place. Moreover, a consolidation of the approaches of states, international organizations, and NGOs and private actors, using each of their comparative advantages, may provide a more effective means of constructively engaging armed actors and decreasing violence in contemporary conflict. NGOs and private actors may, in fact, be capable to supplement existing policy, assume responsibility for entire policy fields, contribute to designing policy, and provide early warning about windows of opportunity as well as emergency situations.

This paper sets out how, and with what purpose, specialized NGOs and private actors are engaging NSAGs with the aim of changing NSAGs' behaviour in a way that increases the opportunities for conflict mediation and resolution; presents three models of collaboration and coordination between states, international organizations, and NGOs and private actors; expands on the strengths and limitations of the involvement of NGOs and private actors; and draws conclusions about the consequences of conflict strategies that do not account for the realities on the ground: the heavy involvement of different types of armed actors in contemporary conflict; the range and number of actors, instruments and approaches involved in engaging NSAGs; and the simultaneity of actors and approaches in the field.

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[62] Hofmann, C. and Schneckener, U. (2011), 'How to Engage Armed Groups? Reviewing Options and Strategies for Third Parties', *Sicherheit und Frieden (S+F),* 29(4): pp. 254–59.

[63] Hofmann, C. (2012), *Reasoning with Rebels. International NGOs' Approaches to Engaging Armed Groups*, Research Paper, Berlin: German Institute for International and Security Affairs. This paper focuses specifically on specialized international NGOs that have dedicated the majority of their work to engaging NSAGs directly and with the purpose of changing the armed group's behaviour with regard to the use of violence. The paper does not address humanitarian work done by NGOs that may lead to ad hoc engagement with NSAGs, such as for example negotiating access to a population in an area controlled by the group. For a more detailed classification of types of INGOs see Hofmann and Schneckener (2011), *NGOs and Nonstate Armed Actors.*

[64] Hofmann and Schneckener (2011), *NGOs and Nonstate Armed Actors.*

Private engagement with NSAGs

The objective of specialized NGOs and private actors involved in conflict mediation and resolution when engaging NSAGs is typically focused on limiting the humanitarian consequences and reducing the violence such armed actors perpetrate in a conflict.[65] To do so, NGOs and private actors employ one of two general approaches. Some promote international norms about the protection of civilians and combatants, with the goal of persuading NSAGs to change their behaviour. Such approaches may focus on the advancement of IHL, such as through the 1997 Mine Ban Treaty (or Ottawa Convention), and the 1949 Geneva Conventions and their Additional Protocols. Means to achieve this aim include different forms of communication, such as strategic communication, informational diffusion, procedural diffusion through institutionalized cooperation, transference through capacity-building, and knowledge transfer. In their work, these specialized NGOs primarily rely on three behavioural and implementation mechanisms – social pressure, persuasion and negotiation – and often depend on the support of local, regional and international organizations. Specifically, NGOs create social pressure on NSAGs by challenging their conduct in respect of an internationally accepted norm. In response to a violation of IHL, NGOs may choose to disseminate information about the violation to specific actors or the public in general to pressure the NSAGs into compliance (i.e. 'naming and shaming'), as well as to pressure external actors to denounce the perpetrators and to threaten sanctions against them, such as isolation and withdrawing support, in case of further violations.[66] Additionally, NGOs increase incentives for the adherence to international norms and international law by asserting that behaviour in accordance with IHL may improve their status and image internationally.[67] NGOs often employ persuasive arguments in campaigns, workshops and facilitated expert meetings to illustrate the benefits of adherence. Moreover, NGOs may use technical support (for example with regard to demining, explosive ordnance disposal, mine risk education and victim assistance) and other tangible support as a reward for the adherence to norms and laws.

The underlying assumption of such an approach is that NSAGs can be persuaded of the value of following IHL norms if they are concerned with their public image, moral authority and sources of legitimacy. Concurrently, this approach is particularly suited for non-state armed actors that follow a political agenda and programme including popular representation and governance. This is particularly the case with more traditional rebel groups, clan chiefs, and groups that have political and regulatory ambitions.[68]

The International Committee of the Red Cross (ICRC) is a strong example for work in this area. In the Philippines, for instance, it conducts workshops and training sessions with regular follow-ups on IHL and other applicable norms, with a specific emphasis on distinguishing between civilians and combatants. It conducts these sessions with national forces in their respective military and police academies and schools, as well as with NSAGs in territories controlled by the armed groups.[69] A unique example of activities in the field of norm diffusion is Geneva Call, a Swiss NGO, established in 2000, that attempts to persuade NSAGs to adhere to universal humanitarian norms by signing, unilaterally, its Deed of Commitment in each or all of the following fields: protection of children in armed conflict, prohibition of sexual violence and gender discrimination, and respect

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[65] Hofmann and Schneckener (2011), *NGOs and Nonstate Armed Actors*.
[66] The ICRC does not, by principle, publicize any violations of IHL so as to maintain the trust of the NSAG. The ICRC has a distinct legal status, being neither an international organization nor an NGO. While it is a private association formed under the Swiss Civil Code it also has a legal status under IHL.
[67] Hofmann (2012), *Reasoning with Rebels*.
[68] Hofmann and Schneckener (2011), *NGOs and Nonstate Armed Actors*.
[69] Hofmann (2012), *Reasoning with Rebels*.

for a total ban on anti-personnel mines. Signatories also commit to monitoring and verification activities by Geneva Call and by other independent international and national organizations. At the same time, it is specified in the Deed of Commitment that signing it does not alter the legal status of the NSAG (pursuant to Common Article 3 of the Geneva Conventions). By April 2016 18 NSAGs had signed the Deed of Commitment for the Protection of Children from the Effects of Armed Conflict, 16 had signed the Deed of Commitment for the Prohibition of Sexual Violence in Situations of Armed Conflict and towards the Elimination of Gender Discrimination, and 49 had adopted the Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action.[70] Most signatories had, furthermore, taken measures to enforce their Geneva Call obligations. Two examples of NSAGs that have made Geneva Call commitments are the Patriotic Union of Kurdistan and the Kurdistan Democratic Party, which have unilaterally agreed to the norms specified in the Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines. Geneva Call first travelled to Northern Iraq to meet with these groups in 2002, together with a technical adviser and mine action specialist from the Swiss Foundation for Mine Action. Thirteen months of persuasion through dialogue with the groups preceded the trip.[71] There were no signs that either of the two signatories had used anti-personnel landmines between the outbreak of conflict in 2003 and 2012.

Other approaches seek the resolution of the conflict through dialogue, mediation, mediation support, and negotiation.[72] The rationale here is that dialogue between the parties as well as dialogue with third parties will eventually lead to a reduction in violence, for example through ceasefires and peace agreements. To achieve these, NGOs and private actors create platforms for dialogue and unofficial diplomacy that create public pressure, possibilities for capacity-building, and frameworks for persuasion.[73] Moreover, dialogue based on humanitarian principles is seen to have inherent value in itself, particularly with regard to potential positive effects on future facilitations, mediations and negotiations. The range of activities that are undertaken in this field are myriad. They include 'good offices' (low level activities aimed at bringing parties together, for example through informal communication and consultation, with the goal of easing the way into negotiations and settlement); mobilization of humanitarian, diplomatic and political support for talks; expertise on technical questions; facilitation of aid from specialized organizations (in areas such as mine clearance, project-specific financial support and logistical support); recommendations to decision-makers; education of local civil society organizations and the general public to promote alternative means of conflict resolution; monitoring, fact-finding and verification activities; and analyses of progress in conflict transformation and early warning. Through a combination of these activities, NGOs in this field attempt to create – where constructive communication in absent – new pathways to dialogue and negotiation, and eventually to peace.

The activities of the Carter Center, a US-based NGO headed by elder statesman, Nobel Peace Prize laureate, and former US President Jimmy Carter, illustrate clearly the efforts that may be undertaken by NGOs and private actors with the aim of resolving conflicts. The Center offers high-level mediation services to states and NSAGs, relying on Carter's persona and influence, and on the willingness of the

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[70] Geneva Call (2016), 'Deed of Commitment', http://www.genevacall.org/how-we-work/deed-of-commitment/.
[71] Ibid.
[72] Bercovitch, J. (ed.) (2002), *Studies in International Mediation*, London: Palgrave Macmillan Ltd.; Dunn, L., A. and Kriesberg, L., 'Mediating Intermediaries. Expanding Roles of Transnational Organisations', in Jacob Bercovitch, (ed) (2002), *Studies in International Mediation*, London: Palgrave Macmillan Ltd., pp. 194–212; Touval, S. and Zartman, I., W., (eds) (1985), *International Mediation in Theory and Practice*, Boulder, Co.: Westview Press.
[73] Debiel, T. and Sticht, M. (2005), *Towards a New Profile? Development, Humanitarian and Conflict-Resolution NGOs in the Age of Globalization*, Duisburg: Institut für Entwicklung und Frieden.

parties to compromise in favour of a mediated solution. In 1995 Carter resumed an earlier mediation attempt, building on existing personal relationships, between Colonel Omar al-Bashir and the Sudan People's Liberation Army/Movement (SPLA/M), swiftly achieving a humanitarian ceasefire that lasted for six months. Although no peace negotiations resulted directly from this initiative, the interruption of hostilities allowed for the treatment of Guinea worm and other diseases in conflict-affected areas, as well as for the immunization of children against polio and other illnesses.[74] Carter maintained involvement in the regional and international efforts that eventually led, under the auspices of the Intergovernmental Authority on Development (IGAD), to the signature of the Comprehensive Peace Agreement between the government of Sudan and the SPLA/M in 2005. The Center subsequently monitored both the national elections in Sudan and the 2011 referendum that determined the secession of what is now South Sudan.[75] Carter meanwhile also brokered the Nairobi Agreement, signed in 1999 by President Bashir and his Ugandan counterpart, Yoweri Museveni, resulting in a mutual commitment to stop supporting forces hostile to each other's government, and the restoration of full diplomatic relations (which had been severed in 1995).[76]

Support specifically by states and international organizations to specialized NGOs and private actors in these fields is rare, despite the possibilities and successes that NGOs have demonstrated. The potential for constructing new avenues that may lead to the improvement of a local humanitarian situation, or to a fresh attempt for peace, is often subdued by concerns for conveying legitimacy and empowerment to an NSAG, as well as by uncertainty around the impact and unintended consequences of informal and unofficial involvement. Where NGOs and private actors have been involved in constructively engaging NSAGs in cooperation with official initiatives – through collaboration, cooperation, and even consolidation – concrete lessons, patterns and opportunities can be derived.

Models of consolidation between states, international organizations, and NGOs and private actors

Previous engagements between official and private actors present foundations for an increased and specialized collaboration and cooperation, and even consolidation, beyond the delivery of humanitarian assistance and development aid, between states, international organizations and NGOs.[77] NGOs and private actors have been able to counterweigh the shortcomings and limitations of official actors – primarily states and international organizations – when addressing the challenges non-state armed actors present in contemporary conflict in three general ways: they have been able to supplement official policy; they have assumed responsibility for entire policy components; and they have developed policy and early warning mechanisms that have supported stronger action by states and international organizations. A closer look at these opportunities reveals how a more strategic use of NGOs' specific capabilities in official conflict prevention and management strategies may be advantageous.

74 The Carter Center (2016), 'Waging Peace: The Republic of Sudan', http://www.cartercenter.org/countries/sudan-peace.html.
75 Ibid.
76 Ibid.; and Hofmann (2012), *Reasoning with Rebels.*
77 For further information on the interplay between the delivery of humanitarian assistance and development aid, see, among other, Grävingholt, J., Hofmann, C. and Klingebiel, S. (2007), *Development Cooperation and Non-State Armed Groups*, Studies 29, Bonn: German Development Institute.

Supplementation of official policy

The work of NGOs is often already part of a broader strategy of governments and international organizations. However, this interaction between official policy and the contribution of NGOs and private actors often focuses on the delivery of humanitarian and development aid, rather than the contributions these actors can make when engaging NSAGs. Currently, NGOs and private actors are included in official strategies in three specific ways.

First, state actors and international organizations may provide financial support of specific projects being undertaken by NGOs that benefit states and international organizations' engagement in a particular country. This often involves emergency aid, which provides the means necessary for the short- and medium-term survival of a population, such as food, drinking water and tools improving health and hygiene, for example after an outbreak of violence, or in the aftermath of natural disasters and epidemics. In some cases, NGOs may be able to assist in the creation of safe havens to provide secure areas for internally displaced persons and refugees, and protection from homelessness and violence. In this work, NGOs and private actors often have to engage with NSAGs; in fact, the numbers of such instances are rising.[78] For example, NGOs may need to negotiate access to target groups or the security of their personnel in the field.[79] Additionally, NGOs may provide the foundations for a more stable future, such as through delivering seeds, equipment, and tools, as well as facilitating micro-credits for businesses. Today almost 90 per cent of financial flows from the United States to the developing world stem from private sources, such as individual donations, private foundations, corporations and public-private partnerships. In comparison, in 1970 some 70 per cent of financial flows from the United States to the developing world originated from government sources.[80] Second, states and international organizations may provide funding to NGOs or private initiatives and public-private partnerships that is not assigned to a specific project or a specific country but which instead supports the NGO's or initiative's operations as a whole. This allows NGOs and private actors to cover thematic areas and countries or regions that are not necessarily a policy priority for their donors. Third, the expertise that NGOs and private actors develop through their engagement in the field over time is consulted by state agencies and international organization. Such first-hand experience and expertise may assist in developing and formulating the official strategies and policies underpinning engagement by state actors and international organizations.

Accordingly, NGOs may already be involved in the official policy-making process from its inception, and, through consultation, they may be involved in facilitating states and international organizations' strategies and activities. However, much of this interaction to date remains largely focused on development and humanitarian aid contributions, and is underused and ad hoc. While NGOs and private actors may continuously lobby governments and international organizations to move in a certain direction, regular cross-sectoral consultations and exchanges – specifically with regard to the engagement of NSAGs – are rare, often lack financial and ideational support from governments and international organizations, and do not involve representatives of the respective sections of government with the ability to influence decision-making on the respective issue. Concurrently, the majority of official funding for NGOs and private actors is earmarked for certain humanitarian and development aid projects that specifically and often rigidly reflect official policy. Engaging with NSAGs is not usually supported by official sources.

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[78] Ibid.

[79] However, generally speaking such interaction does not give rise to more principled engagement with NSAGs regarding humanitarian protection and conflict transformation. See ibid.

[80] InterAction (2015), 'Leadership Development Series – Overview', http://www.interaction.org/leadershipseries/overview.

A good example of a strong collaborative relationship between a government and an NGO with regard to engagement with NSAGs is the involvement of the Centre for Humanitarian Dialogue (HD) in the Norwegian facilitation of peace talks in the protracted conflict between the government of the Philippines and the communist National Democratic Front (NDF) alliance.[81] HD, a Swiss NGO offering mediation services and mediation support to state and non-state actors involved in violent conflicts and disputes, has for more than a decade provided support to the Norwegian government, which acts as the official third-party facilitator for the peace talks. HD was able to provide mediation support to the Norwegian government for the three rounds of talks that were conducted during 2004 and, in the course of this, assisted in establishing a Joint Monitoring Committee in Manila, which it also manages and oversees; the Committee observes the implementation by the parties of the Comprehensive Agreement on the Respect for Human Rights and International Humanitarian Law (CARHRIHL). The involvement of HD as a non-governmental or civil society organization is welcomed by the NSAG as well as by civil society. For the NSAG, the involvement of HD represents an opportunity to broaden the dialogue beyond the scope of state actors and state-based concerns. In particular, the administration of the CARHRIHL by an independent NGO gives credibility to the process by assuring that all complaints are processed independently and that violations are not instrumentalized during the negotiations. For civil society, the involvement of an NGO in processing complaints and violations of human rights and IHL law is an important sign that civil society concerns are represented in the official negotiations.[82] The activities of HD with regard to this project have included liaising with the representatives of the Committee and with governmental and non-governmental stakeholders, as well as managing the Centre's administration and finances. Despite the subsequent resumption of fighting between the NSAG and the government and the ongoing suspension of further talks,[83] HD maintains its support for the Norwegian government, which it can advise with respect to possible windows of opportunity and developments on the ground; as well as continuing to oversee the functioning of the Joint Monitoring Committee.

Responsibility for distinct policy components

In addition to collaborating with and complementing the work of state actors and international organizations, NGOs and private actors may be capable of alleviating weaknesses that states and international organizations experience when engaging NSAGs by assuming responsibility for complete and specific policy components. In such cases, NGOs and private actors may be mandated by states and international organizations to engage NSAGs on certain issues. The ICRC already provides an example of such a model with its standing international mandate to ensure humanitarian protection, provide assistance for victims of violence and promote respect for IHL.[84] Another example is the strategic partnership pursued by the Swiss government with Geneva Call (see above) to engage NSAGs, as part of its official strategy regarding the elimination of the use of anti-personnel landmines and other explosive remnants of war. In this strategic partnership, Geneva Call is charged with engaging NSAGs with the goal of persuading them to forgo unilaterally the use of anti-personnel

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[81] Centre for Humanitarian Dialogue (2015), 'Philippines NDF', http://www.hdcentre.org/en/our-work/peacemaking/philippines-ndf/.

[82] Generally speaking, the peace processes with the NDF and the Moro Islamic Liberation Front in the Philippines have been very open to input from civil society actors as well as from local and international NGOs. To mention only a few: Catholic Relief Services funds much of the activities of religious organizations in the Philippines; Conciliation Resources provides an international forum for discussion for local NGOs and for members of both the government's and the NSAG's negotiating panels; International Alert supports the Philippine Business for Social Progress to work on the private sector's role in conflict management; and Geneva Call campaigns against the use of landmines by the parties to conflict (Rood, S. (2005), *Forging Sustainable Peace in Mindanao: The Role of Civil Society*, Policy Studies 17, Washington: East-West Center, pp. 11–12, 15–16). At the same time, NGOs' impact on the political peace process is estimated to have been minimal (Rood (2005), p. 27).

[83] The most recent meeting between the parties to conflict and the facilitator took place in late 2009 and a resumption of talks was discussed after the national elections in May 2010. However, formal negotiations were again suspended in 2011.

[84] Hofmann (2012), *Reasoning with Rebels.*

land mines. It is imperative, and is communicated to the NSAG, that such a declaration in no way alters its status under international law. In this way, the Swiss government circumvents a difficult aspect of a comprehensive anti-landmine strategy that would otherwise remain unaddressed. While the Swiss government is able to engage states and other official actors to advocate for an end to mine use, it – as part of its official strategy – 'delegates' to an NGO the more difficult task of engaging NSAGs. In this way, the Swiss government addresses all necessary levels of a comprehensive strategy against landmines without compromising its standing with the host country or referencing the status of NSAGs. Other partnerships in this field pursued by the Swiss government involve the International Campaign to Ban Landmines, the Cluster Munitions Coalition, the Landmine and Cluster Munitions Monitor, and the Swiss Gender and Mine Action Programme.

Developing policies and providing early warning

Through their work in the field, NGOs often have a close connection to real-time developments. They may be able to anticipate windows of opportunity for specific engagement in conflict that has the potential to decrease levels of violence, especially against civilian populations. They may also be able to anticipate a worsening of a situation and provide early warning of imminent risks to other actors. These practical experiences and proximity to the field may be used by states and international organizations to gain an in-depth knowledge of a situation on the ground. Moreover, specialized NGOs may be in a position to use a window of opportunity immediately, and to take first steps to begin a constructive dialogue between, respectively, NSAGs, the host government and civilians. Such early steps may mature into an opportunity to conduct talks at a higher political level.

An example is the Carter Center's efforts for peace in northern Uganda. In 2003 the Carter Center handed over the initiatives they had taken in the field to Betty Bigombe and USAID (Northern Uganda Peace Initiative – NUPI). Both actors had previously been closely involved in the peace process, making a handover from the Carter Center to NUPI comparatively easy and comfortable for the parties to conflict and the new mediators, as they already knew each other. Similarly, early in 2007, Geneva Call facilitated contact between the United Somali Congress/Somali National Alliance (USC/SNA) and the African Union (AU) to destroy stockpiles access (approximately 3,500 anti-personnel landmines and anti-tank mines) to which the USC/SNA had given the NGO access. The successful cooperation between the NSAG and the AU may serve as a trust-building measure and benefit future interactions.[85] Moreover, the ICRC frequently acts as neutral intermediary between governments and armed actors to enable the exchange of prisoners or for ceasefires, so as to be able to assist the wounded. In a few specific cases, however, the ICRC has functioned as more than a facilitator of contact between NSAG and government and has itself organized prisoner exchanges. An example for this is the handing over of 60 detainees (military and police) to the ICRC by the Justice and Equality Movement in Darfur, Sudan, in 2009.[86]

States and international organizations rely frequently on NGOs' expertise and efforts in the field. However, they have neglected to use fully and strategically NGOs' abilities to assume responsibilities particularly regarding the engagement with NSAGs as seen above.[87] One reason for this is the uncertainty of states and international organizations about the impact and unintended consequences

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85 Ibid.
86 International Committee of the Red Cross (2009) 'Sudan: detainees transferred under ICRC auspices', https://www.icrc.org/eng/resources/documents/news-release/2009-and-earlier/sudan-news-180709.htm.
87 Hofmann (2012), *Reasoning with Rebels.*

that NGO involvement may produce in a given situation. Actors contemplating closer collaboration and cooperation with NGOs and private actors, and a consolidation of efforts, need to be aware of the strengths and limitations of their involvement, so as not only to consider the potential consequences of collaboration and cooperation, but also to tailor effectively their collaboration to make use of the strengths of the actors involved while simultaneously accounting for their weaknesses. Such strategic consolidation of state actors, international organizations, and NGOs and private actors' efforts may offer additional and broader opportunities for conflict resolution initiatives, building on the different capacities of the various actors involved.

Assessment: strengths and limitations of NGOs' engagement efforts

The advantages that NGOs and private actors possess in engaging NSAGs can be substantial. NGOs and private actors are constrained by the same diplomatic norms that apply to states and international organizations. Accordingly, their interactions with NSAGs do not confer any official status or credibility to the grievances that armed actors may put forward, and nor do they formally confer sovereignty, legitimacy and authority to NSAGs. In fact, the perceived independence of NGOs and private actors from institutions that may confer such recognition – states and international organizations – may increase the credibility of NGOs among armed actors. NGOs often dissociate themselves from the strategic power, resources and business interests that are often attributed to external actors ('state bias'). NGOs and private actors often appear to be more principled, altruistic and dedicated in their work in the field; NSAGs may more readily believe that NGOs are sincerely working for a sustainable resolution of the conflict, and that they take seriously the demands and preferences of the conflicting parties without prejudice.

The characteristics of NGOs and private actors may affirm this view: first, NGOs do not tend to make 'exploding offers' that are retracted if they are not accepted in a certain period of time. Instead, the tendency to maintain communication with conflicting parties and to involve multiple stakeholders in their engagement is often perceived as an attempt to tailor solutions to a conflict based on the ideas of the conflicting parties only. This perception is supported by the lack of leverage – compared with that of states and international organizations – that NGOs have to put pressure on parties.[88] Consequently, the only perceived means for NGOs of facilitating agreements is to find viable middle ground between parties. Second, the reliance on dialogue, cooperation and voluntary concessions (in lieu of strong leverage) provides strong ownership to conflicting parties in finding acceptable and sustainable solutions. Third, contact between NGOs and NSAGs is very often personal in nature. Empathy and understanding (but not necessarily agreement), individual reputation and personal integrity are often the core of the relationships between NGOs and such groups. This allows NGOs and private actors to develop a position of trust that enables them to facilitate, mediate, negotiate, counsel and persuade. To support their reputation as knowledgeable, competent and trustworthy, NGOs often hire individuals with experience in government-level negotiations (such as former officials and diplomats). However, the ability of NGOs and private actors to influence groups' and leaders' behaviour relies on personal and in many cases informal relationships with them, which often take a significant amount of time to develop. Fourth, little wider attention is currently paid to the initiatives that NGOs and private actors undertake with armed actors. As a result, less pressure and fewer expectations are placed on these initiatives. This facilitates the development of long-term cooperation, and enables a focus on

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[88] Ibid.

humanitarian concerns and single issues rather than on comprehensive peace agreements. For armed actors, there is a lower entry threshold for dialogue with NGOs, as well as little gain in retreating from the dialogue early, making it more likely that the former will agree to dialogue in the first place. NGOs, for their part, put their reputation on the line when they engage with NSAGs, and accordingly have an incentive to produce tangible and sustainable results.

A number of shortcomings are directly associated with the advantages that NGOs and private actors may experience in engagement with armed actors. First, the lack of resources begs questions with regard to the feasibility and sustainability of – especially long-term – projects with armed actors. External partners are often invited to join a process when a critical point in the engagement is reached, for example for the signing of an agreement or for its implementation. Second, the mandate, credibility and legitimacy of NGOs' activities have been called into question repeatedly. Without effective supervision, these initiatives run the risk of being instrumentalized by armed actors, especially in areas where multiple private initiatives are active and can be played off against one another. Third, there is no measure for the effectiveness and sustainability for engagement with NSAGs by NGOs and private actors. For instance, NGOs and private actors have in the past proceeded to mediate with lower-level officials from NSAGs where higher-level contacts were unattainable. The success of such initiatives is unclear. Moreover, the fragility of the personal contact in such initiatives often raises concerns about the security of the personnel, and particularly of the local staff that is often employed by NGOs. Additionally, NGOs are often limited in their work by general environmental factors, such as the course and history of the conflict, its dynamics and its levels of escalation. While these factors remain inconsequential in the systematic constitution of NGOs' efforts, in individual cases a deteriorating security situation can lead personnel temporarily to withdraw from the process.

While this paper does not attempt to examine the many complexities of the impacts of counterterrorism legislation on specialized NGOs and other humanitarian actors, it does recognize the importance of work in this area.[89]

Conclusions

When attempting to engage actors as different and diverse as NSAGs, external actors involved in conflict mediation and resolution are advised to take into account the different approaches to engagement as well as the different types of actors engaging armed groups. To be effective, it is necessary not only for the optimal mix of instruments to be employed, but also the optimal constellation of actors engaging such groups. Accordingly, external actors dealing with NSAGs need to take into account the existing range of approaches as well as actors that may contribute to a successful engagement. At the same time, external actors need to be clear about their own capabilities, about those of potential cooperation partners, about the limits of what can be done in the individual case at hand, and – possibly most importantly – about the goals of any engagement. For the future, several problems of collaboration, cooperation and consolidation need to be addressed.

First, an engagement process with NSAGs requires a much closer examination of possible partners and approaches. As of now, in any given conflict involving NSAGs, a plurality of intervening external actors are employing multiple different approaches simultaneously yet independently of one another. In fact, the different actors and approaches often follow different goals, prioritize different means, and even

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[89] UNOCHA and the Norwegian Refugee Council published a useful discussion paper on these issues in 2013 titled 'Study of the Impact of Donor Counter Terrorism Measures on Principled Humanitarian Action'.

compete against each other. The lack of international exchange between external actors complicates the problem and may lead to unintended consequences, difficulties and limitations, and even partial neutralization of effects. In the past, NSAGs have used this situation to play actors off against each other and use them to their own advantage. For example, NSAGs may agree to the participation in a peace process to bypass legal prosecution or economic or military sanctions. Moreover, NSAGs are aware that time is usually on their side: limited resources and domestic pressures will eventually lead external actors to leave and minimize engagement in the country.

Second, an engagement process calls for a much closer examination of the respective non-state armed actors and their changing nature within the conflict and the regional and international system. Only after a comprehensive and accurate profile has been compiled can an appropriate engagement strategy be designed. While this sounds like an obvious first step, many engagements with NSAGs by states or international organizations, as well as by NGOs and private actors, have suffered from incomplete analysis and from overly broad assumptions about the interests, goals and options for action of armed actors. Additionally, approaches for engaging an armed actor have focused overly on specific types of armed violence and armed actors, instead of conceding to the continuum of types of actors and violence existing in the field. In fact, the multiplicity of actors that frequently exist in parallel with each other are often treated differently by the local government. Some are being used, some are supported, and some are even deliberately set up by governments, while others are combated.[90] Moreover, external actors – states and international organizations – have been slow to adapt their profiles of and assumptions about NSAGs, failing to adjust to any changes in the groups' behaviour, goals or the general development of the conflict. Instead of acknowledging the dynamics of NSAGs, as well as of conflict, external actors have demonstrated difficulties in modifying their set strategies accordingly, or have even completely withdrawn from a failed strategy in favour of an improved one. In particular, governments often rely on the approaches with which they are more familiar, with which they have most experience, or that they are most capable of applying. In the recent past this has led to an expansion of counterinsurgency efforts instead of a reflection on the merits of other approaches. At the same time, shifting the strategy and entering official peace negotiations has been interpreted as rewarding the use of violence by NSAGs and granting them undue legitimacy (see for example the 'material support' section of the USA PATRIOT Act). Simultaneously, NGOs' impact is often stunted by their lack of political backing in the international community, their lack of resources and their inability to enforce security.

Third, more than one NSAG is usually involved in contemporary intrastate conflicts. Strategies for engaging NSAGs have often failed to acknowledge the simultaneity of armed actors in one particular conflict and an entire conflict region, as well as their relations to other NSAGs actors or their ties to specific actors within society. They have, therefore, failed to acknowledge the repercussions that any kind of engagement with one of the NSAGs may have for the conflict or the region, as well as for other protagonists and for society as a whole.

Fourth, engagement approaches of external actors have often presumed that the restoration of the national and international order can be served by 'fixing a problem'. While NGOs and private actors can be more flexible in some regards – for example through integrating NSAGs into such a renewed order – the majority of states, international organizations and NGOs have taken this to mean the restoration of a normative and/or political status quo.

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[90] Schneckener, U. (2010), 'Dealing with Armed Non-State Actors in State- and Peacebuilding. Types and Strategies', in Benedek, W., Daase, C., and Van Dyne, P. (eds) (2010), *Transnational Terrorism, Organized Crime and Peacebuilding*, London: Palgrave, pp. 229–48.

In essence, external actors engaging NSAGs need to take into account the entire range of approaches and actors that exist and that may contribute, in a coordinated manner, to the achievement of specific goals and lasting solutions regarding non-state armed actors. In doing so, they need to design engagement strategies that account for the type of NSAG, for the simultaneity of armed groups in a particular conflict, and for their transnational and international activities, as well as for the possibility of change and the resulting need for a modification of the engagement strategy. Considering the multitude of variables that make a successful engagement with armed groups, it appears misguided to exclude any type of strategy or any type of actor that could complement the weaknesses and limitations of a single approach. A joint effort of multiple protagonists and an appropriate mix and timing of strategies promises to produce the best way to engage any NSAG. Finally, an effective security regime must do more than merely respond to attacks. It must also prevent attacks whenever possible. The division of labour and the exploitation of the potential of different external actors appears to be the most apposite approach to engaging with NSAGs, including before a major loss of civilian life.

Acronyms

AU	African Union
CARHRIHL	Comprehensive Agreement on the Respect for Human Rights and International Humanitarian Law
HD	Centre for Humanitarian Dialogue
ICRC	International Committee of the Red Cross
IHL	international humanitarian law
INGOs	international non-governmental organizations
NDF	National Democratic Front
NGOs	non-governmental organizations
NSAGs	non-state armed groups
NUPI	Northern Uganda Peace Initiative
SPLA/M	Sudan People's Liberation Army/Movement
USAID*	
USC/SNA	United Somali Congress/Somali National Alliance

* Standalone acronym; USAID was established as the United States Agency for International Development

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Improving Respect for International Humanitarian Law by Non-state Armed Groups

Ben Saul

Summary

- Non-state armed groups (NSAGs) in non-international armed conflicts can potentially protect or endanger civilians. Their number and diversity have proliferated in recent decades, presenting new challenges for humanitarian protection and engagement by the international community.

- While NSAGs must respect basic international humanitarian law (IHL) norms, the mechanisms for holding them accountable for violations of IHL are less developed than those for states.

- Various legal and practical tools can enable NSAGs to respect IHL, including special agreements, unilateral commitments, internal regulations, dissemination and training, and disciplinary systems.

- IHL-compliant 'codes of conduct' are a particularly important means of promoting respect for IHL in NSAGs, especially if supported by leaders and backed by dissemination, training and sanctions.

- Overall the international community's engagement with NSAGs has been limited, and often focused more on dialogue about humanitarian access and relief than legal protection. In addition to the practical difficulties of engaging NSAGs, engagement can be impeded by counter-terrorism policies, co-option of humanitarianism by military goals, and competing priorities in UN missions.

- Actors that provide relief and assistance can exercise that leverage in order to engage directly with NSAGs on wider issues of humanitarian protection. Actors focused more on monitoring of violations can seek to influence NSAGs though moral persuasion, public shaming and 'influencing influencers'.

- The international community could engage NSAGs more on IHL compliance. Engaging NSAGs does not alter their legal status. While it may enhance an NSAG's perceived political legitimacy, that risk is often outweighed by the high humanitarian price of failing to engage.

- Refusing to engage with NSAGs does not necessarily improve their behaviour. While a few groups may be beyond the pale, many groups are capable of being constructively engaged in some way. NSAGs need to be continually monitored to identify opportune timing for fruitful engagement.

Introduction

Most contemporary armed conflicts are non-international, with 28 such conflicts taking place in 17 states in 2013.[91] Hundreds of non-state armed groups (NSAGs) are involved in conflicts and can potentially endanger or protect civilians. By one estimate, there are 1,000 NSAGs in the Syrian conflict alone.[92] NSAGs are now more prolific, diverse and unpredictable than during the Cold War, where conventional liberation movements and rebel political groups were the norm.[93] Despite these realities, the application of humanitarian norms to NSAGs, the mechanisms for holding them accountable for abuses, and external engagement with them to protect civilians, remain underdeveloped.

A pressing question is how states and international actors can enhance their engagement with NSAGs to improve respect for humanitarian norms. This paper starts by charting the international laws and mechanisms that apply to NSAGs. It then reviews the practical mechanisms that can encourage NSAGs to respect humanitarian norms, after which it provides an overview of international efforts to engage NSAGs and the gaps in engagement. The conclusion considers whether more could be done to engage NSAGs on humanitarian norms.

Legal frameworks applicable to NSAGs

NSAGs cannot be parties to treaties and normally cannot participate in law-making, including on international humanitarian law (IHL), international human rights law (IHRL), international criminal law (ICL), or arms control instruments. Accordingly, they may not feel committed to international norms in the same way as states. All NSAGs in non-international armed conflicts are none the less bound by common Article 3 of the Geneva Conventions of 1949, which requires each 'party' to respect humanitarian obligations, as well as the many rules of IHL that have the status of customary international law.[94] In addition, Additional Protocol II of 1977 may apply where an NSAG controls territory.

The application of IHRL to NSAGs is controversial.[95] This is reflected by international actors that refer to human rights 'abuses' by NSAGs, in contrast to state 'violations'. There is, however, a growing view that some IHRL obligations apply to NSAGs, especially where they are de facto state authorities controlling territory and populations.[96] Members of NSAGs may also be liable for international crimes, although prosecution is difficult and impunity rife.

The mechanisms for holding NSAGs accountable, as groups, for violations of humanitarian norms are less developed than are those applicable to states. NSAGs are not subject to the numerous treaty-based reporting, monitoring and verification mechanisms for states.[97] At best, some NSAGs have been subject to ad hoc UN Security Council sanctions regimes, which sometimes aim to curb abuses of IHL, IHRL or ICL, and bring perpetrators to justice.

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[91] Casey-Maslen, S. (ed.) (2014), *The War Report: Armed Conflict in 2013*, Oxford, Oxford University Press, p. 28.

[92] The Carter Center (2014), *Syria: Countrywide Conflict Report #4*, 11, p. 11.

[93] Keogh, S. and Ruijters, Y., (2012) *Dangerous Liaisons? A Historical Review of UNHCR's Engagement with Non-State Armed Actors*, Geneva: UNHCR, p. 2.

[94] Henckaerts, J. and Doswald-Beck, L. (2005), *Customary International Humanitarian Law*, *Vol. I: Rules*, New York, Cambridge: ICRC and Cambridge University Press.

[95] See Clapham, A. (2006), 'Human Rights Obligations of Non-State Actors in Conflict Situations', *International Review of the Red Cross*, 88(863): p. 491.

[96] Office of the UN High Commissioner for Human Rights (UN OHCHR) (2011), *International Legal Protection of Human Rights in Armed Conflict*, New York and Geneva: UN, p. 25.

[97] Bongard, P. and Somer, J. (2011), 'Monitoring Armed Non-State Actor Compliance with Humanitarian Norms: A Look at International Mechanisms and the Geneva Call Deed of Commitment, *International Review of the Red Cross*, 93: pp. 673, 676; Sassoli, M. (2007), 'Engaging Non-State Actors: The New Frontier for International Humanitarian Law', in Geneva Call, *Exploring Criteria and Conditions for Engaging Armed Non-State Actors To Respect Humanitarian Law and Human Rights Law*, Conference Report, pp. 8, 15–16.

Practical tools to increase respect by NSAGs for humanitarian norms

While the legal frameworks and mechanisms applicable to NSAGs are comparatively sparse, a range of tools is available that enables NSAGs to take ownership of, implement and respect humanitarian norms. These include agreements between the parties, unilateral commitments, internal regulations, dissemination and training activities, and disciplinary systems.[98]

Agreements between NSAGs and states

The parties to a non-international armed conflict may formally conclude 'special agreements', under common Article 3 to the four Geneva Conventions of 1949, to bring into force all or part of the Conventions. This does not affect the legal status of NSAGs or grant them legitimacy, but has purely humanitarian aims.[99] Arrangements need not be as formal as 'special agreements', and can include other actors such as international organizations or humanitarian actors. IHL provisions can also be included in ceasefire and peace agreements, as well as humanitarian memoranda of understanding or action plans.

Agreements generally express the parties' normative commitments, provide bases for dissemination and training, and establish benchmarks for compliance.[100] There are numerous examples of agreements of various kinds, including in El Salvador, Bosnia and Herzegovina, Mozambique, Liberia, the Philippines, Colombia, Sudan and Uganda.[101] Agreements are more likely where a conflict is protracted and the NSAG is well organized and controls territory.[102]

Agreements may raise the IHL standards that would apply as a matter of law, as where the parties agreed in 1992 to apply some of the rules for international conflicts (under Additional Protocol I) to the non-international armed conflict in Bosnia.[103] This agreement later helped to ground war crimes liability in the International Criminal Tribunal for the former Yugoslavia (ICTY).[104] Agreements can also include IHRL, ICL or arms control norms, and provide for monitoring.

Unilateral commitments to respect IHL

NSAGs may, and often do, make unilateral commitments to respect humanitarian norms. IHL provides formal procedures for national liberation movements to do so.[105] In June 2015 Polisario, representing the people of Western Sahara, became the first movement to have a declaration accepted by the depository state, Switzerland. The procedure is otherwise of little use: first because there are few remaining liberation struggles; and second because Protocol I does not apply (for lack of state ratification) to those that persist – as in Palestine.

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[98] Sivakumaran, S. (2012), *The Law of Non-International Armed Conflict*, Oxford: Oxford University Press, pp. 107, 140.

[99] Pictet, J. (1952), *Commentary on the Geneva Conventions of 12 August 1949*, Geneva: Paperback edition, p. 60.

[100] McHugh, G. and Bessler, M. (2006), *Humanitarian Negotiations with Armed Groups: A Manual for Practitioners* (UN Office for the Coordination of Humanitarian Affairs (UN OCHA) and the Inter-Agency Standing Committee, New York, p. 53.

[101] For some examples see Bangerter, O., (2012) 'Internal Control: Codes of Conduct within Insurgent Armed Groups', Occasional Paper 31, Geneva: Small Arms Survey, p. 7–8.

[102] Mack, M. (2008), *Increasing Respect for International Humanitarian Law in Non-International Armed Conflicts*, Geneva: International Committee of the Red Cross, p. 17.

[103] Agreement of 22 May 1992, under the auspices of the International Committee of the Red Cross (applying Articles 35–42 and 48–58 of Protocol I Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts – adopted 8 June 1977, entered into force 7 December 1978, 1125 UNTS 3).

[104] *Prosecutor v Galić*, ICTY-98-29-T, Trial Chamber, Judgement, 5 December 2003, para. 95.

[105] Additional Protocol I of 1977, Article 96(3); Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which May Be Deemed to be Excessively Injurious or to have Indiscriminate Effects (adopted 10 October 1980, entered into force 2 December 1983, 1342 UNTS 137), Article 7(4).

In practice, NSAGs often still make unilateral oral or written commitments, even if they are not formally binding.[106] They may be an encouraging sign of an NSAG's intentions,[107] even if there are risks of propagandizing. There are many examples,[108] some also addressing IHRL.[109]

Unilateral commitments are most effective in influencing an NSAG's behaviour where they are accompanied by mechanisms for implementation, enforcement, monitoring and supervision. Commitments can also provide a useful entry point for external actors to engage with, and seek to influence, an NSAG to abide by the norms the NSAG itself set out.[110]

Deeds of Commitment

A more formal and structured type of undertaking is the Deed of Commitment pioneered by the Swiss-based NGO Geneva Call. Deeds enable an NSAG to commit to humanitarian norms and 'take ownership' of and responsibility for them.[111] Deeds are signed by an NSAG's leaders and 'counter-signed' by Geneva Call and the government of the Canton of Geneva (which also acts as custodian), and they provide a tool to increase accountability.[112] Deeds are attractive to NSAGs in part because engaging with a neutral Swiss NGO brings a level of respectability,[113] albeit without altering their legal status.

Thus far, three types of Deed of Commitment have been developed, with the aim of mirroring international standards:[114] banning anti-personnel mines (since 2000); protecting children (since 2010); and prohibiting sexual violence and gender discrimination (since 2012). By April 2016 49 NSAGs had signed the Deed on mines, 18 the Deed on children, and 16 the Deed on sexual violence, representing more than 50 NSAGs in total.[115]

By signing a Deed, NSAGs undertake to implement their commitments and cooperate with Geneva Call's monitoring. Typical implementation steps include issuing orders, revising internal policies, dissemination and training, monitoring, and disciplinary measures. Geneva Call and its partners provide as much technical assistance as possible, including training.[116] Deeds are monitored at three levels: self-reporting by NSAGs; third-party monitoring; and field missions by Geneva Call, including to verify alleged non-compliance.[117]

Geneva Call's experience is that engagement with NSAGs can advance compliance with humanitarian norms and protect civilians.[118] Its most tangible success has been the destruction of more than 20,000 stockpiled landmines, the demobilization of hundreds of child soldiers, and the launch of new humanitarian assistance programmes in NSAG-controlled areas. Overall, there has been a high level

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[106] See Roberts, A. and Sivakumaran, S. (2011), 'Hybrid Sources of Law: Armed Groups and the Creation of International Humanitarian Law', *Yale Journal of International* Law, 37(1): pp. 108, 142–43.

[107] Rondeau, S. (2011), 'Participation of Armed Groups in the Development of the Law Applicable to Armed Conflicts', *International Review of the Red Cross,* 93 (883): pp. 649, 665.

[108] For examples see Sivakumaran, *The Law of Non-International Armed* Conflict, above, pp. 114–18; Clapham A., 'Focusing on Armed Non-State Actors', in Andrew Clapham and Paola Gaeta (eds) (2014), *The Oxford Handbook of International Law in Armed Conflict*, Oxford: Oxford University Press, pp. 766, 783–84.

[109] As in Ethiopia, Nepal, Sierra Leone and Sudan: see Sivakumaran, ibid, p. 123.

[110] Sivakumaran, ibid, p. 443.

[111] Geneva Call, 'Deed of Commitment', http://www.genevacall.org/how-we-work/deed-of-commitment.

[112] Bongard and Somer, above, p. 686.

[113] Hofmann, C. (2012), *Reasoning with Rebels: International NGOs' Approaches to Engaging Armed Groups*, SWP Research Paper 11, September 2012, 15.

[114] Geneva Call, 'Deed of Commitment'.

[115] Ibid.

[116] Geneva Call (2013), *Annual Report 2012*, Geneva: Geneva Call, p. 31.

[117] Bongard and Somer, above, 689–701.

[118] Bongard, P. (2013), 'Engaging Armed Non-State Actors on Humanitarian Norms: Reflections on Geneva Call's Experience', *Humanitarian Exchange*, No. 58, pp. 9, 10.

of cooperation and compliance with Deeds entered into. The specific focus of Deeds enables targeted engagement without overloading NSAGs or broaching overly sensitive issues. At the same time, NSAGs commit to gradually widen their engagement, and the process has enabled dialogue over time on other issues such as kidnapping. Potential new issues identified at a 2014 meeting of NSAGs included the protection of displaced people, humanitarian access, hostage-taking and cultural heritage.[119] The protection of healthcare personnel and facilities is also being explored.

There are a number of limitations to the process.[120] NSAGs must be willing to cooperate, and not all groups are – particularly radical Islamist groups that reject IHL. Some NSAGs are unwilling to engage on sensitive issues (such as improvised explosive devices, hostage-taking or human shields). After Deeds are signed, NSAGs have encountered difficulties in implementing all of their obligations due to limited resources, capacity and expertise. Some NSAGs have not provided sufficient information. Obstacles to engagement generally have also affected the process. Access, security and logistics have impeded Geneva Call's monitoring. Some states have restricted access, criminalized dialogue under the auspices of counter-terrorism, or imposed 'no engagement' funding conditions. Persistent state violations of norms can also undermine NSAGs' faith in the process.

Internal regulations and codes of conduct

NSAGs frequently adopt internal regulations to control their members' behaviour, including oaths of allegiance, codes of conduct, standing orders, operation orders, military manuals (for commanders), internal organizational documents and penal codes.[121] Regulations may serve various purposes. They can reinforce command hierarchy, and ensure obedience and discipline, and thereby promote military effectiveness. They can express group ideology and identity, including humanitarian beliefs. And they can enhance reputation, and help win support from civilians, diasporas, donors, states or international actors.

Internal regulations can also be used by external actors to exert pressure on NSAGs,[122] as the UN Assistance Mission in Afghanistan (UNAMA) did in relation to the Taliban's code of conduct,[123] although causal behavioural change is hard to evidence. Even where a regulation is adopted for propaganda reasons, the process of its adoption, and its later application, can still induce socialization and behavioural change over time, where internal champions or external actors promote it.

Codes of conduct can be an especially important tool for setting standards of behaviour, and have often been adopted by NSAGs for this reason.[124] Codes may stipulate the rules on fighting – including the identification and targeting of adversaries, the protection of civilians, and the means and methods of violence – as well as addressing wider disciplinary, ideological or political issues. Codes may be

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[119] Geneva Call (2014), *The Third Meeting of Signatories to Geneva Call's Deeds of Commitment*, Summary Report, Geneva, pp. 16–17.
[120] See ibid, pp. 10, 15–16; Hofmann, above, p. 15; Sassoli, M. (2011), 'Should the obligations of states and armed groups under international humanitarian law really be equal?', *International Review of the Red Cross,* 93: pp. 425, 428; Bongard and Somer, above, p. 704; Bongard, P. (2013), 'Engaging Armed Non-State Actors on Humanitarian Norms: Reflections on Geneva Call's Experience', *Humanitarian Exchange*, No. 58, p. 11.
[121] Bangerter, 'Internal Control', above, pp. 21–23; Geneva Call, 'Their Words: Directory of Armed Non-State Actor Humanitarian Commitments', http://theirwords.org; see also Sivakumaran, *The Law of Non-International Armed Conflict*, above, pp. 133–51, 438–42.
[122] International Committee of the Red Cross (ICRC) (2008), *Increasing Respect for International Humanitarian Law in Non-International Armed Conflicts*, Geneva: ICRC, p. 22.
[123] Sivakumaran, *The Law of Non-International Armed Conflict*, above, p. 108.
[124] For examples, see Bangerter, 'Internal Control', above, pp. 11–12, Annexes; ICRC (2011), 'A Collection of Codes of Conduct Issued by Armed Groups', *International Review of the Red Cross*, 93, p. 483; Sivakumaran, ibid, pp. 438–42.

oral or written, and of varying length; most are short and simple, although the Taliban's 2010 code of conduct runs to 85 articles.[125]

Regulations may expressly refer to IHL[126] and/or to IHRL, be influenced by them without mentioning them, or not relate to those norms at all. Many codes contain elements consistent with international law, and some impose higher standards.[127] The International Committee of the Red Cross (ICRC) and Geneva Call have occasionally commented on particular groups' codes of conduct but without endorsing these.

Even where codes reflect humanitarian norms, their interpretation can be at odds with the accepted understanding of IHL. For example, many groups recognize civilian immunity from attack, but interpret 'civilians' more narrowly than in IHL, to allow the targeting of informers, some prisoners, settlers in occupied territory (as in Palestine), certain state officials (such as police and intelligence officers), or even the adversary state's taxpayers (according to Al-Qaeda).[128] The Ejército de Liberación Nacional's (ELN) rules in Colombia permitted hostage-taking. The Taliban's 2006 code of conduct authorized attacks on NGO activities; its 2009 code permitted the killing of 'military infidel' prisoners; and its 2010 code sanctioned the execution of oil supply contractors.

Codes of conduct are not static, however, and can be responsive to public opinion. The Taliban's 2009 code of conduct, for example, removed instructions in its 2006 code to beat or execute teachers, attack schools and ban NGOs.[129] The 2009 code also committed the Taliban to non-discrimination and to the protection of civilians, 'in order to bring the hearts of civilian Muslims closer'.[130] Such changes can also signal to international actors that it may be possible to re-engage a group that was previously off-limits.

Research suggests[131] that the effectiveness of codes of conduct requires that 'their content must be clear, short, relevant' and comprehensible, rather than legalistic. Codes should be generated by the group (not externally imposed) to ensure ownership. They should be connected and consistent with other internal regulations and measures, and integrated into daily military doctrine and activities. Codes should also be widely disseminated, supported by the group's leadership, and backed by effective, fair, consistent and proportionate sanctions.

An example where a code was repudiated by fighters involved the Revolutionary United Front (RUF) in Sierra Leone.[132] The code failed to restrain behaviour because of the RUF's contrary political ideology and orders; inconsistency between internal regulations; a failure to integrate the code into military practices; selective and arbitrary enforcement; a weak chain of command; poor training; and coercive recruitment.

In contrast, the code of the CPN-Maoists in Nepal was effective because it was backed by consistent training, political education, orders and punishment; the group made organizational improvements over time; and the code was in the interests of the group's long-term strategy to win over civilians in a 'people's war'.[133]

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125 Johnson, T. and DuPee, M. (2012), 'Analysing the New Taliban Code of Conduct (*Layeha*): An Assessment of Changing Perspectives and Strategies of the Afghan Taliban', *Central Asian Survey*, 31: pp. 77, 80.
126 As in Algeria, Kosovo, Central African Republic, Sudan, Myanmar, Colombia, Afghanistan: Sivakumaran, *The Law of Non-International Armed Conflict*, above, pp. 134–38.
127 Such as Iranian Kurdish groups: Sivakumaran, ibid, p. 441.
128 See also Sivakumaran, S. (2011), 'Lessons for the Law of Armed Conflict from Commitments of Armed Groups: Identification of Legitimate Targets and Prisoners of War', *International Review of the Red Cross,* 93: p. 463.
129 Jackson, A. and Giustozzi, A. (2012), *Talking to the other side: Humanitarian engagement with the Taliban in Afghanistan*, London: Overseas Development Institute (ODI), Humanitarian Policy Group (HPG) Working Paper, p. 10.
130 Aljazeera (2009) 'Taliban issues code of conduct', 28 July 2009, www.aljazeera.com/news/asia/2009/07/20097278348124813.html.
131 Bangerter, 'Internal Control', above.
132 Ibid, pp. 38–43.
133 Ibid, pp. 43–51.

Dissemination

The dissemination of, and training on, internal regulations are critical with regard to respect for IHL. Dissemination to fighters is sometimes done in writing, but often occurs only orally, to reduce the risk of being identified as a fighter if captured. Occasionally rules are publicized to civilians,[134] which can enable victims and civil society to hold NSAGs accountable.

States have a legal obligation to disseminate IHL as widely as possible to the military and to civilians,[135] and NSAGs covered by Protocol II have the same duty.[136] UN Security Council Resolution 1894 (2009), on the protection of civilians, additionally calls on 'all parties … to ensure the widest possible dissemination of information' about IHL, IHRL and refugee legislation.[137] Actors such as the ICRC also disseminate IHL, including in innovative ways, from radio in the 1950s to social media at present. Geneva Call has disseminated IHL through online videos and an interactive mobile phone application, Fighter Not Killer.[138] The UN Development Programme has funded 'pocket books' of rules for fighters, as in Aceh in Indonesia.

Training

Security Council Resolution 1894 also calls on the parties to conflicts to train members of armed groups.[139] Within NSAGs, the amount and quality of training for recruits varies. For many NSAGs, training is rudimentary,[140] typically lasting up to a month, before fighters are deployed. More enduring NSAGs that control territory may be able to develop more sophisticated training regimes. Training is often conducted by former military personnel (including defectors), and sometimes by foreign military 'advisers', with IHL knowledge.

A number of external actors offer training to NSAGs. Geneva Call was mentioned above. The most experienced is the ICRC, which has long provided training under its treaty mandate to offer its services to the parties in non-international armed conflicts.[141] The ICRC typically targets military commanders (as well as political leaders and legal advisers) in its operationally oriented workshops, but also trains military trainers and fighters.[142] It often combines basic IHL instruction with first aid training and lectures about ICRC activities. Trainers can include ICRC delegates, local Red Cross personnel, or military 'peers'. Innovative techniques are also used, such as internet-based video game scenarios for fighters in Syria.

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[134] Ibid, p. 15; Sivakumaran, *The Law of Non-International Armed Conflict*, above, p. 139.
[135] Four Geneva Conventions of 1949, Articles 47, 48, 127 and 144 respectively; Additional Protocol I of 1977, Article 83; Henckaerts and Doswald-Beck, above, Rule 143.
[136] Protocol II Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978, 1125 UNTS 609), Article 19.
[137] UNSC Resolution 1894 (11 November 2009), para. 7(a)–(b).
[138] See Geneva Call (2015), 'Fighter, not killer: A mobile application to raise awareness of the law of war among armed groups', http://www.genevacall.org/fighter-killer-mobile-application-raise-awareness-law-war-among-armed-groups/.
[139] UNSC Resolution 1894, para. 7(b).
[140] Sassoli, 'Engaging Non-State Actors', above, p. 9.
[141] Geneva Conventions 1949, common Article 3.
[142] Bangerter, O., 'The ICRC and Non-State Armed Groups', in Geneva Call, *Exploring* Criteria, above, pp. 74, 80, 82.

Practical impediments to ICRC training include insufficient contacts with NSAG leaders or members (particularly where a group is 'underground', or because of combat deaths); a disconnection between political and military commanders (as between Hamas and its military wing, the Izz ad-Din al-Qassam Brigades); a lack of control by an NSAG; and insecurity.[143]

Discipline, enforcement and sanctions

Security Council Resolution 1894 further calls on the parties to conflicts to ensure that military orders and instructions are observed 'by establishing effective disciplinary procedures, central to which must be the strict adherence to the principle of command responsibility to support compliance with' IHL.[144]

Mechanisms for disciplining rule-breakers are common among NSAGs. Commanders are usually empowered to discipline fighters. More organized groups may have more elaborate structures such as disciplinary committees, tribunals, courts martial, or even 'courts'.[145] Sanctions may range from reprimands and fines to corporal punishment and execution. The effectiveness of discipline depends on fairness, consistency, promptness and proportionality in penalties.[146] The provision of compensation to victims is rare.[147] However, mechanisms to allow civilian complaints have been established, including by the National Transitional Council of Libya, the Taliban, and Islamic State of Iraq and Syria (ISIS).[148]

International engagement with NSAGs

Overall, the international community has had limited engagement with NSAGs over encouraging respect for IHL and IHRL. Partly this is because of the legal uncertainties mentioned earlier. In addition, some states are concerned that engagement will legitimize NSAGs[149] and/or undermine state sovereignty – even if civilians may turn to NSAGs for protection.[150]

NSAGs can be suspicious of engagement, fearing espionage, or even prosecution (as in the case of Arab and nomad groups in Darfur after the referral of Sudanese leaders to the International Criminal Court).[151] Some NSAGs are underground and inaccessible, such as the Patani separatist insurgency in southern Thailand, or Al-Qaeda, and some are too disorganized to be engaged. Access, security and logistics can impede engagement, as can the fragmentation and proliferation of NSAGs. Protection can often only be discussed after a period of establishing a relationship with an NSAG, which is initially based on less sensitive humanitarian access and relief issues.

[143] See, e.g., Sassoli, 'Should the obligations of states…', above, p. 429; Galli, A. (2013), 'Negotiating humanitarian access with Hamas in Gaza', *Humanitarian Exchange*, No. 58, p. 17; ICRC (2008), *Increasing Respect for International Humanitarian Law in Non-International Armed Conflicts*, pp. 22–23.
[144] UNSC Resolution 1894 (11 November 2009), para. 7(d).
[145] Bangerter, 'Internal Control', above, pp. 25–27; Sivakumaran, *The Law of Non-International Armed Conflict*, above, pp. 445–48, 549–62; Sivakumaran, S. (2009), 'Courts of Armed Opposition Groups: Fair Trials or Summary Justice?', *Journal of International Criminal Justice*, 7: p. 489; Somer, J. (2007), 'Jungle Justice: Passing Sentence on the Equality of Belligerents in Non-International Armed Conflict', *International Review of the Red Cross*, 89: p. 655.
[146] Bangerter, 'Internal Control', above, p. 31.
[147] See Dudai, R. (2011), 'Closing the Gap: Symbolic Reparations and Armed Groups', *International Review of the Red Cross,* 93, p. 783.
[148] Sivakumaran, *The Law of Non-International Armed Conflict*, above, p. 108; Johnson and DuPee, above, p. 78.
[149] Clapham, 'Focusing on Armed Non-State Actors', above, p. 798; Sivakumaran, *The Law of Non-International Armed Conflict*, above, pp. 546–49.
[150] Greenberg Research Inc (1999), *The People on War Report: ICRC Worldwide Consultation on the Rules of War*, Geneva: ICRC, p. 38.
[151] Loeb, J. (2013), *Talking to the other side: Humanitarian engagement with armed non-state actors in Darfur, Sudan, 2003–2013*, HPG Working Paper, London: ODI, pp. 22–23.

Historically, some key protection actors have had a limited field presence – a notable example being the office of the UN High Commissioner for Human Rights (UN OHCHR), although its footprint is expanding. Other actors engage NSAGs but only in relation to particular groups within their mandate, such as displaced persons (the UN High Commissioner for Refugees – UNHCR), or children (the UN Children's Fund – UNICEF – and the Office of the Special Representative of the Secretary-General for Children and Armed Conflict). Some agencies, such as the World Food Programme, avoid direct engagement and instead use community representatives to advocate on their behalf.[152] UN agencies and missions can also be faced with political or legal constraints. State consent is a prerequisite for UN agencies to operate in NSAG areas, and its absence can preclude or impede engagement by the UN, the ICRC and NGOs.

Tensions between humanitarian assistance and protection

Where international actors do engage with NSAGs, this is often limited to securing access for humanitarian relief or ensuring the safety of humanitarian personnel, at the cost of avoiding or deferring protection issues.[153] Broader dialogue on more sensitive issues (including targeting, weapons, means and methods of war, fair trial, economic and social rights, or civil justice and governance) is less common and more difficult.[154] Some organizations fear that wider engagement would prejudice their relations with the NSAG, impede access, endanger staff or compromise principles.[155] This can also affect organizations that have a dual assistance and protection mandate (such as the ICRC or UNHCR), including the fear of jeopardizing their existing access in government-controlled areas.

Actors that provide material aid enjoy an advantage in engaging NSAGs on protection issues because they can offer them concrete things. Médecins Sans Frontières (MSF), for instance, can provide expert medical assistance and facilities when NSAGs may not be able to. The ICRC can provide medical assistance and first-aid training; detainee visits; prisoner exchanges; family tracing; and repatriation,[156] which can be used as entry points for IHL dialogue.

The ICRC works with NSAGs through bilateral dialogue on IHL, monitoring and reporting, and training and capacity-building.[157] Occasionally the ICRC has consulted NSAGs to develop standards, as on healthcare.[158] The ICRC's guarantee of confidentiality (except in extreme cases) enables it to engage NSAGs where others, such as international non-governmental organizations (INGOs) that 'name and shame', cannot. As the ICRC has no coercive power, it uses 'strategic argumentation' to persuade.[159] The price of confidentiality is that the ICRC will rarely publicly discuss or criticize NSAGs.

Where international actors are coordinated in an integrated UN mission, engagement with NSAGs has sometimes prioritized political issues (such as peace negotiations) or humanitarian relief over protection.[160] This was arguably the case with the African Union/UN Hybrid Operation in Darfur

[152] Johnstone, H (2013), 'Humanitarian negotiations in Afghanistan: WFP's experience', *Humanitarian Exchange*, No. 58, p. 15–16.
[153] Casey-Maslen, S. (2013), 'Rebels with a cause? The role of armed non-state actors in the protection of civilians', *Humanitarian Exchange*, No. 58, p. 6; Clapham, A. (2010), *Human Rights Obligations of Non-State Actors*, Oxford: Oxford University Press, pp. 310–11; UNHCR, above, p. 2, 11.
[154] Sassoli, M., 'Should the obligations of states…', above, p. 428.
[155] Jackson, A. (2012), 'Talking to the other side: Humanitarian engagement with armed non-state actors', HPG Brief 47, London: ODI, p. 2; Loeb, above, pp. 7, 16; UNHCR, above, p. 2.
[156] Bangerter, O., 'The ICRC and Non-State Armed Groups', above, pp. 77–78.
[157] ICRC, *Increasing Respect*, above, p. 114.
[158] ICRC (2015), *Safeguarding the Provision of Health Care: Operational Practices and Relevant International Humanitarian Law Concerning Armed Groups*, Geneva: ICRC.
[159] ICRC, *Increasing* Respect, above, p. 30.
[160] Jackson, A. and Davey, E. (2014), *From the Spanish civil war to Afghanistan: Historical and contemporary reflections on humanitarian engagement with non-state armed groups*, HPG Working Paper: ODI, p. 27; McHugh, G. and Singh, S. (2013), 'Preserving the integrity of humanitarian negotiations', *Humanitarian Exchange*, No. 58, p. 3, 5; UNHCR, above, p. 23.

(UNAMID) in 2007,[161] enabling abuses to go unchecked. In contrast, an earlier agreement with the Sudan People's Liberation Movement on 'ground rules' in southern Sudan, enabling Operation Lifeline Sudan (OLS), addressed key protection issues such as children's rights and the Geneva Conventions.[162]

UN integration has also undermined the perceived neutrality, independence and impartiality of UN humanitarian and protection agencies among NSAGs, since such agencies may be seen as part of the UN mission's overall military or political imperatives. The UN's humanitarian engagement with NSAGs seems to be diminishing over time since the high watermark of engagement through OLS, and in Angola. UN Security Council Resolution 1894, however, emphasizes the importance to the Security Council of addressing compliance by the parties to conflicts with IHL, IHRL and refugee law.[163]

INGOs

While Geneva Call can facilitate assistance, such as for de-mining, which makes it attractive to some NSAGs, it is faced with other limitations, including a narrow substantive focus and limited resources. MSF may exceptionally bear witness to IHL violations, but the organization primarily provides medical care. Other INGOs interested in protection (such as Amnesty International and Human Rights Watch) primarily work by monitoring, reporting and publicly denouncing violations, but are not operational actors that routinely engage NSAGs or provide material or technical assistance.

Those human rights INGOs have, however, strategically worked to identify and build pressure on the financial or political backers of NSAGs that violate IHL, as well as in civil society, to 'influence the influencers'. INGOs occasionally meet or correspond with NSAGs. INGOs also have the advantage of being able to engage quickly and flexibly,[164] and with fewer political or bureaucratic constraints than UN agencies.

Foreign state sponsors

Foreign state sponsors of NSAGs are often able to exercise considerable influence over a group's behaviour, providing possibilities for improving compliance with IHL. In eastern Sudan, for instance, Eritrea and Kuwait were 'crucial in tempering' the conduct of the rebel group Free Lions.[165] Support generally could be conditioned on IHL compliance. Foreign state military advisers often train NSAG fighters, and such training could include IHL instruction.

Foreign state sponsors also have international legal responsibilities of their own. For example, under the law of state responsibility,[166] even where a state is not directly responsible for IHL violations by an NSAG, the state may still bear legal responsibility for acts or omissions that aid, abet or contribute to violations or war crimes. This could include, for example, providing intelligence or other tangible support in the knowledge that it would be used in perpetrating violations.

[161] Loeb, above, pp. 27–28.
[162] Alor Kuol, M., 'Exploring Criteria and Conditions for Engaging Armed Non-State Actors to Respect Humanitarian Law and Human Rights Law: The Sudan Experience', in Geneva Call, *Exploring Criteria*, above, pp. 50, 54.
[163] UNSC Resolution 1894 (11 November 2009), para 8.
[164] Hofmann, above, pp. 21, 27.
[165] Alor Kuol, above, p. 53.
[166] International Law Commission, Responsibility of States for Internationally Wrongful Acts, annex to UN General Assembly Resolution 56/83, 12 December 2001.

Under the Arms Trade Treaty 2013,[167] a state is prohibited from transferring conventional arms if it would violate UN Security Council sanctions (including arms embargoes) or international agreements, or if the state 'has knowledge … that the arms or items would be used' in the commission of international crimes. In all other cases, states must consider the potential for arms exports to undermine peace and security, or to be used to commit or facilitate serious violations of IHL or IHRL, or of treaties on terrorism or transnational organized crime.

Impacts of counterterrorism and counter-insurgency

Since 11 September 2001 some countries have enacted counterterrorism laws and policies that restrict engagement with certain NSAGs. For example, training 'terrorist' NSAGs in IHL or IHRL constitutes the crime of 'providing material support' for terrorism under United States law.[168] Terrorist financing laws, donor 'no contact' policies and restrictive funding conditions may also impede engagement.[169] The lack of clarity can result in self-censorship and disengagement.

Certain actors, such as the ICRC and the UN, continue to enjoy international immunities,[170] but NGOs do not. Informal engagement is often still tolerated in practice, although this can leave organizations faced with legal uncertainty, or may induce self-restriction.[171] In some cases, there are UN mandates enabling engagement, as with Hamas in Gaza or al-Shabaab in Somalia,[172] although this does not necessarily immunize NGOs from the application of their home states' laws.

The designation of groups as 'terrorist' presents challenges for humanitarianism, which presupposes neutrality and impartiality based on needs,[173] not 'taking sides' by ostracizing one side of the conflict. Similarly, stabilization and counter-insurgency efforts in some conflicts have led to a co-option and militarization of humanitarian assistance, with the potential for international actors to be perceived by NSAGs as no longer neutral.[174]

Conclusions

The international community could arguably work harder to engage NSAGs on humanitarian issues. Engaging NSAGs does not alter their legal status. Realistically it may enhance their perceived political legitimacy,[175] but that is usually less costly than the high humanitarian price of failing to engage. NSAGs will continue to affect civilians, control territory, administer populations, maintain 'law' and order, and discipline perpetrators, regardless of whether outsiders view them as lawless, 'terrorist' or irredeemable.[176] As the UN Secretary-General commented, 'while engagement with non-State armed groups will not always result in improved protection, the absence of systematic engagement will almost certainly mean more, not fewer, civilian casualties'.[177]

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[167] Arms Trade Treaty (adopted 2 April 2013, entered into force 24 December 2014), Article 6.
[168] *Holder v Humanitarian Law Project*, 130 S Ct 2705 (2010).
[169] Mackintosh, K. and Macdonald, I., (2013) 'Counter-terrorism and humanitarian action', *Humanitarian Exchange*, No. 58, pp. 23, 24.
[170] Ibid, pp. 23, 25.
[171] Modirzadeh, N., Lewis, D. and Bruderlein, C. (2011), 'Humanitarian engagement under counter-terrorism: A conflict of norms and the emerging policy landscape', *International Review of the Red Cross*, 93: pp. 1, 19–20.
[172] UN General Assembly Resolution 46/182 gave UN actors under the Emergency Relief Coordinator within UN OCHA the mandate to negotiate with relevant parties. On Somalia, see UNSC Resolution 1216 (2010).
[173] Jackson and Davey, above, pp. 1, 2.
[174] Ibid, p. 17; Jackson, A. (2012), *Talking to the other side: Humanitarian engagement with armed non-state actors*, HPG Brief 47, London: ODI, p. 3.
[175] Sassoli, M., 'Engaging Non-State Actors', above, p. 8.
[176] See also ibid, p. 11.
[177] Report of the UN Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict, UN Doc S/2009/277, 29 May 2009, para. 40.

Just as the international community seeks to influence states that commit IHL violations,[178] the default setting for NSAGs could be reoriented towards engagement not avoidance. It is not enough for international law and the UN Security Council abstractly to call on NSAGs to respect IHL. NSAGs must be practically engaged to help them fulfil their obligations. Already, the international community often engages with NSAGs on humanitarian access and relief assistance; more effort is needed to take this further to embrace IHL and IHRL protection.[179] Many international actors have not adopted policies on NSAG engagement,[180] although there is growing recognition of the need for more structured engagement.[181]

Certainly some NSAGs are more willing to engage constructively on humanitarian norms than others. Occasionally it will be unsafe, or unproductive, to engage extremist groups at certain points in time, such as Al-Qaeda, Boko Haram, the Lord's Resistance Army, Abu Sayyaf or ISIS. Purely criminal groups also pose difficulties.

None the less, experience suggests that it possible to engage many NSAGs in some way, through some channel, at some stage – even groups designated by some states as 'terrorist', such as the Liberation Tigers of Tamil Eelam (LTTE, or Tamil Tigers), the PKK, the Taliban, al-Shabaab or Hamas, or genocidal groups such as the Khmer Rouge.[182] Shunning groups altogether can be counterproductive, as was the case with the Revolutionary United Front in Sierra Leone.[183] Engagement can often sit alongside denunciation or coercive measures where different international actors are involved and coordinate their approaches; it is not necessarily a case of either/or. Opportunities for engagement frequently change over time, as pariah groups come in from the cold – whether the ANC, the IRA, the Moro Islamic Liberation Front or the Nepalese Maoists. NSAGs should not be automatically excluded or considered hopeless,[184] but should be continuously monitored for openings for constructive engagement.

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178 Sassoli, M., 'Engaging Non-State Actors', above, p. 10.
179 See also Clapham, 'Focusing on Armed Non-State Actors', above, p. 799.
180 Jackson (2012), 'Talking to the other side', above, p. 2.
181 See, e.g., Statement by the Inter-Agency Standing Committee (IASC) Principals, 'The Centrality of Protection in Humanitarian Action', 17 December 2013; McHugh, G., and Bessler, M., *Manual*, above; McHugh, G., and Bessler, M. (2006), *Guidelines on Humanitarian Negotiations with Armed Groups* (UN OCHA and the Inter-Agency Standing Committee); Active Learning Network for Accountability and Performance in Humanitarian Action (ALNAP), Protection: An ALNAP Guide for Humanitarian Agencies (ODI, London, 2005); International Council on Human Rights Policy (2000), *Ends and Means: Human Rights Approaches to Armed Groups* (Versoix, Geneva). See also Geneva Academy of International Humanitarian Law and Human Rights (2014), *Reactions to Norms: Armed Groups and the Protection of Civilians*, Policy Briefing No. 1 (Geneva); Geneva Academy of International Humanitarian Law and Human Rights (2011), *Rules of Engagement: Protecting Civilians through Dialogue with Armed Non-State Actors*; Geneva Call, *Exploring Criteria*, above.
182 UNHCR, above, pp.12–14, 18.
183 Ibid, pp. 14–15.
184 Sassoli, 'Engaging Non-State Actors', above, p. 4; Clapham, 'Focusing on Armed Non-State Actors', above, p. 769.

Acronyms

ANC	African National Congress
CPN-Maoist	Communist Party of Nepal-Maoist
ELN	Ejército de Liberación Nacional
ICL	international criminal law
ICTY	International Criminal Tribunal for the former Yugoslavia
IHL	international humanitarian law
IHRL	international human rights law
IRA	Irish Republican Army
ISIS	Islamic State of Iraq and Syria
LTTE	Liberation Tigers of Tamil Eelam
MSF	Médecins Sans Frontières
NSAGs	non-state armed groups
OLS	Operation Lifeline Sudan
PKK	Partiya Karkerên Kurdistan
UNAMID	African Union/UN Hybrid Operation in Darfur
UNHCR	United Nations High Commissioner for Refugees
UN OHCHR	Office of the United Nations High Commissioner for Human Rights

About the author

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Eliciting the Voices of Civilians in Armed Conflict

Joshua Webb and Charu Lata Hogg

Summary

- The voices of civilians in situations of armed conflict should be central to political processes, developmental plans and humanitarian action.

- There is a general consensus among humanitarian organizations that there is a responsibility to engage recipients of humanitarian aid, and that doing so will increase the effectiveness of humanitarian efforts.

- While there is an emerging norm of humanitarian organizations engaging crisis-affected people in the context of natural disasters or broader development activities, listening to civilians in the context of armed conflict is far less common.

- States and non-state armed groups (NSAGs) tend to show little interest in the views of civilians, let alone in their humanitarian needs. NSAGs are more likely to do so where they share political aims, religious or kinship ties with affected communities, but more often tend to have a coercive relationship with the communities they control.

- Humanitarian actors striving to listen systematically to civilians in situations of armed conflict encounter many serious challenges, including operational and conceptual obstacles. Common barriers include logistical problems and safety concerns; difficulties in the verification, prioritization and transmission of information; and the risk of political instrumentalization.

- The increasing availability of – and enormous advances in – mobile communications technology have created unprecedented opportunities to elicit the voices of civilians in armed conflict. While the application of 'digital humanitarianism' to conflict settings brings risks of its own, technology is already facilitating humanitarian efforts, and is likely to become more important as it improves.

- While efforts to systematize a process of 'listening' to civilians in armed conflict are at a very early stage, there exists both the need and potential for humanitarian actors to increase their efforts in this respect.

- Humanitarian organizations could learn from efforts to engage crisis-affected people in non-conflict settings, including development assistance, peacebuilding and non-conflict humanitarian work.

Introduction

Seeking, and engaging with, the views of people at the receiving end of humanitarian aid has become a norm in the humanitarian sector.[185] There is increasing consensus that engaging with and being accountable to affected people should be an essential part of any humanitarian worker's core functions, although evidence suggests that the rhetoric of engagement remains stronger than its practice.[186]

This paper examines humanitarian actors' efforts to elicit the voices of civilians in situations of armed conflict.[187] Although it appears to have become best practice for humanitarian actors to engage with people at the receiving end of development aid, or of responses to natural disasters, engagement is far less common in the context of armed conflict. The reasons for this are numerous. Obvious challenges for humanitarian actors seeking to engage civilians include operational barriers such as concerns over logistics, access and safety; on the other hand, the concept that engagement with civilians is critical to achieving maximum impact in humanitarian assistance has gained little traction among both states and non-state armed groups (NSAGs).

The paper examines some existing initiatives aimed at documenting civilian views in conflict settings. It does not claim to provide a comprehensive mapping; rather, these examples are intended to serve as a starting point for a more in-depth discussion of the topic. The paper makes three arguments. First: that – as in the development sector and the wider humanitarian sector – efforts at delivering humanitarian assistance in situations of armed conflict stand to benefit from listening to civilians. Second: that those providing humanitarian assistance in situations of armed conflict could learn from existing engagement practices, including in the peacebuilding sector. And third: that, although there remain severe challenges to listening to civilians, significant technological advances have improved access to civilian voices and are likely further to facilitate such efforts.

The paper is divided into four sections. First, it sets out the main arguments for engagement of crisis-affected people, as opposed to the traditional approach of 'being present'. Second, it examines existing practices and initiatives with regard to listening to civilians, implemented by states, NSAGs and other actors – i.e. non-governmental organizations (NGOs), the private sector and the UN – across conflict, post-conflict and humanitarian disaster settings. Third, the paper looks at the challenges presented by listening to civilians – such as lack of access, safety concerns, and concerns regarding appropriate handling of data – and also considers the opportunities offered by technological advances. The final section analyses the activities discussed.

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[185] 'Engagement' remains a notoriously ill-defined concept. For the purpose of this paper, the authors define engagement as the following concepts, developed by Brown and Donini: providing information about a given situation and response; two-way communication; direct involvement and consultations with crisis-affected people; and accountability frameworks and participatory processes. 'Community-based' and 'partnership' may also qualify as engagement, depending on the power relations between the larger organization, the partner organization and civilians. See Brown, D. and Donini, A. (2014), *Rhetoric or reality? Putting affected people at the centre of humanitarian action*, London: ALNAP/ODI, pp. 9–11, http://www.alnap.org/pool/files/alnap-rhetoric-or-reality-study.pdf. The transition from engagement to 'listening' is fluid, with the latter ascribing the active role to those at the receiving end of assistance.

[186] Ibid.

[187] For the purposes of this paper, the concept of armed conflict is drawn from international humanitarian law, which distinguishes two types of armed conflicts, namely: international armed conflicts, consisting of two or more opposing states, and non-international armed conflicts between the armed forces of a state and NSAGs, or between such groups.

Why engage?

The evolution of engagement as a norm in the humanitarian sector can be traced to the institutionalization of participatory approaches in the development sector in the 1980s and 1990s, and to the insight that autonomy is an essential part of human dignity.[188] The importance of taking into account the views of those at the receiving end of aid subsequently spread from the development sector to the wider humanitarian sector. In her 1986 book *Imposing Aid: Emergency Assistance to Refugees*, based on some 6,000 interviews, Barbara Harrell-Bond made the case that the UN High Commissioner for Refugees (UNHCR) programme undertaken from 1982 to provide humanitarian assistance to some 200,000 Ugandan refugees in Sudan was both ineffective and unaccountable to those it was meant to serve.[189] The need for crisis-affected people to participate and have a say in humanitarian assistance programmes has since been endorsed in various forms by the relevant UN agencies, the International Red Cross and Red Crescent Movement and the wider community of NGOs.[190]

Brown and Donini distinguish normative, instrumental and emancipatory rationales for engaging with crisis-affected people. The normative rationale is based both on a sense of duty to civilians and on the above-mentioned understanding that human dignity depends on people's autonomy in determining their needs. The instrumental rationale argues that the knowledge of crisis-affected people has an important role to play in informing needs assessments and avoiding inefficiencies, and thus is central to improving the overall quality of assistance. The emancipatory rationale goes beyond the goal of alleviating immediate suffering, and seeks instead to address the structural causes of a given crisis by empowering those at the margins of society.[191]

These ideas are not universally shared. Some make the case that centralized, top-down approaches can be more effective in terms of mobilizing resources and enabling a rapid response. While not dispensing altogether with the concept of engagement, this view suggests that participatory approaches are not inherently appropriate to each and every situation.

The emancipatory rationale has been particularly controversial in the humanitarian sector, as its endorsement of political aims deviates from the traditional humanitarian paradigm of neutrality. However, evidence suggests that the traditionalist view is no longer dominant, and that it is being critically examined – although not necessarily abandoned – by some of its proponents.[192]

The context: who is listening, and how?

States

Governments have primary responsibility for meeting their peoples' needs, and in doing so ought to respect their rights and dignity. In reality, however, this is often not the case. Governments often fail to take into consideration the views of the first responders to a crisis, i.e. ordinary civilians, civil society groups, faith-based actors and community leaders. Governments may be wary of engaging civilians for political reasons, in particular where they perceive civilians as being sympathetic to NSAGs contesting their authority.

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[188] Brown and Donini (2014), *Rhetoric or Reality?*, p. 17.
[189] Harrell-Bond, B. (1986), *Imposing Aid: Emergency Assistance to Refugees*, Oxford: Oxford University Press.
[190] Brown and Donini (2014), *Rhetoric or Reality?*, p. 17.
[191] Ibid., p. 20.
[192] Ibid., p. 59.

There is scarce evidence, therefore, of systematic efforts by governments or their armed forces to listen to their own populations. Communities seeking to initiate dialogue with NSAGs operating in their area are often required to seek government permission before doing so. For example, the Acholi Religious Leaders Peace Initiative, a civil society group in northern Uganda, had to overcome substantial scepticism and resistance before being granted the political and legal space to initiate talks with Joseph Kony's Lord's Resistance Army (LRA). Subsequent initiatives aimed at dialogue with the LRA were repeatedly impeded, including by violent attack on a meeting in 2001.[193]

Armed groups

There are some instances of NSAGs engaging with civilian populations to assess their humanitarian or development needs. This complex and little-researched relationship between communities and armed groups was the subject of a set of papers published in a single volume as part of peacebuilding organization Conciliation Resources' *Accord* series in 2015.[194] Using in-depth case studies from northern Uganda, Colombia, Northern Ireland and Syria, the *Accord* papers illustrate how communities have affected NSAGs' behaviour to divert them from violence, and analyses key influences on this interaction. The papers present a nuanced analysis of the role of communities in influencing NSAGs and contributing to security and peacebuilding.[195]

The *Accord* papers challenge the widely prevailing narrative that local communities are often represented as 'disempowered', reinforcing the argument that communities with close ties to an armed group can significantly influence that group.[196] The *Accord* papers also caution against a dichotomous understanding of armed groups' relationships with communities, arguing that they should not by default be defined as either predatory – whereby communities are passive victims of human rights abuses and develop strategies to respond; or as symbiotic – whereby communities are actively involved in enabling a given NSAG's activities.

In both Afghanistan and Pakistan there is evidence that recognition on the part of the Taliban that their survival was contingent on maintaining a degree of popular consent has driven a systematic forging of engagement with community leaders. Interaction between communities and armed groups spans issues such as hostage negotiation, criminal justice, dispute adjudication and local ceasefires, and it is conducted through a range of community actors including clerics and village elders.[197]

In northern Colombia in the early 2000s, after four decades of conflict between the country's army and police forces and several guerrilla groups, the village of Micoahumado, in Bolívar department, found itself at the centre of escalating violence between two rival parties to the conflict, the National Liberation Army (Ejército de Liberación Nacional – ELN) and the Central Bolívar Block (Bloque Central Bolívar – BCB).[198] In order to reduce attacks on civilians, the community organized itself and initiated dialogue with both parties. Following a withdrawal by the BCB and two years of negotiations (which were never officially recognized), the ELN agreed to demine the village.

[193] Latigo, J. and Ochola, M. (2015), 'The Acholi Religious Leaders Peace Initiative: local mediation with the Lord's Resistance Army', http://www.c-r.org/downloads/NorthernUganda.pdf.

[194] Accord Insight (2015), *Local engagement with armed groups: In the midst of violence*, London: Conciliation Resources, http://www.c-r.org/downloads/CONJ2670_Accord_new_paper_for_January_06.05.15_WEB_2.pdf.

[195] Ibid.

[196] Accord (2005), *Choosing to engage: Armed groups and peace processes*, London: Conciliation Resources, http://www.c-r.org/downloads/16_Choosing%20to%20engage_2005_ENG_F.pdf.

[197] Accord Insight (2015), *Local engagement with armed groups*.

[198] García-Durán, M. and Santander, F. (2015), 'De-mining in Micoahumado: from civil resistance to local negotiation with the ELN', *Accord Insight 2*, pp. 21–26, http://www.c-r.org/downloads/CONJ2670_Accord_new_paper_for_January_06.05.15_WEB_2.pdf.

It also made commitments not to enter the village in uniform or while bearing arms; to return goods punitively taken from the community; and to cease holding civilians hostage. The Micoahumado community had been able to cultivate a relationship with the ELN even though formal dialogue with what was deemed a terrorist group was proscribed, while remaining neutral in respect of all the conflict parties. However, while it is likely that while these factors were significant in influencing the ELN's agreement to demine the village, its deliberations were also influenced by the strategic factor of the BCB's prior withdrawal.[199]

In Syria, since conflict began in 2011, civilians have been under attack, and their capacity to influence armed groups has been seriously eroded. However, research conducted by the Centre for Humanitarian Dialogue has found that most anti-regime armed factions in Syria recognize the need to maintain popular support for the uprising against Bashar al-Assad.[200] NSAGs cooperate closely with local administrative councils (LACs) in Syria in the delivery of their welfare function. In 2014 the opposition coalition estimated that there were more than 750 LACs in areas under its control.

These examples notwithstanding, the research informing this paper demonstrates that the ability of local communities collectively to negotiate with – let alone challenge – armed groups tends to be severely limited.

One example of an NSAG with an at times predatory relationship with the population it claimed to represent comes from the protracted campaign waged in Sri Lanka by the Liberation Tigers of Tamil Eelam (LTTE, or Tamil Tigers) for an independent Tamil state. By the time the LTTE was defeated by Sri Lanka's armed forces in 2009, the conflict had claimed, by conservative estimates, at least 70,000 lives.

In February 2002, after almost two decades of armed conflict, the LTTE and the Sri Lankan government signed a ceasefire agreement, which, while lacking a human rights framework, explicitly prohibited torture, extortion, abduction, harassment and intimidation of civilians. None the less, the LTTE continued to recruit child soldiers, often by force: more than 3,500 such cases were documented by the UN Children's Emergency Fund (UNICEF) between early 2002 and late 2004, mostly in the eastern district of Batticaloa.[201] Violations against civilians persisted in the mid-2000s, with tensions becoming particularly acute following the breakdown of peace talks between the Sri Lankan government and the LTTE in 2003, and a subsequent surge of killings of Tamils in 2004–05, including in the capital – a particularly high-profile target being foreign minister Lakshman Kadirgamar, a Tamil, who was assassinated in Colombo in August 2005. The LTTE's targeting of both Muslim and Tamil civilians for abduction and extortion, together with the insecurity and suspicion long fostered by the group within the communities it nominally represented, gave rise to a climate of widespread fear. As a consequence, not only did the LTTE deter any form of popular protest at the community level against the group's tactics, but it also curtailed the ability of communities to engage in any dialogue with the LTTE.[202]

[199] Ibid., p. 25.

[200] Centre of Humanitarian Dialogue (2014), *Local Administration Structures in opposition-held areas in Syria*, Geneva: Centre for Humanitarian Dialogue, http://um.dk/en/~/media/UM/English-site/Documents/Danida/Partners/Research-Org/Research-studies/Local%20 Administration%20Structures%20Syria.pdf.

[201] See for instance, Human Rights Watch (2004), 'Living in Fear Child Soldiers and the Tamil Tigers in Sri Lanka', *Human Rights Watch*, 16(13(C)), https://www.hrw.org/reports/2004/srilanka1104/srilanka1104.pdf.

[202] See for instance, Thiranagama, S. (2010), 'In Praise of Traitors: Intimacy, Betrayal, and the Sri Lankan Tamil Community', in Thiranagama, S. and Kelly, T. (eds) (2010), *Traitors: Suspicion, Intimacy, and the Ethics of State-building*, Philadelphia:University of Pennsylvania Press, pp. 127–149.

The UN

In June 2015 the UN Independent High-level Panel on Peace Operations published its report reviewing current UN peace operations and emerging future needs.[203] The panel found that, despite its mandate to intervene in the early stages of armed conflict, the UN Security Council tended to deal with armed conflicts and emergencies after they had developed. Emphasizing the importance of early engagement, the panel advised that measures such as interactive dialogues in informal formats and visits to turbulent areas would be important in addressing emerging threats.[204] Although listening to civilians affected by armed conflict appears to rank high on the UN's agenda, individual agencies' efforts to this end vary in scope and depth.

As the principle UN agency tasked with responding to humanitarian emergencies, the main responsibilities of the UN Office for the Coordination of Humanitarian Affairs (UN OCHA) include information management, based on the recognition of 'the importance of gathering reliable data on the locations of people in need, what they urgently need, who is best placed to assist them, and the value of this information for effective and timely humanitarian assistance'.[205] To this end, UN OCHA – individually and in cooperation with partners – provides a set of key services, including information needs assessments, crisis maps, online platforms and a number of common operational data sets. Humanitarian actors are thus provided with a common set of information tools, intended to increase efficiency and to facilitate cooperation. While UN OCHA personnel on the ground engage with civilians in the context of needs assessment, it appears to have designed no specific framework for listening systematically to civilians in armed conflict.

Lack of information has been a key problem for civilians and humanitarian actors alike. An attempt to close this information gap was made in 2014 when, following the violent advances of Islamic State of Iraq and Syria (ISIS) in northern Iraq, a multi-agency operation led by UN agencies, international non-governmental organizations (INGOs) and media development organizations conducted a rapid assessment with displaced populations and host communities, with the aim of understanding their information needs and access to communication channels.[206] The assessment was based on focus group discussions involving displaced communities in each area, along with interviews with representatives of local government, aid agencies, and local media and telecommunications companies. While, according to the UN Development Programme, some 78 per cent of Iraqis use mobile phones, the inter-agency team concluded that 'displaced people in northern Iraq live in an information vacuum due to the lack of access to reliable news and information from the local media and lack of access to information about existing and planned aid services which is hindering their ability to cope with the catastrophe'.[207] In July 2015, almost a year after the inter-agency team in northern Iraq had published its report, agencies in the Humanitarian Country Team (HCT), including UNHCR, UN OCHA, the UN Office for Project Service (UNOPS), the Norwegian Refugee Council, Save the Children, World Vision International and the International Organization for Migration (IOM), established a call centre to provide IDPs with information and to refer complaints, feedback and urgent needs to relevant organizations.[208]

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[203] Report of the High-Level Independent Panel on Peace Operations (2015), *Uniting our strengths for peace-politics, partnership and people*, New York: United Nations, http://www.un.org/sg/pdf/HIPPO_Report_1_June_2015.pdf.

[204] Ibid.

[205] UN OCHA, 'Information Management', http://www.unocha.org/what-we-do/information-management/overview.

[206] Inter-Agency Rapid Assessment Report (2014), *Understanding the information and communication needs among IDPs in Northern Iraq*, https://www.internews.org/sites/default/files/resources/Iraq_IA_CwC_Report_2014-08_web.pdf.

[207] Ibid.

[208] Woods, G. and Mace, S. (2015), 'Connecting humanitarian actors and displaced communities: the IDP call centre in Iraq', *Humanitarian Practice Network*, October 2015, http://odihpn.org/magazine/connecting-humanitarian-actors-and-displaced-communities-the-idp-call-centre-in-iraq/.

UNHCR has since 2012 been using mobile technology in the form of SMS communications to inform IDPs in Jordan about issues pertaining to project implementation. In addition, the agency has been running a hotline, which handles more than 1,500 calls a day, and it is designing an application that would enable smartphone users to access information related to projects and to interact with the service providers. UNHCR also organizes monthly 'town hall' meetings in all locations hosting refugees, during which programme updates are shared and concerns can be raised both by refugees and host populations.[209]

The UN Department for Peacekeeping Operations (DPKO) deploys civil affairs officers to its field operations to act as the primary liaison between the mission and local interlocutors.[210] The officers are tasked with representing and explaining the mission to communities affected, as well as with gathering and reporting information on the priorities, perceptions and concerns of different groups, and seeking input on planned activities.[211] While the *Civil Affairs Handbook* of the DPKO and UN Department of Field Support (DFS) concedes that it may be necessary to approach local authorities in the first instance, civil affairs officers are instructed to examine the social structure of affected communities and to be as inclusive as possible in their work, not to overlook marginalized groups, and to 'give a voice to the voiceless' wherever possible. Civil interlocutors are defined as 'local government officials, elders and traditional leaders', as well as 'a wide spectrum of non-institutional actors, including civil society organizations, media, the business sector, IDPs and members of the general population'.[212]

Civil affairs officers are able to use a broad range of methods, including one-to-one scheduled meetings; conferences, roundtable discussions and meetings held by groups or third parties; drop-in office hours; public (town hall) meetings; and 'chance' encounters; as well as input through media, such as via radio call-in shows.[213] Members of a local community may also be recruited: the *Civil Affairs Handbook* gives the example of the targeted recruitment by the UN Interim Administration Mission in Kosovo (UNMIK) of local women as community officers, resulting in one case in a shift in focus from political aspects of minority returns to the living conditions of IDPs.[214] The DPKO provides officers with 'toolkits' for the various engagement methods, including instructions on preparation and conduct during meetings, and advice on potential risks resulting from engagement and mismanagement of information.

It should be noted, however, that the activities of civil affairs officers' are confined to the aims of their respective mandate and mission. While there may be significant overlap between the overall concerns of civilians in a given situation and those relating to a specific mission, such concerns that go beyond the mandate of the mission may not be heard.

NGOs

In most conflict settings, NGOs initiate some form of dialogue with civilian communities, with the aim of recording grievances, documenting rights violations or conducting needs assessments. Community participation in the delivery of aid and development programmes is widely recognized as essential

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[209] Humanitarian Accountability Partnership (2014), *Scoping Mission Report Jordan*, p. 15, http://www.chsalliance.org/files/files/Deployments/Jordan-Mission-Report%20_Aug-2014.pdf.
[210] As of January 2015, according to the DPKO, there were 950 civil affairs officers operating in its 12 field missions. See United Nations Peacekeeping, 'Civil affairs', http://www.un.org/en/peacekeeping/issues/civil/.
[211] UN DPKO and DFS (2012), *Civil Affairs Handbook*, New York: United Nations, p. 131, http://www.un.org/en/peacekeeping/documents/civilhandbook/Civil_Affairs_Handbook.pdf.
[212] Ibid.
[213] Ibid., pp. 132–133.
[214] Ibid., p. 132.

to their success. Yet there has been a lack of comprehensive evidence of the impact of engagement with civilians on the effectiveness of assistance. A group of international NGOs did publish a report in 2013 setting out what was claimed to be the first concrete evidence of how accountability mechanisms improve the value for money, effectiveness, relevance and sustainability of humanitarian and development projects.[215] The report drew on the experiences of communities supported by Ukamba Christian Community Services (Christian Aid's partner in eastern Kenya) and Save the Children in central Myanmar, to make the case that putting in place measures such as formal complaints procedures, financial transparency, regular village-level meetings and community procurement of local workers greatly improve both aid delivery and impact.[216]

The joint NGO report referenced a 2012 survey published by the Active Learning Network for Accountability and Performance in Humanitarian Action (ALNAP), highlighting the absence of a formalized mechanism to allow communities to critique and influence NGO projects in recent humanitarian emergencies in Haiti, the Democratic Republic of the Congo, Pakistan and Uganda. The ALNAP survey had found that more than half of aid recipients reported that there were no formal systems in place whereby they could offer opinions about projects set up in their community, air grievances, or propose changes.[217]

The Ground Truth (GT) Solutions initiative was set up in 2012 to fill a gap in the accountability architecture by listening to those affected by crises and taking account of their views, with the aim of improving aid effectiveness.[218] GT offers humanitarian agencies what it terms a 'light-touch', practical means of listening – via focus groups, face-to-face contact and mobile phone surveys – to the intended beneficiaries of aid, and then using information gathered to inform the design and delivery of assistance programmes. Feedback is relayed to the agencies responsible for the programmes in real time, enabling immediate responses. According to GT, the data gathered can not only help predict programme outcomes but, by using a standard methodology, can also allow aid agencies to track their performance against affected populations perceptions and compare themselves to other agencies and programmes. Recent work has included gathering feedback from people internally displaced by the situation in eastern Ukraine, with the aim of informing government policy towards IDPs and improving the efficacy of communication.[219] From late 2015 new Listen Learn Act projects were being piloted in Nepal, Lebanon, Ethiopia and Mali, collecting feedback on the programmes of four different humanitarian organizations;[220] Meanwhile, also in 2015 the International Rescue Committee, in partnership with GT, began piloting a Client Voice and Choice Initiative in South Sudan, Syria, Kenya and Greece, as a mechanism to collect and respond to feedback from clients of the IRC's programmes in different countries and humanitarian settings.[221]

The most systematic effort to elicit the voices of civilians at the recipient end of international humanitarian assistance has been the CDA 'Listening Program' project.[222] The project was based on the observation that much humanitarian work is driven externally, i.e. by donors' ideas, demands

[215] Featherstone, A. (2013), *Improving Impact: do accountability mechanisms deliver results?*, Christian Aidhttp://www.christianaid.org.uk/images/accountability-impact-report-2013.pdf.

[216] Ibid.

[217] Taylor, G. et al. (2012), *The State of the Humanitarian System*, London: ALNAP/ODI.

[218] See Ground Truth Solutions (2015), 'Taking Accountability to the Next Level', http://groundtruthsolutions.org/.

[219] Ground Truth Solutions (2015), 'Giving IDPs in Ukraine a Voice', http://groundtruthsolutions.org/ukraine-3/.

[220] Ground Truth Solutions (2015), 'Implementing the Listen Learn Act project with DanChurch Aid and Save the Children', http://groundtruthsolutions.org/projects-with-dcasave-the-children-2/.

[221] Ground Truth Solutions (2015), 'Partnering with the International Rescue Committee under the Client Voice and Choice Initiative', http://groundtruthsolutions.org/projects-with-irc-2/.

[222] CDA (2015), 'The Listening Program', http://cdacollaborative.org/cdaproject/the-listening-project/.

and timelines, rather than executed in collaboration between donors and recipients of aid. Often, in the view of aid recipients, policies are imposed from the top, and in donors' interests, without taking full account of the impact of such policies among aid-recipient societies.[223] Between 2005 and 2009 the Listening Program gathered the voices of more than 6,000 people affected by international aid efforts (recipients, eyewitnesses, and aid workers) in 20 countries.

It should be noted, however, that the project's careful design and rigorous methodology – requiring a broad and sustained presence on the ground – is simultaneously its strength and weakness.

First, this approach has been applied in both peacebuilding and in informing delivery of humanitarian aid projects. It arises from the principles that humanitarian and peacebuilding activities should be complementary where possible, that humanitarian action must impartially address all people's specific needs and priorities, and that humanitarian actors must be enabled to engage in dialogue with all parties to a conflict in order to increase their access to the people affected. However, the relationship between peacebuilding and humanitarian action is not without inherent tensions: peacebuilding often has an explicitly political alignment, while humanitarian action is neutral, independent and guided by need. None the less, the fact that both responses aim to build resilience and help communities cope better with crises suggests that there exists potential for cross-fertilization.[224]

Second, at a more practical level, staff resources tend to be restricted in conflict settings, and civilians may be difficult to access both physically and psychologically. Thus, carefully conceptualized and executed efforts such as the Listening Program may be difficult to operate as long as hostilities continue.

The tech sector

While the private sector is not commonly associated with humanitarian aid, a number of businesses, particularly those from the energy or manufacturing sectors, do provide humanitarian assistance as part of their corporate social responsibility (CSR) activities. However such efforts are not generally targeted towards civilian voices, nor do they extend to situations of armed conflict. The case of technology companies, by the nature of their work, is somewhat different, although these similarly tend to stay at arm's length from conflict settings.

Led by the social media platform Facebook, a group of software and mobile communications companies have created the platform www.internet.org, through which Facebook and its partners are making efforts to provide internet access, and basic services free of charge, to poor and remote areas of the world. However, while technically the platform could improve opportunities for civilians to communicate with humanitarian actors, the platform is at root a commercial enterprise and thus distinct from other humanitarian initiatives.

Google's platform Google Crisis Response is directly targeted at humanitarian work, providing online tools such as resource pages, crisis maps and person-finders.[225] Nevertheless, this project again seeks to provide the infrastructure to enable civilian voices to be heard, rather than specifically eliciting these voices. Although Google has worked in a number of complex humanitarian emergencies, including in politically charged environments such as the aftermath of Cyclone Nargis in Myanmar

[223] Anderson, M., Brown, D. and Jean, I. (2012), *Time to Listen: Hearing People on the Receiving End of International Aid*, 1st edn, Cambridge: CDA Collaborative Learning Project, p. 51, http://52.72.44.207/wordpress/publication/time-to-listen-hearing-people-on-the-receiving-end-of-international-aid/.

[224] UN OCHA Occasional Policy Briefing Series – No. 7 (2011), *Peace building and Linkages with Humanitarian Action: Key Emerging Trends and Challenges*, New York: UN OCHA, https://docs.unocha.org/sites/dms/Documents/Occasional%20paper%20Peacebuilding.pdf.

[225] Google, 'Google Crisis Response', https://www.google.org/crisisresponse/about/index.html.

in 2008, none of the projects so far undertaken by Google Crisis Response has been implemented in situations of armed conflict.

Microsoft responds to both natural and man-made disasters, with a clear focus on the former. The company provides software to track medical equipment, as well as web applications enabling affected populations to inform responders about their needs.[226] In 2013 Microsoft launched a cross-platform 'HelpBridge' app, designed to allow users to send status alerts to pre-selected contacts via email, SMS or social media in the event of a disaster. Its HealthVault app enables users to create a profile of their health and medical requirements, including medication and pre-existing conditions, for health professionals to access in case of emergency.[227]

However, while Microsoft and others may provide assistance following natural disasters, they are hesitant to do so in situations of armed conflict. Why is this so? First and foremost, private-sector companies naturally prioritize a safe working environment for their staff on the ground, including the possibility of monitoring the environment for potential safety threats. While a natural disaster may trigger a chain reaction – as in the 2011 'triple disaster' of earthquake, tsunami and nuclear accident in Japan – staff tend to be deployed only after an emergency has occurred. In a conflict setting, the risk to staff is continuous; the socio-political environment is difficult to monitor, which in turn complicates risk assessments. Second, should technical solutions be hacked or otherwise misused, exposing sensitive information to a conflict party, companies could inadvertently contribute to, rather than alleviate, human suffering.

Armed forces

The relationship between military and humanitarian actors has long been fraught. While the profile of humanitarian aid may be subject to review, strict political neutrality remains one of its core tenets, and one that appears irreconcilable with the role of armed forces that are partial by default. As a consequence, military actors engaging in 'humanitarian' work can lead to a blurring of humanitarian and military actions and objectives, which in turn may pose problems for traditional humanitarian actors. In 2011 Pierre Krähenbühl, then operations director for the International Committee of the Red Cross (ICRC), noted that attacks against humanitarian personnel had become commonplace over the preceding decade, noting that what he termed 'a rejection of humanitarianism' was a by-product of 'policies that integrate humanitarian aid into political and military strategies'.[228]

Where military actors engage in activities normally carried out by humanitarians, this can have serious adverse consequences not only for the latter, but also for civilians themselves. In the late 2000s, for instance, the Colombian military engaged in 'humanitarian' work as part of a strategy to increase the state's presence in contested territories.[229] However, by simultaneously acting as a party to an armed conflict and a humanitarian actor, the Colombian forces violated the humanitarian principle of political neutrality, potentially decreasing their opponents' respect for humanitarian norms and actors alike; moreover, the military also willingly accepted the possibility that its cooperation with civilians might render the latter targets to NSAGs.[230]

[226] Microsoft Philanthropies (2016), 'How technology can help', https://www.microsoft.com/about/philanthropies/disaster-response/prepared-and-ready/.
[227] Microsoft (2016), 'HelpBridge App Can Help Those in Need During Natural Disasters', https://blogs.microsoft.com/firehose/2014/05/29/helpbridge-app-can-help-those-in-need-during-natural-disasters/.
[228] Krähenbühl, P. (2011), 'The militarization of aid and its perils', ICRC, https://www.icrc.org/eng/resources/documents/article/editorial/humanitarians-danger-article-2011-02-01.htm.
[229] Marcos, F. (2009), 'Military participation in humanitarian action: reflection on the Colombia case', *Humanitarian Practice Network*, December 2009, http://odihpn.org/magazine/military-participation-in-humanitarian-action-reflections-on-the-colombia-case/.
[230] Ibid.

In both Kosovo and Afghanistan the German Bundeswehr has deployed so-called 'intercultural mission advisers' ('Interkulturelle Einsatzberater/Einsatzberaterinnen', IEB, or IntkulEinsBerBw). IEB personnel are area specialists, tasked with bridging cultural gaps between the German armed forces and local populations; as described by the Bundeswehr, they are 'networks and seismographs'. The work of IEB is focused on protective missions, in which armed forces and local populations are not hostile to each other but share certain goals, including a reduction of open hostilities. Their responsibilities include: identifying and evaluating local, ethnic, religious, political and other socio-cultural structures; establishing and maintaining a network of local contacts; and utilizing these contacts to support the armed forces' mission.[231] While these tasks do not explicitly call for gathering civilian voices for humanitarian purposes, the IEB are intended to listen much more than to talk, and are explicitly trained to 'learn and take into account cultural differences'.[232] IEB workers frequently operate on their own, spending several days on end engaging members of a given community. Their example illustrates the functional rationale for engaging civilians, namely to make responses more effective by making use of local knowledge and networks. However, as in Colombia, while increasing links with civilian populations may have been helpful from a military point of view, softening the demarcation line between military and humanitarian actors may work to the latter's detriment. Recalling a press statement by international forces in Afghanistan emphasizing that humanitarian aid was helping to win the 'fight against terrorism', Krähenbühl, in his 2011 article, asserted that:

> Such developments lead parties to conflicts and affected populations to associate all humanitarians with specific political and military goals in Afghanistan and beyond. When humanitarian action becomes part of strategies aimed at defeating an enemy, the risks for aid agencies in the field grow exponentially.[233]

Thus, while it may be desirable for military actors to engage civilians and to gather the latter's views, blurring the line between military and humanitarian personnel carries a significant risk of decreasing the space for humanitarian work in a conflict setting.

The challenges of engagement with civilians in armed conflict situations, and the opportunity of technology

As conflicts become increasingly complex, direct access to civilians, particularly in areas under the control of NSAGs, is often hindered by one or more parties to the conflict. Ensuring safe and regular access to civilian populations thus remains a controversial and challenging matter in armed conflict situations.

By conducting face-to-face interviews with civilians, humanitarian staff may put the latter at risk, not only because of the potentially sensitive nature of the information collected, but also because to participate in such contacts may mean that civilians become the targets of a party to an armed conflict. Furthermore, interview processes may accentuate existing societal fault lines by capturing principally the points of view of those who are dominant. As previously highlighted, a lack of information poses problems for both civilians and humanitarian actors. Conversely, engagement by humanitarian actors,

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[231] Bundeswehr Streitkräftebasis (Joint Support Service) (2014), 'Interkulturelle Einsatzberater', http://www.streitkraeftebasis.de/portal/a/streitkraeftebasis/!ut/p/c4/04_SB8K8xLLM9MSSzPy8xBz9CP3I5EyrpHK94uyk-ILMKr3SnNTM4hK9zNQkvaz8pIL8ohL9gmxHRQAUAh2F/.
[232] Bundeswehr Streitkräftebasis (Joint Support Service) (2015), 'Konflikte reduzieren, Vertrauen schaffen – mit kompetenter interkultureller Beratung', http://www.streitkraeftebasis.de/portal/a/streitkraeftebasis/!ut/p/c4/04_SB8K8xLLM9MSSzPy8xBz9CP3I5EyrpHK94uyk-ILMKr3SnNTM4hK9zNQk_YJsR0UAEMVL1g!!/.
[233] Krähenbühl, P. (2011), 'The militarization of aid and its perils'.

and 'listening' in particular, carry the risk of raising expectations on the part of crisis-affected people that may not be met later on.

While by no means a comprehensive solution, the proliferation of – and advances in – mobile communications technology bring the potential of substantively improving access to civilian voices. It was anticipated that the number of internet users worldwide would reach 3.2 billion by the end of 2015, some 2 billion of whom in developing countries.[234] In 2016 the number of smartphone users is expected to surpass 2 billion,[235] and already more people access the internet through mobile phones than through computers.[236] Social media usage is also rapidly increasing: in 2015 there were nearly 1.6 billion active Facebook users globally,[237] and some 500 million new tweets were generated per day.[238] While there is a correlation between economic development status and access to the internet and smartphone use, the overall trend extends to low- and middle-income countries.[239]

Thus, with very few places remaining entirely beyond reach, the world's ability to elicit the voices of civilians affected by humanitarian emergencies is expanding. The 2010 Haiti earthquake, the 2011 'triple disaster' in Japan, and the 'Arab Spring' uprisings in the Middle East all saw the rise of data-driven or digital humanitarianism. Following initial scepticism, the latter now frequently complements more traditional humanitarian efforts, supporting staff on the ground through the gathering of real-time data via the internet. A key component in the synthesis of previously standard and digital humanitarianism has been the advent of virtual 'crisis maps', whereby base mapping is supplemented with substantive information – such as indicating specific locations where fighting is taking place or where civilians are at acute risk. Such information, collected through news reports, monitoring of social media and even hotlines, is subsequently verified and transmitted to humanitarian staff on the ground. The availability of real-time data offers enormous potential for improving aid in humanitarian emergencies.

All the same, new technologies bring their own challenges and risks. First, regardless of setting, the ever-increasing volume of available data has made it difficult to distil the relevant from the vast amount of irrelevant data.[240] While evidence suggests that in the future digital filters may better address this problem, relying on the judgment of technology rather than on humans to inform humanitarian efforts or policy choices entails obvious risks.

Second, and related, is the reliability of data. The often-quoted assertion that 'truth is the first casualty of war' is especially relevant in the digital age, where manipulated information may reach broad audiences within short periods of time. Verifying data through eyewitnesses is a very real challenge in settings of natural disasters, and may be impossible in regions afflicted by conflict.

Third, and most important, civilians who provide data for humanitarian or other purposes – such as documenting of human rights violations – are only as safe as the data they provide are secure. While measures may be in place to minimize the risk of data becoming insecure – such as through

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[234] International Telecommunication Union (2015), *The World in 2015: ICT Facts and Figures*, Geneva: International Telecommunication Union, http://www.itu.int/en/ITU-D/Statistics/Documents/facts/ICTFactsFigures2015.pdf.

[235] eMarketer (2014), '2 Billion Consumers Worldwide to Get Smart(phones) by 2016', 11 December 2014, http://www.emarketer.com/Article/2-Billion-Consumers-Worldwide-Smartphones-by-2016/1011694.

[236] Ibid.

[237] Statista, 'Number of monthly active Facebook users worldwide as of 4th quarter 2015 (in millions)', http://www.statista.com/statistics/264810/number-of-monthly-active-facebook-users-worldwide/.

[238] Internet Live Stats, 'Twitter Usage Statistics', http://www.internetlivestats.com/twitter-statistics/.

[239] 35.3 per cent of individuals in developing countries use the internet, compared to 9.3 per cent in least developed countries (mobile broadband subscriptions come in at 39.1/12.1 percent). See International Telecommunication Union (2015), *The World in 2015*.

[240] Meier, P. (2015), *Digital Humanitarians: How Big Data Is Changing the Face of Humanitarian Response*, Boca Raton: CRC Press.

hacking, leaking or other disclosure – it is difficult to see how all risk could be eliminated. In a worst-case scenario, if data traceable to an individual or organization should fall into the wrong hands, the consequences for a given source could be grave.

These are serious challenges. Furthermore, it is notable that the Standby Volunteer Task Force, among the pioneers of digital humanitarian services, explicitly does not deploy 'in conflict zones and in countries under repressive rule', suggesting that there are no easy solutions at hand.[241]

None the less, future advances in technology may be able to overcome, or at least mitigate, some of the challenges to ensuring that the voices of civilians in armed conflict are heard. Humanitarian actors should not, therefore, disregard the enormous opportunities arising from crisis-affected communities' increasing access to modern communications technology and the corresponding availability of data. The application of mobile communications technology for humanitarian purposes has already facilitated access to civilians in armed conflict, and it is highly likely that future advances will further improve humanitarian actors' ability to respond to civilian needs. As the International Committee of the Red Cross (ICRC) has noted:

> Humanitarian organizations themselves are increasingly using Internet and mobile-phone-base applications for their own surveys and other data gathering (e.g. EpiSurveyor or Open Data Kit). Combining such information with other sources, including information collected directly from communities and individuals affected, is becoming standard good practice.[242]

Conclusion

There is widespread agreement among practitioners, academics and civilians affected by crisis that international humanitarian programmes do not consistently and effectively engage with local communities.[243] Tensions between what humanitarian agencies are able to provide, and how this relates and responds to the wishes and needs of an affected population, are not new. In her exhaustive 1944 study of international relief work between 1914 and 1943, Hertha Kraus observed that: 'in some programs there has been very little direct contact with the people in trouble, as individuals; in others a great deal of personal service was given them'.[244] Current secondary evidence gathered by the authors of this paper, while by no mean comprehensive, indicates that this pattern may have continued.

Effective engagement may inevitably be stymied by lack of access and presence on the ground as a result of security concerns. Other impeding factors include constraints of both finance and human resources, and difficulties in developing mechanisms that are both replicable and scalable poses another barrier to documenting the voices of civilians in conflict. Civilians in situations of conflict are often critical of projects that are constructed without due attention to the local culture or without understanding of local sensitivities. But in the majority of cases, resistance to increased interaction with civilians stems from governments or in some instances from NSAGs.

Civilians are often the first responders in an emergency situation, but access to them in order to achieve efficient, ethical and effective humanitarian action is dependent on a range of factors. Research shows that in instances where armed groups are dependent on civilian support or

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[241] Ibid., p. 60.

[242] ICRC (2013), *Professional Standards for Protection Work*, Geneva: International Committee of the Red Cross, p. 79, https://www.icrc.org/eng/assets/files/other/icrc-002-0999.pdf.

[243] Brown, D., Donini, A. and Clarke, P. (2014), *Engagement of crisis-affected people in humanitarian action*, London: ALNAP/ODI, http://www.alnap.org/pool/files/background-paper-29th-meeting.pdf.

[244] Kraus, H. (1944), *International Relief in Action 1914–1943,* Scottsdale: Herald Press.

acquiescence, there is scope for communities to articulate their concerns. The nature of the relationship between armed groups and the communities whose interests they seek to uphold is a key determinant of how the views of communities are reflected.

However, the possibility should be borne in mind that engagement can have unintended negative consequences, and can result in further marginalization of people (in some cases women, or members of a less represented section of society). It is critical, therefore, that civilian engagement is conducted after a thorough analysis of the context and a study of local dynamics and relationships.

There are concerns that humanitarian actors more often than not approach civilians at very specific stages of a project's life, and for a limited duration. Recent research by the CDA and ALNAP on feedback mechanisms in humanitarian programmes shows that those affected by crisis seldom have the opportunity to influence broader programme and agency or humanitarian strategies and principles through feedback; rather, they provide input on project-level details.[245] The impact that civilian involvement can have on making humanitarian assistance on the ground more responsive inevitably rests on how inclusive and considered the initiative to access civilian voices has been.

There is also the issue of how, and to what extent, technology can realistically improve the response to civilian needs. For example, the call centre set up by the UN in 2015 to respond to civilian requirements in Iraq is limited in the nature of the problems it can deal with. Operatives cannot provide assistance on questions or complaints related to problems with the government, or to sexual or gender-based violence. There is the remote possibility of transmitting complaints to various UN mechanisms, including to the UN Security Council, but opportunities for immediate redress do not exist. In practical terms, too, scarce or unreliable internet connectivity and availability of electricity are obvious obstacles to the effective use of technology in civilian engagement.

Such impediments notwithstanding, technology does facilitate access to information by, and dissemination of information to, a variety of actors. But it also entails many associated challenges, primarily because the ease and the speed with which information can be electronically gathered and disseminated could expose individuals and communities to risk.

Questions also arise concerning what can realistically be achieved and changed through advocacy – i.e. by amplifying the voices of civilians on the ground. In the case of Syria, although advocacy by NGOs has contributed to the adoption of UN Security Council resolutions endorsing cross-border relief operations, these have had limited positive effect on the sustained protection of Syrian civilians or on their access to humanitarian aid.

None the less, the UN and other humanitarian organizations are increasingly conscious of the need to 'listen', not least to improve their effectiveness and credibility. However, both external and internal constraints – donor imperatives, limitations on access, institutional culture, etc. – mean that capturing civilian voices is not intrinsically factored into crisis response.

Given the inherent political and institutional factors impelling governments and non-state actors, the responsibility to ensure that the views of civilians are reflected in the design and delivery of programmes, and that the needs of affected populations remain at the core of humanitarian action, thus rests with humanitarian organizations. But these organizations cannot deliver on this in isolation: they require adequate donor support. There is a clear need for a fundamental shift

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[245] Bonino, F., Jean, I. and Clarke, P. (2014), *Effective Feedback Mechanisms in Humanitarian Contexts – Guidance for Practitioners and Policy-makers based on findings from ALNAP-CDA Case Studies in Sudan, Pakistan and Haiti*, London: ALNAP/ODI, http://www.alnap.org/ourwork/feedback-loop.

in institutional thinking and culture – involving a transition from a 'top-down' to a 'bottom-up' approach – whereby agency within affected populations is recognized and documented, and feeds into the delivery of assistance in an accountable manner.

Key to achieving this transition is learning from the experiences of various actors, including NGOs, in peacebuilding initiatives, as these will offer valuable lessons for the evolution of humanitarian assistance in this sphere. Furthermore, humanitarian actors engaged in capturing the voices of civilians in armed conflict need to take advantage of the three potentially interconnecting factors that will facilitate their work – peacebuilding, political will and technological advances. While governments may sometimes be reluctant participants in this exercise, the reality is that governments involved in conflict bear the primary responsibility for ensuring the delivery of humanitarian assistance to their populations.

Acronyms

ALNAP	Active Learning Network for Accountability and Performance in Humanitarian Action
BCB	Bloque Central Bolívar (Central Bolivar Bloc)
CDA	CDA Collaborative Learning Projects
DFS	(UN) Department of Field Support
DPKO	(UN) Department for Peacekeeping Operations
ELN	Ejército de Liberación Nacional (National Liberation Army)
GT	Ground Truth Solutions
ICRC	International Committee of the Red Cross
IDPs	internally displaced persons
IEB	Interkulturelle Einsatzberater
INGOs	international non-governmental organizations
LACs	Local Administrative Councils
LRA	Lord's Resistance Army
LTTE	Liberation Tigers of Tamil Eelam
NGOs	non-governmental organizations
NSAGs	non-state armed groups
UNHCR	United Nations High Commissioner for Refugees
UN OCHA	United Nations Office for the Coordination of Humanitarian Affairs

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About the Chatham House Humanitarian Engagement with Non-state Armed Groups project

Chatham House has undertaken a study of the factors that determine whether and how engagement with non-state armed groups (NSAGs) for humanitarian purposes can be made more effective, safe and sustainable. The initiative is intended to provide input to the 2016 World Humanitarian Summit and to generate both political support and practical policy options in order to increase the effectiveness of humanitarian action in conflict through improving engagement and interaction with NSAGs.

In addition to the four papers brought together in this collection, a set of core propositions were outlined in a briefing by Michael Keating and Patricia Lewis, *Towards a Principled Approach to Engagement with Non-state Armed Groups for Humanitarian Purposes*, published by Chatham House in January 2016.

Independent thinking since 1920