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**Forum on armed groups  
and the involvement of children in armed conflict  
Chateau de Bossey, Switzerland  
4 to 7 July 2006**

**Background document**

**Approaching armed groups\***

This paper describes some of the different approaches used by the political and legal bodies of the UN and regional intergovernmental organizations and their member states, humanitarian agencies, and non-governmental organizations (NGOs) in seeking to influence armed groups.<sup>1</sup> These approaches vary according to the working methods of the agency or body concerned, the objectives they seek to achieve, and the normative framework within which they operate.

Section 1 of the paper describes in general terms three main forms of approach taken by different actors: holding armed groups to their responsibilities under international law by means of methods such as negotiation, monitoring, reporting, denunciation and lobbying (sometimes called “naming and shaming”), sanctions, or criminal prosecution; negotiating humanitarian access to civilian populations; and political engagement in the context of conflict resolution and peace processes. Section 2 looks more specifically at how some international agencies and NGOs use these and other methods to influence armed groups on issues relating to the recruitment and use and demobilization and reintegration of child soldiers.

The brief overview in this paper is presented for the purpose of promoting discussion and debate. It is not intended to be exhaustive or definitive, or to suggest that there are clear or rigid distinctions between the various forms of approach described. Indeed, it is important to note that most actors use more than one form of

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<sup>1</sup> The main focus of this paper is on engagement with non-state armed groups, in most instances those who are engaged in conflict with the government (that is, armed opposition groups). There is no universally agreed generic term to describe such groups. The precise term used to describe such groups (non-state actors, non-state armed groups, armed political groups, armed opposition groups, insurgent groups, rebel groups, guerrillas, and so on) may vary depending on the exact nature of the group and/or the context and/or the practice of the writer. The most commonly used generic term, in UN documents and by many NGOs and others, is “armed groups”, and that is the term used in this working document unless there are specific reasons to use a more precise term in a particular context.

The Coalition to Stop the Use of Child Soldiers unites national, regional and international organizations and Coalitions in Africa, Asia, Europe, Latin America and the Middle East. Its founding organizations are Amnesty International, Defence for Children International, Human Rights Watch, International Federation Terre des Hommes, International Save the Children Alliance, Jesuit Refugee Service, the Quaker United Nations Office-Geneva and World Vision International.



approach, and possibly others not included here, according to the specific circumstances of each case.

## 1. Forms of approach to armed groups

### 1.1 The UN and member states – addressing the conduct of armed groups in terms of international law<sup>2</sup>

Initiatives by the UN and its member states relating to the conduct of armed groups – and particularly the conduct of those groups in the context of armed conflict – are based on the principles of international humanitarian law (IHL)<sup>3</sup> and human rights law.

IHL comprises international rules, codified in legal instruments (treaties) and/or established in customary norms, that aim to restrict the means and methods of armed conflict and to protect civilians and others who are not, or who are no longer, taking part in the fighting. The primary legal instruments of IHL applicable to non-international (that is, internal) armed conflict, and which are therefore directly relevant to armed groups, are Common Article 3 of the four Geneva Conventions of 1949 (Common Article 3) and Additional Protocol II of 1977. Common Article 3 specifies a number of minimum provisions that must be respected by all parties to a non-international armed conflict, whether that conflict is between government forces and one or more non-state armed groups, or between armed groups fighting among themselves. It provides that those who are not taking part in the fighting, or who are no longer doing so, must be treated humanely, and it prohibits the following acts against them: violence to life and person, in particular murder, mutilation, cruel treatment and torture; the taking of hostages; outrages upon personal dignity, in particular humiliating and degrading treatment; and the passing of sentences and the carrying out of executions without a judgment pronounced by a regularly constituted court providing all judicial guarantees. The provisions of Common Article 3 are supplemented and developed in Additional Protocol II.

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<sup>2</sup> For more detailed information on the applicability of provisions of IHL and human rights law to armed groups, on which much of this section is based, see Gerard McHugh and Manuel Bessler, *Humanitarian Negotiations with Armed Groups: A manual for practitioners*, UN Office for the Coordination of Humanitarian Affairs (OCHA), January 2006 (cited hereafter as OCHA Manual), <http://ochaonline.un.org/humanitariannegotiations/index.html>, Section 3.3; Inter-Agency Standing Committee Task Force on Humanitarian Action and Human Rights, *Frequently Asked Questions on International Humanitarian, Human Rights and Refugee Law in the Context of Armed Conflict*, UN Publications, 2004, <http://www.humanitarianinfo.org/iasc/default.asp>; and Marco Sassoli, *Possible Legal Mechanisms to Improve Compliance by Armed Groups with International Humanitarian Law and International Human Rights Law*, [http://www.armedgroups.org/images/stories/pdfs/sassoli\\_paper.pdf](http://www.armedgroups.org/images/stories/pdfs/sassoli_paper.pdf). See also Liesbeth Zegveld, *Accountability of Armed Opposition Groups in International Law*, Cambridge University Press, 2002, and Andrew Clapham, *Human Rights Obligations of Non-state Actors*, Oxford University Press, 2006.

<sup>3</sup> These principles may also be referred to as “humanitarian norms”.



While only states can become party to these treaties, the rules contained in them apply equally to states and to non-state armed groups involved in the conflict.<sup>4</sup> Moreover, the principles contained in Common Article 3 are recognized as principles of customary international law, along with other key rules of armed conflict such as the principle that parties to a conflict shall at all times distinguish between the civilian population and combatants (the principle of distinction), and the principle that attacks should be directed solely at military objectives and that neither the civilian population as such, nor individual civilians, should be the object of attack. Because these principles form part of international customary law it means that their applicability does not depend on the state concerned having ratified the treaties in which they are expressly set out.

While IHL applies to situations of armed conflict, international human rights law applies at all times, including in situations of armed conflict. Certain international human rights treaties provide that in situations of emergency, and under strictly defined circumstances, states parties may exceptionally derogate from (that is, temporarily suspend) their obligations relating to certain civil and political rights. But there are certain key human rights that can never be suspended – not even in war. This is important, because armed conflict poses risks to a wide range of human rights of civilians, including the right to life and to liberty and security of person and, often, the right not to be tortured. Armed conflict also poses a risk to economic and social rights, for instance if there is a conflict-induced humanitarian emergency.

In some respects IHL and human rights law can be regarded as two distinct bodies of law, in that their historical origins and their implementation mechanisms and procedures are different. The codification of modern IHL dates from the mid-nineteenth century, whereas the codification of modern human rights law is often considered to date from the adoption of the 1948 Universal Declaration of Human Rights (UDHR), although both bodies of law have origins in ethical and philosophical principles which date back much earlier. With regard to procedures, there is no counterpart in IHL for the monitoring, implementation and enforcement mechanisms established under human rights treaties, where states parties are required to submit reports to international monitoring bodies on measures they have taken to give effect to the rights in the treaties, and where, in many instances, individuals can bring complaints to those monitoring bodies about violations of those rights.

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<sup>4</sup> The four Geneva Conventions have been ratified by virtually all states; their Common Article 3 applies to “each Party to the conflict”. Additional Protocol II, however, has to date not been universally ratified; it applies to non-international armed conflicts between the armed forces of a state party and “dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol”. While there is no provision for non-state armed groups to become party to these treaties in the same way as states, the provisions of the treaties apply to those groups by virtue of their ratification by the state on whose territory the armed group operates. On this point the ICRC Commentary to Additional Protocol II states: “the commitment made by a state not only applies to the government but also to any established authorities and private individuals within the national territory of that state and certain obligations are therefore imposed upon them. The extent of rights and duties of private individuals is therefore the same as that of the rights and duties of the state. Although this argument has occasionally been questioned in legal literature, the validity of the obligation imposed upon insurgents has never been contested.” (Commentary to Additional Protocol II, para. 4444, available at <http://www.icrc.org> (info resources, IHL database).)



But despite these important historical and procedural differences, the substantive content of these two bodies of law is interrelated and mutually reinforcing and largely overlaps. This is not only because human rights law applies at all times, including in times of armed conflict, but also because many of the underlying principles contained in the two bodies of law are substantially the same. This overlap is exemplified in the Convention on the Rights of the Child, which places obligations on states parties in terms of their obligations under IHL.<sup>5</sup> The interrelationship between IHL and international human rights law is also evident in the statements and practice of UN political and legal bodies (see below).

As with IHL, it is only states, and not armed groups, even if they are in effective control of populations or territories, which can become parties to international human rights treaties and subject to their implementation mechanisms. But there is a growing body of international opinion, evidenced in, for example, “soft” law<sup>6</sup> and pronouncements of international and non-governmental bodies, the writings of some legal scholars and some judicial decisions, that armed groups and other non-state actors – particularly if they exercise government-like functions in a particular territory – may also be expected to respect human rights.<sup>7</sup> It is also worth noting that the UDHR, while formulated in terms of the rights which belong to each individual, states that “every individual and every organ of society, ... shall strive ... to promote respect for these rights and freedoms and ... to secure their universal and effective recognition and observance, [and] [n]othing in this Declaration may be interpreted as implying for any state, group or person any right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms set forth herein”.<sup>8</sup>

This mutual reinforcement and convergence between IHL and human rights law, and the emerging view that, as well as their obligations to comply with IHL, non-state armed groups have direct responsibilities under international human rights law, has been given expression in pronouncements and resolutions of UN bodies. For example, a number of statements and resolutions of the UN Security Council have called on all parties, including non-state parties, to armed conflicts to comply with

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<sup>5</sup> States parties must “respect and ensure respect for rules of international humanitarian law applicable to them in armed conflicts”, and “in accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts” must take all feasible measures to ensure protection and care of children affected by armed conflict (Convention on the Rights of the Child, Article 38(1) and 38(4)). See also the reference to Operation Lifeline Sudan (OLS) in section 1.4 below, where the Sudan People’s Liberation Movement/Army (SPLM/A) made commitments to honour the Convention on the Rights of the Child.

<sup>6</sup> “Soft” international law is an important body of non-treaty standards usually adopted within the framework of the UN system (declarations, bodies of principles, etc.). Although not legally binding, soft law serves to interpret and elaborate treaty provisions and to develop new standards in emerging areas of international law. (Interagency Standing Committee, op. cit., p.2). See also Nigel Rodley, “Soft Law, Tough Standards”, *Interights Bulletin* Vol. 7 No. 3, <http://www.interights.org>.

<sup>7</sup> See, for example, Marco Sassoli, Andrew Clapham and Liesbeth Zegveld, op. cit.

<sup>8</sup> UDHR, Preamble and Article 30.



human rights law as well as IHL.<sup>9</sup> The Office of the UN High Commissioner for Human Rights, reporting to the UN Commission on Human Rights, has similarly indicated its view that the actions of non-state armed groups can be defined in terms of violations of human rights law as well as IHL.<sup>10</sup> The UN Commission on Human Rights, while most of its resolutions maintain a clear distinction between IHL (applicable to both states and non-state actors) and human rights law (applicable to states), refers to the clear interlinking between these two branches of law and their applicability in its 2005 resolution on hostage-taking.<sup>11</sup>

The UN has established a wide range of mechanisms for monitoring and reporting on the conduct of parties to conflict, including armed groups, both during armed conflict and following peace agreements. UN and other inter-governmental peacekeeping forces have been deployed in numerous countries to monitor the conduct of government forces and armed groups following peace agreements. Such missions usually include military observation and human rights components, along with civilian police, judicial and prison advisors mandated to support long term institutional reform in these sectors. With respect to the human rights components, although the specific mandate of each peacekeeping operation varies in content, depending on the requirements of the particular situation, they are generally charged with monitoring and documenting any breaches of IHL and violations of human rights law by any of the parties or former parties to the conflict, and to intervene with the government or other bodies concerned to put an end to such abuses, protect the victims and bring about improvements in the longer term. Reports from such missions are channelled upward through the UN system to the Security Council or other bodies and are intended to provide the basis for initiating international action and other diplomatic initiatives.<sup>12</sup>

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<sup>9</sup> The UN Security Council has "call[ed] upon all parties to armed conflict to comply fully with the provisions of the Charter of the United Nations and with the rules and principles of international law, in particular international humanitarian, human rights and refugee law, and to implement fully the relevant decisions of the Security Council" (Statement by President of the Security Council, UN Doc. S/PRST/2002/41, 20 December 2002). With regard to specific groups it has strongly condemned the activities of militias and armed groups, including non-state groups, operating in the Great Lakes region which "commit human rights abuses" (UN Security Council Resolution 1653 (2006)); has stressed that the "Sudanese rebel groups ... must also take all necessary steps to respect international humanitarian and human rights law" (Resolution 1564 (2004)); and has "[s]trongly condemn[ed] the activities of militias and armed groups such as the Lord's Resistance Army (LRA), which continue to attack civilians and commit human rights abuses in the Sudan" (Resolution 1663 (2006)), <http://www.un.org/documents/scres.htm>.

<sup>10</sup> "Nepal has experienced gross violations of international human rights and humanitarian law committed by CPN (Maoist) in the course of its insurgency and by security forces in the State's response." Report of the UN High Commissioner for Human Rights on the situation of human rights and activities of her Office in Nepal UN Doc. E/CN.4/2006/107 (16 February 2006), para. 17, <http://nepal.ohchr.org/reports.htm>.

<sup>11</sup> The resolution notes the Commission's concern at "acts of hostage-taking in different forms and manifestations, including those committed by terrorists and armed groups", and states that "hostage-taking constitutes a war crime under the Rome Statute of the International Criminal Court and is also a grave breach of the Geneva Conventions" and that "wherever and by whomever committed, [it] is a serious crime aimed at the destruction of human rights" (UN Commission on Human Rights, Resolution 2005/31), <http://www.ohchr.org/english/bodies/chr/sessions/61/documents.htm>.

<sup>12</sup> For further information see UN Peacekeeping website, <http://www.un.org/Depts/dpko/dpko/index.asp>.



While armed groups are not subject to treaty obligations and implementation mechanisms in the same way as states, there are, in addition to monitoring and reporting, other enforcement and implementation measures taken by the UN and its member states towards non-state armed groups and their individual members who have persistently failed to respect IHL and human rights norms.

### **Implementation —sanctions and embargoes**

The UN Security Council has adopted resolutions imposing sanctions and embargoes against non-state armed groups in situations which the Security Council has determined are a threat to international peace and security.<sup>13</sup> These include resolutions prohibiting UN member states<sup>14</sup> from transferring arms to armed groups in the Democratic Republic of the Congo (DRC), Liberia, Rwanda, Sierra Leone and Sudan.<sup>15</sup> Sanctions and embargoes can also include measures such as restrictions on foreign travel for identified individuals, or seizures or freezing of foreign assets of individuals or groups. The Security Council has also stated that violations of international humanitarian law and human rights law may in themselves constitute a threat to international peace and security necessitating Security Council action.<sup>16</sup>

The UN Secretary-General has proposed that the UN make more use of sanctions and embargoes in the case of armed groups that violate human rights and humanitarian norms:

“... More serious consideration also needs to be given to the imposition of travel restrictions and targeted sanctions (particularly in respect of small arms and military assistance) against armed groups that blatantly violate international humanitarian law and human rights standards and prevent humanitarian access to populations in need.”<sup>17</sup>

<sup>13</sup> The UN Security Council is authorized to call on member states to apply sanctions and similar measures not involving armed force in order to restore or maintain international peace and security (UN Charter, Articles 39 and 41).

<sup>14</sup> All UN member states are required to accept and carry out decisions of the UN Security Council (UN Charter, Article 25).

<sup>15</sup> See UN Security Council Resolutions 1493 (2003) and 1596 (2005) (DRC); 1521 (2003) (Liberia); 1011 (1995) (Rwanda); 1171 (1998) (Sierra Leone); 1591 (2005) (Sudan), <http://www.un.org/documents/scres.htm>.

<sup>16</sup> The Security Council has “[n]ote[d] that the deliberate targeting of civilian populations or other protected persons and the committing of systematic, flagrant and widespread violations of international humanitarian and human rights law in situations of armed conflict may constitute a threat to international peace and security, and, in this regard, reaffirms its readiness to consider such situations and, where necessary, to adopt appropriate steps.” UN Security Council Resolution 1296 (2000), para. 5, reiterated in Resolution 1674 (2006), para. 26, <http://www.un.org/documents/scres.htm>.

<sup>17</sup> Report of the Secretary-General to the Security Council on the protection of civilians in armed conflict, UN Doc. S/2004/431, 28 May 2004, para. 42, <http://www.un.org/documents/repsec.htm>.



In April 2006 the UN Security Council extended a travel ban and freezing of funds to a commander of the Sudan Liberation Army (SLA), a non-state armed group in Darfur.<sup>18</sup>

In addition to actions by the UN, sanctions and embargoes can be imposed by a state acting unilaterally, or by a group of states acting under the auspices of a regional organization such as the European Union (EU). For example, the USA proscribed the Liberation Tigers of Tamil Eelam (LTTE) in 1997 and the United Kingdom in 2000. In April 2006 Canada outlawed the LTTE in that country.<sup>19</sup> In September 2005, following the killing of the Sri Lankan foreign minister, the EU imposed a travel ban on the LTTE, banning it from visiting member states, condemning what it called "the continuing use of violence and terrorism" by the LTTE.<sup>20</sup> At the end of May 2006 the EU added the LTTE to its list of designated terrorist groups, entailing specific restrictive measures including freezing of funds and other assets and police and judicial cooperation by EU Member States.<sup>21</sup> The Colombian National Liberation Army (ELN), Revolutionary Armed Forces of Colombia (FARC) and the New People's Army (NPA) of the Philippines are among the almost 50 armed groups included on that list.<sup>22</sup>

### **Implementation – international criminal law**

International criminal law includes criminal aspects of international law and international aspects of national criminal law. It is derived from general principles of international law, agreements between states, and criminal law commonly recognized by states.

Over the last decade a clear international consensus has emerged on the importance of ending impunity for the perpetrators of human rights violations – that is, the effective enforcement of laws and other mechanisms to hold individual perpetrators responsible for their actions.

States are obliged under international law to enact legislation and take other measures to bring to justice in their own courts, or to extradite to another state for trial, anyone who, regardless of their nationality or of where the crime was committed, is suspected of grave breaches of the Geneva Conventions or other crimes under international law such as genocide, war crimes, crime against humanity, torture and enforced disappearance. The past 12 years have also seen the establishment of a number of international judicial mechanisms for holding individuals

<sup>18</sup> UN Security Council Resolution 1672 (25 April 2006), extending to additional individuals the measures originally imposed in Security Council Resolution 1591 (2005), <http://www.un.org/documents/scres.htm>.

<sup>19</sup> "Tamil Tigers' foreign setback", BBC News, 14 April 2006, [http://news.bbc.co.uk/1/hi/world/south\\_asia/4910348.stm](http://news.bbc.co.uk/1/hi/world/south_asia/4910348.stm).

<sup>20</sup> "EU bans Tamil Tigers over murder", BBC News, 27 September 2005, [http://news.bbc.co.uk/1/hi/world/south\\_asia/4287608.stm](http://news.bbc.co.uk/1/hi/world/south_asia/4287608.stm).

<sup>21</sup> "Declaration by the Presidency on behalf of the European Union concerning listing of the LTTE as a terrorist organisation", EU press release 31 May 2006, [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/cfsp/89790.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/cfsp/89790.pdf).

<sup>22</sup> Council Common Position 2006/380/CFSP of 29 May 2006, Official Journal of the EU, 31 May 2006.



accountable for crimes under international law when states are unwilling or unable to do so. In 1993 and 1994 the UN Security Council established ad hoc international criminal tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR). The Special Court for Sierra Leone (SCSL) was established in 2002 by an agreement between the government of Sierra Leone and the UN to prosecute and try individuals suspected of being responsible for crimes during the armed conflict there.<sup>23</sup>

The jurisprudence of the ICTY and the ICTR has made a major contribution to developing the detail of international criminal law, which has been codified in the 1998 Rome Statute of the International Criminal Court which entered into force on 1 July 2002.<sup>24</sup> The Court has jurisdiction over war crimes, crimes against humanity and genocide committed since that date. War crimes are crimes committed in the context of international or non-international armed conflict. Crimes against humanity can be committed in the context of armed conflict or in peacetime.

Article 8 of the Rome Statute contains a detailed list of acts which amount to war crimes in non-international armed conflict. It includes "serious violations" of Common Article 3 as well as a number of other serious violations such as direct attacks on civilians or on those undertaking humanitarian assistance; pillage; rape and other serious forms of sexual violence; enlisting children under 15 or using them to participate actively in hostilities; and forcible displacement of civilians unless their security or imperative military reasons demand it.

Article 7 of the Rome Statute enumerates acts which can amount to crimes against humanity. These are certain acts "when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack", including murder; enslavement; deportation or forcible transfer of population; torture; rape and other grave forms of sexual violence; enforced disappearance; and "other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health".

Crimes against humanity and war crimes are acts for which individuals, whether state or non-state actors, can be held criminally responsible under international law. International criminal law is, accordingly, directly relevant to the accountability of members of non-state armed groups. Article 25 of the Rome Statute provides for individual criminal responsibility; Article 28 provides for criminal responsibility of military commanders for criminal acts committed by their subordinates.

These international criminal tribunals have taken action against individuals from non-state armed groups. In 2003 five alleged leaders of the Revolutionary

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<sup>23</sup> The January 2002 agreement between the UN and the government of Sierra Leone was preceded by UN Security Council Resolution 1315 (2000). The Court is mandated to try those who bear the greatest responsibility for serious violations of international humanitarian law and national law committed in the territory of Sierra Leone since 30 November 1996. For more information see the website of the Special Court, <http://www.sc-sl.org>.

<sup>24</sup> For more information about the International Criminal Court (ICC), see <http://www.icc-cpi.int>. The Rome Statute can be located at <http://www.un.org/law/icc/statute/romefra.htm>.



United Front (RUF) were indicted separately by the Special Court for Sierra Leone.<sup>25</sup> In November 2005 the International Criminal Tribunal for the former Yugoslavia (ICTY) found Haradin Bala, a member of the Kosovo Liberation Army (KLA), guilty of torture, cruel treatment and murder as violations of the laws or customs of war, for acts committed in central Kosovo in mid-1998.<sup>26</sup> In another case before the ICTY the trial continues of three commanders of the KLA on charges of crimes against humanity and violations of the laws or customs of war.<sup>27</sup> In July 2005 the International Criminal Court (ICC) issued arrest warrants against five Lord's Resistance Army (LRA) commanders from Uganda, and in February 2006 the Court commenced proceedings against Thomas Lubanga, leader of the Union of Congolese Patriots (UPC) in Democratic Republic of the Congo (DRC) (see section 2.2 below).<sup>28</sup>

## 1.2 Monitoring, reporting, denunciation, and lobbying – the work of human rights NGOs

The work of some human rights and humanitarian NGOs focuses on actions to pressure governments – and to a lesser extent armed groups – to respect the rights set out in international human rights and humanitarian law. The denunciations of the human rights movement can generate publicity and enlist influential governments and institutions to exert diplomatic and economic pressure on abusive governments.<sup>29</sup> Similarly, public denunciation of abuses by armed groups and publicizing their failure to respect human rights norms can exert pressure on such groups with the aim of inducing them to improve their conduct. The UN Secretary-General has described these forms of pressure as follows:

“At political and practical levels there are levers of influence that can have significant sway with all parties to conflict. In today’s world, parties to conflict cannot operate as islands unto themselves. The viability and success of their political and military projects depend on networks of cooperation and good will that link them to the outside world, to their immediate neighbourhood as well as to the wider international community. There are, consequently, powerful factors that can influence all parties to conflict: the force of international and national public opinion; the desire of the parties for acceptability and legitimacy at the national and the international level; international accountability as enforced by the International Criminal Court and ad hoc tribunals; restrictions on the external provision of arms, financial

<sup>25</sup> Special Court for Sierra Leone, <http://www.sc-sl.org/RUF.html>.

<sup>26</sup> Limaj et al. (Case IT-03-66), International Criminal Tribunal for the former Yugoslavia (ICTY), <http://www.un.org/icty>. (The Statute of the ICTY uses the term “violations of the laws or customs of war” to refer to the types of acts which, in the Rome Statute of the ICC, are defined as war crimes.)

<sup>27</sup> Haradinaj, Balaj and Brahimaj (Case IT-04-84), ICTY, op. cit.

<sup>28</sup> International Criminal Court, <http://www.icc-cpi.int>.

<sup>29</sup> Human Rights Watch, <http://www.hrw.org/about/faq>.



flows and illicit trade in natural resources; the growing strength and vigilance of international and national civil societies; and media exposure.”<sup>30</sup>

A central element of the strategy is attracting public attention to the conduct of those who breach human rights or humanitarian norms. This method of influence, used by organizations such as Amnesty International and Human Rights Watch, comprises a wide range of activities including researching and issuing reports on violations of human rights and humanitarian norms, active lobbying and campaigning, both in the country concerned and internationally, as well as efforts to end impunity by calling publicly for those who have committed abuses to be brought to justice and making recommendations for long-term judicial, police and other reforms.

Such organizations rely to a great extent on collaboration with local or regional partners for information. Some, such as the Quaker United Nations Office, place a focus on working with the UN, the EU, international financial institutions and similar bodies, to attract attention to human rights or humanitarian abuses and to seek to generate the pressure that may influence those who commit those abuses.

A focus on individual cases of victims of human rights abuses – often using testimonies of victims or eyewitnesses – is at the core of NGO human rights reporting. It seeks to draw the attention of relevant UN and other international bodies, other states, and the public at large to the plight of the victims. International advocacy thereby aims to “speak out” in solidarity with vulnerable populations, particularly those denied the opportunity to have their voices heard.

The major human rights organizations do not negotiate with armed groups. They may, however, if practicable, meet with representatives of armed groups to present to them research findings, concerns and recommendations, or to discuss the group’s human rights policy and practice.

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The approach of human rights NGOs as described above is to try to influence the policies and practices of armed groups by exerting various forms of external pressure on them. Other NGOs and humanitarian agencies, including the UN’s own operational agencies, employ various forms of engagement to influence armed groups. The notion of engagement covers a variety of approaches, including dialogue, advocacy, education and negotiation. It also includes a variety of aims. Some NGOs and humanitarian agencies engage in dialogue with armed groups to promote those groups’ compliance with humanitarian norms. Others, particularly agencies providing humanitarian assistance, engage in negotiations with armed groups to secure access to the civilian populations they are trying to protect. Engagement may also be undertaken for political purposes, in order to persuade armed groups to negotiate a peaceful resolution of the conflict. Both humanitarian and political engagement can be done directly or indirectly, through third parties, depending on the circumstances and the needs and possibilities of the particular situation.

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<sup>30</sup> Report of the UN Secretary-General on children and armed conflict, UN Doc. A/59/695-S/2005/72, 9 February 2005, para. 77, <http://www.un.org/documents/repesc.htm>.



### 1.3 Engagement to promote compliance with humanitarian norms

The international NGO Geneva Call engages armed groups (non-state actors, NSAs)<sup>31</sup> in a process of dialogue to obtain a sustainable commitment to an international ban on the use of anti-personnel mines (landmines) as well as broader respect for humanitarian norms. Geneva Call was established on the premise that NSAs often do not feel bound by international norms and standards negotiated and adopted by states against which they are fighting. Thus the inclusion of NSAs in a process involving both dialogue and a formal mechanism to pledge commitment to end the use of landmines was seen as a necessary step for “universalizing” the ban on anti-personnel mines, since the Ottawa Treaty, which prohibits the use of such mines, is open to ratification by states but not by non-state armed groups.<sup>32</sup>

The commitment by NSAs is formalized through signing a Deed of Commitment, a unique process based on an inclusive rather than exclusive or repressive approach towards these actors.<sup>33</sup> Geneva Call’s engagement involves sustained dialogue with the NSAs to persuade them to sign the Deed of Commitment, and continues after signature through supporting its implementation, monitoring compliance and ensuring accountability.<sup>34</sup> The organization also provides support in the form of direct training and workshops, as well as by acting as a bridge to mine clearance and stockpile destruction agencies, especially where the NSAs lack the resources and know-how to implement their commitment.<sup>35</sup>

The International Committee of the Red Cross (ICRC), too, engages directly with armed groups to promote their observance of IHL in the course of their operations. One of the ICRC’s core activities is to work to ensure that government armed forces receive systematic training in IHL, human rights law and humanitarian principles.<sup>36</sup> For many years it has been prepared to offer such training and advice on IHL also to armed groups, on the basis of its pragmatic view that humanitarian principles should be made known to all parties to a conflict.<sup>37</sup> It engages directly with armed groups by disseminating information on its mandate and on IHL. It conducts training workshops with members of these groups to provide a framework for theoretical and practical approaches to the application of the Geneva Conventions in situations of armed conflict relevant to the groups. In 2004, for example, it provided such training to armed groups in the Democratic Republic of the Congo (DRC),

<sup>31</sup> Geneva Call uses the term non-state actor to refer to any armed actor operating outside state control that uses force to achieve its political/quasi-political objectives. Such actors include armed groups, rebel groups, liberation movements and de facto governments. See <http://www.genevacall.org>.

<sup>32</sup> Correspondence with Pascal Bongard, Geneva Call, 13 February 2006.

<sup>33</sup> Elisabeth Reusse-Decrey, “The struggle against landmines: an opening for peace talks in Colombia”, in Robert Ricigliano (ed.), *Choosing to Engage: Armed groups and peace processes*, Conciliation Resources, Accord Series 16, 2005, <http://www.c-r.org/accord/engage/accord16/index.shtml>.

<sup>34</sup> Interview with Pascal Bongard, Geneva Call, 1 March 2006.

<sup>35</sup> Correspondence with Pascal Bongard, Geneva Call, op. cit.

<sup>36</sup> International Committee of the Red Cross (ICRC), <http://www.icrc.org> (ICRC activities, promoting IHL).

<sup>37</sup> International Council on Human Rights Policy, *Ends and Means: Human rights approaches to armed groups*, 2000, p.50, <http://www.ichrp.org>.



Sudan (to the Sudan People's Liberation Movement/Army (SPLM/A) and in Darfur), the Philippines (New People's Army (NPA) and Moro Islamic Liberation Front (MILF)), and Colombia. In Uganda, however, it was unable to carry out such activities with the Lord's Resistance Army (LRA) because of lack of contact.<sup>38</sup>

One of the ICRC's key roles in armed conflict is to visit and ensure protection for detainees held in connection with armed conflict; in this regard also it engages with armed groups as well as with government forces. In 2004, for example, in Sudan it regularly visited government soldiers held by the SPLM/A and in Darfur visited detainees held by opposition groups; in Nepal it facilitated the release of over 70 people captured by the Communist Party of Nepal (Maoist) (CPN(M)) in the course of their attacks and visited other detainees who continued to be held by them. It also intervenes directly with armed groups, where possible, to bring an end to breaches of IHL.<sup>39</sup> In Sri Lanka in 2004, for example, where there continued to be killings in the context of inter-factional fighting within the Liberation Tigers of Tamil Eelam (LTTE), as well as continuing reports of recruitment of minors, the ICRC collected information about IHL violations and presented its findings to the leadership concerned, urging it to ensure that such practices were stopped.<sup>40</sup>

#### **1.4 Engagement to secure humanitarian access**

Humanitarian action comprises two complementary dimensions of assistance and protection. The objective of assistance is to provide goods and services to meet core physical and other socio-economic needs. The humanitarian agency delivering the assistance therefore needs to ensure that a government or armed group in control of the territory permits, or at least does not obstruct, the provision of that assistance. Protection is focused on ensuring respect for the rights of individuals in accordance with international law (international human rights law, IHL, and refugee law) and ensuring that those rights are respected by the government, armed group, or others in a position to exert control or influence over those individuals.<sup>41</sup>

The objectives of engagement by humanitarian agencies with armed groups are to provide life-saving assistance and protection to vulnerable populations living in conflict zones so as to mitigate the consequences of armed conflict and prevent suffering, as well as to promote respect by the armed group for humanitarian and human rights norms. Humanitarian negotiations do not in any way confer legitimacy or recognition on armed groups, nor do they mean that humanitarian negotiators support the views of the armed groups with which they engage.<sup>42</sup>

<sup>38</sup> ICRC Annual Report 2004, [http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/section\\_annual\\_report\\_2004](http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/section_annual_report_2004).

<sup>39</sup> ICRC Annual Report 2004, op. cit.

<sup>40</sup> ICRC Annual Report 2004, op. cit.

<sup>41</sup> For a more detailed discussion of these two complementary areas of humanitarian action, see OCHA Manual, op. cit., Section 5.2.

<sup>42</sup> David Petrusek, "Vive la difference? Humanitarian and political approaches to engaging armed groups", in Robert Ricigliano (ed.), *Choosing to Engage*, op. cit.



In order to achieve their objectives, humanitarian organizations (including UN agencies, the ICRC, and NGOs) must negotiate access to civilians as well as the security of aid staff in areas under the control of armed groups or where such groups are active. The process of engagement can be used at the same time as an opportunity to promote improved knowledge of and respect for humanitarian norms (for example by promoting respect for the civilian status of civilians within the conflict zone) and for international law.<sup>43</sup>

Over the years, UN agencies, particularly UNICEF, the Office of the UN High Commissioner for Refugees (UNHCR) and the Office for the Coordination of Humanitarian Affairs (OCHA), usually through their field staff, have undertaken ad hoc negotiations with parties in conflict, sometimes directly with local commanders, for specific humanitarian purposes. UNICEF has developed the concept of "days of tranquillity" into operational arrangements for humanitarian ceasefires to allow for activities such as immunization and feeding of children in zones of conflict. Similarly, UNHCR and OCHA have conducted negotiations to secure access and protection for vulnerable and displaced populations.<sup>44</sup>

Operation Lifeline Sudan (OLS), established in April 1989 in Southern Sudan, provides an example of how humanitarian engagement can work successfully in practice. OLS was a sustained program of humanitarian aid working on both sides of a conflict, and was the first time that a government had given UNICEF permission to provide humanitarian relief to populations under the control of an armed opposition group. In early 1989, after years of civil conflict and a disastrous drought the previous year when 250,000 people died and almost three million became displaced, the UN Secretary-General asked UNICEF to meet with the warring parties.<sup>45</sup> The Sudanese government, the Sudan People's Liberation Movement/Army (SPLM/A) and UNICEF entered into a tripartite agreement which defined a set of ground rules for the operations of UNICEF/OLS in areas controlled by the SPLM/A.<sup>46</sup> The agreement sought "to define the minimum acceptable standards of conduct for the activities of OLS agencies and Sudan Relief and Rehabilitation Association (SRRA)", its official counterpart.<sup>47</sup> The agreement made reference to and expressed support for the Geneva Conventions of 1949 and the Additional Protocols of 1977, as well as the Convention on the Rights of the Child. It further stated that the fundamental

<sup>43</sup> OCHA Manual, op. cit., Section 2.2.

<sup>44</sup> Report of the UN Secretary-General on children and armed conflict, A/58/546-S/2003/1053, 10 November 2003, para. 73, <http://www.un.org/documents/repesc.htm>.

<sup>45</sup> UNICEF, "Children as Zones of Peace", in *State of the World's Children*, 1996, <http://www.unicef.org/sowc96/contents.htm>. For a more detailed account of OLS, see Iain Levine, *Promoting Humanitarian Principles: the Southern Sudan experience*, Overseas Development Institute (ODI), Relief and Rehabilitation Network (now Humanitarian Practice Network) Paper 21, 1997, and Mark Bradbury, Nicholas Leader, and Kate Mackintosh, *The "Agreement on Ground Rules" in South Sudan*, Humanitarian Policy Group Report 4, 2000, both available at <http://www.odihpn.org/publist.asp> (free registration required).

<sup>46</sup> SPLM/OLS Agreement on Ground Rules, Appendix 1 to Iain Levine, op. cit., or Appendix 2 to Mark Bradbury and others, op. cit.

<sup>47</sup> SPLM/OLS Agreement on Ground Rules, op. cit., Preamble.



objective of OLS and SRRA was the provision of humanitarian assistance to civilians in need.<sup>48</sup>

Not only was OLS effective in delivering food, medical and other assistance to the population, it also helped to bring about other changes. It brought about a reduction in the fighting, at least along the corridors of tranquillity, and allowed people to move about the countryside. In 1995, the Sudan People's Liberation Army (SPLA) became the first combatant group in dispute with a recognized government to commit itself to abide by the provisions of the Convention on the Rights of the Child.<sup>49</sup>

In 1991 the UN General Assembly recognized the need for UN operational organizations to be able to enter into negotiations with all parties to a conflict to facilitate access for the provision of assistance.<sup>50</sup> The increased need for humanitarian agencies to negotiate with armed groups has been reflected in successive reports since 1999 by the UN Secretary-General on the protection of civilians in armed conflict. These reports have highlighted the importance of negotiations with parties to a conflict to ensure access to, and protection of, vulnerable groups.<sup>51</sup> More recently, following its adoption of resolutions in 1999 and 2000 on the protection of civilians in armed conflict,<sup>52</sup> the UN Security Council has recognized this, in 2002 adopting an *Aide Mémoire* to facilitate the Security Council's consideration of the question of the protection of civilians in armed conflict. The *Aide Mémoire* indicates that during the Security Council's deliberation of UN peacekeeping mandates it will consider, as a means of gaining access to vulnerable populations, engagement in sustained dialogue with all parties to the armed conflict.<sup>53</sup>

The UN Secretary-General has drawn attention both to the importance of such humanitarian negotiations and to the potential adverse impact if states try to prevent humanitarian agencies from engaging with armed groups:

“Violent attacks on civilians and denial of humanitarian access by non-State armed groups are common characteristics of today's armed conflicts. Promoting respect for international humanitarian law and human rights norms and providing humanitarian assistance to populations in areas under the control of armed groups require dialogue with those groups. The designation of certain non-State armed groups as terrorist organizations has had an adverse impact on opportunities for humanitarian negotiations. The prohibition on dialogue with armed groups in Colombia, for example, has

<sup>48</sup> SPLM/OLS Agreement on Ground Rules, op. cit., Preamble and Section A, para.1.

<sup>49</sup> UNICEF, op. cit.

<sup>50</sup> UN General Assembly Resolution 46/182, Strengthening of the coordination of humanitarian emergency assistance of the UN, para. 35(d), <http://www.un.org/documents/resga.htm>.

<sup>51</sup> Reports of the Secretary-General on the protection of civilians in armed conflict, UN Docs S/1999/95; S/2001/331; S/2002/1300; S/2004/431; and S/2005/740, <http://www.un.org/documents/repsc.htm>.

<sup>52</sup> UN Security Council Resolutions 1265 (1999) and 1296 (2000), <http://www.un.org/documents/scres.htm>.

<sup>53</sup> UN Security Council, Statement by the President of the Security Council, UN Doc. S/PRST/2002/6, 15 March 2002, <http://www.un.org/Docs/sc/statements/2002/prst2002.htm>.



resulted in severe restrictions on access to populations in need. A coherent approach to engagement with non-State armed groups by the international/humanitarian community is crucial in order to avoid manipulation by the armed group concerned, as is recognition of the neutral and impartial nature of United Nations humanitarian operations. Political pressure and bilateral diplomacy is vital to supporting dialogue between humanitarian agencies and non-State actors over issues of protection and access. ...<sup>54</sup>

The 2001 report of the UN Secretary-General on the protection of civilians in armed conflict identified the need for a structured, consistent approach to humanitarian negotiations with armed groups. In that report the Secretary-General stated that he had requested the Inter-Agency Standing Committee (IASC) to "develop a manual for access negotiations and strategies, including benchmarks for the engagement and disengagement of aid agencies, demands of conditionality, clearance procedures, needs assessments, and other principles outlined in the present report".<sup>55</sup> That manual was issued by the UN Office for the Coordination of Humanitarian Affairs (OCHA) in January 2006 as guidance for humanitarian workers negotiating with armed groups.<sup>56</sup>

The International Committee of the Red Cross (ICRC) has an exclusively humanitarian mission to protect the lives and dignity of victims of armed conflict and to provide them with assistance. It also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles.<sup>57</sup> In Darfur in 2004, based on its strict neutrality and solid contacts established with all parties to the conflict, the ICRC was able to work throughout most of Darfur, providing relief on the basis of most need, and it took the lead in restoring contact between family members separated by the conflict. It appealed frequently to the authorities and all armed groups to protect civilians and ensure aid could reach them, in accordance with IHL.<sup>58</sup>

The Norwegian Refugee Council has involved members of armed groups in training workshops on the protection of internally displaced persons (IDPs), where the Guiding Principles on Internal Displacement<sup>59</sup> have been used as a framework for discussion, thus allowing the specific situation of particular groups of IDPs to be discussed in an impartial way.<sup>60</sup>

<sup>54</sup> Report of the Secretary-General to the Security Council on the protection of civilians in armed conflict, UN Doc. S/2004/431, para. 41, <http://www.un.org/documents/repasc.htm>.

<sup>55</sup> Report of the Secretary-General on the protection of civilians in armed conflict, UN Doc. S/2001/331, para. 26, <http://www.un.org/documents/repasc.htm>.

<sup>56</sup> OCHA Manual, op. cit. Much of this section is drawn from that Manual.

<sup>57</sup> ICRC mission, <http://www.icrc.org>.

<sup>58</sup> ICRC Annual Report 2004, op. cit.

<sup>59</sup> The 1998 Guiding Principles on Internal Displacement restate and compile human rights and humanitarian law relevant to internally displaced persons, UN Doc. E/CN.4/1998/53/Add.2, <http://www.ohchr.org/english/issues/idp/standards.htm>.

<sup>60</sup> Greta Zeender, "Getting non-state actors to protect IDPs", *Forced Migration Review* 24, IDP Supplement, October 2005, <http://www.fmreview.org>.



Negotiations with armed groups to enable humanitarian access must always be based on a framework of impartial application of core humanitarian principles, and the humanitarian agency must communicate these principles to the armed group concerned.<sup>61</sup> Humanitarian workers must also be aware of some of the challenges that humanitarian engagement might pose. Agencies undertaking humanitarian engagement need to be very clear about their own principles before they begin such discussions. They also need to be clear about the limits of their mandates, and the limits of their legitimacy, if they begin to dialogue about matters of broader policy (for instance, steps towards peace or fundamental demands of the armed group).<sup>62</sup> There have also been instances where some armed groups have played humanitarian organizations off against each other or engaged in negotiations for the purpose of attempting to enhance their legitimacy. Another concern can arise where there is a likelihood that negotiations could have a negative impact on humanitarian conditions or could jeopardize the security of the beneficiaries.<sup>63</sup>

Some humanitarian NGOs combine humanitarian engagement with elements of the denunciation approach described in section 1.2 above. For example, Médecins Sans Frontières (MSF) provides emergency medical assistance to populations in danger, including in conflict zones. In carrying out humanitarian assistance, MSF seeks also to raise awareness of crisis situations, and acts as a witness. MSF regards an important part of its work as being to address any violations of basic human rights which its field teams encounter which are perpetrated or sustained by political actors. It does so by confronting the responsible actors themselves, by putting pressure on them through mobilization of the international community and by issuing information publicly.<sup>64</sup> Action Contre la Faim (ACF) / Action Against Hunger (AAH) brings assistance to civilian populations during crises by emergency intervention, and afterwards through rehabilitation and sustainable development programs. In carrying out this work it maintains a strict political and religious neutrality. Nevertheless, ACP/AAH can denounce human rights violations it witnesses as well as obstacles put in the way of its humanitarian action.<sup>65</sup>

Sometimes direct contact with an armed group may be impossible because of difficulties in reaching a spokesperson or because of the way the group operates. There may also be legal limitations on direct contact with armed groups where the government refuses to allow an organization to negotiate or enter into dialogue with such a group.

<sup>61</sup> OCHA Manual, op. cit., Section 3.2.

<sup>62</sup> International Council on Human Rights Policy, *Ends and Means*, op. cit., p.47.

<sup>63</sup> See, for example, Mark Cutts, *The Humanitarian Operation in Bosnia, 1992-95: Dilemmas of negotiating humanitarian access*, New Issues in Refugee Research Working Paper No. 8, UNHCR Geneva Policy Research Unit, 1999, <http://www.jha.ac/articles/u008.pdf>.

<sup>64</sup> Médecins Sans Frontières (MSF), <http://www.msf.org>.

<sup>65</sup> Action Contre le Faim (ACF), <http://www.actioncontrelafaim.org>; Action Against Hunger (AAH), <http://www.aah-usa.org/who/charter.html>, <http://www.aahuk.org/info.htm>.



## 1.5 Political engagement – peace processes and conflict resolution

Political engagement is the term used to describe efforts to persuade armed groups to negotiate a ceasefire or peaceful resolution to an armed conflict, including facilitating their participation in peace processes

Governments of other states are often involved in mediating or facilitating peace talks between governments and armed groups in conflict zones. Representatives of the ministries of foreign affairs of several countries help negotiate memorandums of understanding and ceasefires and oversee these processes until the actual end of the armed conflicts. The last twenty years have seen NGOs and other unofficial groups and individuals play a wide variety of roles vis-à-vis armed groups and peacemaking.<sup>66</sup>

Since the early 1990s Norway has facilitated a number of peace and reconciliation processes and offers long-term involvement, including after a peace agreement has been reached. Its peace efforts are contingent on all the involved parties showing a genuine will to negotiate and on their acceptance of Norway as a facilitator. In Sri Lanka and the Philippines Norway is the official facilitator of the peace negotiations. In Sudan Norway is part of a troika supporting the peace process together with the USA and the United Kingdom (UK). Norway is also involved in several other peace processes in various ways. Norway provides humanitarian assistance to areas affected by armed conflict, but it takes the position that, in order to ensure the efficient use of resources, purely humanitarian assistance must be complemented by efforts to promote political solutions to the conflict. Peace and reconciliation efforts are therefore an integral part of Norway's humanitarian efforts.<sup>67</sup>

Norway's present involvement with the peace process in Sri Lanka began in early 1997. In February 2000 Norway agreed to a request from the Sri Lankan government and the leadership of the Liberation Tigers of Tamil Eelam (LTTE) to assist the process as a third party. A ceasefire agreement entered into force in February 2002. Norway heads the international observer mission that monitors the ceasefire agreement, the Sri Lanka Monitoring Mission (SLMM), which consists of observers from all five Nordic countries of Norway, Finland, Sweden, Denmark and Iceland.<sup>68</sup>

In August 2005, following talks during preceding months facilitated by former Finnish President Martti Ahtisaari's Crisis Management Initiative,<sup>69</sup> with support from the European Commission and the Netherlands, Finnish, Norwegian and Swiss

<sup>66</sup> See Julian Thomas Hottinger, "The Relationship between Track One and Track Two Diplomacy", in Robert Ricigliano (ed.), *Choosing to Engage*, op. cit.

<sup>67</sup> Norway Ministry of Foreign Affairs, <http://odin.dep.no/ud/english/bn.html>.

<sup>68</sup> Norway Ministry of Foreign Affairs, op. cit. and <http://www.norway.lk>; Sri Lanka Monitoring Mission (SLMM), <http://www.slmm.lk>.

<sup>69</sup> The Crisis Management Initiative (CMI) is an independent, non-governmental organization, founded in 2000, whose aim is to enhance the crisis prevention, active crisis management and post-conflict rehabilitation capacity of the international community by seeking practical and implementable solutions. It is a registered association in Finland, with its functions focusing in the international community. The founding member and current Chair is former Finnish President Martti Ahtisaari. <http://www.cmi.fi>.



governments, a memorandum of understanding between the government of Indonesia and the Free Aceh Movement (GAM) was signed in Helsinki.<sup>70</sup> It was followed in September by the deployment of an unarmed civilian mission, the Aceh Monitoring Mission, comprising 250 monitors from the EU and five ASEAN (Association of Southeast Asian Nations) states, to oversee its implementation.<sup>71</sup>

The Centre for Humanitarian Dialogue is an independent and impartial organization active in promoting and facilitating dialogue among belligerents in a number of conflict resolution projects. For example, it helped facilitate the negotiation and implementation of an internationally-monitored ceasefire agreement in Darfur in 2004. In 2005 it met with representatives of the government of the Republic of the Philippines, of the Moro National Liberation Front (MNLF) and members of civil society to address the implementation of outstanding elements of the 1996 Peace Agreement. Since February 2004 the Centre has provided support to the Norwegian government in its role as a third party facilitator to peace talks between the government of the Republic of the Philippines and the National Democratic Front (NDF) which negotiates on behalf of the Communist Party of the Philippines (CPP) and the New People's Army (NPA).<sup>72</sup>

Conciliation Resources works in partnership with local and international civil society organizations and governments to prevent violence, promote justice and transform conflict into opportunities for development. It carries out research and lobbying activities and organizes workshops and seminars aimed at promoting practical approaches to conflict resolution. For instance, in 2005, it lobbied the US Congress to engage with armed groups, to promote political engagement and advocated against the proscription of these groups.<sup>73</sup> In Sierra Leone, Conciliation Resources works at the community level undertaking peace monitoring and youth empowerment workshops. It engages with ex-combatants as one of the key groups whose successful development is critical to peacebuilding in the country.<sup>74</sup>

## 1.6 Choosing not to engage

In some circumstances, organizations or agencies will choose not to engage with a group or will cease any form of engagement if they judge it is no longer safe to do so, if to continue would be contrary to their mandate, or if there is a generally accepted policy among humanitarian agencies and NGOs not to engage with a particular group. For instance, in Sierra Leone, most humanitarian and aid agencies refused to work in areas controlled by the Revolutionary United Front (RUF) during 2000-2001,

<sup>70</sup> Ministry for Foreign Affairs of Finland, <http://formin.finland.fi/english>.

<sup>71</sup> Aceh Monitoring Mission, <http://www.aceh-mm.org>.

<sup>72</sup> The Centre for Humanitarian Dialogue facilitates dialogue between parties to reach agreements that reduce the humanitarian consequences of the underlying conflict, increase humanitarian security, and ultimately contribute to the conflict's peaceful resolution. Its activities include direct mediation and supporting the efforts of other third party facilitators in existing peace processes. It also conducts research and analysis bringing forward practical policy recommendations to improve international efforts to secure and sustain peace. <http://www.hdcentre.org>.

<sup>73</sup> Presentation by Conciliation Resources, Washington DC, 2005.

<sup>74</sup> Correspondence with Celia McKeon, Conciliation Resources, 8 March 2006.



in line with a UN-led policy of isolation. Only Médecins Sans Frontières (MSF) and Action Contre la Faim (ACF) continued to engage, in the belief that the isolation could not “correct” the misconduct of the RUF, nor could it help protect the population.<sup>75</sup>

The question of whether or not to engage can pose a dilemma for a humanitarian organization, whose decision will depend on a range of factors including the particular circumstances, the armed group concerned, and organization's own specific aims. For instance, when it became apparent to Geneva Call (see section 1.3) that the ELN in Colombia was not willing to discuss the possibility of renouncing the use of landmines since they regarded the use of landmines as essential in their political struggle and showed no sign of bending, Geneva Call considered whether they should cease to engage and halt the dialogue until the ELN assumed a more reasonable position. However, Geneva Call eventually decided that to cease to engage would be to abandon the humanitarian cause of the people in the region and that, if even a slight possibility existed that continued dialogue might build confidence and eventually yield a positive outcome for potential victims, then this must be pursued.<sup>76</sup>

## 2. Approaching armed groups on child soldiers

This section provides an overview of the types of engagement by humanitarian agencies and international NGOs to address children's involvement in armed groups. Few organizations, whether international, regional or local, work exclusively on the problem of child soldiers. In many cases, their work on child soldiers and armed groups has developed as a result of their engagement with those groups on other humanitarian or human rights concerns.

Agencies and NGOs often use a combination of approaches when dealing with the issue of child recruitment and use. UNICEF employs differing levels and forms of engagement according to the situation, the need to reach and protect a particular population and the degree of contact already established with an armed group or a government. Some approaches may be complementary, such as humanitarian and political engagement, while some are more difficult to combine and may impinge upon the work of those working with armed groups or on behalf of affected populations.<sup>77</sup>

<sup>75</sup> See Max Glaser, *Humanitarian Engagement with Non-state Armed Actors: The parameters of negotiated access*, London: Overseas Development Institute (ODI), Humanitarian Practice Network Paper 51, 2005, p.17, <http://www.odihpn.org/publist.asp> (free registration required).

<sup>76</sup> Elisabeth Reusse-Decrey, “The struggle against landmines: an opening for peace talks in Colombia”, op. cit.

<sup>77</sup> It should be noted that the use of child soldiers is also military in nature and it is important to consider the military perspective of child recruitment in armed groups. Search for Common Ground (SFCG), in cooperation with Senator Roméo Dallaire, USAID's Displaced Children and Orphans Fund, the University of Winnipeg, and UNICEF Canada are organizing a workshop entitled: *Expanding the Dialogue: preventing the use of children as soldiers*, at the University of Winnipeg, Canada, on 28-30 August 2006, with a special focus on the military considerations of child recruitment. <http://www.childsoldiersinitiative.org/workshop.html>.



## 2.1 The legal framework – international law on the recruitment and use of child soldiers

The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (Optional Protocol) is the main international legal instrument on child soldiers used as a framework for monitoring and denouncing these practices by both state forces and armed groups.

Several international and national NGOs have used the Optional Protocol as an effective means of influencing governments on the issue of child soldiers. For example, following a long campaign by the Paraguay Coalition to Stop the Use of Child Soldiers and other local NGOs, the Paraguayan government recently announced that it would raise the age of voluntary recruitment into its armed forces to 18 years of age.<sup>78</sup>

With respect to armed groups, Article 4 of the Optional Protocol states:

- “1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years;
2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices;
3. The application of the present article shall not affect the legal status of any party to an armed conflict.”

In drafting the Optional Protocol, although there was discussion of having the article on non-state armed groups formulated in terms of "all parties to the conflict", as in IHL, this approach was not adopted. Instead the provision was drafted in terms of a classical human rights legal framework, with a moral obligation on the armed groups and placing a legal obligation on states parties.<sup>79</sup> States parties to the Optional Protocol have a responsibility to penalize such groups for any breaches. In other words, the conduct of armed groups is to be regulated by domestic law.

With regard to monitoring implementation of Article 4 of the Optional Protocol, the guidelines to states parties regarding their reports to be submitted to the Committee on the Rights of the Child<sup>80</sup> specify that states are expected to provide the following information:

<sup>78</sup> *Multilateral Treaties Deposited with the Secretary General – Treaty I-IV-21*, UN Treaty Collection, downloaded from Internet 26 April 2006, <http://untreaty.un.org> (subscription required).

<sup>79</sup> Rachel Brett, *Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict (OP/CAC)*, International Council on Human Rights Policy and International Commission of Jurists Workshop, International Human Rights Standard-Setting Processes, Geneva, 13-14 February 2005, [http://www.ichrp.org/paper\\_files/120\\_w\\_08.doc](http://www.ichrp.org/paper_files/120_w_08.doc).

<sup>80</sup> Each state party to the Optional Protocol is required to report to the Committee on the Rights of the Child, the treaty monitoring body, on its implementation of the provisions of the Protocol.



- The armed groups operating on/from the territory of the state or with sanctuary on that territory;
- Update on the status of the negotiations of the state party with armed groups;
- Disaggregated data on children who have been recruited and used in hostilities by the armed groups, and on those who have been arrested by the state concerned;
- Any written or oral commitment made by armed groups which aim at not recruiting and using children below the age of 18 years in hostilities;
- Measures adopted by the state aimed at raising awareness among armed groups and within the communities of the need to prevent recruitment of children below the age of 18 years and of their legal duties with regard to the minimum age set up in the Optional Protocol for recruitment and use in hostilities;
- The adoption of legal measures which aim at prohibiting and criminalizing the recruitment and use in hostilities of children under the age of 18 years by such armed groups and the judicial decisions applying to this issue;
- The programs to prevent notably children who are at highest risk of recruitment or use by such armed groups, such as refugee and internally displaced children, street children, orphans (for example, birth registration campaigns) from being recruited or used by armed groups.<sup>81</sup>

States parties that have to date produced reports to the Committee on the Rights of the Child on their implementation of the Optional Protocol have no armed groups operating on their territories and consequently have not reported on their implementation of Article 4.

## 2.2 Initiatives by the UN and member states

### **UN Security Council**

Since 1999 the UN Security Council has held an annual debate on children affected by armed conflict. It has also adopted resolutions on an almost yearly basis that identify children and armed conflict as an issue affecting international peace and security, under Chapter VII of the UN Charter. So far, six resolutions have been adopted which are dedicated specifically to children and armed conflict.<sup>82</sup>

In 2001 the UN Security Council requested that the Secretary-General draw up a list of parties to armed conflict that recruit or use children in violation of their international obligations in situations on the Council's agenda.<sup>83</sup> The Secretary-General's November 2002 report to the Security Council listed 23 such parties in five countries (Afghanistan, Burundi, Democratic Republic of the Congo, Liberia and

<sup>81</sup> Guidelines regarding initial reports of States Parties to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, UN Doc. CRC/OP/AC/1, 12 October 2001, [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CRC.OP.AC.1.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CRC.OP.AC.1.En?Opendocument).

<sup>82</sup> UN Security Council Resolution 1261 (1999); Resolution 1314 (2000); Resolution 1379 (2001); Resolution 1460 (2003); Resolution 1539 (2004); Resolution 1612 (2005), <http://www.un.org/documents/scres.htm>.

<sup>83</sup> UN Security Council Resolution 1379 (2001), op. cit.



Somalia).<sup>84</sup> In the Secretary-General's October 2003 report the list was expanded to include others in situations that were not on the Council's agenda. Forty-four parties were named in 15 countries: Afghanistan, Burundi, Côte d'Ivoire, Democratic Republic of the Congo, Liberia, Somalia, Chechnya, Colombia, Myanmar, Nepal, Northern Ireland, Philippines, Sri Lanka, Sudan, and Uganda. Armed groups were named in all these conflicts.<sup>85</sup>

In April 2004 the UN Security Council requested the Secretary-General to devise an action plan for a systematic and comprehensive monitoring and reporting mechanism (MRM).<sup>86</sup> The parties listed in the Secretary-General's 2003 report were called upon to prepare within three months concrete time-bound plans to halt recruitment and use of children. The Security Council stated that it would consider imposing targeted and graduated measures against parties that refused to enter into dialogue, failed to develop an action plan or did not meet the commitments included in their action plan. Such measures could be taken in the context of country specific resolutions and could include a ban on the export or supply of small arms and light weapons, other military equipment and military assistance.<sup>87</sup>

UN Security Council Resolution 1612 of July 2005 requested the immediate implementation of the MRM, setting the stage for the next step: Security Council action against parties that fail to comply with their obligations. The MRM is to be implemented in two phases: (a) five countries on the Security Council agenda (Burundi, Côte d'Ivoire, Democratic Republic of the Congo, Somalia, and Sudan), plus two others, possibly Nepal and Sri Lanka;<sup>88</sup> and (b) other countries of concern (Colombia, Myanmar, Philippines, Uganda). As set out in the Secretary-General's 2005 report, monitoring efforts will focus on the following six grave violations against children: killing and maiming; recruiting or using child soldiers; attacks against schools and hospitals; rape or other grave sexual violence; abduction; and denial of humanitarian access.

The MRM is specifically designed for monitoring violations of children's rights that occur in the context of armed conflict. But, as the preamble of Resolution 1612 makes clear, the fact that the MRM is implemented in a state does not mean that an armed conflict exists on its territory and that, as a consequence, international humanitarian law is applicable.<sup>89</sup> On this point, the Secretary-General's 2005 report states:

<sup>84</sup> Report of the Secretary-General on Children and armed conflict, UN Doc. S/2002/1299, 26 November 2002, <http://www.un.org/documents/repesc.htm>.

<sup>85</sup> Report of the Secretary-General on Children and armed conflict, UN Doc. A/58/546-S/2003/1053, 10 November 2003, <http://www.un.org/documents/repesc.htm>.

<sup>86</sup> UN Security Council Resolution 1539 (2004), op. cit.

<sup>87</sup> See also Section 1.1 above on arms embargoes by the UN Security Council.

<sup>88</sup> Paragraph 3 of Resolution 1612 (2005) mentions the implementation of the MRM in the five countries on the Security Council's agenda. The Office of the Special Representative of the Secretary-General for Children and Armed Conflict has stated that Nepal and Sri Lanka may also form part of the first phase of implementation. See Center for Defense Information, "UN enters 'era of application' in its campaign against child soldiers", 12 October 2005, <http://www.cdi.org/friendlyversion/printversion.cfm?documentID=3175>.

<sup>89</sup> UN Security Council Resolution 1612 (2005), op. cit.



“...it should be emphasized that there is no universally applicable definition of “armed conflict” in general, and in particular that the mandate of my Special Representative does not contain a definition of the term. In the performance of his mandate, my Special Representative has adopted a pragmatic and cooperative approach to this issue, focusing on ensuring broad and effective protection for children exposed to situations of concern, rather than on the definition of the term “armed conflict”. The mention or discussion of any particular State or situation should not be construed as a legal determination that there exists a situation of armed conflict within the meaning of the Geneva Conventions and their Additional Protocols.”<sup>90</sup>

In the context of peacekeeping operations, since 2001 specialist child protection advisers have been deployed as a component of complex peacekeeping missions established by the UN with the aim of promoting the rule of law and sustainable peacebuilding.<sup>91</sup> The establishment of these posts has entailed close collaboration between the Office of the Special Representative of the Secretary General (see below), the Department of Peacekeeping Operations (DPKO), the Office of the UN High Commissioner for Human Rights (OHCHR) and UNICEF. The first child protection adviser was deployed in 2001 to the peacekeeping mission in Sierra Leone. Since then advisers have been included in peacekeeping operations in the Democratic Republic of the Congo (DRC), Angola, Liberia, Burundi, Côte d’Ivoire, Nepal, Sudan and Haiti.<sup>92</sup>

### ***The Special Representative of the Secretary-General for Children and Armed Conflict***

The Office of the Special Representative of the Secretary-General for Children and Armed Conflict was established by the UN General Assembly in 1996.<sup>93</sup> The Special Representative’s September 2005 report to the General Assembly enumerated what had been achieved since the office was established, as well as ongoing efforts, including advocating the incorporation of the concerns of children throughout peacemaking processes and carrying out numerous field missions.<sup>94</sup> The best known component of these missions has been the gathering of commitments from parties to conflicts that violate the rights of children and, more specifically, that are known recruiters of child soldiers.<sup>95</sup>

<sup>90</sup> Report of the Secretary-General on Children and armed conflict, UN Doc. A/59/695-S/2005/72, 9 February 2005, <http://www.un.org/documents/repsec.htm>.

<sup>91</sup> For information about the development of UN peacekeeping operations, see UN Peacekeeping website, <http://www.un.org/Depts/dpko/dpko/index.asp>.

<sup>92</sup> Report of the Special Representative of the Secretary-General for Children and Armed Conflict, 7 September 2005, UN Doc. A/60/335, paras 18-20, <http://www.un.org/ga/60/documentation/list.html>.

<sup>93</sup> UN General Assembly Resolution A/RES/51/77, 12 December 1996, <http://www.un.org/special-rep/children-armed-conflict/English/OurMandate.html>.

<sup>94</sup> Report of the Special Representative, 7 September 2005, op. cit.

<sup>95</sup> See website of the Special Representative, <http://www.un.org/special-rep/children-armed-conflict>.



“Obtaining commitments is one component of a broader agenda for country visits. Special country representatives of the Secretary-General or resident coordinators, as the heads of the United Nations field presence, are responsible for following up on commitments and other aspects of the agenda at the country-level. At the same time, it must be emphasized that the Office of the Special Representative has neither the capacity, the field presence nor the resources to undertake monitoring of commitments and standards on the ground, and that such activity is not within the mandate of the Special Representative.”<sup>96</sup>

The commitments gathered during the Special Representative’s field missions were negotiated on an ad hoc basis, were not in written form and covered a variety of issues affecting children including: allowing unhindered access for humanitarian relief and other purposes to populations in distress; observing humanitarian ceasefires for purposes of vaccination or supply of relief; and the prohibitions against targeting civilian populations, schools and hospitals, using landmines and recruiting children as soldiers.<sup>97</sup>

### **Judicial action**

The Special Court for Sierra Leone and the International Criminal Court have recently begun prosecutions against alleged child recruiters from armed groups.

The Special Court for Sierra Leone (SCSL) was set up jointly by the government of Sierra Leone and the UN. It is mandated to put on trial those who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996. These violations include conscription of children under 15.<sup>98</sup>

Five alleged leaders of the armed group Revolutionary United Front (RUF) were indicted separately by the Special Court for Sierra Leone in 2003. Of these, Foday Sankoh died of natural causes in custody in July 2003, and Sam Bockarie was killed in Liberia in May 2003.<sup>99</sup> The indictments against both of them were accordingly withdrawn in December that year. The trial of the other three, Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, began in July 2004 and is still continuing.<sup>100</sup>

The International Criminal Court (ICC) has taken action against alleged child recruiters in the Democratic Republic of the Congo (DRC) and Uganda. The ICC’s prosecutor announced the opening of investigations on Uganda in 2004, and in July 2005 the Court issued arrest warrants against the leader of the Lord’s Resistance

<sup>96</sup> Report of the Special Representative, 7 September 2005, op. cit., para. 33.

<sup>97</sup> Website of the Special Representative, op. cit.

<sup>98</sup> Special Court for Sierra Leone, <http://www.sc-sl.org/about.html>.

<sup>99</sup> Child Soldiers Coalition, Global Report 2004, <http://www.child-soldiers.org/resources/global-reports>.

<sup>100</sup> Special Court for Sierra Leone, the RUF trial, <http://www.sc-sl.org/RUF.html>, accessed 26 May 2006.



Army (LRA), Joseph Kony, and four other LRA leaders for crimes including abduction of children to serve as soldiers.<sup>101</sup>

In February 2006 the ICC issued an arrest warrant against Thomas Lubanga, leader of the Union of Congolese Patriots (UPC), an armed group in the Ituri region of north-eastern DRC. Lubanga was charged with the conscription and recruitment of child soldiers who were used to participate actively in the conflict. He was arrested and transferred to the ICC in the Hague in March, becoming the first person to be arrested and transferred to the ICC since the entry into force of the Rome Statute in July 2002. The investigation continues and it is expected that it will subsequently lead to other warrants being sought against members of other armed groups active in the Ituri region.<sup>102</sup>

### 2.3 NGO reporting on child soldiers

Amnesty International and Human Rights Watch, whose work is based on international human rights standards, regularly denounce the recruitment of child soldiers by armed groups in their reports and campaigns. Human Rights Watch has published special reports on Colombia and Sri Lanka, where armed groups are responsible for the majority of cases of child recruitment and use. It published a comprehensive report on Colombia dealing with the lives of children in military camps run by armed groups such as the *Fuerzas Armadas Revolucionarias de Colombia* (FARC) and the *Ejército de Liberación Nacional* (ELN), and denounced the continued practice of child recruitment and use by the Liberation Tigers of Tamil Eelam (LTTE) in Sri Lanka.<sup>103</sup> Amnesty International has long campaigned against child recruitment and use by armed groups, including through international letter writing campaigns aimed at specific and urgent cases of abuse, as well as reports on countries such as DRC and Burundi. In April 2005 it organized an *Act Now* campaign on child soldiers in Côte d'Ivoire, asking members of the public to pressure both the government and the *Forces Nouvelles*, an armed group, to "genuinely engage with the disarmament, demobilization, rehabilitation and reintegration of child soldiers".<sup>104</sup>

Humanitarian agencies and NGOs working in the field have also channelled information on recruitment of children by armed groups to human rights organizations that denounce these violations. These organizations have developed strategies to preserve the anonymity of those who provide the information, and to minimize the risks to the affected populations and the staff of the NGOs or agencies working in the

<sup>101</sup> International Criminal Court (ICC), <http://www.icc-cpi.int/cases.html> accessed 3 May 2006. The court issued sealed arrest warrants in July 2005; the warrants were unsealed and publicly announced in October. The other four LRA leaders where arrest warrants have been issued are Dominic Ongwen, Okot Odhiambo, Raska Lukwiya and Vincent Otti.

<sup>102</sup> ICC press release "Issuance of a Warrant of Arrest against Thomas Lubanga Dyilo", 17 March 2006, <http://www.icc-cpi.int/press/pressreleases/133.html>.

<sup>103</sup> Human Rights Watch, "You'll learn not to cry": *Child combatants in Colombia*, September 2003, <http://www.hrw.org/reports/2003/colombia0903>; *Living in Fear: Child Soldiers and the Tamil Tigers in Sri Lanka*, November 2004, <http://hrw.org/reports/2004/srilanka1104>.

<sup>104</sup> Amnesty International, *Côte d'Ivoire: Let the children live in peace*, 27 April 2005 (AFR 31/004/2005 - WA 08/05), <http://web.amnesty.org/pages/civ-270405-action-eng>.



field. For example, they take steps to ensure that information received from local NGOs on child recruitment is only used in such a way that any potential confrontation with the military commanders or local chiefs involved in these practices does not involve the local population.

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

The Coalition to Stop the Use of Child Soldiers (Child Soldiers Coalition) comprises eight leading international humanitarian and human rights NGOs.<sup>105</sup> Some of them denounce armed groups and petition actively for the prosecution of offenders; others are primarily concerned with the safe delivery of aid and other services to vulnerable populations under the control or influence of armed groups.<sup>106</sup> The Coalition also has regional representatives in Africa, Asia, Americas and Middle East and national networks in about 30 countries. It unites local, national and international organizations, as well as youth, experts and concerned individuals from every region of the world.

Initially created to lobby for the Optional Protocol, the Coalition has since developed a wide range of activities aimed at ending the use of children as soldiers worldwide. Every three years, it publishes the Child Soldiers Global Report, a unique resource documenting the military recruitment and use of children throughout the world.<sup>107</sup> It also submits regular briefings, including the most recent information available on these practices, to the Committee on the Rights of the Child, the UN Security Council, the European Union (EU) and other international bodies.

The international Coalition, along with its regional and national partners, has approached and lobbied numerous armed groups that recruit children. Direct talks have been held with groups active in the DRC, Lebanon, Myanmar, the Occupied Palestinian Territories, the Philippines and Sudan. Coalition member organizations have carried out projects including child rights training, research, media work and direct lobbying with armed groups (see section 2.4 below).

## **2.4 Humanitarian engagement**

### **UNICEF**

The main intergovernmental organization dealing regularly with armed groups on the question of child recruitment is UNICEF. Internal displacement, abduction, lack of access to humanitarian assistance, exposure to violence and child recruitment and use are common issues that the agency has to address as part of its child protection mandate. It therefore often addresses the issue of child recruitment in the context of other child protection concerns, although in some instances child recruitment

<sup>105</sup> Amnesty International, Defence for Children International, Human Rights Watch, Jesuit Refugee Service, Quaker UN Office Geneva, Save the Children Alliance, International Federation Terre des Hommes, and World Vision International.

<sup>106</sup> For a description of these different forms of approach, see sections 1.2 and 1.4 above.

<sup>107</sup> Child Soldiers Coalition, Global Report 2004, op. cit.



becomes a major element of its work, such as in Sri Lanka with regard to the recruitment practices of the Liberation Tigers of Tamil Eelam (LTTE).<sup>108</sup> In DRC from May to December 2001 UNICEF undertook a series of meetings with the political leadership of the *Rassemblement Congolais pour la Démocratie* in Goma (RCD-Goma), culminating in the written agreement of principles to demobilize and reintegrate child soldiers in October 2001 and a formal agreement and plan of action on 4 December 2001.<sup>109</sup>

Humanitarian engagement with armed groups is a necessary part of UNICEF's operational activities because of the need to obtain access to vulnerable populations and ensure the security of its staff. It has gained much practical experience of this over the years.<sup>110</sup> It was a major contributor to the inter-agency initiative to develop a more systematic and principled approach to humanitarian engagement with armed groups culminating in the publication in early 2006 of a manual and guidelines for humanitarian workers.<sup>111</sup>

UNICEF deals with armed groups using either direct or indirect engagement – that is, through third parties, such as community leaders, NGO partners, religious institutions, diasporas (communities abroad), or sometimes through governments which may have influence with the group concerned.<sup>112</sup> It also seeks to carry out all its field activities, including initiatives aimed at engaging armed groups, with the backing of the UN country team and coordinates its actions with other UN agencies present on the ground.<sup>113</sup> In line with the principles set out in the OCHA Manual, its negotiations with armed groups are framed in terms of international law and humanitarian norms, including humanitarian access and provision of relief and the safety of humanitarian workers;<sup>114</sup> imply no political recognition of the group concerned;<sup>115</sup> and include mechanisms for follow-up, implementation and enforcement, and resolution of disputes.<sup>116</sup>

### ***International Committee of the Red Cross (ICRC)***

The International Committee of the Red Cross (ICRC) engages directly with armed groups for humanitarian purposes. In terms of child protection, the ICRC's humanitarian concerns focus on children who are separated from their parents or are

<sup>108</sup> See, for example, case study in the OCHA Manual, op. cit, Section 6.6.

<sup>109</sup> Beth Verhey, *Going Home: Demobilising and reintegrating child soldiers in the Democratic Republic of Congo*, Save the Children, London, 2003, <http://www.reliefweb.int/library/documents/2003/save-drc-02oct.pdf>.

<sup>110</sup> For example, Operation Lifeline Sudan (OLS) since 1989 (see Section 1.4 above).

<sup>111</sup> OCHA Manual, op. cit, Chapter 3 and throughout. (As noted above, much of this working document is based on that Manual.)

<sup>112</sup> For a discussion of direct and indirect engagement, see OCHA Manual, op. cit, Section 4.3.1.

<sup>113</sup> OCHA Manual, op. cit, Section 4.2.2.

<sup>114</sup> OCHA Manual, op. cit, Chapter 3 and Sections 5.3 to 5.5.

<sup>115</sup> OCHA Manual, op. cit. Section 1.1 and throughout.

<sup>116</sup> OCHA Manual, op. cit. Sections 6.3 to 6.5.



unaccompanied; those who are held in detention; and child soldiers. Throughout the world, the ICRC facilitates the restoration of links between former child soldiers and their relatives by means of messages through the Red Cross network. It also works on family reunification.

In Sierra Leone, the ICRC has taken action with the national Red Cross Society and the International Federation of Red Cross and Red Crescent Societies in opening reintegration facilities for former child soldiers, many of whom were associated with armed groups. In Sri Lanka, the ICRC has made representations to the LTTE on behalf of families who have claimed that the LTTE had recruited their children. It made similar representations to armed groups operating in Colombia to urge them to refuse to recruit minors who volunteer to join up.<sup>117</sup>

In 1995 the International Red Cross and Red Crescent Movement adopted a Plan of Action on children affected by armed conflicts,<sup>118</sup> which promotes the principle of non-recruitment and non-participation in armed conflicts by children under 18 years of age. The same year, the Plan of Action was endorsed by the Council of Delegates in its Resolution 5.<sup>119</sup> While being a strong supporter of the Optional Protocol, the ICRC recognizes the difficulty of using the language of Article 4 for engaging armed opposition groups.<sup>120</sup> During the Optional Protocol negotiations dealing with the provision on armed groups, the ICRC was in favour of an international humanitarian law format rather than the classical human rights framework that was eventually chosen (see section 2.1 above). It argued that referring to the obligations of “parties to a conflict” would have been a more compelling basis for binding armed opposition groups to the Optional Protocol.<sup>121</sup>

### **Save the Children**

In 2004, the Save the Children Alliance published a set of guidelines for policy-makers and field-based program staff on working with children associated with fighting forces, setting out a policy framework and some recommendations based on global lessons learned.<sup>122</sup> The guidelines state:

<sup>117</sup> ICRC, “The ICRC’s Conception of Protecting Children in War”, *Children in War Information Kit*, 2002, updated in July 2004, <http://www.icrc.org> (Focus, Children in war).

<sup>118</sup> *26th International Conference of the Red Cross and Red Crescent - Resolution (and Annexes)*, International Review of the Red Cross No. 310, 1996, pp.55-130, <http://www.icrc.org/eng/review>.

<sup>119</sup> The Council of Delegates comprises representatives of National Red Cross and Red Crescent Societies, the ICRC and the International Federation of Red Cross and Red Crescent Societies, <http://www.icrc.org> (Focus, RC Movement, Council of Delegates).

<sup>120</sup> “Optional Protocol to the Convention on the Rights of the Child concerning involvement of children in armed conflicts: Position of the International Committee of the Red Cross”, 27 October 1997, International Review of the Red Cross No. 322, 1998, pp.107-125, <http://www.icrc.org/eng/review>.

<sup>121</sup> Daniel Helle, “Optional Protocol on the involvement of children in armed conflict to the Convention on the Rights of the Child”, International Review of the Red Cross No. 839, 2000, pp. 797-809, <http://www.icrc.org/eng/review>.

<sup>122</sup> International Save the Children Alliance, *A Fighting Chance: Guidelines and implications for programmes involving children associated with armed groups and armed forces*, Save the Children UK, 9 November 2004, <http://www.savethechildren.org.uk>.



“The irregular structure and unpredictable behaviour of some non-state armed groups means that working with them carries risks. While this must always be approached with caution, contact with non-state armed groups can have a direct impact on the protection of children, especially those who are hard to reach.”<sup>123</sup>

The guidelines establish a set of “implications” to keep in mind for contact and advocacy with armed forces and armed groups as well as for training them in children’s rights and human rights. These include a clear understanding of the nature, structure and military objectives of the armed forces or the armed group; establishing mechanisms for follow up from the outset; obtaining written commitments from the highest level of command specifying the armed group’s or forces’ role and responsibility in relation to international standards and child protection; coordinating the approaches with other agencies, especially the ICRC; and engaging well-established local organizations respected by local authorities and communities in approaching the armed actors.<sup>124</sup>

Based on past experience, Save the Children points out that “armed actors often find it difficult to accept and respect humanitarian organisations. Individuals from armed groups and forces who have worked in both civilian and military environments and are part of the military hierarchy, e.g. liaison officers, may be the best channel for collaboration and training.”<sup>125</sup> It also recommends that, in offering training to armed groups and forces, a long-term objective must be “to institutionalise an understanding of children’s rights and human rights within the armed group or force, and to ensure that these issues are included in training as a matter of course so that the understanding is not diminished by changes in personnel”.<sup>126</sup>

### **Community initiatives to stop child recruitment**<sup>127</sup>

Numerous local and national NGOs across the world have initiated programs to prevent child recruitment and to get children released from armed groups. In some countries they have played an important role in monitoring and reporting on child recruitment and other serious violations of children’s rights and channelled information to the UN and to international human rights organizations. The latter have contributed to training programs at the community level, and have also acted as a “mouthpiece” for communities, condemning child recruitment and other abuses when it is too dangerous for local groups to do so.

On the prevention side, many have developed public education programs on child rights and child protection for communities. These have involved workshops on child rights and child protection issues, as well as production of posters, leaflets, and

<sup>123</sup> *A Fighting Chance*, op. cit., p. 27.

<sup>124</sup> *A Fighting Chance*, op. cit., pp. 28-30.

<sup>125</sup> *A Fighting Chance*, op. cit., p. 29.

<sup>126</sup> *A Fighting Chance*, op. cit., p. 31.

<sup>127</sup> The information in this section is compiled from confidential sources by the Child Soldiers Coalition.



media materials for print, radio and television use. In some countries local NGOs have carried out child rights training for members of the armed groups themselves. This valuable work has yet to be systematically documented and in some cases the NGOs choose not to publicize the work for security reasons.

Efforts have been made in some countries to create local committees, involving church, school and community leaders, to reflect on child protection during armed conflict. Community meetings have been used to distribute information and discuss international and national law protecting children from recruitment as well as to reflect on community values on child protection. The purpose is to provide communities with information and assist their development of prevention strategies. Some local NGOs have engaged in direct advocacy with armed groups. In the DRC for example, groups composed of local leaders and activists were able to visit regional commanders (of both government forces and armed groups) to press for the release of children. In some instances they were able to involve local commanders in discussion groups on the use of children in hostilities.

## 2.5 Political engagement

In some instances governments of other states have actively facilitated or otherwise supported peace negotiations between parties in conflict (see section 1.5). However, peace agreements often fail to include the issue of child soldier demobilization and reintegration. The Memorandum of Understanding signed in August 2005 in Helsinki between the Government of Indonesia and the Free Aceh Movement (GAM) and facilitated by the Crisis Management Initiative and the government of Finland did not include any provisions relating to children affected by the conflict.<sup>128</sup>

In the Philippines, where armed opposition groups active in Mindanao reportedly train and use children in the armed conflict,<sup>129</sup> the ceasefire in place between the government of the Republic of the Philippines and the Moro Islamic Liberation Front (MILF) does not include any reference to the use of children. The ceasefire, following negotiations facilitated by the governments of Malaysia and Indonesia, was signed March 2001 in Kuala Lumpur.<sup>130</sup> Since recruiting children does not constitute an explicit violation of the cessation of hostilities agreement, the international team tasked with monitoring the ceasefire does not intervene on this matter.<sup>131</sup>

<sup>128</sup> See Action Appeal by the Child Soldiers Coalition, "Indonesia: Effective demobilization and reintegration of child soldiers are vital" <http://www.child-soldiers.org/coalition/action-appeals>, in *Child Soldiers Newsletter*, Winter 2005 Edition (Issue 14), <http://www.child-soldiers.org/resources/newletters>.

<sup>129</sup> See, for example, Report of the Secretary-General on Children and armed conflict, 9 February 2005, op. cit., Annex II.

<sup>130</sup> The Gaddafi International Foundation for Charitable Associations was also present at the talks; see "Agreement on peace between the government of the Republic of the Philippines and the Moro Islamic Liberation Front", Conciliation Resources, Accord Programme, <http://www.c-r.org/accord/min/accord6/repub.shtml>.

<sup>131</sup> This policy of turning a blind eye to the problem of children's involvement in the conflict was confirmed by a senior member of the International Monitoring Team in Mindanao, the Philippines, in November 2005.



Some UN agencies actively work to include child protection issues in the negotiation agenda of ceasefire and peace agreements. In South Sudan, UNICEF was instrumental in ensuring that any case of child recruitment by the Sudan People's Liberation Movement (SPLM) would be considered a violation of the Comprehensive Peace Agreement signed on 9 January 2005.<sup>132</sup> In Burundi, UNICEF, with the backing of the European Union (EU) and the World Bank, ensured that child demobilization was an essential element of the peace agreement.

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<sup>132</sup> Draft SPLM Interim DDR Authority Guidelines for demobilization of children in Southern Sudan (20/09/05), Article 8.2: "It is a violation of the Comprehensive Peace Agreement to recruit children" (copy on file with Child Soldiers Coalition).