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and human rights



Rules of Engagement

Protecting Civilians through Dialogue
with Armed Non-State Actors



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Foreword

The report *Rules of Engagement, Protecting Civilians through Dialogue with Armed Non-State Actors* is an essential reference document for humanitarian and mediation practitioners dedicated to humanitarian engagement with armed non-state actors (ANSAs).

The fundamental commitment that underpinned the development of this document is to strengthen the protection of civilians in situations of armed conflict. In fact, despite international efforts, civilians continue to account for the vast majority of casualties, and are increasingly the target of atrocities, in contemporary armed conflicts.

In June 2009, the Secretary-General of the United Nations issued a report that identified the lack of compliance with international law by ANSAs as one of the main protection challenges. Furthermore, in his report, Mr. Ban Ki Moon encouraged Member States to identify additional measures to improve such compliance.

In line with this recommendation, Switzerland has set itself the objective of offering the international community possible new approaches and tools to improve the compliance with international norms by ANSAs. Thus, it has supported the Geneva Academy of International Humanitarian Law and Human Rights in this endeavour since 2009.

The report is particularly innovative as it is the result of an applied research and consultation process that involved all concerned actors, including ANSAs themselves. This inclusive approach made it possible to address current challenges and reflect contemporary dilemmas as they arise in the field.

The report presents a detailed set of conclusions and recommendations. They are addressed to a range of concerned actors, particularly humanitarian and mediation practitioners, members of ANSAs, as well as states, which, under international law, have the primary responsibility to protect people within their jurisdiction. The overarching conclusion of the report is the recognition of an urgent need for increased humanitarian engagement with ANSAs. This means that common efforts have to be undertaken by the international community in order to make a real difference to civilians at risk.

The conclusions and recommendations are the result of long years of humanitarian practice and expertise. The Geneva Academy can celebrate the publication of this document as a success in the framework of their continued efforts in preventing and alleviating the horrors of armed conflict through research and training in international law. Special gratitude goes also to all the experts who dedicated their time and shared their valuable knowledge and perspectives to promote our common goal of strengthening the protection of civilians in situations of armed conflict.

I am hopeful that this report will provide the international community with a key reference tool in this domain and that it will also contribute to raising the awareness of the international community of the benefits that humanitarian engagement with ANSAs has for the protection of civilians.

A handwritten signature in black ink, appearing to read 'C. Wild', is centered on the page.

Claude Wild

Ambassador

Head of Political Affairs Division IV, Human Security

Federal Department of Foreign Affairs, Switzerland

'... it is obvious from the massive violence against civilian populations around the world today and throughout history that most warring parties do not see civilians as humanitarian agencies might like them to. Either they do not find civilians particularly innocent or they decide that, innocent or not, killing them is useful, necessary or inevitable in their wars.'

Hugo Slim, *Killing Civilians—Method, Madness and Morality in War*, 2007.

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Introduction

Rationale

There is an urgent need to improve the protection of civilians in armed conflicts around the world. Rarely are civilians respected, as the law requires; too often, civilians are deliberately targeted in violation of the law; and invariably, they are the main victims of armed conflicts today. Many—though by no means all—of the abuses against civilians are committed by armed non-state actors (ANSAs). As the UN Secretary-General has pointed out:

[A]rmed groups have often sought to overcome their military inferiority by employing strategies that flagrantly violate international law. These range from deliberate attacks against civilians, including sexual violence, to attacks on civilian objects such as schools, to abduction, forced recruitment and using civilians to shield military objectives. The risks for civilians are further increased as militarily superior parties, in fighting an enemy that is often difficult to identify, respond with means and methods of warfare that may violate the principles of distinction and proportionality, giving rise to further civilian casualties.¹

Engaging ANSAs on compliance with international norms is therefore a critical element in any effort to strengthen the protection of civilians. Moreover, since most of today's conflicts are qualified under international humanitarian law as being of a non-international character,² as Marco Sassòli has noted:

By definition, at least half the belligerents in the most widespread and most victimizing of armed conflicts around the world, *i.e.* non-international armed conflicts, are non-state armed groups.³

While it is uncontested that international humanitarian law imposes obligations on ANSAs in the conduct of hostilities, the application of other bodies of international law, in particular human rights law, remains controversial. Overall, the normative framework is fragmented and complex and many difficulties exist in promoting their effective implementation, as this report describes.

Project aims and methodology

In 2009, the Swiss Federal Department of Foreign Affairs (FDFA) adopted a Strategy for the Protection of Civilians in Armed Conflicts. In line with this

¹ 'Report of the UN Secretary-General on the Protection of Civilians in Armed Conflict', UN Security Council, November 2010, UN doc. S/2010/579, 11 November 2010, §8.

² That is, involving as parties to the conflict a State, or a coalition of States, pitted against one or several ANSAs, or even a conflict between two or more ANSAs.

³ M. Sassòli, 'Possible Legal Mechanisms to Improve Compliance by Armed Groups with International Humanitarian Law and International Human Rights Law', paper submitted at the Armed Groups Conference, Vancouver, 13–15 November 2003, 1, available at <http://www.genevacall.org/resources/other-documents-studies/f-other-documents-studies/2001-2010/2003-13nov-sassoli.pdf> (last visited 12 July 2011).

Strategy, the Political Affairs Division IV (DP IV) asked the Geneva Academy of International Humanitarian Law and Human Rights (the Academy) to consider how best to enhance compliance with international norms by ANSAs,⁴ taking into account the views both of the actors themselves and the experiences of those engaged in dialogue with them.

For despite the widely acknowledged importance of ANSAs to any effort to improve the protection of civilians in armed conflict, engagement⁵ with such actors on compliance with international norms remains inadequate and, in some contexts, is actively discouraged or prohibited by states. Furthermore, such engagement as does take place is largely confined to a small number of humanitarian organizations, save for efforts to secure operational access for the delivery of relief.

The main objective of this project was thus to elaborate a document that would serve as a point of reference for states, international organizations, and non-governmental organizations (NGOs) in their elaboration of policy on engaging with ANSAs on international norms, particularly with respect to the protection of civilians in armed conflict. It is hoped that this report will help to fulfil protection or mediation mandates by highlighting how effective engagement with ANSAs can lead to better compliance with international norms.

The project involved a desk study of relevant literature, interviews with experts from the field, and the organization of three workshops. The first workshop, in March 2010, brought together experts from international organizations and NGOs active in protection and relief operations that involve engagement with armed groups; mediators, including governmental experts, who have experience with armed groups in the context of mediation processes; and academics, who provided insight from their own research.

The second workshop, in October 2010, assembled members (past and current) of ANSAs as well as those with an intimate knowledge of their operations to contribute to a better understanding of how to increase ANSA compliance with international norms. The third and final workshop, in May 2011, was convened with a view to obtaining feedback from selected state representatives on the preliminary conclusions, findings, and recommendations of the project. The workshops were held under the Chatham House Rule.⁶

4 The actors covered by this project were primarily armed groups other than those of a State or its agents. Private military companies, and groups whose objectives are purely lucrative, such as street gangs or the mafia, have not been the focus of the project. The Academy has conducted a separate project to develop an International Code of Conduct for Private Security Service Providers (see: <http://www.icoc-psp.org/>).

5 By engagement is meant efforts to enhance compliance with international norms by ANSAs through a variety of direct or indirect means, especially awareness-raising, dissemination, persuasion, technical support/capacity-building, negotiation, dialogue, and advocacy. There are also other more punitive measures that are sometimes adopted to seek to enhance compliance by such actors but these do not fall within the strict definition of engagement.

6 The Chatham House Rule states that: 'When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.'

An Advisory Board, composed of selected experts from FDFA (DPiV), the Centre for Humanitarian Dialogue, Geneva Call, Human Rights Watch, and the International Committee of the Red Cross (ICRC), was responsible for advising on the content and process of the project. Their participation in this role, however, in no way implies their endorsement of the views expressed in this report.

Content of the report

This report aims to address some of the key challenges faced by the international community (e.g. states, international organizations, NGOs working in the field) when dealing with lack of compliance with international norms by ANSAs. The main body of the report sets out the main conclusions and findings of the project, with supporting illustrations from current practice as well as a review of the legal challenges—under national as well as international law—that confront anyone seeking to improve respect for international law by ANSAs.

It is, however, a forward-looking document; a *vade mecum* intended to encourage greater engagement with ANSAs on a professional basis. For this reason, the annexes include a number of resources to assist professionals interested in engaging with ANSAs. Annex A includes the full text of selected agreements on norms with ANSAs. Annex B includes the text of the Turku Declaration of Minimum Humanitarian Standards, a text intended to cover a perceived gap in normative coverage, especially in internal disturbances or tensions short of armed conflict. Annex C contains the latest version (V4) of the Aide Memoire to the UN Security Council on the protection of civilians in armed conflict. Annex D contains the set of rules of customary international humanitarian law applicable in non-international armed conflict, adduced from a comprehensive study of customary international humanitarian law by the ICRC published in 2005. Annex E includes the names of the participants in the project workshops.

Challenges for ANSAs to comply with international norms

The reasons for lack of compliance by ANSAs are diverse, but can be summarised according to five main factors.

The first of these factors is **strategic military concerns**. The nature of warfare in non-international armed conflicts may lead to the use of tactics that violate international law, such as launching attacks from within the civilian population. The imbalance between a state's security forces (in size, weaponry, and financial resources) and the actions or even mere existence of an ANSA may also be used by the latter as a reason for not respecting certain norms in practice. ANSAs sometimes claim to feel constrained to adopt certain tactics that violate humanitarian norms as to do otherwise would invite military defeat or even annihilation.

The second factor is the **likelihood of prosecution** under domestic legislation for having taken up arms against the state, wholly irrespective of their respect for international legal norms. Thus, whereas combatants in an international armed conflict are entitled to prisoner of war status, thereby receiving immunity from prosecution for having participated in hostilities, a fighter from an ANSA is not normally recognised as a combatant under international humanitarian law and so faces prosecution for having taken up arms under the national law of the state that captures him or her.⁷

Third, ANSAs may simply **lack knowledge of international norms**. Indeed, while states have a clear obligation to provide instruction in international humanitarian law to their armed forces,⁸ the ICRC notes that:

[I]n many non-international armed conflicts, bearers of arms with little or no training in IHL are directly involved in the fighting. This ignorance of the law significantly impedes efforts to increase respect for IHL and regulate the behaviour of the parties to the conflicts.⁹

Thus, members of ANSAs may not know of (let alone agree with) norms prohibiting the recruitment of children as soldiers, or the outlawing of certain weapons, for instance.¹⁰ Concepts familiar to those conversant with international humanitarian law, such as proportionality, may not be well understood by members of ANSAs, both at senior and at lower operational levels.

Fourth, even though certain ANSAs may know of applicable norms, **ideology**, whether political or religious, may lead to their deliberately violating certain international norms. Indeed, the very concept of civilian, as Hugo Slim noted in the extract cited at the beginning of this report, may simply be alien to their view of the world.

Fifth, ANSAs may feel they **lack ‘ownership’**¹¹ over international norms. ANSAs are not entitled to ratify the relevant international treaties (as, by definition, they are not a state and the relevant treaties are not open to adherence to such entities),¹² and are generally precluded from participating as full members of a treaty drafting body. Thus, they sometimes argue that

⁷ See, *inter alia*, Articles 4 and 118 of *1949 Geneva Convention III*, and for example, Bellal, A. and Chetail, V., ‘The Concept of Combatant under International Humanitarian Law’, in Bhuiyan, J., Doswald Beck, L., Chowdhury, A., *International Humanitarian Law, An Anthology*, LexisNexis/Butterworths/Wadhwa, 2009, pp. 57–77.

⁸ See, for example, Articles 47, 48, 127, and 144 of *1949 Geneva Convention IV* and Article 83 of *1977 Additional Protocol I*.

⁹ ICRC, *Increasing respect for international humanitarian law in non-international armed conflicts*, February 2008, p. 12; see also The Armed Group Project, ‘Curbing Human Rights Violations by Non-State Armed Groups’, Conference summary and report, 12–15 November 2003, available at www.armedgroups.org (accessed 15 December 2009).

¹⁰ Events during the conflicts in Libya in 2011 have shown that ANSAs may also lack sufficient training and expertise in the use of certain types of weapons, which has an impact on their ability to ensure the effective protection of civilians.

¹¹ In the context of the present article, by ‘ownership’ is meant the capacity and willingness of actors engaged in armed conflict to set, and/or take responsibility for the respect of, norms intended to protect civilians as well as other humanitarian norms applicable in armed conflict.

¹² The procedure under Article 96, paragraph 3 of *1977 Additional Protocol I to the Geneva Conventions* has yet to be successfully applied and is limited to a rather narrow group of ANSAs – national liberation movements.

they should not be bound to respect rules that they have neither put forward nor formally adhered to.¹³

ANSAs are not the only ones to violate humanitarian norms. In many armed conflicts, states violate the most fundamental rules of human rights and humanitarian law. But there is a particular problem with ANSAs respecting international norms offering protection to civilians in armed conflict. Concern over a lack of compliance by certain ANSAs with respect to particular norms has been widely raised by states and international organizations. It is hoped that this report offers an opportunity for positive change.

¹³ See, among others, Sivakumaran, S., 'Binding Armed Opposition Groups', *International and Comparative Law Quarterly*, Vol. 55, April 2006, pp. 369–394; De Beco, G., 'Compliance with International Humanitarian Law by Non-State Actors', in *Journal of International Law of Peace and Armed Conflict*, 2005, Vol. 18, No. 3, pp. 190–199; Zegveld, L., *Accountability of Armed Opposition Groups in International Law*, Cambridge, Cambridge University Press, 2002; Sivakumaran, S., 'The ownership of international humanitarian law: non-state armed groups and the formation and enforcement of the rules', draft paper presented at a conference in Vancouver in 2003.

Engaging with Armed Non-State Actors on Compliance with International Norms: Conclusions and Findings

This section sets out the ten main conclusions and findings of the project. Each conclusion is supported by an explanation based on the findings of the Academy's research team and relevant illustrations from current practice.

1. There is an urgent need for greater and more systematic engagement with ANSAs on compliance with international norms.

In 2010, in his report to the UN Security Council on the protection of civilians in armed conflict, the UN Secretary-General stressed 'the need for a comprehensive approach towards improving compliance with the law' by ANSAs.¹⁴ The Secretary-General further stated that:

Improved compliance with international humanitarian law and human rights law will always remain a distant prospect in the absence of, and absent acceptance of the need for, systematic and consistent engagement with non-state armed groups. Whether engagement is sought with armed groups in Afghanistan, Colombia, the Democratic Republic of the Congo, the occupied Palestinian territories, Pakistan, Somalia, the Sudan, Uganda, Yemen or elsewhere, experience shows that lives can be saved by engaging armed groups in order to seek compliance with international humanitarian law in their combat operations and general conduct, gain safe access for humanitarian purposes and dissuade them from using certain types of weapons.¹⁵

Those engaging on norms can be states (e.g. in conflict resolution and mediation efforts), international organizations, NGOs, members of the constituency from which an ANSA draws its support, former fighters from other ANSAs, and educational institutions, as well as those with political or moral influence over a group. An assessment of who can, or indeed should, engage in efforts to promote norms will need to take into account security, legal, political, and operational factors in particular, when determining whether or not to be involved with any given ANSA or conflict.

¹⁴ 'Report of the UN Secretary-General on the Protection of Civilians in Armed Conflict', UN Security Council, UN doc. S/2010/579, 11 November 2010, §56.

¹⁵ Ibid., §52.

The internal decision on whether or not to engage in dialogue with ANSAs in any given case should, though, depend to some extent on how the individual, organization, or state concerned is seen by the relevant actors. Some external actors are not perceived as neutral and their involvement may be prejudicial to the outcome of negotiations and discussions. The views of ANSAs should therefore be taken into account when deciding which external actors to involve in engagement and mediation processes.

As things stand, only one international NGO is dedicated to securing commitments from ANSAs to comply with certain norms: Geneva Call, an international NGO based in Geneva. (See *Box 1 for a description of Geneva Call's work and Annex A2 for their Deeds of Commitment.*)

Many operational agencies that provide emergency relief to conflict-affected populations engage with ANSAs on a regular basis, although a tension may exist between the desire to be granted (or to maintain) access to affected populations and the desire to promote compliance with international norms.

Box 1 Geneva Call

Geneva Call was launched in March 2000 as a neutral and impartial humanitarian organization dedicated to engaging NSAs towards compliance with IHL and IHRL norms, consistent with common Article 3 of the Geneva Conventions. The organization focuses on NSAs [non-state actors] involved in situations of armed conflict that operate outside effective State control and are primarily motivated by political goals. These include armed movements, de facto authorities, and non-internationally recognized States.

Geneva Call engages NSAs in a constructive dialogue aimed at persuading them to change their behaviour and respect specific humanitarian norms, starting with a total ban on anti-personnel mines. The organization originated in 2000 from the International Campaign to Ban Landmines following the international community's realization that the landmine problem would not be effectively addressed unless NSAs were included in the solution. The Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action is an internationally recognized mechanism through which 41 NSAs have already adhered to a total ban on the use of anti-personnel mines and to cooperate in humanitarian mine action activities. Geneva Call plays an important role in monitoring and supporting the implementation of these commitments. The organization is now expanding its advocacy work with NSAs to the protection of women and children in situations of armed conflict.¹⁶

There are, however, legal concerns, discussed further below, about engaging with groups labelled as terrorist for fear of prosecution for facilitating terrorism. Thus, for instance, in July 2011, as the situation in Somalia became ever more critical as a result of a major drought, António Guterres, the UN High Commissioner for Refugees, stated that:

¹⁶ Geneva Call, 'About Us', <http://www.genevacall.org/about/about.htm> (last visited 12 July 2011)

We are absolutely sure that the level of suffering of the Somali people at the present moment is absolutely appalling, and that is why we have been insisting that we should do everything at the level of the international community with all the actors involved in the conflict, to make it possible to deliver massive humanitarian assistance inside Somalia.¹⁷

This meant dealing directly with ANSAs, particularly *al-Shabaab*, which is listed by the US and other states as a terrorist group and which had previously banned humanitarian agencies from operating in areas it controlled (see *Box 6 for more on this issue*).¹⁸

The ICRC, of course, has regularly engaged with ANSAs going back to its early days in the 19th century (see *Box 2*).

Box 2 The ICRC and 'other' weapons bearers

The 'other' weapon bearers – armed opposition groups and military/security firms – cannot be overlooked in modern armed conflict. They are playing an increasingly active role, sometimes a major role, in internal disturbances and other violent situations as well as in high-intensity conflicts such as Afghanistan and formerly in Iraq. They have great influence on what happens to people affected by these situations, and their members can also become victims of the hostilities due to injury or capture. The ICRC therefore strives to maintain and strengthen dialogue with them in order to ensure that they are aware of their obligations.

Dialogue with armed groups is nothing new to the ICRC. As far back as 1871, Henry Dunant, one of the founders of the Red Cross, conferred with leaders of the Paris Commune to work out a way of releasing hostages. From 1936 to 1939, ICRC delegates visited prisoners held by the Spanish Republicans to ascertain whether they were being correctly treated, and sometimes arranged their release. These are but two examples of numerous interactions and today, thanks to its willingness to remain neutral and independent, the ICRC has numerous contacts around the world with groups like the Taliban and FARC rebels in Colombia.¹⁹

17 'UN refugee chief calls for drought aid inside Somalia', *BBC News online*, 9 July 2011, <http://www.bbc.co.uk/news/world-africa-14096163> (last visited 12 July 2011).

18 *Ibid.*

19 ICRC, 'Building respect for humanitarian action and IHL among "other" weapon bearers: Overview', 29 October 2010, <http://www.icrc.org/eng/what-we-do/building-respect-ihl/dialogue-weapon-bearers/other-weapons-bearers/overview-icrc-other-weapon-bearers.htm> (last visited 12 July 2011).

Human Rights Watch, an international human rights NGO, regularly engages with ANSAs on compliance with international norms as part of its mission to investigate and expose human rights violations and hold abusers accountable. Its most recent work on engagement with ANSAs has been in Libya, which reflects some of the lessons learned in such engagement, as summarised in Box 3.

Box 3 Engagement by Human Rights Watch with ANSAs in Libya in 2011²⁰

Human Rights Watch (HRW) had a particularly strong position from which to engage on compliance with international norms in Libya. This resulted from its longstanding relationship with lawyers and activists, many of whom played a key role in organizing the peaceful protests against Gaddafi's regime in February 2011. Some later became leading figures in the rebel forces that quickly emerged after the authorities lost control of Benghazi in the east as they sought to prevent government security forces retaking the town by force.

HRW was present in Eastern Libya to document abuses of human rights by the Libyan government but soon also included monitoring of actions by the new authorities in the east, in particular the treatment of those detained by the new authorities, as well as the abuses suffered by African migrant workers falsely accused of being pro-Gaddafi mercenaries in Eastern Libya. HRW's work subsequently extended to dissemination of international norms to the rebels as they formed into a fighting force. It also advocated for no use of any landmines, a commitment to join the Rome Statute of the International Criminal Court should the rebels become the recognised representatives of the State of Libya, and financial transparency surrounding any oil sales.

HRW believes that if compliance with norms is to be improved, whether in Libya or elsewhere, there must be an opportunity for ANSAs to engage in dialogue. In Libya it stressed the importance of the protection of civilians and therefore engaged in particular efforts on the front line with the rebel soldiers. It did not, though, refrain from criticising the rebels for violations of norms that it witnessed, while making sure that its monitoring role was clearly understood by the rebels.

Given the ad hoc nature of the rebel fighters, many of whom lacked training and familiarity with international norms, as well as broader command and control problems within the rebel forces, promoting compliance with international norms has proved extremely challenging. There have been abuses by the rebels, as documented by both HRW and the UN Human Rights Council-mandated International Commission of Inquiry. Nonetheless, for the most part, HRW has observed a genuine commitment on the part of the rebel forces to respecting international norms. It has helped that these forces have seen benefits from such respect: self-interest is indeed a powerful incentive.

The existing relationship that HRW had with many key figures was a crucial building block in establishing mutual trust, as was the organization's continuing reporting of violations of international law by government armed forces and militia.

HRW believes that the greatest challenge for efforts to engage ANSAs remains the fear of states that such actors will be legitimised through engagement. HRW continues to insist on the wider benefits of engagement, including for the treatment of soldiers from states' own armed forces by ANSAs.

²⁰ This text box is based on an interview with Peter Bouckaert, Emergencies Director, Human Rights Watch, Geneva, 20 July 2011.

Amnesty International has also developed policies for reporting on abuses by ANSAs and encouraging respect for human rights. Its 2011 report on Libya illustrates its approach (see Box 4).²¹

Box 4 Amnesty International's work in Libya

In September 2011, Amnesty International warned that the National Transitional Council (NTC) had to ensure that armed anti-Gaddafi groups cease reprisal attacks and arbitrary arrests. Amnesty International found evidence that during the conflict pro-Gaddafi forces committed war crimes and abuses which may amount to crimes against humanity. In most cases it was civilians who bore the brunt of these violations. But the organization also documented a brutal 'settling of scores' by some anti-Gaddafi forces when pro-Gaddafi forces were ejected from eastern Libya, including lynchings of pro-Gaddafi soldiers after capture.

Dozens of people suspected to be former security agents, pro-Gaddafi loyalists or mercenaries have been killed after capture since February in Eastern Libya. When Al-Bayda, Benghazi, Derna, Misratah and other cities first fell under the control of the NTC in February, anti-Gaddafi forces carried out house raids, killings and other violent attacks against suspected mercenaries, either sub-Saharan Africans or black Libyans. The organization welcomed the fact that in May, the NTC issued guidelines for its forces to act in accordance with international law and standards and in August the NTC Chair called on anti-Gaddafi forces to refrain from reprisal attacks. The NTC also sent text messages to Libyan mobile users telling them to avoid revenge attacks and treat detainees with dignity.

Presenting a comprehensive 'Human Rights Agenda for Change' to the NTC, Amnesty International called on the new authorities to immediately bring all detention centres under the control of the Ministry of Justice and Human Rights and to ensure that arrests are only conducted by official bodies rather than the 'thuwwar' (revolutionaries).

Amnesty International, which has taken testimonies from more than 200 detainees since the fall of al-Zawiya and Tripoli, believes that hundreds of people have been taken from their homes, at work, at check-points, or simply from the streets. Many have been ill-treated upon arrest, being beaten with sticks, backs of rifles, kicked, punched and insulted, at times while blindfolded and handcuffed. In some cases, detainees reported being shot after being seized. The organization called on the NTC to prioritise the investigation of those on all sides of the conflict suspected of responsibility for abuses, with a view to prosecution in fair trials that meet international standards and ensuring reparation for victims.

²¹ Amnesty International, 'Libya: NTC must take control to prevent spiral of abuses', 13 September 2011, <http://www.amnesty.org/en/for-media/press-releases/libya-ntc-must-take-control-prevent-spiral-abuses-2011-09-12> (last visited 17 September 2011).

The Centre for Humanitarian Dialogue (HD Centre), an organization launched in 1999 and based in Geneva, also undertakes 'humanitarian mediation' to help protect civilians caught up in conflicts. The organization uses its conflict mediation experience in an attempt to end conflict, but also to help address the immediate humanitarian needs of the affected population. The humanitarian mediation approach is said to be at the heart of the HD Centre's mission (see *Box 5 for the example of its work on the Darfur region of Sudan*).²²

Box 5 The HD Centre's work in Darfur

A series of humanitarian workshops on Darfur aimed at improving the humanitarian situation were organised in 2008 and 2009 in Geneva, Nairobi, and Darfur. They brought together representatives of two of the main Darfur opposition movements – SLM-Unity and JEM [the Justice and Equality Movement] – and the humanitarian community.

Discussions focused on key humanitarian issues including access and security of humanitarian workers; hijacking and kidnapping; protection of refugees, internally displaced people, women and children; international humanitarian and human rights law; and the need for an improved humanitarian mechanism.

In early 2010, a first consultation to discuss similar issues took place between national security officials from the Government and international humanitarian agencies, closely followed by a one-day workshop with field commanders of the Sudan Liberation Army-Abdul Wahid (SLA-AW) and humanitarian agencies.

In July 2010, as a direct result of the ongoing dialogue between the JEM and UN agencies, sponsored by the HD Centre, UNICEF and JEM signed a Memorandum of Understanding (MOU) on the protection of children in Darfur. The signature took place on 21 July 2010 at the HD Centre's headquarters in Geneva. As part of this agreement, the JEM commit to taking all steps necessary to ensure the protection of children affected by the conflict in Darfur. It has also pledged that UNICEF will have unimpeded access to all JEM locations to verify compliance with the Agreement.

In coordination with the office of the UN-AU joint mediation for Darfur, the HD Centre also hosted a humanitarian workshop in Nairobi for a delegation of Darfur's Liberty and Justice Movement (LJM), to discuss the humanitarian and human rights aspects of the draft Darfur peace agreement which were under discussion in Doha.

²² HD Centre, 'Humanitarian Mediation: Introduction', <http://www.hdcentre.org/projects/humanitarian-mediation>; see also HD Centre, 'Humanitarian Mediation: Overview', 2010, <http://www.hdcentre.org/projects/humanitarian-mediation?overview>.

2. Engagement needs to embrace the broadest possible range of ANSAs, although the potential consequences of such engagement for the civilian population should be the primary concern.

In principle, any ANSA should be included in efforts to enhance compliance with humanitarian norms. In seeking to engage with ANSAs, however, the potential consequences of that engagement for the civilian population should be the primary concern. This means that, in practice, raising concerns about the protection of civilians may be—and often is—subordinated to a desire to secure access to the at-risk population.

Certain donors or governments may seek to prevent any form of engagement, even for purely humanitarian purposes, with ANSAs that they term ‘terrorist’.²³ According to the UN Secretary-General:

I am encouraged that the ongoing discussions on this issue during the Security Council’s biannual open debates on the protection of civilians reveals an increasing appreciation by Member States of the importance of engagement for humanitarian purposes. This is yet to translate, however, into broad acceptance of such engagement (...). For example, in Somalia concerns exist that some donor States, particularly those that have designated Al-Shabaab as a terrorist organization, have introduced conditions into their funding agreements with humanitarian organizations that impose limits on operations in Al-Shabaab-controlled areas. In Gaza, the humanitarian funding policies of some donor States have sought to limit contact with Hamas by the humanitarian organizations they fund, even though Hamas exercises effective control over Gaza and is thus a key interlocutor in ensuring that aid reaches those who need it. Humanitarian agencies also voiced concerns over the possible humanitarian impact of domestic legislation, such as that in the United States, which criminalizes various forms of material support to prohibited groups.²⁴

Deeming ANSAs ‘terrorist’ irrespective of their compliance with international norms is not conducive to promoting respect for those norms (see *Box 6 for the ICRC’s perspective on terrorism and international humanitarian law*) or for the potential success of peace or other negotiations.²⁵ Indeed, the designation of certain ANSAs as ‘terrorists’ may even, in certain instances, encourage the violation of international norms, according to

23 As noted below, there is a plethora of widely differing definitions of the term under relevant national legislation (and no internationally agreed definition of terrorism or terrorist group). For instance, a 2003 study for the US Army quoted a source that counted 109 definitions of terrorism that covered a total of 22 different definitional elements. See Record, J., *Bounding the Global War on Terrorism*, 1 December 2003, p. 6, citing Alex P. Schmid, Albert J. Jongman, et al., *Political Terrorism: A New Guide to Actors, Authors, Concepts, Data Bases, Theories, and Literature*, Transaction Books, New Brunswick, NJ, 1988, pp. 5–6.

24 ‘Report of the UN Secretary-General on the Protection of Civilians in Armed Conflict’, UN Security Council, UN doc. S/2010/579, 11 November 2010, §55.

25 Thus, in June 2011, the UN Security Council decided to treat al Qaeda and the Taliban separately when it comes to UN sanctions in an attempt to ‘more effectively’ fight terrorism and support the Afghan government’s reconciliation efforts. See UN Security Council Resolutions 1988 and 1989 (2011) of 17 June 2011; see also, for example, Associated Press, ‘U.N. to delink al Qaeda, Taliban sanctions’, *CBS news online*, 17 June 2011.

ANSAs consulted during this project. As former fighters have stated to the Academy's research team, once you are labelled a terrorist you act as one; once listed, 'you are rejected' and 'you have nothing to lose'.

Box 6 Terrorism and international humanitarian law: the view of the ICRC

There is no comprehensive international legal definition of terrorism. IHL [international humanitarian law] does not define it, but it does explicitly prohibit most acts committed against civilians and civilian objects during an armed conflict that would, if committed in peacetime, commonly be considered as 'terrorist'.

A recent challenge for IHL has been the tendency of States to label as terrorist all acts of warfare against them committed by armed groups, especially in non-international armed conflicts. This has created confusion in differentiating between lawful acts of war, including such acts committed by domestic insurgents against military targets, and acts of terrorism.

There is considerable controversy on the legal qualification of the 'global war on terror'. The ICRC does not hold the view that a global war is being waged. It prefers a case-by-case approach. The ICRC believes it is dangerous and unhelpful to try to apply IHL to situations that do not amount to war.²⁶

Listing group as terrorists may also result in critical groups or individuals being excluded from peace negotiations, thereby unnecessarily prolonging conflict. Being listed as terrorists infuriates groups who see their goals as legitimate, and feel their goals are being proscribed more than their methods. Moreover, since it is typically far easier to be included on a list of terrorist organizations than it is to be removed from one (and the criteria for inclusion on the list as well as the delisting procedure are today often opaque and politically-motivated), practical incentives to improve respect for international norms may be limited once any armed group has been so designated. ANSAs also resent the lack of condemnation of what they term 'terrorist acts' committed by states against their own population.

Furthermore, efforts to promote ownership of humanitarian norms by individuals or organizations may themselves fall foul of some broad national legislation that criminalises material support (broadly defined) to any entity designated as terrorist. This clearly may have serious consequences for anyone seeking to engage with ANSAs, even on promoting compliance with international norms. Humanitarian organizations will therefore have to consider whether their actions may endanger their staff or put them at risk of prosecution as a result of applicable anti-terrorism legislation.²⁷ (See Box 7 for an assessment of the decision of the US Supreme Court in the Holder case.²⁸)

²⁶ ICRC, 'Contemporary challenges for IHL: Overview', 29 October 2010, <http://www.icrc.org/eng/war-and-law/contemporary-challenges-for-ihl/overview-contemporary-challenges-for-ihl.htm> (last visited 12 July 2011).

²⁷ For further detail on this issue see, for example, Harvard University's Program on Humanitarian Policy and Conflict Research (HPCR), 'Criminalizing Humanitarian Engagement'.

²⁸ See generally, on applicable US legislation criminalising material support to terrorism, Charles Doyle, 'Terrorist Material Support: An Overview of 18 U.S.C. 2339A and 2339B', Congressional Research Service, Washington DC, 19 July 2010.

In response to concerns about the breadth of domestic counter-terrorism legislation, in his 2010 report to the UN Security Council, the UN Secretary General stated:

More immediately, I would urge Member States to consider the potential humanitarian consequences of their legal and policy initiatives and to avoid introducing measures that have the effect of inhibiting humanitarian actors in their efforts to engage armed groups for the humanitarian purposes referred to [in this report].²⁹

Box 7 *Holder v. Humanitarian Law Project: A summary of the issues*

*The US Supreme Court decision in *Holder v. Humanitarian Law Project*³⁰ confirmed the purview of US legislation whereby merely engaging in the promotion of humanitarian norms with groups or individuals listed as terrorists may be deemed to constitute a federal crime.*

Under US statutes prohibiting material support to terrorism (18 U.S.C. 2339A and 2339B, as amended by the USA PATRIOT³¹ Act of 2001 and the Intelligence Reform and Terrorism Prevention Act of 2004), it is an offence to provide material support or resources to designated terrorist organizations or for the purpose of committing terrorism offences. The two sections use a common definition for the term ‘material support or resources’: any service or tangible or intangible property. This can encompass training, logistical support, or expert advice. Violations of either section are punishable by imprisonment of up to 15 years.

*A US NGO, Humanitarian Law Project (HLP), successfully challenged the constitutionality of the provisions before the District and Appellate Courts in California. HLP wanted to ‘train members of [the] PKK on how to use humanitarian and international law to peacefully resolve disputes’, and to ‘teach PKK members how to petition various representative bodies such as the United Nations for relief’. In June 2010, however, in its decision in *Holder v. Humanitarian Law Project*, the Supreme Court held that the forms of material support in the challenge before it were not unconstitutionally vague nor was their proscription inconsistent with the First Amendment’s freedom of speech and freedom of association requirements. In an oft-quoted statement, Chief Justice Roberts declared that: ‘material support “meant to promot[e] peaceable, lawful conduct” can be diverted to advance terrorism in multiple ways. (...) A foreign terrorist organization introduced to the structures of the international legal system might use the information to threaten, manipulate, and disrupt. This possibility is real, not remote.’*

The Court’s reasoning has been widely criticised. For instance, former US President Jimmy Carter argued that: ‘The “material support law”, which is aimed at putting an end to terrorism, actually threatens our work and the work of many other peacemaking organizations that must interact directly with groups that have engaged in violence. The vague language of the law leaves us wondering if we will be prosecuted for our work to promote peace and freedom.’

A better view of the law was put forward by the three dissenting judges, in a reasoning drafted by Justice Breyer, who stated that: ‘I would read the statute as criminalizing First-Amendment-protected pure speech and association only when the defendant knows or intends that those activities will assist the organization’s unlawful terrorist actions. Under this reading, the Government would have to show, at a minimum, that such defendants provided support that they knew was significantly likely to help the organization pursue its unlawful terrorist aims.’

29 ‘Report of the UN Secretary-General on the Protection of Civilians in Armed Conflict’, UN Security Council, UN doc. S/2010/579, 11 November 2010, §57.

30 See Supreme Court of the United States, *Holder, Attorney General, et al. v. Humanitarian Law Project et al.*, Decision of 21 June 2010.

31 This is an acronym for the full title of the Act, which is ‘Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism’.

In response to the growing crisis in southern Somalia, at the beginning of August 2011 the USA modified its earlier position against the delivery of humanitarian aid where there was a risk that some of the aid could be diverted into the hands of *al-Shabaab* fighters. At a press briefing on 2 August 2011, a senior administration official stated:

Now, US law has never prohibited humanitarian assistance to people in need in Somalia. In fact, about 90 million – or rather, about \$80 million of our aid thus far has, in fact, been delivered to people in Somalia. But in the face of this evolving crisis and the extreme humanitarian needs, we have issued new guidance to allow more flexibility and to provide a wider range of age – of aid to a larger number of areas in need. We hope this guidance will clarify that aid workers who are partnering with the US Government to help save lives under difficult and dangerous conditions are not in conflict with U.S. laws and regulations that seek to limit the resources or to eliminate resources flowing to al-Shabaab. ...

[W]e are seeking to reassure our humanitarian assistance partners, implementing partners, that they need not fear prosecution under OFAC [Office of Foreign Assets Control] regulations as long as they are engaged in good-faith efforts to deliver food to people in need. The details of that I think are going to be worked out on a – sort of an evolving basis.³²

The 4 August 2011 FAQ document from the US Treasury Department, though, made it clear that the new rules only apply to US Agency for International Development (USAID) grantees and US government agencies:

Under the current extreme circumstances on the ground, the Department of State and USAID and their contractors and grantees are authorized to engage in certain transactions in the conduct of their official assistance activities in Somalia, under rigorous controls aimed at preventing diversion of assistance or cash payments to designated parties.

According to the Charity and Security Network, there is no information on what ‘certain transactions’ are or what is meant by ‘rigorous controls’ to prevent aid from getting into the hands of *al-Shabaab*.³³

But the US is by no means the only nation that potentially criminalizes engagement for humanitarian purposes with an ANSA. Many other governments, whether they are engaged in armed conflict or are at risk of terrorist attacks, have adopted broad and sometimes vague legislation and/or policies surrounding interaction with a range of actors. Many of these could potentially criminalize engagement for purely humanitarian purposes or in support of the respect for international norms. Accordingly, there is an urgent need for greater clarity—in the interests of all concerned—on what acts would be unlawful and why, so that legitimate engagement is not impeded or even prevented.

³² US Department of State, ‘Background Briefing on Somalia and Delivery of Humanitarian Assistance’, Special Briefing, Office of the Spokesperson, Washington, DC, 2 August 2011.

³³ Ibid.

3. To be successful, engagement should be initiated as early as possible, conducted at a high level by all concerned parties, and be sustained throughout the duration of armed violence. It should, though, be made clear from the outset that engagement does not constitute any form of political recognition.

Engagement with an ANSA should start as early as possible, potentially even prior to the outbreak of an armed conflict as defined under international humanitarian law,³⁴ and should be sustained or repeated in order to build trust between the group and those engaged in promoting better compliance with norms. It may be possible—and it is certainly desirable—to build on pre-existing relationships with particular groups.

Engaging with an ANSA at the highest level helps to ensure that a commitment is more likely to be honoured in practice. Former members of other ANSAs or indeed the engaged ANSA, within or outside the country concerned, may be able to play a helpful role in engagement. It is also important to consider whether constituencies and foreign supporters can help to secure better compliance with norms. Of course, enhancing compliance is made significantly more challenging by any fragmentation of ANSAs into different factions.

The more the engagement with an ANSA is sustained or repeated, the greater the potential to effect positive change in the behaviour of any given ANSA. As a corollary, the longer the wait to engage an ANSA (or the lower the perceived seniority of the individual seeking to engage), the less important an ANSA may feel that either engagement, or the norms, are deemed to be. A field presence of a norms promoter may often be a positive factor in promoting compliance with any agreements undertaken by ANSAs.

ANSAs seek differing forms of recognition. Those engaging with ANSAs should stress from the outset that their engagement does not—indeed cannot—affect the status of the armed group under international law. They should, though, be aware that even though their engagement cannot change the legal status of the groups, it will typically be seen as contributing to a perception of legitimacy. Moreover, the recognition of any organized armed group as a party to an armed conflict—thereby formalizing the application of international humanitarian law—may be an important step towards encouraging compliance with international norms.

In engaging with ANSAs, those seeking to enhance norm compliance should be as transparent with the government of the concerned state or states as is feasible. Where possible, the active support and cooperation of the concerned state should be sought. This will help to avoid the risk that engagement is seen to encourage the ANSA in their general goals. Those engaging with ANSAs should also endeavour to ensure that their efforts are effectively coordinated with other stakeholders, such as civil society, relief organizations, the ICRC, and the UN.

³⁴ There is, however, a risk that this will be interpreted by some as advocating violence, since explaining the rules of armed conflict before fighting starts can be seen as condoning the resort to force. But the fact remains that this is clearly the best time to engage in a discussion of relevant humanitarian norms.

As part of the process of engagement, ANSAs may need to be informed about their international legal obligations. In retrospect, many ANSAs believe that a better knowledge of international law would have helped to reduce the impact of armed conflict on civilians. In some cases, for example, such groups have not been aware of the prohibition on child recruitment and the potential liability before the International Criminal Court and other tribunals. Dissemination efforts can take place at a senior level or be conducted with those engaged in promoting compliance.

As certain norms can give rise to individual prosecution, those engaged in promoting compliance may need to distinguish their role from that of the prosecutorial authorities and others gathering testimonies. They will also need to consider that they may be called to testify in international criminal tribunals concerning events they have witnessed or statements that have been made to them by members of ANSAs.

The extent of international obligations applicable both to the state and to the ANSA(s) should be disseminated also to the affected civilian population, from the outset of armed violence. Engagement efforts should, wherever possible and appropriate, seek to use the culture and language of the relevant communities as well as appropriate means, taking into account issues such as literacy levels and access to different media.

4. Those seeking to promote compliance with international norms should monitor the conflict for ‘windows of opportunity’ that may offer a greater chance for success of engagement on specific humanitarian concerns. There are potentially advantages and disadvantages to linkages with peace negotiations.

The situation in any given conflict should be monitored for particular ‘windows of opportunity’ for engagement with ANSAs or a particular ANSA on international norms. A discussion of norms may more easily occur during a lull in fighting or a ceasefire, for example, than when conflict is intense. Leadership or military strategy may also change, helping to facilitate discussion of compliance with norms.

There are potentially advantages and disadvantages to linkages with peace negotiations. Three main scenarios can be envisaged.

First, there may be a complete de-linkage of engagement on norms and a peace process. For example, where a peace process is moribund or is faltering, it may be appropriate to keep engagement wholly outside it, the reason being that if norms are included in a peace agreement and the negotiations fail or the peace agreement unravels, the commitments to comply with certain norms may also fail. At the same time, a parallel process can be seen as affording impetus to a future or moribund peace process. It may thus constitute confidence-building measures while other, potentially more sensitive issues are still to be resolved, as the example of the Philippines demonstrates (see *Box 8*).

Second, efforts to enhance respect for norms may be formally integrated within a peace process. There has been the experience of successful negotiation and implementation of agreements on norms involving ANSAs within a peace process. In particular, one may achieve an agreement for the protection of civilians where other topics remain unresolved. This can in turn lead to monitoring mechanisms that can be later adapted to oversee other aspects of an eventual peace agreement.

Box 8 The 2009 Agreement on Protection of Civilians in Armed Conflict in the Philippines³⁵

On 27 October 2009, after months of talks, the Moro Islamic Liberation Front (MILF) and the Government of the Philippines signed an agreement seeking to improve the protection of civilians in armed conflict in accordance with their obligations under humanitarian and human rights law. Ambassador Rafael E. Seguis, chair of the Philippines Government Peace Panel, and Mohagher Iqbal, the chair of the MILF Peace Panel, both signed the Agreement on the Civilian Protection Component of the International Monitoring Team. The Government hoped that this would support peace talks between the two parties. The recently appointed Presidential Adviser on the Peace Process Annabelle Abaya stated that preparations were already underway for reopening of peace negotiations with the MILF.

The latest document signed followed three confidence-building measures identified by the GRP and the MILF prior to the return to the conference table. These were the Suspension of Military Operations for the Armed Forces of the Philippines (AFP) and the Suspension of Military Activities for the MILF, and the agreement on the creation of the International Contact Group.

Article 1 of the October 2009 agreement includes basic undertakings by both the Government and the MILF, whereby they 'reconfirm their obligations under humanitarian law and human rights law to take constant care to protect the civilian population and civilian properties against the dangers arising in armed conflict situations'. They also agreed to refrain from intentionally targeting or attacking non-combatants, to prevent suffering of the civilian population and to avoid acts that would cause collateral damage to civilians.

Both parties agreed to refrain from targeting or intentionally attacking civilian properties or facilities such as schools, hospitals, religious premises, health and food distribution centres, or relief operations, or objects or facilities indispensable to the survival of the civilian population and of a civilian nature.

They also agreed to take all necessary actions to facilitate the provision of relief supplies to affected communities, and take all precautions feasible to avoid incidental loss of civilian life, injury to civilians, and danger to civilian objects, and ensure that all protective and relief actions shall be undertaken on a purely non-discriminatory basis covering all affected communities.

The two sides also agreed to 'issue or reissue orders' to their respective military units or security forces (including paramilitaries, associated militias, and police units) and to conduct their operations consistent with their obligations and commitments.

³⁵ This box is based on B. Cal, 'Inching closer: GRP, MILF peace talks', 29 October 2009.

Third, the promotion of respect for international norms may take place within a peace process but through distinct negotiations. This is relevant where, for example, compliance with norms appears likely to be subordinated to efforts to conclude a peace agreement. It enables those engaged in promoting compliance with international norms to work in parallel with those mediating or negotiating peace agreements.

Box 9 The UN Mediation Support Unit's *Mediation Support Standby Team*

To support mediation efforts, the UN set up a Mediation Support Unit (MSU) in 2006 within the Department of Political Affairs, based on financial support from Norway. The MSU 'serves as a central repository for peacemaking experience and a clearing house for lessons learned and best practices'. The Unit is also intended to 'coordinate training for mediators and provide them with advice on UN standards and operating procedures'.

The MSU encompasses a Mediation Support Standby Team, established in 2008, which is a five-person expert team that can be deployed on short notice to assist UN and non-UN mediation efforts around the world. Their expertise covers a range of issues that arise frequently in peace talks: from mediation strategy to security arrangements, transitional justice and human rights, power-sharing and constitution-making. To date, however, there has been surprisingly little use of the team's human rights expertise, suggesting this issue is either sufficiently addressed through other means or that it may be neglected.

In 2010, four members of the team were working under a joint arrangement with the Norwegian Refugee Council, with support from the Government of Norway. Two other positions were funded by the European Commission, while the gender specialist was on secondment from UNIFEM.

5. Understanding factors that affect the level of ANSA compliance with international norms (sometimes termed positive or negative 'incentives') is critical if engagement is to be successful.

There are a number of reasons cited as to why ANSAs have an interest in complying with—or, on the contrary, violating—international norms. These are sometimes termed 'positive incentives' and 'negative incentives', respectively. Those engaging with ANSA should therefore seek to understand better the specific incentives that can influence compliance with norms in any given conflict. It demands considerable time and effort to understand the background to the conflict, the nature of the group, and its objectives (political, military, ideological, religious, and social).

Positive incentives

Factors supporting compliance (sometimes termed 'positive incentives'), which are often quoted by ANSAs themselves are: the need for popular support ('winning hearts and minds'); the self-image of the group; the group's own internal beliefs; reciprocity; projecting a good national or international image; and family ties with the population. These should be identified and built on in a systematic fashion.

Generally, however, the primary incentive that should be used to advocate for compliance is the group's own *self-interest*. This has military, political, legal, and humanitarian aspects.

The *military* arguments for compliance comprise both an element of reciprocity and strategic choices. Respect for norms by one party to the conflict may encourage respect for norms by the other (although this affirmation is typically treated with great scepticism by ANSAs, according to Geneva Call). Conversely, abuses and violations committed by one party are normally met with a similar response from the other party. Furthermore, an ANSA that treats captured soldiers with humanity encourages soldiers to surrender. Mistreatment or summary execution, on the other hand, is more likely to lead to soldiers fighting on to the death. Thus, ANSAs may come to understand that certain means and methods of warfare are counterproductive or have excessive humanitarian costs.

The *political* arguments for compliance centre on the desire of many ANSAs to be recognised, along with their cause, as legitimate. In addition, many ANSAs need the support (e.g. human, material, and financial) of the 'constituency' on behalf of whom they claim to be fighting. Further, in certain cases ANSAs may even wish to be seen as more respectful of international norms than the state against which they are fighting.³⁶ Finally, some ANSAs are sensitive to the argument that better respect for norms applicable in armed conflicts facilitates peace efforts and strengthens the chance of a lasting peace.

The *legal* arguments for compliance are primarily the avoidance of international criminal sanction and other coercive measures, such as arms embargoes, travel bans, and asset freezes. Effective command and control by the leadership of an ANSA over its own fighters is in the self-interest of the group's senior officials. This will also have implications for the attribution of command responsibility under international criminal law.³⁷ Fear of prosecution for international crimes is a factor that influences the behaviour of certain ANSAs or of senior individuals within that group. Compliance with international norms will not protect them from the risk of prosecution under domestic criminal law for taking up arms against the state, but in some instances governments have offered amnesties to those who have taken up arms against them, and indeed this is encouraged under Article 6 of 1977 Additional Protocol II to the Geneva Conventions.³⁸ Such amnesties should not, however, confer immunity for international crimes.

36 For example, many ANSAs that have signed Geneva Call's Deed of Commitment whereby they renounce the use of anti-personnel mines have done so in States not party to the 1997 *Anti-Personnel Mine Ban Convention* (such as India, Iran, Myanmar, and Somalia). See, for example, Geneva Call, 'Anti-personnel mines and armed non-State actors'.

37 See, for example, A. Clapham, 'The Rights and Responsibilities of Armed Non-State Actors: The Legal Landscape and Issues Surrounding Engagement' (2010), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1569636.

38 According to Article 6(5) of the Protocol: 'At the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained.' Several experts have suggested that States should be encouraged to treat captured fighters from ANSAs who respect international humanitarian law in accordance with the protection accorded to prisoners of war. This is politically very difficult for many states, but could potentially have a major impact on compliance with international norms.

The *humanitarian* arguments for compliance relate to the fundamental desire of certain ANSAs to respect human dignity. Such a desire should not be underestimated—certain ANSAs may genuinely desire to behave ‘in a humanitarian way’—and may afford opportunities to go beyond actual international obligations and engage ANSAs on norms which provide a higher level of protection for civilians than that strictly demanded by international law, such as, for example, by refraining from using certain explosive weapons in urban areas in recognition of the risks for the civilian population.

Humanitarian agencies may in turn provide assistance for activities, such as mine clearance, which benefit the communities on whose behalf the ANSAs claim to be fighting. Similarly, agencies may provide reintegration and education programmes for children formerly associated with armed forces to enable their safe release. In both cases, assistance can be made conditional on the ANSA accepting a commitment to the relevant norm.

Negative incentives

Factors leading to non-compliance and which are most often quoted by ANSAs centre on what are perceived as violations by state actors and a system of international justice that unfairly targets ANSAs. Other negative incentives include lack of knowledge or understanding of particular norms; a situation when an ANSA is fighting for its very survival with limited options; a desire to illustrate how weak the government is against which it is fighting; being termed terrorists, criminals, or bandits (and therefore having nothing to lose by behaving like them); the perceived complexity of international law; and the need to recruit large numbers of fighters (whatever their age may be) to withstand the superiority of means and methods of warfare of states’ armed forces.

6. There is a need for greater clarity on the precise content and application of the international normative framework to ANSAs. Notwithstanding any lack of overall clarity, however, those engaging with ANSAs on compliance with international norms can draw on both international humanitarian law and human rights law in seeking to protect civilians in armed conflict.

International humanitarian law offers a clear framework for the international regulation of the conduct of hostilities by ANSAs in any situation of armed conflict. There is, though, a need to clarify the applicable international legal obligations on ANSAs, especially with respect to international human rights law (see *Box 10*).

For while the application of international humanitarian law to ANSAs is generally uncontested—as distinct from the precise means by which that law applies to them—some people are not ready to recognize that human rights *law*, as opposed to its principles, is similarly directly applicable. It is, however, clear that UN practice is evolving with respect

to this application of the law (see *Box 11 on the treatment of the issue in the International Commission of Inquiry on Libya of June 2011*).³⁹

Unless and until general agreement is achieved on this issue, to serve as a basis for engagement with ANSAs, the development of a model international code of conduct to explicitly apply to the behaviour of ANSAs should be considered. This could take as a starting point the Guidance of the UN Security Council on norms applicable to the protection of civilians in armed conflict (see *Annex C*).

Box 10 The Application of International Human Rights Law to ANSAs

International human rights law is applicable at all times, including in armed conflict. This has been formally confirmed on several occasions by the International Court of Justice. Thus, in contrast to international humanitarian law (IHL), there is no need to assess whether a certain threshold of violence has been reached (although certain situations of emergency may allow a State Party to derogate from full observance of specific rights). When the threshold for the application of IHL has been reached, both bodies of law will generally apply in a 'complementary' way.

The applicability of human rights law to ANSAs is, however, controversial. One of the reasons put forward by scholars refuting the applicability of this body of law is that the rationale of human rights is the regulation of states' and not private actors' behaviour with respect to individuals under their jurisdiction or control. Admittedly, in contrast with IHL instruments, few human rights treaties explicitly seek to bind ANSAs, although the situation is evolving.

A narrow conception of human rights law does not, however, correspond to the basic philosophy of human rights or to the reality of many situations in which ANSAs operate. As suggested by Andrew Clapham:

*'[T]he most promising theoretical basis for human rights obligations for non-State actors is first, to remind ourselves the foundational basis of human rights is best explained as rights which belong to the individual in recognition of each person's dignity. The implication is that these natural rights should be respected by everyone and every entity.'*⁴⁰

*From a technical point of view, there seems to be broad agreement among experts that international human rights law could be applicable to ANSAs in specific circumstances, in particular when they exercise elements of governmental functions and have de facto authority over a population. This will normally be the case when an armed group controls a certain portion of the territory. Indeed, the need to regulate the relationship between those who govern and those who are governed, which characterizes the *raison d'être* of human rights law, would be reproduced and thus would justify the application of that body of law.*

³⁹ In its formal recommendations, the Commission called on the National Transitional Council, *inter alia*: 'To ensure the immediate implementation of applicable international humanitarian law and international human rights law'.

⁴⁰ A. Clapham, 'The Rights and Responsibilities of Armed Non-State Actors: The Legal Landscape and Issues Surrounding Engagement' (2010).

Box 11 Non-State Actors and International Human Rights Law: the view of the International Commission of Inquiry on Libya

'Non-state actors in Libya, in particular the authorities and forces of the National Transitional Council, cannot formally become parties to the international human rights treaties and are thus not formally given obligations under the treaties. Although the extent to which international human rights law binds non-state actors remains contested as a matter of international law, (...) it is increasingly accepted that, where non-state groups exercise de facto control over territory, they must respect fundamental human rights of persons in that territory. (...) The Commission has taken the approach that since the NTC has been exercising de facto control over territory akin to that of a Governmental authority, it will examine also allegations of human rights violations committed by its forces. The Commission notes that the NTC has made a public undertaking in which it committed to "build a constitutional democratic civil state based on the rule of law, respect for human rights and the guarantee of equal rights and opportunities for all its citizens including full political participations by all citizens and equal opportunities between men and women and the promotion of women empowerment".⁴¹

Which norms to engage on?

The choice of which norms to engage on is clearly critical. In engaging with ANSAs, some organizations prefer to seek a commitment from any given ANSA to respect applicable international law in general. They believe that such an overarching commitment is critical to ensuring compliance with applicable norms. Others prefer to be more selective, for example, promoting the specific obligation to allow humanitarian access or promoting the prohibition of the use of anti-personnel mines. The selection of which norms to promote will depend on an assessment of the situation, including the typology and character of the ANSA concerned, and the conflict in which it is fighting, as well as, of course, the issues that the ANSA concerned is willing to discuss.⁴²

There are many possible issues demanding attention in seeking to protect all those affected by armed conflict and no one wishes to suggest, for example, that certain groups of civilians are more entitled to protection than others. What is clear, however, is that it is not necessarily a question of 'all or nothing'. Promoting respect for one specific norm does not mean that anyone promoting it is implicitly endorsing violation of another international norm. Nor does it mean that other norms cannot be specifically addressed later.

41 'Report of the International Commission of Inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya', UN Human Rights Council, UN doc. A/HRC/17/44, 1 June 2011, §72.

42 As underlined by Olivier Bangerter, for example:

[A]rmed groups present a wide variety of actors, in terms of size, command and control capabilities, modus operandi, control of territory, support, networks, culture, aims, etc.... Armed groups represent a wide variety of actors, from quasi-State organizations to a mere handful of predators, and standardised approaches are doomed to fail. This is the biggest challenge to a typology-based approach. ... Tailor-made approaches must be the motto.

Bangerter, O., 'The ICRC and Non-State Armed Groups', in Geneva Call, PSIO and UNIDIR, *Exploring Criteria and Conditions for Engaging Armed Non-State Actors to Respect Humanitarian Law and Human Rights Law*.

The primary focus of this project has been the protection of civilians and therefore as a fundamental starting point all ANSAs should be encouraged always to respect civilians and civilian objects, as demanded by international law (see *Box 12 overleaf on the Principle of distinction under customary international humanitarian law*). Indeed, ANSAs that were consulted by this project readily agreed that **attacks should never be made against civilians.**

However, the determination of *who* is to be considered a civilian continues to differ among ANSAs. In a number of cases, this does not meet the definition of a civilian under international humanitarian law. For example, ANSAs consulted by the Academy research team considered that “village guards” or self-defence groups set up by the state to prevent ANSAs from entering a village were not civilians, even when or if they do not conduct military operations. At a minimum, each ANSA should make explicit who it considers is entitled to their protection and respect as being a civilian and who they consider legitimate targets of armed attacks. This can then be compared with international norms and advocacy can then be undertaken to try to bring the ANSA definition into line with international law.

Civilians should never be used as human shields. Consulted ANSAs agreed that they should endeavour wherever and whenever possible not to hide among the civilian population. There may be occasions, however, where it is unrealistic to expect members of ANSAs to clearly distinguish themselves from the civilian population as to do so would invite annihilation.

In addition, national or international human rights groups, the media, foreign civilians, and those providing humanitarian or medical assistance should always be respected. ANSAs should cooperate fully with neutral and impartial humanitarian organizations, notably by providing safe and unhindered access to areas under their control. Natural resources needed by the civilian population should never be targeted.

Box 12 The Principle of Distinction under Customary International Humanitarian Law⁴³

Distinction between civilians and combatants

- *The parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians.*
- *Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.*
- *Civilians are persons who are not members of the armed forces. The civilian population comprises all persons who are civilians.*
- *Civilians are protected against attack, unless and for such time as they take a direct part in hostilities.*

Distinction between civilian objects and military objectives

- *The parties to the conflict must at all times distinguish between civilian objects and military objectives. Attacks may only be directed against military objectives. Attacks must not be directed against civilian objects.*
- *In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose partial or total destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.*
- *Civilian objects are all objects that are not military objectives.*
- *Civilian objects are protected against attack, unless and for such time as they are military objectives.*

Indiscriminate attacks

- *Indiscriminate attacks are prohibited. Indiscriminate attacks are those: (a) which are not directed at a specific military objective; (b) which employ a method or means of combat which cannot be directed at a specific military objective; or (c) which employ a method or means of combat the effects of which cannot be limited as required by international humanitarian law; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.*
- *Attacks by bombardment by any method or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects are prohibited.*

The possible consequences for the civilian population should be a paramount consideration when deciding whether or not to launch an attack (see Box 13 for the rules on proportionality under customary international humanitarian law).

⁴³ ICRC Study of Customary International Humanitarian Law (2005).

Box 13 Customary Rules on Proportionality and Precautions in Attack⁴⁴

Proportionality in attack

- *Launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited.*

Precautions in attack

- *In the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects. All feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects.*
- *Each party to the conflict must do everything feasible to verify that targets are military objectives.*
- *Each party to the conflict must take all feasible precautions in the choice of means and methods of warfare with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects.*
- *Each party to the conflict must do everything feasible to assess whether the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.*
- *Each party to the conflict must do everything feasible to cancel or suspend an attack if it becomes apparent that the target is not a military objective or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.*
- *Each party to the conflict must give effective advance warning of attacks which may affect the civilian population, unless circumstances do not permit.*
- *When a choice is possible between several military objectives for obtaining a similar military advantage, the objective to be selected must be that the attack on which may be expected to cause the least danger to civilian lives and to civilian objects.*

The consequences for civilians may be both direct—whereby ANSAs should consider the risk of civilian casualties during their military operations—as well as indirect, whereby operations may lead to reprisals against the civilian population by their enemies.

No ANSA should recruit children, especially those under 15 years of age. An international norm formally prohibiting the recruitment and participation of children under 15 years of age in armed conflict has existed since the adoption of the two *1977 Additional Protocols*⁴⁵ (and was arguably implicit in the *1949 Geneva Conventions*). It has since been incorporated in

44 ICRC Study of Customary International Humanitarian Law (2005).

45 Under Article 77(2) of *1977 Additional Protocol I* (applicable in international armed conflict): 'The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years the Parties to the conflict shall endeavour to give priority to those who are oldest.' Under Article 4(3)(c) of *1977 Additional Protocol II* (applicable in non-international armed conflict), 'children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities'.

the 1998 Statute of the International Criminal Court (see generally Box 14 on the application of international criminal law to armed non-state actors).⁴⁶ According to the ICRC, the prohibition of recruitment under 15 years of age is a rule of customary international law applicable in armed conflicts of a non-international character as well as international armed conflicts. 'Children must not be recruited into armed forces or armed groups.'⁴⁷

Box 14 The application of international criminal law to ANSAs⁴⁸

International criminal law seeks to punish individuals for the commission of certain international crimes, particularly genocide, crimes against humanity, and certain war crimes. The current system of international criminal law works through international ad hoc tribunals, internationalised or mixed tribunals, the International Criminal Court, and national courts (military tribunals and ordinary courts). One of the legal consequences of framing an act as an international crime is that it may give rise to what is called universal jurisdiction, which allows any state to try alleged perpetrators, even in the absence of any link between the accused and the state exercising jurisdiction.

Genocide, as defined in the 1948 UN Convention against Genocide, covers acts such as murder or serious bodily or mental harm, committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such.

Crimes against humanity encompass serious attacks on human dignity or a grave humiliation or degradation of human beings. The 1998 Rome Statute of the International Criminal Court (ICC) requires that they be committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. Such crimes can be committed in time of peace as well as during an armed conflict (see Article 7 of the 1998 Rome Statute).

War crimes refer to serious violations of international humanitarian norms applicable in international and non-international armed conflict. Despite the criminalisation of acts committed in non-international armed conflicts, important differences remain between the laws applicable in such conflicts and those applicable to international armed conflict, as evidenced by the shorter list of war crimes that the ICC can prosecute in the context of non-international armed conflicts (see Article 8 of the 1998 Statute of the ICC).

These three international crimes apply to individuals fighting with ANSAs and to members of state armed forces. Furthermore, individual criminal responsibility clearly applies outside the context of armed conflicts to situations which constitute crimes against humanity or genocide. And, in some cases, international criminal law has been used to prosecute members of ANSAs for other crimes included in international treaties, such as torture and hostage-taking.

Indeed, the work of the International Criminal Court to date suggests that it will probably be individuals from ANSAs who will make up the bulk of the defendants there. Three states have all referred their own situations to the Court: Uganda, the Central African Republic, and the Democratic Republic of the Congo. In all three cases, the Government is co-operating in order to see members of ANSAs tried before the Court. All the detainees in custody as of August 2011 were individuals from ANSAs; clearly, governments will not readily hand over their own forces for international prosecution.

⁴⁶ According to Article 8(2)(e)(vii), jurisdiction is given to the Court over the war crime committed in a non-international armed conflict of 'conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities'.

⁴⁷ Rule 136, available at <http://www.icrc.org/customary-ihl/eng/docs/home> (last accessed 10 May 2011).

⁴⁸ Adapted from the Rule of Law in Armed Conflicts (RULAC) Project, 'International Criminal Law', at http://www.adh-geneve.ch/RULAC/international_criminal_law.php; and A. Clapham, 'Legal Landscape paper', *op. cit.*

Under an Optional Protocol to the UN Convention on the Rights of the Child, adopted in 2000, states who ratify it must 'take all feasible measures' to ensure that members of their armed forces under the age of 18 do not take a direct part in hostilities. States must also raise the minimum age for voluntary recruitment into the armed forces from 15 years but the Protocol does not require a minimum age of 18. It further bans compulsory recruitment below the age of 18. States Parties must take legal measures to prohibit ANSAs from recruiting and using children under the age of 18 in armed conflict under any circumstances.

Under Article 4 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict:

- 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.**

Thus, a 'straight-18' minimum age applies under this Protocol to ANSAs but not to states. This clearly poses challenges when a minimum 18 year age-limit for recruitment or participation is being advocated for the ANSA, but in a state where recruitment lawfully occurs for those fighting for the state at an earlier age. Furthermore, it is argued by some that a minimum age of 18 is an unrealistic obligation for ANSAs to abide by.⁴⁹ Allowing participation under 18 in an ANSA is subject to possible sanction by the UN Security Council (see *Box 15*).

Indeed, it is clear that some ANSAs are not prepared to accept 18 as the minimum age for recruitment and participation of children in armed conflict. Some even question 15 as the minimum age for allowing children to associate with armed groups, although it is understood that recruiting children under 15 makes individual members of a group potentially open to prosecution for war crimes, even where they can persuasively argue that the children were accepted into the group for their own protection.

49 See, for further reading, Gazagne, P., "Engaging Armed Non-state Actors on the Issue of Child Recruitment and Use", in Nosworthy, D., *Seen, but not Heard: Placing Children and Youth on the Security Governance Agenda*, Switzerland, LIT Verlag, DCAF Publications, 2009. The 'cultural context' is often mentioned in this regard, whereby in some societies, 15-year-olds are considered men and may act as the head of the family.

Box 15 The UN Security Council and the six 'grave violations' against children

The UN Security Council has consistently addressed the specific protection of children in armed conflict, following the first inclusion of the issue on the Council's agenda in 1999. Resolution 1612 (2005) is especially noteworthy because it established the UN-led Monitoring and Reporting Mechanism on Children and Armed Conflict ('the Mechanism') and its operational country-level Task Forces. The Mechanism and its Task Forces monitor and report on six 'grave violations':

- killing and maiming of children,
- recruiting and using child soldiers,
- attacks against schools or hospitals,
- rape or other grave sexual violence against children,
- abduction of children, and
- denial of humanitarian access for children.

Resolution 1612 also established the Security Council Working Group on Children and Armed Conflict (the Working Group), as an official subsidiary body of the Council which consists of all 15 Council Members. The Working Group is empowered to make recommendations for action against individuals who commit any of the six grave violations identified by the Security Council.

In August 2009, the Security Council adopted Resolution 1882, under which the Council asked the Secretary-General to 'include in the annexes to his reports on children and armed conflict those parties to armed conflict that engage, in contravention of applicable international law, in patterns of killing and maiming of children ... in situations of armed conflict'. In July 2011, the Council adopted Resolution 1998 in which it asked the Secretary-General to include also those parties to armed conflict that engage, in contravention of applicable international law in 'recurrent attacks on schools and/or hospitals'.

Where an ANSA is listed in such an Annex, the UN, especially through UNICEF and the support of the Special Representative of the UN Secretary-General for Children and Armed Conflict, seeks to address the underlying causes by negotiation and adoption of so-called Action Plans. The ANSA can then be de-listed when the necessary action has been taken.

The question remains as to how effective these Action Plans have proved to be in practice. A number of interlocutors have cast doubt on the extent to which this has led to positive change by concerned ANSAs (and governments). For UN bodies and agencies engaged in the process, there is the added concern for the security of their personnel, especially where they are involved in a monitoring task, since involvement in monitoring may jeopardize the ability to deliver humanitarian assistance and put personnel at further risk.

Based on its success in engaging ANSAs on the issue of landmines, Geneva Call has extended the scope of its work to include children, through a new Deed of Commitment for the Protection of Children from the Effects of Armed Conflict. According to Geneva Call, it 'aspires to the most effective standards of protection, particularly on the use and recruitment of children' (see Box 16 for an extract from this new Deed of Commitment).⁵⁰

⁵⁰ See Annex A for the full text of this new Deed of Commitment.

Box 16 Deed of Commitment under Geneva Call for the Protection of Children from the Effects of Armed Conflict (Extracts)

WE, (name of signatory), through our duly authorized representative(s), HEREBY solemnly commit ourselves to the following terms:

- 1. TO ADHERE to a total ban on the use of children in hostilities.*
- 2. TO ENSURE that children are not recruited into our armed forces, whether voluntarily or non-voluntarily. Children will not be allowed to join or remain in our armed forces.*

...

- 5. TO TREAT humanely children who are detained or imprisoned for reasons related to the armed conflict, in accordance with their age and gender specific needs, recognizing that deprivation of liberty may be used only as a measure of last resort and for the shortest appropriate period of time. The death penalty will not be pronounced or executed on a person for any offence committed while a child.*

...

- 7. TO FURTHER ENDEAVOUR TO PROVIDE children in areas where we exercise authority with the aid and care they require, in cooperation with humanitarian or development organizations where appropriate. Towards these ends, and among other things, we will:*

- i) take concrete measures towards ensuring that children have access to adequate food, health care (including psycho-social support), education, and where possible, leisure and cultural activities;*
- ii) protect children against sexual and other forms of violence;*
- iii) facilitate the provision of impartial humanitarian assistance to children in need;*
- iv) facilitate efforts by impartial humanitarian organizations to reunite children with their families;*
- v) avoid using for military purposes schools or premises primarily used by children.*

...

- 15. Any reservation to this Deed of Commitment must be consistent with its object and purpose, international humanitarian law, and the minimum obligations of State parties to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. It must be expressed in writing upon signature and will be periodically reviewed towards attaining the highest possible respect for the rights of children. Geneva Call will be the final arbiter on the permissibility of any reservation.*

7. A range of forms and models exist for concretizing commitments by ANSAs to international norms. Agreements and undertakings should be reflected in writing wherever possible, even if they are initially made only orally.

A variety of mechanisms exist for ANSAs to commit to respecting international norms, such as unilateral declarations, special agreements,⁵¹ Memoranda of Understanding, 'Ground Rules', Action Plans, or deeds of commitment. They offer a valuable opportunity for ANSAs to express their adherence to international norms (as they are typically not entitled to ratify international treaties). Unilateral declarations, for example, by which ANSAs pledge to abide by certain international treaties or norms have been made by a number of such actors. A military code of conduct drawn up by the ANSA could also be considered a form of unilateral declaration, when its existence is made known externally.

Perhaps the best known form of **unilateral declaration** is the deed of commitment issued by Geneva Call. Its Deed of Commitment on the ban on anti-personnel landmines (included in Annex A) has been signed by more than 40 ANSAs and, as noted above, it has recently issued a Deed of Commitment for the Protection of Children from the Effects of Armed Conflict and is in the process of drafting a new Deed of Commitment on sexual violence.

A **special agreement** was originally perceived as a means by which parties to a non-international conflict could bring into force other provisions of international humanitarian law. The term is also now used to refer more generally to documents that reflect the parties' understanding of applicable law, in particular customary norms and the interpretation of those norms.

Agreements and undertakings should be reflected in writing wherever possible, even if they are initially made only orally.⁵² This offers the possibility for others to assess compliance and also to include provision for internal and external monitoring.

Agreements may include a set of fundamental norms to be applied in a given situation or may be more specific or detailed. In any event, they should specifically provide for enforcement and monitoring measures.

Any agreements should be drafted or at least translated into relevant local languages. Care should be taken to ensure that the agreements do not endorse behaviour in violation of the international obligations of an ANSA.

⁵¹ By which some or all of the rules of international humanitarian law applicable to international armed conflict are to be applied.

⁵² Some of those engaged in promoting compliance have preferred to conclude oral rather than written agreements with ANSAs.

8. For an ANSA to improve its compliance with humanitarian norms, it must disseminate, monitor, and enforce these norms within its ranks.

ANSAs should be encouraged to develop and adopt a code of conduct that reflects the local context while respecting international standards. An internal code of conduct is evidence of an ANSA's intention to ensure military discipline while respecting local culture and the civilian population, while remaining in compliance with international norms. An ANSA should therefore seek to internalise its international obligations and other commitments by 'translating' norms into internal codes of conduct. There may be a need for outside technical assistance or support for the effective implementation of undertakings. Care should, however, be taken to ensure that the relevant ANSA assumes the responsibility for adoption, dissemination, and implementation of applicable norms.

Standing operating procedures for military operations as well as possible punishments for violations should be set out clearly, and an implementation and monitoring mechanism, including provision for external monitoring, should be established to promote compliance with the code. The code should be disseminated among fighters and records of the imposition of internal discipline should be kept. These may be used as evidence to respond to allegations of violations of international norms.

Those promoting compliance with norms should be aware that sanction of a member of an ANSA may be summary in nature and in the past has involved corporal punishment or execution. They should therefore be careful to encourage due process or discourage punishment in violation of human rights.⁵³ Measures of reparation (either on an individual or group basis) or local forms of justice that respect international norms and standards will be more appropriate. Other sanctions may include detention (where this is feasible), removal from the ranks of the group, demotion, or removal of the fighter's weapon or other privileges for a specified duration.

In dialogue with ANSAs, efforts should be made to demonstrate the benefit for the groups themselves—military, legal, political, and humanitarian—in their complying with international norms. Culturally appropriate language and methods should be used to disseminate norms and promote such compliance.

Finally, former members of ANSAs may have greater credibility than humanitarian organizations in seeking to encourage compliance with international norms. They may also be able to demonstrate with greater credibility how ANSAs can attain their objectives without necessarily violating applicable norms.

53 The Academy would not consider corporal punishment or execution appropriate under any circumstances.

9. Impartial external monitoring of the actions of ANSAs allied, wherever possible, to technical assistance.

Monitoring is a critical element in promoting compliance with norms. It should be external, where possible, but there should also be an opportunity for an ANSA to complain about the behaviour of the government's armed forces against which it is fighting. It is important that those engaging with ANSAs are seen to be impartial with respect to allegations made against any party to the conflict.⁵⁴

Monitoring should both clearly identify the norms whose respect needs to be specifically enhanced and also seek to promote successful implementation with relevant agreements or declarations. There are a variety of possible approaches to monitoring, including:

- Reporting by an ANSA on its compliance with norms;
- Verification missions by third parties, involving local and/or international actors (*see, for example, Box 17 and the role of the UN in the case of El Salvador*);
- National human rights commissions;
- Confidential monitoring and reporting on the behaviour of an ANSA; and
- 'Naming and shaming' violations and violators.

Peer-based fora and mechanisms can also help to promote compliance by ANSAs with international norms.

The advantages of cooperating fully with, and facilitating, any investigation should be discussed with the ANSA.

⁵⁴ External actors engaged in monitoring compliance with international norms should seek to avoid the risk of being instrumentalised in monitoring actions by ANSAs. There is a fear among many ANSAs that external bodies seeking to conduct monitoring come with institutional bias against the group or are subject to brainwashing by governments.

Box 17 The case of El Salvador⁵⁵

An important occasion in which the United Nations successfully mediated a peace agreement between a government and an ANSA in a non-international armed conflict was at the beginning of the 1990s. An armed conflict was fought in El Salvador between 1979 and 1992. On 4 April 1990, the government and the Farabundo Martí National Liberation Front (Frente Farabundo Martí para la Liberación Nacional, FMLN) agreed to enter into UN-mediated peace talks and expressed their shared aim of guaranteeing 'unrestricted respect for human rights' in El Salvador. As a result of UN efforts, a negotiating agenda was established in Caracas, Venezuela, which foresaw a two-stage process of political agreements, followed by a cease-fire. The agenda items for the first stage were the armed forces, human rights, the judicial system, the electoral system, constitutional reform, socio-economic problems, and UN verification.

On 26 July 1990, an agreement on human rights was signed in San José, Costa Rica, providing for immediate measures for the protection of fundamental rights and freedoms and international verification of their observance.

This was the first substantive agreement as a part of the peace negotiations and it is noteworthy that the obligations are framed in a human rights agreement rather than in terms of humanitarian law obligations. The agreement also envisioned the establishment of a UN human rights verification mission—ONUSAL. Rather than waiting for a cease-fire to put the human rights mission in place, ONUSAL opened an office in San Salvador in January 1991 and began verification operations six months later. In January 1992, the Government of El Salvador and the FMLN (as well as the Representative of the UN Secretary-General) signed a peace agreement in Mexico formally ending 12 years of civil strife. Thus, the agreement on human rights, among other things, had paved the way for a formal peace agreement.

In his final report to the UN Security Council on the work of ONUSAL and the situation in El Salvador, submitted in 1995, the UN Secretary-General stated that violations of human rights had "declined markedly" since ONUSAL began operations in 1991. He observed that politically motivated killings had become rare and complaints of arbitrary detention had sharply diminished, while "disappearances" had stopped altogether.⁵⁶

ANSAs believe that they are often unfairly criticised or punished while government armed forces escape sanction. Efforts should therefore be increased so as to promote respect for international norms by states as well as ANSAs. In return, ANSAs should be encouraged to be transparent about, and make public apology for, abuses or mistakes committed during attacks, while resisting the temptation to respond 'in kind' to abuses by government forces or other ANSAs.

Where humanitarian norms have been violated, and especially where civilians have been targeted, such abuses should be publicly acknowledged and appropriate disciplinary action taken. ANSAs should cooperate with and communicate details of any such incidents to the international community, including the aims of the group, the reasons for the attack, and any action taken afterwards to address abuses or mistakes.

⁵⁵ This text box is based on J. L. Roush, 'The El Salvador Accords: A Model for Peace Keeping Actions', American Diplomacy, The University of North Carolina at Chapel Hill, October 1997.

⁵⁶ 'Report of the Secretary-General on the United Nations Observer Mission in El Salvador', UN doc. S/1995/220 of 24 March 2005, §29.

There is an obvious temptation—and often also pressure from within the armed group or the concerned communities—to respond to abuses by government forces or other ANSAs. Responding with abuses of their own will merely risk an increasing spiral of violence. Restraint will ultimately help to retain the support of the civilian population.

Certain norms, such as, for example, the destruction of anti-personnel mines, may require the commitment of time and resources by the ANSA. Furthermore, technical assistance may need to be afforded to an ANSA to enable it to fulfil its undertakings, for example with respect to the destruction of certain weapons and/or ammunition. Care will have to be taken, however, to ensure that those promoting better compliance with norms do not become complicit in any future criminal behaviour by an ANSA or become engaged in developing military strategy. For example, the neutralization of anti-personnel mines should not result in a recycling of materials into further arms or ammunition.

10. There is a need for better documentation of engagement with ANSAs on compliance with international norms. Explicit acknowledgement of improved compliance by an ANSA with international norms can serve to further enhance respect for those norms.

Individuals, organizations, and states engaged in promoting compliance by ANSAs with international norms have, for the most part, not systematically documented their experiences and lessons learned, let alone shared them with the international community at large. Indeed, many of the organizations described in this report who have been engaged in promoting compliance by ANSAs with international norms have regretted that they did not sufficiently document their experience and best practices. It is hoped that this paper will encourage all of those engaged in this difficult endeavour to ensure that they carefully evaluate, document, and publicise to the maximum extent possible their experiences and the lessons they have learned through this work.

Finally, commitments and improved compliance with international norms by any ANSA should be acknowledged externally. When ANSA are seen to respect international norms or improve their compliance, this behaviour should receive positive acknowledgment and reinforcement. Both members of ANSAs and persons working in the field present in the workshops acknowledged that could be an incentive for future compliance.

Box 18 R2P and engagement with armed non-state actors

The concept of the ‘responsibility to protect’,⁵⁷ commonly known by the abbreviation, R2P, affirms that the state has the primary duty to protect the civilian population within its jurisdiction from genocide, crimes against humanity, war crimes, and so-called ‘ethnic cleansing’. This includes where these crimes are being committed by armed non-state actors (ANSAs). But where that state is unwilling or unable to carry out this responsibility, the international community as a whole has the duty to help the state—first and foremost via peaceful means (such as through diplomatic pressure, dialogue, or sanctions), but should this fail, through military intervention via Chapter VII of the UN Charter.

R2P builds conceptually upon the work of Francis Deng on sovereignty as responsibility, which resulted from humanitarian crises in the 1990s in Africa, especially in relation to internally displaced persons. Deng challenged the legal and moral authority of sovereignty, arguing that it should be judged by the views of the population rather than the governments, for in his words, a ‘government that allows its citizens to suffer a vacuum of responsibility for moral leadership cannot claim sovereignty in an effort to keep the outside world from stepping in to offer protection and assistance’.⁵⁸

But what does this responsibility entail when an ANSA is operating transnationally, i.e. it is based outside the state against which it is fighting? If the state on whose territory the ANSA is located is able to intervene to put an end to its unlawful activities but does nothing, it risks being held responsible for facilitating genocide, war crimes, and/or crimes against humanity, if the ANSA is engaging in such acts. If, however, the state does not have the military capacity to intervene effectively in its own country, it could be argued that the R2P concept, and indeed applicable international law, demands that it either ask the international community for support to address the problem or at the very least that it does not unreasonably prevent others from engaging with the ANSA concerned with a view to bringing to an end violations of international criminal law. This broader policy and practice framework needs to be developed as a matter of some urgency.

57 See the International Commission on Intervention and State Sovereignty (2001), as developed in the 2005 World Summit Outcome (UN doc. A/RES/60/1, New York, 24 October 2005, paras. 138-139), and the 2009 UN Secretary-General’s report: ‘Implementing the Responsibility to Protect’ (UN Doc. A/63/677 of 12 January 2009).

58 F. Deng, F. et al., *Sovereignty as Responsibility: Conflict Management in Africa*, Brookings Institution, Washington, DC, 1996, p. 33.

Concluding Remarks: The Way Forward

We have seen that, despite major challenges, there is considerable scope—and even greater need—for states, international organizations, NGOs and others to engage with ANSAs on compliance with international norms. Engagement, wherever it is possible, should be envisaged with the broadest range of ANSAs with a view to promoting compliance with norms, especially with respect to the protection of civilians in armed conflict. The likelihood of such engagement leading to positive change is, however, greatly increased when an ANSA has some form of political agenda.

Those engaging with ANSAs should stress from the outset that their actions do not constitute political recognition or recognition of belligerency, nor do they affect the status of ANSAs under international law. In addition, those engaging with ANSAs should be as transparent with the government of the concerned state or states and civil society and the general public as is feasible. Where possible, the active support and cooperation of the concerned state should be sought.

Once commitments have been made or an agreement is in place, a critical element in the success of any effort is credible verification and ongoing monitoring, both internally and externally, as well as necessary support for implementation by ANSAs of their undertakings. ANSAs should be encouraged systematically to repress violations of norms by their own forces. The process and punishment should be in accordance with international standards. External monitoring is a major challenge for the international community as some actors, especially states and potentially also the UN, may not be regarded as impartial by the relevant ANSA. Peer-based fora and mechanisms may be set up to promote compliance by ANSAs with international norms.

For organizations, the safety of their personnel and the risk to any relief operations they may be conducting will of course be primary considerations. But organizations should also bear in mind that compliance with certain norms may require significant investment by the ANSA but may also need external assistance to build their capacity. In all cases, those engaging with ANSAs should document their experiences and, wherever possible, share those experiences with others working on similar engagements.

Finally, there is a need for the international community to ensure greater clarity as to the international legal obligations assumed by, or incumbent on, ANSAs, especially with respect to international human rights law. For example, international humanitarian law does not fully address situations where an armed group is operating as the *de facto* authority over a certain area and population for a prolonged period of time, especially when there are no active and protracted hostilities such as to constitute an armed conflict under international law. To support engagement efforts, the development of a model code of behaviour should be considered that reflects fundamental standards of humanity. Such a code, which would need to be elaborated

with detailed input from, and discussion with, members of ANSAs, would be intended to be applied explicitly to ANSAs rather than states. The aim of such a code would be to assist engagement efforts. It would therefore need to be carefully designed so that it can be adapted to the specific context in each case.

Annexes

Annex A. Selected agreements with ANSAs

1. El Salvador Human Rights Agreement, signed in San José, Costa Rica, on 26 July 1990

AGREEMENT ON HUMAN RIGHTS⁵⁹

I. RESPECT FOR AND GUARANTEE OF HUMAN RIGHTS

The Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (hereinafter referred to as “the Parties”),

Bearing in mind that the legal system of El Salvador provides for the recognition of human rights and the duty of the State to respect and guarantee such rights;

Considering also that the State has assumed obligations of this nature under the many international conventions to which it is a party;

Bearing in mind that the Frente Farabundo Martí para la Liberación Nacional has the capacity and the will and assumes the commitment to respect the inherent attributes of the human person;

Reiterating the common purpose, expressed in the Geneva Agreement, to guarantee unrestricted respect for human rights in El Salvador;

Further reiterating their willingness, also expressed in the Geneva Agreement, to submit in this matter to verification by the United Nations;

On the understanding that for the purposes of the present political agreement, “human rights” shall mean those rights recognized by the Salvadorian legal system, including treaties to which El Salvador is a party, and by the declarations and principles of human rights and humanitarian law adopted by the United Nations and the Organization of American States;

Have concluded the following agreement in pursuance of the initial objective of the Geneva Agreement:

1. All necessary steps and measures shall be taken immediately to avoid any act or practice which constitutes an attempt upon the life, integrity, security or freedom of the individual. Similarly, all necessary steps and measures shall be taken to eliminate any practice involving enforced disappearances and abductions. Priority shall be given to the investigation of any cases of this kind which may arise and to the identification and punishment of the persons found guilty.

⁵⁹ It is the understanding of the Parties that this Agreement does not exhaust the consideration of the item on human rights and that it is, accordingly, a partial agreement. With the exception of points that are immediately applicable, the Agreement is subject to the package of political agreements to be negotiated for the achievement of the initial objective envisaged in the Geneva Agreement.

2. The full guarantee of the freedom and the integrity of the person requires that certain immediate measures be taken in order to ensure the following:

- (a) No one may be arrested for the lawful exercise of his political rights;
- (b) An arrest may be made only if ordered by the competent authority in writing, in accordance with the law, and the arrest must be carried out by officers who are properly identified as such;
- (c) Anyone arrested must be informed while the arrest is being made of the reasons for the arrest and must be apprised without delay of the charge or charges against them;
- (d) No one shall be placed under arrest as a means of intimidation. In particular, arrests shall not be made at night, except in the case of individuals caught *in flagrante delicto*;
- (e) No one in custody shall be held incommunicado. Any person who has been arrested shall have the right to be assisted without delay by legal counsel of his own choosing and the right to communicate freely and privately with such counsel;
- (f) No one shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

3. In the course of the present negotiations, appropriate legal procedures and timetables shall be determined for the release of individuals who have been imprisoned for political reasons.

4. The fullest possible support shall be given to ensuring the effectiveness of the remedies of amparo and habeas corpus. To this end, the broadest possible publicity shall be given to this Agreement among the public at large and, in particular, among authorities or officers in charge of detention centres. Anyone who hampers the operation of these remedies or provides false information to the judicial authorities shall be punished.

5. The right of all persons to associate freely with others for ideological, religious, political, economic, labour, social, cultural, sporting or other purposes shall be fully guaranteed. Trade union freedom shall be fully respected.

6. Freedom of expression and of the press, the right of reply and the activities of the press shall be fully guaranteed.

7. Displaced persons and returnees shall be provided with the identity documents required by law and shall be guaranteed freedom of movement. They shall also be guaranteed the freedom to carry on their economic activities and to exercise their political and social rights within the framework of the country's institutions.

8. All persons shall be guaranteed freedom of movement in the areas involved in conflict, and the necessary steps shall be taken to provide the inhabitants of such areas with the identity documents required by law.

9. The Parties recognise the necessity of guaranteeing the effective enjoyment of labour rights. This subject will be considered under the agenda item on economic and social problems.

II. INTERNATIONAL VERIFICATION

10. In accordance with the provisions of the Geneva Agreement and the agenda for the negotiations which was adopted in Caracas, the Parties hereby agree to the terms of reference for the United Nations human rights verification mission (hereinafter referred to as "the Mission"), as set out below.

11. The Mission shall devote special attention to the observance of the rights to life, to the integrity and security of the person, to due process of law, to personal liberty, to freedom of expression and to freedom of association. In this context, a special effort shall be made to clarify any situation which appears to reveal a systematic practice of human rights violations and, in such cases, to recommend appropriate measures for the elimination of the practice to the Party concerned. The foregoing shall be without prejudice to any powers granted to the Mission to consider individual cases.

12. A Director designated by the Secretary-General of the United Nations shall be in charge of the Mission. The Director shall work in close co-operation with existing human rights organizations and bodies in El Salvador. He shall also be assisted by expert advisers. In addition, the Mission shall include as many verification personnel as may be necessary.

13. The purpose of the Mission shall be to investigate the human rights situation in El Salvador as regards acts committed or situations existing from the date of its establishment and to take any steps it deems appropriate to promote and defend such rights. Accordingly, it shall perform these functions with a view to promoting respect for human rights and their guarantee in El Salvador and helping to do away with those situations in which such respect and guarantees are not duly observed.

14. The Mission's mandate shall include the following powers:

- (a) To verify the observance of human rights in El Salvador;
- (b) To receive communications from any individual, group of individuals or body in El Salvador, containing reports of human rights violations;
- (c) To visit any place or establishment freely and without prior notice;
- (d) To hold its meetings freely anywhere in the national territory;
- (e) To interview freely and privately any individual, group of individuals or members of bodies or institutions;
- (f) To collect by any means it deems appropriate such information as it considers relevant;
- (g) To make recommendations to the Parties on the basis of any conclusions it has reached with respect to cases or situations it may have been called upon to consider;
- (h) To offer its support to the judicial authorities of El Salvador in order to help improve the judicial procedures for the protection of human rights and increase respect for the rules of due process of law;
- (i) To consult the Attorney-General of the Republic;
- (j) To plan and carry out an educational and informational campaign on human rights and on the functions of the Mission itself;

- (k) To use the media to the extent useful for the fulfilment of its mandate;
- (l) To report regularly to the Secretary-General of the United Nations and through him to the General Assembly.

15. The Parties undertake to give their full support to the Mission. To that end, they pledged:

- (a) To grant the Mission whatever facilities it may require for the performance of its functions;
- (b) To ensure the security of the members of the Mission and of such persons as may have provided it with information, testimony or evidence of any kind;
- (c) To provide, as expeditiously as possible, whatever information may be required by the Mission;
- (d) To give their earliest consideration to any recommendations made to them by the Mission;
- (e) Not to hinder the fulfilment of the Mission's mandate.

16. Each of the Parties shall appoint a delegate to serve as liaison with the Mission.

17. Should the Mission receive communications referring to acts or situations which occurred prior to its establishment, it may transmit them, if it deems it appropriate, to the competent authorities.

18. The fact that a case or situation has been considered by the Mission shall not preclude the application thereto of international procedures for the promotion and protection of human rights.

19. Subject to any arrangements which must be made prior to its establishment, the Mission shall take up its duties as of the cessation of the armed conflict. The Mission shall be established initially for one year and may be renewed.

San José, 26 July 1980

2. Geneva Call Deeds of Commitment

DEED OF COMMITMENT UNDER GENEVA CALL FOR ADHERENCE TO A TOTAL BAN ON ANTI-PERSONNEL MINES AND FOR COOPERATION IN MINE ACTION

WE, the *(name of the non-State actor)*, through our duly authorized representative(s),

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

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

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

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

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

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

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

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

1. TO ADHERE to a total ban on anti-personnel mines. By anti-personnel mines, we refer to those devices which effectively explode by the presence, proximity or contact of a person, including other victim-activated explosive devices and anti-vehicle mines with the same effect whether with or without anti-handling devices. By total ban, we refer to a complete prohibition on all use, development, production, acquisition, stockpiling, retention, and transfer of such mines, under any circumstances. This includes an undertaking on the destruction of all such mines.

2. TO COOPERATE IN AND UNDERTAKE stockpile destruction, mine clearance, victim assistance, mine awareness, and various other forms of mine action, especially where these programs are being implemented by independent international and national organizations.

3. TO ALLOW AND COOPERATE in the monitoring and verification of our commitment to a total ban on anti-personnel mines by Geneva Call and other independent international and national organizations associated for this purpose with Geneva Call. Such monitoring and verification include visits and inspections in all areas where antipersonnel mines may be present, and the provision of the necessary information and reports, as may be required for such purposes in the spirit of transparency and accountability.
4. TO ISSUE the necessary orders and directives to our commanders and fighters for the implementation and enforcement of our commitment under the foregoing paragraphs, including measures for information dissemination and training, as well as disciplinary sanctions in case of non-compliance.
5. TO TREAT this commitment as one step or part of a broader commitment in principle to the ideal of humanitarian norms, particularly of international humanitarian law and human rights, and to contribute to their respect in field practice as well as to the further development of humanitarian norms for armed conflicts.
6. This *Deed of Commitment* shall not affect our legal status, pursuant to the relevant clause in common article 3 of the Geneva Conventions of August 12, 1949.
7. We understand that Geneva Call may publicize our compliance or non-compliance with this *Deed of Commitment*.
8. We see the desirability of attracting the adherence of other armed groups to this *Deed of Commitment* and will do our part to promote it.
9. This *Deed of Commitment* complements or supersedes, as the case may be, any existing unilateral declaration of ours on anti-personnel mines.
10. This *Deed of Commitment* shall take effect immediately upon its signing and receipt by the Government of the Republic and Canton of Geneva which receives it as the custodian of such deeds and similar unilateral declarations.

DEED OF COMMITMENT UNDER GENEVA CALL FOR THE PROTECTION OF CHILDREN FROM THE EFFECTS OF ARMED CONFLICT

WE, (name of signatory), through our duly authorized representative(s),

Concerned with the harmful and widespread impact of armed conflict on the physical and mental development of children and the long-term consequences this has for human security, durable peace, and development;

Affirming our determination to protect the civilian population, in particular children, from the effects or dangers of military actions, and to respect their right to life, to human dignity, to education and to development, with the best interest of the child as a primary consideration;

Recognizing that children associated with armed forces are at particular risk of exposure to attacks by opposing forces;

Taking due account of the varying standards within international law instruments providing special protection for children affected by armed conflict, in particular the Geneva Conventions and their Additional Protocols, and the Convention on the Rights of the Child and its Optional Protocol on the Involvement of Children in Armed Conflict, and determined to clarify our responsibilities on the recruitment and use in hostilities of persons under 18 years of age;

Mindful that the Statute of the International Criminal Court criminalizes the act of conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities;

Rejecting the notion that any cause, for whatever reason, may justify unlawful treatment of children in armed conflict;

Accepting that international humanitarian norms apply to and oblige all parties to armed conflict;

Stressing that the present Commitment protects all children, both girls and boys;

And understanding that for the purposes of this Deed of Commitment “children” are defined as persons under the age of 18, and where there is doubt as to whether a person has reached the age of 18, (s)/he will be treated as a child;

HEREBY solemnly commit ourselves to the following terms:

1. TO ADHERE to a total ban on the use of children in hostilities.
2. TO ENSURE that children are not recruited into our armed forces, whether voluntarily or non-voluntarily. Children will not be allowed to join or remain in our armed forces.

3. TO NEVER COMPEL children to associate with, or remain associated with, our armed forces. By associate, we mean any type of direct or supporting activity whether combat-related or otherwise. In the event that children have been compelled to do so, they will be released at the earliest possible opportunity in accordance with Article 6 of this Deed of Commitment.

4. TO ENSURE that children do not accompany our armed forces during our military operations and to take all feasible measures so that children in areas where we exercise control are not present during military operations.

5. TO TREAT humanely children who are detained or imprisoned for reasons related to the armed conflict, in accordance with their age and gender specific needs, recognizing that deprivation of liberty may be used only as a measure of last resort and for the shortest appropriate period of time. The death penalty will not be pronounced or executed on a person for any offence committed while a child.

6. The release or disassociation of children from our armed forces must be done in safety and security, and whenever possible, in cooperation with specialized child protection actors.

7. TO FURTHER ENDEAVOUR TO PROVIDE children in areas where we exercise authority with the aid and care they require, in cooperation with humanitarian or development organizations where appropriate. Towards these ends, and among other things, we will:

i) take concrete measures towards ensuring that children have access to adequate food, health care (including psycho-social support), education, and where possible, leisure and cultural activities;

ii) protect children against sexual and other forms of violence;

iii) facilitate the provision of impartial humanitarian assistance to children in need;

iv) facilitate efforts by impartial humanitarian organizations to reunite children with their families;

v) avoid using for military purposes schools or premises primarily used by children.

8. TO ISSUE the necessary orders and directives to our political and military organs, commanders and fighters for the implementation and enforcement of our commitment, including measures for information dissemination and training. Commanders and superiors are responsible for their subordinates. In case of non-compliance, we will take all necessary measures to cease violations immediately, initiate appropriate investigations and impose sanctions in accordance with international standards.

9. TO ALLOW AND COOPERATE in the monitoring and verification of our present commitment by Geneva Call and other independent international and national organizations associated for this purpose with Geneva Call. Such monitoring and verification include visits and inspections in all areas where we operate, and the provision of the necessary information and reports, as may be required for such purposes in the spirit of transparency and accountability.

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

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

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

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

14. This Deed of Commitment complements, or supersedes, as the case may be, any existing unilateral declaration of ours on children and armed conflict.

15. Any reservation to this Deed of Commitment must be consistent with its object and purpose, international humanitarian law, and the minimum obligations of State parties to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. It must be expressed in writing upon signature and will be periodically reviewed towards attaining the highest possible respect for the rights of children. Geneva Call will be the final arbiter on the permissibility of any reservation.

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

Annex B. Turku Declaration of Minimum Humanitarian Standards

Declaration of Minimum Humanitarian Standards, reprinted in the Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its Forty-sixth Session, Commission on Human Rights, 51st Session, Provisional Agenda Item 19, at 4, U.N. Doc. E/CN.4/1995/116 (1995) (Declaration of Turku).

[The appropriate United Nations organ,]

Recalling the reaffirmation by the Charter of the United Nations and the Universal Declaration of Human Rights of faith in the dignity and worth of the human person;

Considering that situations of internal violence, disturbances, tensions and public emergency continue to cause serious instability and great suffering in all parts of the world;

Concerned that in such situations human rights and humanitarian principles have often been violated;

Recognizing the importance of respecting existing human rights and humanitarian norms;

Noting that international law relating to human rights and humanitarian norms applicable in armed conflicts do not adequately protect human beings in situations of internal violence, disturbances, tensions and public emergency;

Confirming that any derogations from obligations relating to human rights during a state of public emergency must remain strictly within the limits provided for by international law, that certain rights can never be derogated from and that humanitarian law does not admit of any derogations on grounds of public emergency;

Confirming further that measures derogating from such obligations must be taken in strict conformity with the procedural requirements laid down in those instruments, that the imposition of a state of emergency must be proclaimed officially, publicly, and in accordance with the provisions laid down by law, that measures derogating from such obligations will be limited to the extent strictly required by the exigencies of the situations, and that such measures must not discriminate on the grounds of race, colour, sex, language, religion, social, national or ethnic origin;

Recognizing that in cases not covered by human rights and humanitarian instruments, all persons and groups remain under the protection of the principles of international law derived from established custom, from the principles of humanity and the dictates of public conscience;

Believing that it is important to reaffirm and develop principles governing behaviour of all persons, groups, and authorities in situations of internal violence, disturbances, tensions and public emergency;

Believing further in the need for the development and strict implementation of national legislation applicable to such situations, for strengthening cooperation necessary for more efficient implementation of national and international norms, including international mechanisms for monitoring, and for the dissemination and teaching of such norms;

Proclaims this Declaration of Minimum Humanitarian Standards.

Article 1

This Declaration affirms minimum humanitarian standards which are applicable in all situations, including internal violence, disturbances, tensions, and public emergency, and which cannot be derogated from under any circumstances. These standards must be respected whether or not a state of emergency has been proclaimed.

Article 2

These standards shall be respected by, and applied to all persons, groups and authorities, irrespective of their legal status and without any adverse discrimination.

Article 3

1. Everyone shall have the right to recognition everywhere as a person before the law. All persons, even if their liberty has been restricted, are entitled to respect for their person, honour and convictions, freedom of thought, conscience and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction.

2. The following acts are and shall remain prohibited:

a) violence to the life, health and physical or mental well-being of persons, in particular murder, torture, mutilation, rape, as well as cruel, inhuman or degrading treatment or punishment and other outrages upon personal dignity;

b) collective punishments against persons and their property;

c) the taking of hostages;

d) practising, permitting or tolerating the involuntary disappearance of individuals, including their abduction or unacknowledged detention;

e) pillage;

f) deliberate deprivation of access to necessary food, drinking water and medicine;

g) threats or incitement to commit any of the foregoing acts.

Article 4

1. All persons deprived of their liberty shall be held in recognized places of detention. Accurate information on their detention and whereabouts, including transfers, shall be made promptly available to their family members and counsel or other persons having a legitimate interest in the information.
2. All persons deprived of their liberty shall be allowed to communicate with the outside world including counsel in accordance with reasonable regulations promulgated by the competent authority.
3. The right to an effective remedy, including habeas corpus, shall be guaranteed as a means to determine the whereabouts or the state of health of persons deprived of their liberty and for identifying the authority ordering or carrying out the deprivation of liberty. Everyone who is deprived of his or her liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of the detention shall be decided speedily by a court and his or her release ordered if the detention is not lawful.
4. All persons deprived of their liberty shall be treated humanely, provided with adequate food and drinking water, decent accommodation and clothing, and be afforded safeguards as regards health, hygiene, and working and social conditions.

Article 5

1. Attacks against persons not taking part in acts of violence shall be prohibited in all circumstances.
2. Whenever the use of force is unavoidable, it shall be in proportion to the seriousness of the offence or the objective to be achieved.
3. Weapons or other material or methods prohibited in international armed conflicts must not be employed in any circumstances.

Article 6

Acts or threats of violence the primary purpose of foreseeable effect of which is to spread terror among the population are prohibited.

Article 7

1. The displacement of the population or parts thereof shall not be ordered unless their safety or imperative security reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the population may be transferred and received under satisfactory conditions of shelter, hygiene, health, safety, and nutrition. Persons or groups thus displaced shall be allowed to return to their homes as soon as the conditions which made their displacement imperative have ceased. Every effort shall be made to enable those so displaced who wish to remain together to do so. Families whose members wish to remain together must be allowed to do so. The persons thus displaced shall be free to move around in the territory, subject only to the safety of the persons involved or reasons of imperative security.
2. No persons shall be compelled to leave their own territory.

Article 8

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his or her life.

2. In addition to the guarantees of the inherent right to life, and the prohibition of genocide, in existing human rights and humanitarian instruments, the following provisions shall be respected as a minimum.

3. In countries which have not yet abolished the death penalty, sentences of death shall be carried out only for the most serious crimes. Sentences of death shall not be carried out on pregnant women, mothers of young children or on children under 18 years of age at the time of the commission of the offence.

4. No death sentence shall be carried out before the expiration of at least six months from the notification of the final judgment confirming such death sentence.

Article 9

No sentence shall be passed and no penalty shall be executed on a person found guilty of an offence without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by the community of nations. In particular:

a) the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him or her, shall provide for a trial within a reasonable time, and shall afford the accused before and during his or her trial all necessary rights and means of defence;

b) no one shall be convicted of an offence except on the basis of individual penal responsibility;

c) anyone charged with an offence is presumed innocent until proved guilty according to law;

d) anyone charged with an offence shall have the right to be tried in his or her presence;

e) no one shall be compelled to testify against himself or herself or to confess guilt;

f) no one shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with the law and penal procedure;

g) no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under applicable law, at the time when it was committed.

Article 10

Every child has the right to the measures of protection required by his or her condition as a minor and shall be provided with the care and aid the child requires. Children who have not yet attained the age of fifteen years shall not be recruited in nor allowed to join armed forces or armed groups or allowed to take part in acts of violence. All efforts shall be made not to allow persons below the age of 18 to take part in acts of violence.

Article 11

If it is considered necessary for imperative reasons of security to subject any person to assigned residence, internment or administrative detention, such decisions shall be subject to a regular procedure prescribed by law affording all the judicial guarantees which are recognized as indispensable by the international community, including the right of appeal or to a periodical review.

Article 12

In every circumstance, the wounded and sick, whether or not they have taken part in acts of violence, shall be protected and treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them on any grounds other than their medical condition.

Article 13

Every possible measure shall be taken, without delay, to search for and collect wounded, sick and missing persons and to protect them against pillage and ill-treatment, to ensure their adequate care; and to search for the dead, prevent their being despoiled or mutilated, and to dispose of them with respect.

Article 14

1. Medical and religious personnel shall be respected and protected and shall be granted all available help for the performance of their duties. They shall not be compelled to carry out tasks which are not compatible with their humanitarian missions.

2. Under no circumstances shall any person be punished for having carried out medical activities compatible with the principles of medical ethics, regardless of the person benefitting therefrom.

Article 15

In situations of internal violence, disturbances, tensions or public emergency, humanitarian organizations shall be granted all the facilities necessary to enable them to carry out their humanitarian activities.

Article 16

In observing these standards, all efforts shall be made to protect the rights of groups, minorities and peoples, including their dignity and identity.

Article 17

The observance of these standards shall not affect the legal status of any authorities, groups, or persons involved in situations of internal violence, disturbances, tensions or public emergency.

Article 18

1. Nothing in the present standards shall be interpreted as restricting or impairing the provisions of any international humanitarian or human rights instrument.

2. No restriction upon or derogation from any of the fundamental rights of human beings recognized or existing in any country by virtue of law, treaties, regulations, custom, or principles of humanity shall be admitted on the pretext that the present standards do not recognize such rights or that they recognize them to a lesser extent.

Annex C. Aide Memoire for the UN Security Council on the Protection of Civilians in Armed Conflict

For the consideration of issues pertaining to the protection of civilians in armed conflict.⁶⁰

Enhancing the protection of civilians in armed conflict is at the core of the work of the United Nations Security Council for the maintenance of peace and security. In order to facilitate the Council's consideration of protection of civilians concerns in a given context, including at the time of the establishment or renewal of peacekeeping mandates, in June 2001 Council Members suggested that an Aide Memoire, listing the relevant issues, be drafted in cooperation with the Council (S/2001/614). On 15 March 2002, the Council adopted the Aide Memoire as a practical guide for its consideration of protection of civilians issues and agreed to review and update its contents periodically (S/PRST/2002/6). It was subsequently updated and adopted as an annex to Presidential Statement S/PRST/2003/27 on 15 December 2003.

This is the fourth edition of the Aide Memoire and is based on the Council's previous deliberations on the protection of civilians, including resolutions 1265 (1999), 1296 (2000), 1674 (2006), 1738 (2006) and 1894 (2009). It is the result of consultation between the Security Council and the Office for the Coordination of Humanitarian Affairs (OCHA), as well as between OCHA and concerned United Nations departments and agencies, and other relevant humanitarian organizations.

The Aide Memoire is intended to facilitate the Security Council's consideration of issues relevant to the protection of civilians in armed conflict. To this end, it highlights primary objectives for Security Council action; offers, on the basis of the Security Council's past practice, specific issues for consideration in meeting those objectives; and provides, in the addendum, a selection of agreed language from Security Council resolutions and presidential statements that refer to such concerns.

Bearing in mind that each peacekeeping mandate has to be elaborated on a case-by-case basis, the Aide Memoire is not intended as a blueprint for action. The relevance and practicality of the various measures described have to be considered and adapted to the specific conditions in each situation.

Most frequently civilians are caught in circumstances of dire need where a peacekeeping operation has not been established. Such situations may require the Council's urgent attention. This Aide Memoire may, therefore, also provide guidance in circumstances where the Council may wish to consider action outside the scope of a peacekeeping operation.

60 Annex to UN doc. S/PRST/2010/25 of 22 November 2010.

I. General protection concerns pertaining to the conflict-affected population.

A. Protection of, and assistance to, the conflict-affected population

Parties to armed conflict to take the necessary measures to protect and meet the basic needs of the conflict-affected population.

Issues for consideration:

- Stress the responsibility of parties to armed conflict to respect, protect and meet the basic needs of civilian populations within their effective control.
- Condemn, and call for the immediate cessation of, acts of violence or abuses committed against civilians in situations of armed conflict in violation of applicable international humanitarian law and human rights law.
- Call for strict compliance by parties to armed conflict with applicable international humanitarian law and human rights law, including with regard to:
 - The prohibition against violence to life and person, in particular murder, mutilation, cruel treatment and torture; enforced disappearances; outrages upon personal dignity; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and any other form of sexual violence.
 - The prohibition against arbitrary deprivation of liberty; corporal punishment; collective punishment; and the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.
 - The prohibition against taking of hostages.
 - The prohibition against ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand.
 - The prohibition against the recruitment or the active use of children in hostilities by parties to armed conflict in violation of applicable international law.
 - The prohibition against slavery and the slave trade in all their forms and uncompensated or abusive forced labour.
 - The prohibition against wilfully impeding relief supplies as provided for under international humanitarian law.
 - The prohibition of persecution on political, religious, racial or gender grounds.
 - The prohibition of any adverse distinction in the application of international humanitarian law and human rights law based on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status.
 - The obligation to respect and protect, to whichever party they belong, the wounded and sick, to take all possible measures, particularly after an engagement, to search for and collect the wounded and sick and to provide, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition without distinction on any grounds other than medical ones.

- Call on all parties to ensure access for relevant organizations, as applicable, to all prisons and places of detention.
- Mandate United Nations peacekeeping and other relevant missions authorized by the Security Council, where appropriate and on a case-by-case basis, to contribute to the protection of the civilian population, particularly those under imminent threat of physical violence, within their zones of operation. In doing so, request:
 - That the protection of civilians is prioritized in decisions about the use of available capacity and resources, including information and intelligence resources, in the implementation of mandates.
 - The development of clear guidelines/directives as to what missions can do to protect civilians, including practical protection measures such as intensified and systematic patrolling in potential volatile areas, joint protection teams or early warning cells.
 - Systematic coordination, between the civil and military components of the mission and with humanitarian actors, in order to consolidate expertise on the protection of civilians.
 - That missions communicate with the civilian population to raise awareness and understanding about their mandate and activities and to collect reliable information on violations of international humanitarian law and human rights abuses perpetrated against civilians.
- Request that United Nations peacekeeping and other relevant missions develop comprehensive protection strategies in consultation with United Nations country teams and other relevant actors.
- Request that reports of the Secretary-General on country specific situations include information on the protection of civilians.
- Request that United Nations peacekeeping and other relevant missions develop benchmarks and indicators of progress regarding the protection of civilians to measure specific developments in the implementation of their protection mandates.
- Request troop- and police-contributing countries to ensure the provision of appropriate training to heighten the awareness and responsiveness to protection concerns of their personnel participating in United Nations peacekeeping and other relevant missions authorized by the Security Council to protect civilians.
- Urge relevant regional and/or subregional bodies to develop and implement policies, activities, and advocacy for the benefit of civilians affected by armed conflict.

B. Displacement

Parties to armed conflict and other relevant actors refrain from, and take the necessary measures to prevent and respond to, the displacement of the civilian population.

Issues for consideration:

- Condemn, and call for the immediate cessation of, displacement in violation of applicable international humanitarian law and human rights law.
- Call for strict compliance by parties to armed conflict with applicable international humanitarian law, human rights law and refugee law, including with regard to:
 - The prohibition against deportation, forcible transfer or displacement of the civilian population, in whole or in part, unless the security of the civilians concerned or imperative military reasons so demand.
 - The obligation, in case of displacement, to ensure to the greatest practicable extent that the civilians concerned are received under satisfactory conditions of shelter, hygiene, health, safety and nutrition and that members of the same family are not separated and that basic needs are met during displacement.
 - The right to freedom of movement and to leave one's country and seek asylum.
 - The right to non-refoulement under the Convention relating to the Status of Refugees, the protection of which does not extend to any person with respect to whom there are serious reasons for considering that she or he has been guilty of acts contrary to the purposes and principles of the United Nations.
- Underline the primary responsibility of States to respect and maintain the security and civilian character of camps for refugees and internally displaced persons, including disarming armed elements, separating combatants, curbing the flow of small arms in camps and preventing recruitment by armed groups in and around camps.
- Mandate peacekeeping and other relevant missions authorized by the Security Council to take all feasible measures to ensure security in and around such camps and for their inhabitants.
- Request that reports of the Secretary-General on country-specific situations include the protection of displaced persons as a specific aspect of the report.
- Urge relevant regional and/or subregional bodies to develop and implement policies, activities, and advocacy for the benefit of internally displaced persons and refugees.

Durable solutions for refugees and internally displaced persons, including safe, voluntary and dignified return and reintegration.

Issues for consideration:

- Call for strict compliance by parties to armed conflict with applicable international humanitarian law, refugee law and human rights law, including with regard to:
 - Respect for the right of refugees and displaced persons to voluntary return in safety and dignity to their homes.
 - Respect for the property rights of refugees and displaced persons, without adverse distinction on the basis of gender, age or other status.
- Stress in relevant resolutions the importance of achieving durable solutions for refugees and displaced persons, including voluntary, safe and dignified return, and of ensuring their full participation in the planning and management of these solutions. Call upon all parties concerned to create the conditions conducive to allowing the voluntary, safe, dignified and sustainable return, local integration or resettlement of refugees and displaced persons.
- Call upon all parties concerned to ensure non-discriminatory treatment of returning refugees and internally displaced persons.
- Call upon all parties concerned to ensure the participation of refugees and internally displaced persons and inclusion of their needs, including their right to voluntary, safe and dignified return and reintegration, in all peace processes, peace agreements and post-conflict recovery and reconstruction planning and programs.
- Encourage United Nations peacekeeping and other relevant missions authorized by the Security Council, as appropriate and on a case-by-case basis, to support domestic mechanisms for addressing housing, land and property issues or their establishment by national authorities.
- Encourage United Nations peacekeeping and other relevant missions authorized by the Security Council, as appropriate and on a case-by-case basis, to prevent the illegal appropriation and confiscation of land and property belonging to refugees and internally displaced persons and to ensure the protection of returning refugees and internally displaced persons.

C. Humanitarian access and safety and security of humanitarian workers.

Parties to armed conflict to agree to and facilitate relief operations that are humanitarian and impartial in character and to allow and facilitate rapid and unimpeded passage of relief consignments, equipment and personnel.

Issues for consideration:

- Condemn, and call for the immediate removal of, impediments of humanitarian access in violation of applicable international humanitarian law.
- Call for strict compliance by parties to armed conflict with applicable international humanitarian law, including:
 - The prohibition against using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under applicable international humanitarian law.
 - Agreeing to relief actions which are humanitarian and impartial in character and conducted without any adverse distinction.
- Call for strict compliance by parties to armed conflict and third States with their obligations under applicable international humanitarian law to allow and facilitate the rapid and unimpeded passage of relief consignments, equipment and personnel subject to their right to prescribe technical arrangements, including search, under which such passage is permitted.
- Mandate United Nations peacekeeping and other relevant missions authorized by the Security Council, where appropriate and as requested, to facilitate the provision of humanitarian assistance.

Parties to armed conflict to respect and protect humanitarian workers and facilities.

Issues for consideration:

- Condemn, and call for the immediate cessation of, attacks deliberately targeting humanitarian workers.
- Call for strict compliance by parties to armed conflict with applicable international humanitarian law, including the duty to respect and protect relief personnel and installations, material, units and vehicles involved in humanitarian assistance.
- Mandate peacekeeping and other relevant missions authorized by the Security Council to contribute, as requested and within capabilities, to the creation of the necessary security conditions for the provision of humanitarian assistance.
- Encourage the Secretary-General to bring to the attention of the Security Council situations in which humanitarian assistance is denied as a consequence of violence directed against humanitarian personnel and facilities.

- Request that States include key provisions of the Convention on the Safety of United Nations and Associated Personnel and its Optional Protocol, such as those regarding the prevention of attacks against members of United Nations operations, the criminalisation of such attacks and the prosecution or extradition of offenders, in future as well as, if necessary, in existing status-of-forces, status-of-mission and host country agreements negotiated with the United Nations.

D. Conduct of hostilities.

Parties to armed conflict to take all feasible precautions to spare civilians from the effects of hostilities.

Issues for consideration:

- Condemn, and call for the immediate cessation of, all acts of violence or abuses committed against civilians in violation of applicable international humanitarian law and human rights law.
- Call for strict compliance by parties to armed conflict with applicable international humanitarian law, including the prohibitions against:
 - Directing attacks against the civilian population or against individual civilians not taking direct part in hostilities;
 - Directing attacks against civilian objects;
 - Launching an attack that is indiscriminate, i.e., of a nature to strike military objectives and civilians or civilian objects without distinction;
 - Launching an attack which may be expected to cause incidental loss of life or injury to civilians or damage to civilian objects or a combination thereof which would be excessive in relation to the concrete and direct military advantage anticipated;
 - Directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the United Nations Charter, as long as they are entitled to the protection given to civilians or civilian objects under international humanitarian law;
 - Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
 - Rape and other forms of sexual violence;
 - Directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
 - Directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
 - Destroying or seizing the property of the adversary unless required by military necessity;
 - Using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under applicable international humanitarian law.

- Request regular reporting by United Nations peacekeeping and other relevant missions authorized by the Security Council on concrete steps taken to ensure the protection of the civilian population in the conduct of hostilities and on measures to ensure accountability for violations of applicable international humanitarian law.

E. Small arms and light weapons, mines and explosive remnants of war.

Protection of the civilian population through the control of, and reduction in the availability of, illicit small arms and light weapons.

Issues for consideration:

- Express concern at the detrimental impact of the proliferation of arms, in particular small arms, on the security of civilians by fuelling armed conflict, and request the mission to monitor the presence of arms among the civilian population.
- Request States and regional and subregional organizations to adopt measures to curb and reduce the illicit trafficking of small arms and light weapons such as voluntary collection and destruction; effective stockpile management; arms embargoes; sanctions; and legal measures against corporate actors, individuals and entities involved in such activities.
- Encourage strengthened practical cooperation between United Nations peacekeeping and other relevant missions authorized by the Security Council aimed at monitoring and preventing the cross-border movement of small arms and light weapons.
- Mandate United Nations peacekeeping and other relevant missions authorized by the Security Council to collect and dispose of or secure illicit and/or surplus small arms and light weapons as well as surplus ammunition stockpiles.
- Consider imposing arms embargoes and other measures aimed at preventing the sale or supply of arms and related materiel of all types to parties to armed conflict that commit violations of applicable international law.
- Encourage strengthened practical cooperation among relevant sanctions monitoring groups of the Security Council, peacekeeping and other relevant missions authorized by the Security Council and States.
- Request the establishment of a baseline arms inventory as well as arms marking and registration systems in situations where a United Nations arms embargo coincides with disarmament, demobilization and reintegration efforts.

Protection of the civilian population through the marking, clearance, removal or destruction of mines and explosive remnants of war (ERW), including cluster munition remnants.

Issues for consideration:

- Call on parties to armed conflict, after the cessation of active hostilities and as soon as feasible, to mark, clear, remove or destroy mines and ERW in affected territories under their control, prioritizing areas affected by mines and ERW which are assessed to pose serious humanitarian risk.
- Call on parties to armed conflict to record and retain information on the use of mines and explosive ordnance or the abandonment of explosive ordnance, to facilitate rapid marking and clearance, removal or destruction of mines and ERW and risk education, and to provide the relevant information to the party in control of, and civilian populations in, the territory.
- Call on parties to armed conflict to take all feasible precautions in the territory under their control affected by mines and ERW to protect the civilian population, in particular children, including issuing warnings, undertaking risk education, marking, fencing and monitoring of territory affected by mines and ERW.
- Call on parties to armed conflict to protect United Nations peacekeeping and other relevant missions authorized by the Security Council, as well as humanitarian organizations, from the effects of mines and ERW and to make available information on the location of mines and ERW that they are aware of in the territory where the mission/organizations are or will be operating.
- Call on parties to armed conflict, States and other relevant actors to provide technical, financial, material or human resources assistance to facilitate the marking, clearance, removal or destruction of mines and ERW.
- Call on parties to armed conflict, States and other relevant actors to provide assistance for the care, rehabilitation and economic and social reintegration of victims of ERW and their families and communities.

F. Compliance, accountability and the rule of law

Compliance by parties to armed conflict with applicable international humanitarian law and human rights law.

Issues for consideration:

- Call on parties to armed conflict to take appropriate measures to respect and ensure respect for international humanitarian law and human rights law, including by:
 - Enforcing appropriate military disciplinary measures and upholding the principle of command responsibility.
 - Training troops on applicable international humanitarian law and human rights law.
 - Vetting armed and security forces to ensure that personnel have a reliably attested record of not having been involved in violations of international humanitarian law or human rights law.
- Consider applying targeted and graduated measures against parties to armed conflict that commit violations of applicable international humanitarian law and human rights law.
- Stress that the support of United Nations peacekeeping and other relevant missions to military operations led by national armed forces is strictly conditioned on the compliance of those armed forces with international humanitarian, human rights and refugee law and on joint planning of such operations.
- Call upon United Nations peacekeeping and other relevant missions to intercede with national armed forces if elements of the latter, receiving support from the mission are suspected of committing violations of international humanitarian, human rights and refugee law and, if the situation persists, to withdraw the mission's support.
- Request the mission to provide military training, including in the area of human rights, international humanitarian law, child protection and the prevention of gender-based and sexual violence, to the armed forces.

Accountability for persons suspected of genocide, crimes against humanity, war crimes or serious violations of human rights law.

Issues for consideration:

- Stress the importance of ending impunity for criminal violations of applicable international humanitarian law and human rights law as part of a comprehensive approach to seeking sustainable peace, justice, truth, and national reconciliation.
- Call on States to comply with their obligations to investigate, search for, prosecute or extradite persons suspected of committing genocide, war crimes, crimes against humanity or other serious violations of human rights law.

- Stress the need for the exclusion of, and reject any form of, or endorsement of, amnesty for genocide, crimes against humanity, war crimes or other serious violations of human rights in conflict resolution processes and ensure that no such amnesty previously granted is a bar to prosecution before any United Nations-created or assisted court.
- Mandate United Nations peacekeeping and other relevant missions authorized by the Security Council to promote, in cooperation with relevant States, the establishment of effective arrangements for investigating and prosecuting violations of international humanitarian law or other serious violations of human rights law.
- Request the cooperation of States and United Nations peacekeeping and other relevant missions authorized by the Security Council in the apprehension and surrender of alleged perpetrators of genocide, crimes against humanity, war crimes or other serious violations of human rights law.
- Consider the establishment, in situations where local judicial mechanisms are overwhelmed, of ad hoc judicial mechanisms at the national or international level to investigate and prosecute war crimes and serious violations of human rights law.
- Consider the referral of situations involving genocide, crimes against humanity or war crimes to the International Criminal Court.

Protection of civilians through the restoration and enforcement of the rule of law, disarmament, demobilization and reintegration programmes and security sector reforms.

Issues for consideration:

- Call upon States to ensure equal protection under the law and equal access to justice for victims of violations of international humanitarian law and human rights law, including women and children, and to take the necessary measures to ensure the protection of victims and witnesses.
- Mandate United Nations peacekeeping and other relevant missions authorized by the Security Council to support restoration of the rule of law, including the provision of assistance in monitoring, restructuring and reforming the justice sector.
- Request the rapid deployment of qualified and well-trained international civilian police, justice and corrections experts as a component of United Nations peacekeeping and other relevant missions authorized by the Security Council.
- Call on States, regional and subregional organizations to provide technical assistance for local police, judiciary and penitentiaries (e.g., mentoring, legislative drafting).
- Stress the importance of permanently disarming, demobilizing, reintegrating former combatants of national and foreign armed groups and assisting the victims in conflict affected communities.

- Stress the importance of security sector reform and urge all international partners to support the efforts to professionalize and ensure the civilian oversight of the national security forces and the police.

Build confidence and enhance stability by promoting truth and reconciliation mechanisms.

Issues for consideration:

- Mandate the establishment of appropriate, locally adapted, mechanisms for truth and reconciliation (e.g., technical assistance, funding, and reintegration of civilians within communities).
- Request, where appropriate, the establishment by the Secretary-General of commissions of inquiry and similar measures with regard to situations involving genocide, war crimes, crimes against humanity or serious violations of human rights law.

G. Media and information

Protection of journalists, other media professionals and associated personnel.

Issues for consideration:

- Condemn and call for the immediate cessation of attacks against journalists, media professionals and associated personnel operating in situations of armed conflict.
- Call for compliance by parties to armed conflict with applicable international humanitarian law and respect for the civilian status of journalists, media professionals and associated personnel as well as their equipment and installations.
- Demand that States take all necessary steps to prosecute those responsible for attacks against journalists, media professionals and associated personnel in violation of applicable international humanitarian law.

Counter occurrences of speech used to incite violence.

Issues for consideration:

- Condemn and call for the immediate cessation of incitements to violence against civilians in situations of armed conflict.
- Demand that States bring to justice individuals who incite or otherwise cause such violence.
- Impose targeted and graduated measures in response to media broadcasts inciting genocide, crimes against humanity, war crimes or other serious violations of human rights law.

- Mandate peacekeeping and other relevant missions authorized by the Security Council to promote the establishment of media monitoring mechanisms to ensure effective monitoring, reporting and documenting of any incidents, origins and contents that incite “hate media”.

Promote and support accurate management of information on the conflict.

Issues for consideration:

- Urge parties to armed conflict to respect the professional independence of journalists, media professionals and associated personnel.
- Encourage United Nations peacekeeping and other relevant missions authorized by the Security Council to include a mass-media component that can disseminate information about international humanitarian law and human rights law while also giving objective information about the activities of the United Nations.
- Request relevant actors to provide technical assistance to States in drafting and enforcing anti-hate speech legislation.

II. Specific protection concerns arising from Security Council discussions on children affected by armed conflict

Parties to armed conflict to take the necessary measures to meet the specific protection, health, education and assistance needs of children.

Issues for consideration:

- Condemn, and call for the immediate cessation of, violations and abuses committed against children in situations of armed conflict, including the recruitment or active use in hostilities of children by parties to armed conflict in violation of applicable international law, the killing or maiming of children; rape and other grave sexual abuse of children; abduction of children; attacks against schools or hospitals; and denial of humanitarian access for children.
- Call for strict compliance by parties to armed conflict with applicable international humanitarian law and human rights law relating to children affected by armed conflict.
- Call upon relevant parties to develop and implement concrete time-bound action plans to halt recruitment and use of children, in close collaboration with United Nations peacekeeping missions, United Nations country teams and the Special Representative of the Secretary-General on Children and Armed Conflict.
- Call upon all parties concerned to implement the recommendations of the Security Council Working Group on Children and Armed Conflict.

- Include specific provisions for the protection of children in the mandates of United Nations peacekeeping and other relevant missions authorized by the Security Council.
- Request that reports of the Secretary-General on country-specific situations include the protection of children as a specific aspect of the report.
- Call upon all parties concerned to ensure that the protection, rights and well-being of children affected by armed conflict are specifically integrated into peace processes, peace agreements and post-conflict recovery and reconstruction planning and programmes, including measures for family tracing and reunification, the rehabilitation and reintegration of separated children, and the release and reintegration of children associated with armed forces and groups.
- Urge States, United Nations entities, regional and subregional organizations and other concerned parties, to take appropriate measures to control illicit subregional and cross-border activities harmful to children, as well as other violations and abuses committed against children in situations of armed conflict in violation of applicable international law.
- Urge relevant regional and/or subregional bodies to develop and implement policies, activities, and advocacy for the benefit of children affected by armed conflict.

III. Specific protection concerns arising from Security Council discussions on women affected by armed conflict.

Parties to armed conflict and other relevant actors to refrain from, and take the necessary measures to prevent and respond to, sexual violence.

Issues for consideration:

- Condemn, and call for the immediate cessation of, acts of sexual violence committed in the context of, and associated with, armed conflict.
- Call for strict compliance by parties to armed conflict with the rules of international humanitarian law and human rights law prohibiting rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence.
- Call on parties to armed conflict take appropriate measures to refrain from, prevent and protect all persons from all forms of sexual violence, including by:
 - Enforcing appropriate military disciplinary measures and upholding the principle of command responsibility.
 - Training troops on the categorical prohibition of all forms of sexual violence.
 - Debunking myths that fuel sexual violence.

- Vetting armed and security forces to ensure that personnel have a reliably attested record of not having been involved in the perpetration of rape and other forms of sexual violence.
- Evacuating to safety civilians under imminent threat of sexual violence.
- Request that reports of the Secretary-General on country-specific situations include sexual violence as a specific aspect of the report, including to the extent possible, disaggregated data as to gender and age of victims; and request the development of mission-specific strategies and plans of action for preventing and responding to sexual violence, as part of a broader protection of civilians strategy.
- Urge relevant regional and/or subregional bodies to develop and implement policies, activities, and advocacy for the benefit of civilians affected by sexual violence.
- Request troop- and police-contributing countries to deploy higher numbers of women peacekeepers or police, and to ensure the provision of appropriate training to their personnel, participating in United Nations peacekeeping and other relevant missions, on the protection of civilians, including women and children, and the prevention of sexual violence in conflict and post-conflict situations.

Parties to armed conflict to take the necessary measures to meet the specific protection, health and assistance needs of women and girls.

Issues for consideration:

- Condemn, and call for the immediate cessation of, violations and abuses committed against women and girls in situations of armed conflict.
- Call for strict compliance by parties to armed conflict with applicable international humanitarian law and human rights law relating to the protection of women and girls affected by armed conflict.
- Call upon all parties concerned to ensure that the protection, rights and well-being of women and girls affected by armed conflict are specifically integrated into all peace processes, peace agreements and post-conflict recovery and reconstruction planning and programmes.
- Include specific provisions for the protection of women and girls in the mandates of United Nations peacekeeping and other relevant missions authorized by the Security Council.
- Request that reports of the Secretary-General on country-specific situations include the protection of women and girls as a specific aspect of the report.
- Urge relevant regional and/or subregional bodies to develop and implement policies, activities, and advocacy for the benefit of women and girls affected by armed conflict.

Equal participation and full involvement of women in the prevention and resolution of armed conflict.

Issues for consideration:

- Urge States, United Nations entities, regional and subregional organizations and other concerned parties to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict.
- Call on all actors involved in negotiating and implementing peace agreements to adopt a gender perspective, including by considering:
 - The needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction.
 - Measures that support local women's peace initiatives and indigenous processes for conflict resolution, and that involve women in the implementation mechanisms of peace agreements.
 - Measures that ensure the protection of, and respect for, the human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary.
- Urge the Secretary-General and his Special Envoys to ensure the participation of women in discussions pertinent to the prevention and resolution of conflict, the maintenance of peace and security, and postconflict peacebuilding, and encourage all parties to such talks to facilitate the equal and full participation of women at all decision-making levels.
- Ensure that Security Council missions take into account gender considerations and the rights of women and girls, including through consultation with local and international women's groups.
- Urge troop- and police-contributing countries to expand the role, numbers and contribution of women in United Nations operations, and especially among military observers and civilian police.

Sexual exploitation and abuse (SEA).

Issues for consideration:

- Urge humanitarian and development organizations to take appropriate action to prevent SEA by their personnel, including pre-deployment and in-theatre awareness training and, in the case of United Nations actors, to promote and ensure compliance, including by civilian staff of United Nations peacekeeping and other relevant missions, with the Secretary-General's Bulletin on special measures for protection from sexual exploitation and abuse (ST/SGB/2003/13).
- Urge troop- and police-contributing countries to take appropriate action to prevent SEA by their personnel, including pre-deployment and in-theatre awareness training to promote and ensure compliance with the Secretary-General's Bulletin on special measures for protection from sexual exploitation and abuse (ST/SGB/2003/13).
- Urge troop- and police-contributing countries to ensure full accountability in cases of SEA involving their personnel and to report to the Secretary-General on action taken.

Annex D. Customary Rules of International Humanitarian Law Applicable in Armed Conflicts of a Non-International Character: A Study by the International Committee of the Red Cross*

The Principle of Distinction

Distinction between civilians and combatants

Rule 1. The parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians.

Rule 2. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.

Rule 5. Civilians are persons who are not members of the armed forces. The civilian population comprises all persons who are civilians.

Rule 6. Civilians are protected against attack, unless and for such time as they take a direct part in hostilities.

Distinction between civilian objects and military objectives

Rule 7. The parties to the conflict must at all times distinguish between civilian objects and military objectives. Attacks may only be directed against military objectives. Attacks must not be directed against civilian objects.

Rule 8. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose partial or total destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

Rule 9. Civilian objects are all objects that are not military objectives.

Rule 10. Civilian objects are protected against attack, unless and for such time as they are military objectives.

Indiscriminate attacks

Rule 11. Indiscriminate attacks are prohibited.

Rule 12. Indiscriminate attacks are those:

- (a) which are not directed at a specific military objective;
- (b) which employ a method or means of combat which cannot be directed at a specific military objective; or
- (c) which employ a method or means of combat the effects of which cannot be limited as required by international humanitarian law;

and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.

Rule 13. Attacks by bombardment by any method or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects are prohibited.

Proportionality in attack

Rule 14. Launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited.

Precautions in attack

Rule 15. In the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects. All feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects.

Rule 16. Each party to the conflict must do everything feasible to verify that targets are military objectives.

Rule 17. Each party to the conflict must take all feasible precautions in the choice of means and methods of warfare with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects.

Rule 18. Each party to the conflict must do everything feasible to assess whether the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

Rule 19. Each party to the conflict must do everything feasible to cancel or suspend an attack if it becomes apparent that the target is not a military objective or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

Rule 20. Each party to the conflict must give effective advance warning of attacks which may affect the civilian population, unless circumstances do not permit.

Rule 21. When a choice is possible between several military objectives for obtaining a similar military advantage, the objective to be selected must be that the attack on which may be expected to cause the least danger to civilian lives and to civilian objects. *[A rule applicable in an international armed conflict and arguably also in an armed conflict of a non-international character]*

Precautions against the effects of attacks

Rule 22. The parties to the conflict must take all feasible precautions to protect the civilian population and civilian objects under their control against the effects of attacks.

Rule 23. Each party to the conflict must, to the extent feasible, avoid locating military objectives within or near densely populated areas. *[A rule applicable in an international armed conflict and arguably also in an armed conflict of a non-international character]*

Rule 24. Each party to the conflict must, to the extent feasible, remove civilian persons and objects under its control from the vicinity of military objectives. *[A rule applicable in an international armed conflict and arguably also in an armed conflict of a non-international character]*

Specifically protected persons and objects

Medical and religious personnel and objects

Rule 25. Medical personnel exclusively assigned to medical duties must be respected and protected in all circumstances. They lose their protection if they commit, outside their humanitarian function, acts harmful to the enemy.

Rule 26. Punishing a person for performing medical duties compatible with medical ethics or compelling a person engaged in medical activities to perform acts contrary to medical ethics is prohibited.

Rule 27. Religious personnel exclusively assigned to religious duties must be respected and protected in all circumstances. They lose their protection if they commit, outside their humanitarian function, acts harmful to the enemy.

Rule 28. Medical units exclusively assigned to medical purposes must be respected and protected in all circumstances. They lose their protection if they are being used, outside their humanitarian function, to commit acts harmful to the enemy.

Rule 29. Medical transports assigned exclusively to medical transportation must be respected and protected in all circumstances. They lose their protection if they are being used, outside their humanitarian function, to commit acts harmful to the enemy.

Rule 30. Attacks directed against medical and religious personnel and objects displaying the distinctive emblems of the Geneva Conventions in conformity with international law are prohibited.

Humanitarian relief personnel and objects

Rule 31. Humanitarian relief personnel must be respected and protected.

Rule 32. Objects used for humanitarian relief operations must be respected and protected.

Personnel and objects involved in a peacekeeping mission

Rule 33. Directing an attack against personnel and objects involved in a peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians and civilian objects under international humanitarian law, is prohibited.

Journalists

Rule 34. Civilian journalists engaged in professional missions in areas of armed conflict must be respected and protected as long as they are not taking a direct part in hostilities.

Protected zones

Rule 35. Directing an attack against a zone established to shelter the wounded, the sick and civilians from the effects of hostilities is prohibited.

Rule 36. Directing an attack against a demilitarized zone agreed upon between the parties to the conflict is prohibited.

Rule 37. Directing an attack against a non-defended locality is prohibited.

Rule 38. Each party to the conflict must protect cultural property:

A. All seizure of or destruction or wilful damage done to institutions dedicated to religion, charity, education, the arts and sciences, historic monuments and works of art and science is prohibited.

B. Any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, property of great importance to the cultural heritage of every people is prohibited.

Works and Installations Containing Dangerous Forces

Rule 42. Particular care must be taken if works and installations containing dangerous forces, namely dams, dykes and nuclear electrical generating stations, and other installations located at or in their vicinity are attacked, in order to avoid the release of dangerous forces and consequent severe losses among the civilian population.

The Natural Environment

Rule 43. The general principles on the conduct of hostilities apply to the natural environment:

A. No part of the natural environment may be attacked, unless it is a military objective.

B. Destruction of any part of the natural environment is prohibited, unless required by imperative military necessity.

C. Launching an attack against a military objective which may be expected to cause incidental damage to the environment which would be excessive in relation to the concrete and direct military advantage anticipated is prohibited.

Rule 44. Methods and means of warfare must be employed with due regard to the protection and preservation of the natural environment. In the conduct of military operations, all feasible precautions must be taken to avoid, and in any event to minimize, incidental damage to the environment. Lack of scientific certainty as to the effects on the environment of certain military operations does not absolve a party to the conflict from taking such precautions. *[A rule applicable in an international armed conflict and arguably also in an armed conflict of a non-international character]*

Rule 45. The use of methods or means of warfare that are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment is prohibited. Destruction of the natural environment may not be used as a weapon. [A rule applicable in an international armed conflict and arguably also in an armed conflict of a non-international character]

Specific Methods of Warfare

Denial of quarter

Rule 46. Ordering that no quarter will be given, threatening an adversary therewith or conducting hostilities on this basis is prohibited.

Rule 47. Attacking persons who are recognized as *hors de combat* is prohibited. A person *hors de combat* is:

- (a) anyone who is in the power of an adverse party;
- (b) anyone who is defenceless because of unconsciousness, shipwreck, wounds or sickness; or
- (c) anyone who clearly expresses an intention to surrender; provided he or she abstains from any hostile act and does not attempt to escape.

Rule 48. Making persons parachuting from an aircraft in distress the object of attack during their descent is prohibited.

Destruction and seizure of property

Rule 49. The destruction or seizure of the property of an adversary is prohibited, unless required by imperative military necessity.

Rule 52. Pillage is prohibited.

Starvation and access to humanitarian relief

Rule 53. The use of starvation of the civilian population as a method of warfare is prohibited.

Rule 54. Attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population is prohibited.

Rule 55. The parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control.

Rule 56. The parties to the conflict must ensure the freedom of movement of authorized humanitarian relief personnel essential to the exercise of their functions. Only in case of imperative military necessity may their movements be temporarily restricted.

Deception

Rule 57. Ruses of war are not prohibited as long as they do not infringe a rule of international humanitarian law.

Rule 58. The improper use of the white flag of truce is prohibited.

Rule 59. The improper use of the distinctive emblems of the Geneva Conventions is prohibited.

Rule 60. The use of the United Nations emblem and uniform is prohibited, except as authorized by the organization.

Rule 61. The improper use of other internationally recognized emblems is prohibited.

Rule 62. Improper use of the flags or military emblems, insignia or uniforms of the adversary is prohibited. *[A rule applicable in an international armed conflict and arguably also in an armed conflict of a non-international character]*

Rule 63. Use of the flags or military emblems, insignia or uniforms of neutral or other States not party to the conflict is prohibited. *[A rule applicable in an international armed conflict and arguably also in an armed conflict of a non-international character]*

Rule 64. Concluding an agreement to suspend combat with the intention of attacking by surprise the enemy relying on that agreement is prohibited.

Rule 65. Killing, injuring or capturing an adversary by resort to perfidy is prohibited.

Communication with the enemy

Rule 66. Commanders may enter into non-hostile contact through any means of communication. Such contact must be based on good faith.

Rule 67. *Parlementaires* are inviolable.

Rule 68. Commanders may take the necessary precautions to prevent the presence of a *parlementaire* from being prejudicial.

Rule 69. *Parlementaires* taking advantage of their privileged position to commit an act contrary to international law and detrimental to the adversary lose their inviolability.

Weapons

General principles on the use of weapons

Rule 70. The use of means and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering is prohibited.

Rule 71. The use of weapons which are by nature indiscriminate is prohibited.

Poison

Rule 72. The use of poison or poisoned weapons is prohibited.

Biological weapons

Rule 73. The use of biological weapons is prohibited.

Chemical weapons

Rule 74. The use of chemical weapons is prohibited.

Rule 75. The use of riot-control agents as a method of warfare is prohibited.

Rule 76. The use of herbicides as a method of warfare is prohibited if they:

- (a) are of a nature to be prohibited chemical weapons;
- (b) are of a nature to be prohibited biological weapons;
- (c) are aimed at vegetation that is not a military objective;
- (d) would cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which may be expected to be excessive in relation to the concrete and direct military advantage anticipated; or
- (e) would cause widespread, long-term and severe damage to the natural environment.

Expanding bullets

Rule 77. The use of bullets which expand or flatten easily in the human body is prohibited.

Exploding bullets

Rule 78. The anti-personnel use of bullets which explode within the human body is prohibited.

Weapons primarily injuring by non-detectable fragments

Rule 79. The use of weapons the primary effect of which is to injure by fragments which are not detectable by X-rays in the human body is prohibited.

Booby-traps

Rule 80. The use of booby-traps which are in any way attached to or associated with objects or persons entitled to special protection under international humanitarian law or with objects that are likely to attract civilians is prohibited.

Landmines

Rule 81. When landmines are used, particular care must be taken to minimize their indiscriminate effects.

Rule 82. A party to the conflict using landmines must record their placement, as far as possible. *[A rule applicable in an international armed conflict and arguably also in an armed conflict of a non-international character]*

Rule 83. At the end of active hostilities, a party to the conflict which has used landmines must remove or otherwise render them harmless to civilians, or facilitate their removal.

Incendiary weapons

Rule 84. If incendiary weapons are used, particular care must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects.

Rule 85. The anti-personnel use of incendiary weapons is prohibited, unless it is not feasible to use a less harmful weapon to render a person hors de combat.

Blinding laser weapons

Rule 86. The use of laser weapons that are specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness to unenhanced vision is prohibited.

Treatment of Civilians and Persons Hors de Combat

Fundamental guarantees

Rule 87. Civilians and persons *hors de combat* must be treated humanely.

Rule 88. Adverse distinction in the application of international humanitarian law based on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria is prohibited.

Rule 89. Murder is prohibited.

Rule 90. Torture, cruel or inhuman treatment and outrages upon personal dignity, in particular humiliating and degrading treatment, are prohibited.

Rule 91. Corporal punishment is prohibited.

Rule 92. Mutilation, medical or scientific experiments or any other medical procedure not indicated by the state of health of the person concerned and not consistent with generally accepted medical standards are prohibited.

Rule 93. Rape and other forms of sexual violence are prohibited.

Rule 94. Slavery and the slave trade in all their forms are prohibited.

Rule 95. Uncompensated or abusive forced labour is prohibited.

Rule 96. The taking of hostages is prohibited.

Rule 97. The use of human shields is prohibited.

Rule 98. Enforced disappearance is prohibited.

Rule 99. Arbitrary deprivation of liberty is prohibited.

Rule 100. No one may be convicted or sentenced, except pursuant to a fair trial affording all essential judicial guarantees.

Rule 101. No one may be accused or convicted of a criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time it was committed; nor may a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed.

Rule 102. No one may be convicted of an offence except on the basis of individual criminal responsibility.

Rule 103. Collective punishments are prohibited.

Rule 104. The convictions and religious practices of civilians and persons *hors de combat* must be respected.

Rule 105. Family life must be respected as far as possible.

The Wounded, sick and shipwrecked

Rule 109. Whenever circumstances permit, and particularly after an engagement, each party to the conflict must, without delay, take all possible measures to search for, collect and evacuate the wounded, sick and shipwrecked without adverse distinction.

Rule 110. The wounded, sick and shipwrecked must receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. No distinction may be made among them founded on any grounds other than medical ones.

Rule 111. Each party to the conflict must take all possible measures to protect the wounded, sick and shipwrecked against ill-treatment and against pillage of their personal property.

The dead

Rule 112. Whenever circumstances permit, and particularly after an engagement, each party to the conflict must, without delay, take all possible measures to search for, collect and evacuate the dead without adverse distinction.

Rule 113. Each party to the conflict must take all possible measures to prevent the dead from being despoiled. Mutilation of dead bodies is prohibited.

Rule 115. The dead must be disposed of in a respectful manner and their graves respected and properly maintained.

Rule 116. With a view to the identification of the dead, each party to the conflict must record all available information prior to disposal and mark the location of the graves.

Missing persons

Rule 117. Each party to the conflict must take all feasible measures to account for persons reported missing as a result of armed conflict and must provide their family members with any information it has on their fate.

Persons deprived of their liberty

Rule 118. Persons deprived of their liberty must be provided with adequate food, water, clothing, shelter and medical attention.

Rule 119. Women who are deprived of their liberty must be held in quarters separate from those of men, except where families are accommodated as family units, and must be under the immediate supervision of women.

Rule 120. Children who are deprived of their liberty must be held in quarters separate from those of adults, except where families are accommodated as family units.

Rule 121. Persons deprived of their liberty must be held in premises which are removed from the combat zone and which safeguard their health and hygiene.

Rule 122. Pillage of the personal belongings of persons deprived of their liberty is prohibited.

Rule 123. The personal details of persons deprived of their liberty must be recorded.

Rule 124B. The ICRC may offer its services to the parties to the conflict with a view to visiting all persons deprived of their liberty for reasons related to the conflict in order to verify the conditions of their detention and to restore contacts between those persons and their families.

Rule 125. Persons deprived of their liberty must be allowed to correspond with their families, subject to reasonable conditions relating to frequency and the need for censorship by the authorities.

Rule 126. Civilian internees and persons deprived of their liberty in connection with a non-international armed conflict must be allowed to receive visitors, especially near relatives, to the degree practicable.

Rule 127. The personal convictions and religious practices of persons deprived of their liberty must be respected.

Rule 128C. Persons deprived of their liberty in relation to a non-international armed conflict must be released as soon as the reasons for the deprivation of their liberty cease to exist.

The persons referred to may continue to be deprived of their liberty if penal proceedings are pending against them or if they are serving a sentence lawfully imposed.

Displacement and displaced persons

Rule 129. Parties to a non-international armed conflict may not order the displacement of the civilian population, in whole or in part, for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand.

Rule 131. In case of displacement, all possible measures must be taken in order that the civilians concerned are received under satisfactory conditions of shelter, hygiene, health, safety and nutrition and that members of the same family are not separated.

Rule 132. Displaced persons have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist.

Rule 133. The property rights of displaced persons must be respected.

Other persons afforded specific protection

Rule 134. The specific protection, health and assistance needs of women affected by armed conflict must be respected.

Rule 135. Children affected by armed conflict are entitled to special respect and protection.

Rule 136. Children must not be recruited into armed forces or armed groups.

Rule 137. Children must not be allowed to take part in hostilities.

Rule 138. The elderly, disabled and infirm affected by armed conflict are entitled to special respect and protection.

Implementation

Compliance with international humanitarian law

Rule 139. Each party to the conflict must respect and ensure respect for international humanitarian law by its armed forces and other persons or groups acting in fact on its instructions, or under its direction or control.

Rule 140. The obligation to respect and ensure respect for international humanitarian law does not depend on reciprocity.

Rule 141. Each State must make legal advisers available, when necessary, to advise military commanders at the appropriate level on the application of international humanitarian law.

Rule 142. States and parties to the conflict must provide instruction in international humanitarian law to their armed forces.

Rule 143. States must encourage the teaching of international humanitarian law to the civilian population.

Enforcement of international humanitarian law

Rule 144. States may not encourage violations of international humanitarian law by parties to an armed conflict. They must exert their influence, to the degree possible, to stop violations of international humanitarian law.

Rule 148. Parties to non-international armed conflicts do not have the right to resort to belligerent reprisals. Other countermeasures against persons who do not or who have ceased to take a direct part in hostilities are prohibited.

Responsibility and reparation

Rule 149. A State is responsible for violations of international humanitarian law attributable to it, including:

- (a) violations committed by its organs, including its armed forces;
- (b) violations committed by persons or entities it empowered to exercise elements of governmental authority;
- (c) violations committed by persons or groups acting in fact on its instructions, or under its direction or control; and
- (d) violations committed by private persons or groups which it acknowledges and adopts as its own conduct.

Rule 150. A State responsible for violations of international humanitarian law is required to make full reparation for the loss or injury caused.

Individual responsibility

Rule 151. Individuals are criminally responsible for war crimes they commit.

Rule 152. Commanders and other superiors are criminally responsible for war crimes committed pursuant to their orders.

Rule 153. Commanders and other superiors are criminally responsible for war crimes committed by their subordinates if they knew, or had reason to know, that the subordinates were about to commit or were committing such crimes and did not take all necessary and reasonable measures in their power to prevent their commission, or if such crimes had been committed, to punish the persons responsible.

Rule 154. Every combatant has a duty to disobey a manifestly unlawful order.

Rule 155. Obeying a superior order does not relieve a subordinate of criminal responsibility if the subordinate knew that the act ordered was unlawful or should have known because of the manifestly unlawful nature of the act ordered.

War crimes

Rule 156. Serious violations of international humanitarian law constitute war crimes.

Rule 157. States have the right to vest universal jurisdiction in their national courts over war crimes.

Rule 158. States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects.

Rule 159. At the end of hostilities, the authorities in power must endeavour to grant the broadest possible amnesty to persons who have participated in a non-international armed conflict, or those deprived of their liberty for reasons related to the armed conflict, with the exception of persons suspected of, accused of or sentenced for war crimes.

Rule 160. Statutes of limitation may not apply to war crimes.

Rule 161. States must make every effort to cooperate, to the extent possible, with each other in order to facilitate the investigation of war crimes and the prosecution of the suspects.

* Rules 3, 4, 41, 49, 51, 106, 107, 108, 114, 124 A, 128 A-B, 129, 130, 145, 146, and 147 have been omitted because they are deemed to apply only in an international armed conflict. For the list of rules of customary international humanitarian law identified by the International Committee of the Red Cross, with substantive commentaries, see the ICRC's Customary IHL Database, Part 1, Rules, available at: http://www.icrc.org/customary-ihl/eng/docs/v1_rul.

Annex E. List of Participants in the Project Workshops

Participants in the First Experts Workshop (March 2010)

Academic and research institutions and Foundations

Claude BRUDERLEIN, Director, Program on Humanitarian Policy and Conflict Research, Harvard University, Boston

Beth LEHNER, Project Officer, HD Centre for Humanitarian Dialogue (HD Centre)

Dennis McNAMARA, Senior Humanitarian Adviser, HD Centre

Dr Sandesh SIVAKUMARAN, Lecturer, School of Law, University of Nottingham, UK

Professor Christian TOMUSCHAT, Emeritus Professor of Public International Law and European law at the Humboldt University in Berlin and former member of the UN Human Rights Committee and the UN International Law Commission.

Luisa VIERUCCI, Lecturer in Law, Florence University

Swiss Federal Department of Foreign Affairs participants

Ambassador Thomas GREMINGER, DP IV

Julian HOTTINGER, Expert in Mediation and Facilitation

Raffaella SCHIAVELLO, Desk Officer, DP IV

Stefano TOSCANO, Chief of Section, DP IV

Other government representatives

Nabil TAN, Presidential Adviser on the Peace Process, the Philippines

Dr Abdelbagi GAILANI, State Minister for Humanitarian Affairs, Sudan

Tony HAYS-PARKS, Law of War Chair, Office of General Counsel, US Department of Defense

UN representatives

Gary RISSER, Monitoring and Reporting Mechanism, Child Protection Section, UNICEF New York

Gabor RONA, Acting Chief, Protection of Civilians in Armed Conflict Section, Office for the Coordination of Humanitarian Affairs, New York

Oscar SOLERA, Human Rights Officer, Office of the UN High Commissioner for Human Rights

ICRC representatives

Olivier BANGERTER, Advisor for dialogue with armed groups, ICRC Geneva

Jean-Marie HENCKAERTS, Legal Division, ICRC Geneva

Andreas WIGGER, Head of the Central Tracing Agency and Protection Division, ICRC Geneva

NGO representatives

Pascal BONGARD, Programme Director for Africa and Policy Advisor, Geneva Call

Peter BOUCKAERT, Emergencies Director, Human Rights Watch

Rachel BRETT, Quaker UN Office Geneva

Elizabeth DECREY-WARNER, President, Geneva Call

Avner GIDRON, Senior Policy Adviser, Amnesty International

Ed SCHENKENBERG VAN MIEROP, Director, International Council of Voluntary Agencies (ICVA)

Jonathon SOMER, Legal Adviser and Program Coordinator on Children and non-State Actors, Geneva Call

Greta ZEENDER, Senior Researcher, Norwegian Refugee Council

Academy, IHEID, and Geneva University participants

Professor Andrew CLAPHAM, Director, Geneva Academy of International Humanitarian Law and Human Rights, and Professor, International Law, Graduate Institute of International Studies and Development (IHEID)

Professor Nicolas MICHEL, Professor at the Faculty of Law of the University of Geneva and Adjunct Professor, IHEID

Professor Marco SASSÒLI, Professor of International Law, University of Geneva

Dr Annyssa BELLAL, Research Fellow, Academy

Dr Stuart CASEY-MASLEN, Research Fellow, Academy

Participants in the Second Workshop (October 2010)

Sixteen participants drawn from current and former members of ANSAs as well as those with particular expertise in the actions and motivations of such actors. Their names have been withheld for security reasons.

Participants in the Third Workshop (May 2011)

Selected representative of states. The workshop was held under the Chatham Rule hence their names and the states they represent are not reported.