

**KEEPING THE PROMISE OF PROTECTION:
HOLDING ARMED GROUPS TO THE SAME STANDARD AS STATES**

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Armed non-state actors are not new to world politics, but today they command an unprecedented attention. Largely, this reflects a growing understanding of the changed nature of global violence. While during the Cold War the international community focused on inter-state war, today it increasingly recognizes that most conflicts are civil wars fought between states and non-state actors, or in the case of inter-communal violence, between multiple non-state actors with little or no state involvement. In 2002, for example, there was only one inter-state conflict (India-Pakistan) while there were 31 civil wars fought between a state and at least one rebel group, and 35 internal conflicts that involved *only* non-state actors. Today these rebel groups, militias, warlords, and insurgents seriously threaten not just the security of states, but the most basic human rights of millions of people.

Non-state armed groups present a complex policy challenge. The traditional instruments to curb human rights and humanitarian abuses were developed for use against states. Because states have diplomatic relations with other states, can sign treaties and be parties to the major international institutions, a toolkit of familiar policy instruments is available to deal with them when they fail to uphold international standards. These range from quiet diplomacy through to more coercive instruments such as economic sanctions, and – ultimately – the use of force.

In this framework, non-state groups are not expected to meet the same standard as states. Indeed, they are usually completely ignored. Their acts of violence are seen as a domestic problem of the state concerned, to be dealt with through legal, political, or military means.

Today this framework is under increasing strain. Not only are non-state actors recognized as key players in armed conflicts, but what the international community expects of these actors is changing. The humanitarian and human rights communities – along with some states – increasingly hold non-state armed groups to the same standard of behaviour as states. In 1977 Protocol II of the Geneva Conventions extended humanitarian protection to victims of “Non-International Armed Conflicts.” And in the past decade and a half both Amnesty International and Human Rights Watch have

changed their definition of what constitutes a human rights violation, to include acts committed by non-state groups as well as states.

But while more is now expected from armed groups, our policy toolkit has not kept pace with the changing times. Few traditional security instruments work effectively against non-state actors. For example, the Ottawa Treaty banning the use of landmines is rightly heralded as a significant humanitarian achievement. However, only states can be parties and the extent to which the Treaty legally binds non-state groups is disputed. Yet, in 1999 and 2000 there were three times as many non-state actors using landmines as states. The leading international policy instrument effectively ignores a big part of the problem.

Similar questions arise in connection with international efforts to ban the use of child soldiers. The new Child Soldiers Protocol, which prohibits the use of children as combatants, has been signed by 109 countries and ratified by 35. One of its key provisions prohibits non-state armed groups from recruiting or using persons under 18 in hostilities. However, the principal mechanism for enforcing this provision is for States Parties to criminalize it. This simply begs the question of how armed groups can be held accountable, when the existence of such groups in the first place reflects a state's incapacity to effectively control and enforce laws in its territory.

If armed groups are to be held accountable for violations of humanitarian norms, they have to be assigned responsibility for ending them. For this to happen, groups have to be addressed directly. Not surprisingly, states are reluctant to permit this. Jealous of their sovereignty, they are wary of anything that might confer legitimacy on their enemies. This problem is compounded by the terms of the current "War on Terror," which makes many states even more reluctant to tolerate any form of engagement with groups they perceive as beyond the moral pale.

Despite these political obstacles, organizations like UNHCR, UNICEF, UNDP, ICRC, MSF and a legion of NGOs engage with armed groups on a daily basis. If they want to negotiate access agreements, arrange ceasefires or safe passage, and try to save civilian lives, they have no choice but to deal with armed groups, even those that are formally designated as "terrorists" like the Tamil Tigers or the FARC. In doing so, these organizations are *de facto* experimenting with various policy tools to pressure armed groups to curb abuses.

Our research has identified a variety of policy instruments for engaging armed groups. Organizations like the ICRC seek to inform armed groups of their responsibilities under international law, and seek protection for civilian populations. Human Rights Watch, Amnesty International, and MSF take a tougher line, shaming groups that violate accepted standards. The Security Council has imposed economic sanctions and arms embargoes, with varying degrees of success. A number of legal instruments, ranging from amnesties and immunities, through to indictments and prosecutions by *ad hoc* tribunals and the International Criminal Court, are also being deployed against various groups.

However, the use of many of these instruments has lacked strong political support from UN Member States. Even though the Secretary-General has repeatedly called for measures to address "all parties" in armed conflicts, Member States remain reluctant to

place the general question of non-state actors to the UN's political agenda. This has resulted in a serious disconnect between policymaking in New York and the work of UN agencies on the ground. International organizations engaging armed groups, as they must, are left to work in an often *ad hoc* manner without political support, while Member States are ignoring an important opportunity to learn from the UN's and other agencies' experiences.

The political obstacles are real, and will not be easily overcome. But if calls for the creation of a "culture of protection" for civilians in armed conflict are to be more than rhetoric, the UN must recognize the facts on the ground and confront the challenge of addressing armed groups directly. Recent Security Council initiatives to shame armed groups that use child soldiers are a step in the right direction, but much more could be done.

There are some areas where progress may be possible. For example, conflicts between multiple armed groups where states are not involved now constitute the majority of armed conflicts. They claim thousands of lives and affect millions of people. These conflicts are less politically sensitive than conflicts in which the state is one of the warring parties, and could be the first focus of attention.

Another challenge for the UN is to move beyond the *ad hoc* use of instruments, to pinpointing which tools work most effectively with different kinds of armed groups. Different organizational structures, motivations, available resources and the types of violence employed by groups affect our ability to influence them. With its enormous field experience, the UN is well placed to contribute to a systematic evaluation of these policy instruments' effectiveness.

Regardless of the sensibilities of Member States, the distinction between state and non-state actors is often meaningless for people living in situations of armed conflict. Both are equally responsible for the grave abuses civilians are forced to endure. The humanitarian and human rights communities have recognized this fact and begun to develop ways to hold armed groups accountable for their behaviour. It is now time for Member States to follow suit and put the resources, political support and moral authority of the United Nations behind them.

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