



Engaging Non-State Actors in a Landmine Ban

a pioneering conference

FULL CONFERENCE PROCEEDINGS

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24th and 25th March 2000
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CICG – Geneva

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in cooperation with the members of
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Mines Action Canada,
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list of acronyms

ANC	African National Congress
APM	Anti-personnel mines
ATM	Anti-tank mines
CCW	1980 UN Convention on Certain Conventional Weapons
CPP	Communist Party of the Philippines
DRC	Democratic Republic of the Congo
ELN	National Liberation Army – Colombia
EPL	Ejercito Popular Liberacion
EU	European Union
EZLN	Ejercito Zapatista de Liberacion Nacional
FARC	Revolutionary Armed Forces of Colombia
FMLN	Frente Farabundo Marti de Liberacion Nacional
GATT	General Agreement on Tariffs and Trade
HR	Human rights
ICBL	International Campaign to Ban Landmines
ICRC	International Committee of the Red Cross
ICSID	International Centre for Settlement of Investment Disputes
IEA	Islamic Emirate of Afghanistan (the Taliban)
IHL	International Humanitarian Law
IRA	Irish Republican Army
ISCE	Inter-sessional Standing Committees of Experts
KDP	Kurdistan Democratic Party – Iraq (also PDK)
KLA	Kosovo Liberation Army (also UCK)
KNLA	Karen National Liberation Army (Burma)
KPC	Kosovo Protection Corps (KPC), successor to KLA in Kosovo
LTTE	Liberation Tigers of Tamil Eelam (Sri Lanka)
M-19	Movimiento 19 de Abril
MILF	Moro Islamic Liberation Front (Philippines)
ML	Umkhonto we Sizwe, military wing of the ANC
MOU	Memorandum of Understanding

NATO	North Atlantic Treaty Organisation
NGO	Non-governmental organisation
NPA	Norwegian People's Aid
NSA	Non-state actor
OAS	Organization of American States
OAU	Organisation of African Unity
OLS	Operation Lifeline Sudan
ONUSAL	Mision de la Organizacion Naciones Unidas para El Salvador
OSIL-Sudan	Operation Save Innocent Lives – Sudan
PDF	Popular Defence Forces, paramilitaries in Sudan
PKK	Kurdistan Workers' Party (Turkey)
PLO	Palestinian Liberation Organisation
PNA	Palestinian National Authority
POW	Prisoner of War
PRI	Partido Revolucionario Institucional
PUK	Patriotic Union of Kurdistan (Iraq)
RPM-P/RPA-ABB	Rebolusyonyong Partido ng Manggagawa-Pilipinas and the Revolutionary Proletarian Army-Alex Boncayao Brigade (Philippines)
SPLA/M	Sudan People's Liberation Army/Movement
SPM	Somali Patriotic Movement
SWAPO	South West Africa People's Organisation (Namibia)
TMK	Kosovo Protection Corps (Albanian acronym), successor to KLA in Kosovo
UCK	Kosovo Liberation Army (Albanian acronym)
UN	United Nations
UNDHA	United Nations Department for Humanitarian Affairs
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
URNG	Unidad Revolucionaria Nacional de Guatemala
UXO	Unexploded Ordnance
WFP	World Food Programme
WTO	World Trade Organisation

introduction



Mary Foster
Conference Proceedings Editor

In March 2000, about 120 people from over 30 countries gathered in Geneva to discuss ways of engaging armed opposition groups, called “non-state actors”, in the effort to eradicate landmines. Remarkably, the participants included not only academics, activists and representatives of NGOs, but also representatives of both governments and non-state actors themselves.

What pulled this disparate group together was concern for the people living on mined land under non-state control or injured by landmines produced, used, stockpiled and traded by non-state actors.

why engage non-state actors?

The conference consolidated opinion — from point of view of states, NSAs, and NGOs — that the NSA element of the landmine crisis needs to be addressed in a concerted fashion.

It is clear that the effort to ban landmines must, sooner or later, address non-state as well as state use of mines. Indeed, as one of the speakers pointed out, it has necessarily been doing so in a quiet way from the very beginning of the international initiative. While binding governments to the 1997 Ottawa Treaty¹ will certainly advance the goal of eradicating anti-personnel landmines, this is a limited strategy. It will never be sufficient while non-state actors continue to be part of the landmine equation.

What makes this difficult to see is the still overwhelming focus on the state in dominant discourses and institutions of global relations. It is necessary to remind ourselves that, around the world, close to 200 armed entities, many with land and populations under their sway, stand outside the inter-state system. Dozens of these are directly involved in the landmine problem;

along with states, they are manufacturing, trading, selling and using landmines and controlling areas of land where people are living with landmines.

The practical implication for anyone wishing to alleviate the suffering caused by landmines is that strategies to engage non-state actors, complementing strategies aimed at states, must be developed.

defining mines

“Landmine” has proven difficult to define. The difficulties have as much to do with politics as technicalities, reflecting differences in attitudes towards militarism and even the nature of political change. The definition in the Ottawa Treaty has been criticised for not capturing claymore-type mines² and certain anti-tank mines which can function as person-activated weapons³. In contrast, broader, function-oriented definitions, as formulated in the “Bad Honnef Framework⁴,” for example, attempt to capture all weapons which can, in practise, be activated by individuals, not just those designed to do so. The Bad Honnef definition has in turn been questioned for its failure to encompass all anti-tank mines, which also create problems for civilians, relief efforts and post-war recovery.

Most Ottawa Treaty countries have accepted a ban on anti-personnel mines while supporting mine clearance programmes which address the whole range of explosive remnants of war. A few, like Italy, have gone further, banning a much broader category of landmine.

Non-state actor positions on landmines also reflect these debates: some are more concerned with anti-personnel mines as defined in the Ottawa Treaty; others, such as the Taliban, have gone further in statements they have made or, like the SPLA, in their mine clearance support.

The problems posed by a wide range of mine-like weapons, including cluster bombs and anti-tank mines, were discussed at the conference. “Victim-activated weapons” and the ICRC’s catch-all “explosive remnants of war” provided the general framework for the discussions.

what are non-state actors?

“Non-state actor” or NSA is no less fraught a term — exactly what it defines was discussed at length during the conference. Again, underlying differ-

ences in political orientation and analysis can be discerned in some of these exchanges.

“Rebel group,” “liberation movement,” “terrorist organisation,” and “authority” are more familiar words for the groups this umbrella term seeks to identify in legally and normatively neutral terms. Non-state actors, for the purposes of the conference, are organisations which do not accept the authority of a recognised government over them and do not have full international recognition as governments themselves. Clearly, the very existence of NSAs raises questions about legitimacy: questions about the legitimacy of specific governments they refuse to recognise; about their own legitimacy as representatives of certain populations; and, most fundamentally, about the inter-state system itself. The questions they raise on this level are at the heart of the difficulty in openly addressing non-state use of landmines in the present global structure.

Of particular interest in the landmine context are NSAs employing a military strategy; specifically, those using landmines. Hence “armed opposition group” was often used as an alternative to “NSA” during the conference. However, groups which are not using mines or are not even employing a military strategy might also be relevant: they may have mine-affected populations; they may be potential mine users; they may exercise moral authority with other NSAs, as is the case with the elected parliament in Burma; or they may be in a position to put moral pressure on the governments they are opposing, especially where governments are justifying their own use of mines by pointing fingers at NSAs. Nor should the symbolic value of NSA statements for general “norm-building” be undervalued.

Another key distinction is between groups which are primarily motivated by political agendas and those which have other, perhaps economic, motivations. NSAs with a predominantly political agenda were the focus of the conference; they can be distinguished from other non-state groups which may use mines, such as organised criminals or mafias, private corporations, and mercenary businesses. This is a distinction recognised in the international system, where national liberation movements, for example, are given a special status under the Geneva Conventions. The latter types of groups, while they might be important to the landmine campaign, raise different sets of questions about accountability and offer different strategies of approach; in some cases they can best be dealt with indirectly, through the state system. In

practice, the difference between these two types of groups may not always be very clear: the economic motivations of some NSAs are not or are no longer very clearly subordinate to a defined political agenda. UNITA and certain groups operating in Colombia or the Democratic Republic of the Congo (DRC) are examples of groups in the grey areas of this difference.

A final point on categories. Partly as a result of anxieties about the place of the state in global relations, the distinction between NSAs and states in the first place is made to look more clear-cut than it actually is. From NSAs covertly supported by governments, and militias partially controlled by governments, to de facto governing authorities (such as the SPLA in parts of Sudan), and partially recognised authorities (such as the PLO and the Saharawi Arab Democratic Republic), to governments like South Africa with an NSA past, the boundaries between the two are blurred in practice. This has consequences for the kind of approaches that can be adopted.

It is easy to get side-tracked into purely academic or ideologically-motivated arguments over the definition of non-state actors. In the end, selecting groups most relevant to the landmine problem on a case by case basis and then prioritising them according to certain pragmatic calculations may prove the most fruitful way of developing a systematic approach. Examples of relevant groups can be found among the participants in the conference.

There is no avoiding that difficult judgements will have to be made in light of the possibility that pragmatic acceptance of an NSA's role in the landmine problem ('you in fact are making the decisions') may not, in practice, be easy to separate from legitimization ('you are the legitimate decision-making body'). This requires caution. Ideally, the same sort of care would be taken in the case of recognised governments.

challenges

Governments and NGOs working together in the landmine campaign have developed a range of techniques, many adapted from human rights and peace campaigns, to convince, cajole and coerce governments into curbing their use and production of landmines and address the problems faced by mine-affected communities. These mechanisms include public education, education of government officials, dialogue with officials, using aid as a leverage, public pressure, naming and shaming, cutting off supply, and legal action.

Taken together, they have made it more difficult for governments to escape their humanitarian obligations in this area.

These same techniques are often problematic when applied to non-state actors. The following are among the challenges the conference identified in engaging NSAs on this issue:

- ⊙ pre-established diplomatic channels may not exist;
- ⊙ NSAs may be illegal and difficult or dangerous to contact at all, let alone openly;
- ⊙ constituencies in war zones may not have the political freedom, information, capacity or energy necessary to challenge their NSA and there may be few established means of doing so;
- ⊙ NSAs are generally fluid organisations without an automatic carry-over of commitments from one leadership to the next;
- ⊙ NSA organisations may be decentralised, with distances separating political leadership from military command, and some troops operating with fairly loose ties to each other — it is not always clear who to talk to and how much impact decisions taken by the leadership will have;
- ⊙ NSA circumstances may be fairly desperate, financially and militarily, leaving little room for choices about weaponry;
- ⊙ NSAs may be particularly suspicious of information-gathering and monitoring activities;
- ⊙ NSAs are generally in a situation of war and it may be difficult to conduct mine action and to give up a weapon they are actively using in these circumstances;
- ⊙ in open warfare, the danger of any intervention playing into the conflict is great; and
- ⊙ NSAs are often operating in an environment of shifting interests of powerful states which do not necessarily have any commitment to the landmine ban.

strategies for engaging NSAs

The discussions on strategies for bringing NSAs on board the landmine boat at the conference covered many different aspects of the work ahead. The

following provides some background for and synthesis of the conference discussions.

Proper analysis of the situation by outside actors will enable them to devise an effective strategy and an appropriate intervention in a highly tense situation. Analysis might cover regional tensions, history of the conflict, legitimacy of the NSA, degree of its involvement in the mine problem, its organisation and decision-making structures, framing ideologies, level of understanding and acceptance of international law, capacity to develop a military strategy, constituencies, legitimacy, possible sources of leverage, resources, and local capacity to pressure NSA to adopt a ban and conduct mine action.

Dialogue and persuasion. Without the moral commitment of decision-makers, a ban and mine action are unlikely to be implemented. The suggestions relating to awareness and stigmatization of mines included:

- ⊙ there needs to be education of NSAs both on the impact of mines and on international standards;
- ⊙ it is important to put arguments in NSA's own moral language, whether this is based on regional traditions, ideology, religion or other local frameworks;
- ⊙ the interests of NSAs can be appealed to, in terms of political credibility gained internationally and with own community, of ending loss of own combatants and own people, of encouraging opponent governments to stop using mines, and of maintaining a healthy landbase ("homeland not mineland");
- ⊙ creating their own, individualised declaration on landmines can help NSAs to work through some of the issues involved;
- ⊙ it might be possible to identify allies within NSAs who are willing to carry the message from the inside;
- ⊙ support for the ban can be built among rank and file and communities through practical mine action;
- ⊙ both political and military leadership, as well as military rank and file have to be brought into dialogue on the issue; and
- ⊙ NSAs may profit from discussing the issue among themselves.

Pressure. Moving from persuasion to points of leverage, more or less

coercive pressure is another level at which the political will to implement a ban and carry out mine action can be created:

- ⊙ education and mine awareness among constituencies and communities can, in some cases, help create pressure on NSAs to stop using mines and address a mine problem;
- ⊙ diaspora community can be another source of influence or point of leverage on NSAs;
- ⊙ analysis of other points of leverage should be carried out on a case-by-case basis;
- ⊙ public declarations by NSAs, individualised or adopting existing international standards, can be used as a PR tool to pressure NSAs to live up to these standards; it is thus important to publish any such agreements widely;
- ⊙ in certain cases, carefully targeted sanctions might be useful;
- ⊙ threats of legal actions at the international level against intransigent leadership might be useful and appropriate in certain cases; and
- ⊙ it has been shown that aid as conditionality does not work.

Support and monitoring. Failure to implement a ban may be as much a matter of lack of capacity as lack of political will. Providing support for NSAs to implement a ban and conduct mine action is a crucial part of the process. This includes support for internal capacity, such as:

- ⊙ technical capacity to carry out mine clearance and stockpile destruction; and
- ⊙ capacity for self-regulation, including dissemination of landmine standards and policy to rank and file and writing compliance reports on these agreements.

It also includes helping to create an environment conducive to a ban, through such measures as:

- ⊙ monitoring of unilateral declarations or bilateral agreements by external actors, whether regional bodies, government support groups, donors, or NGOs;
- ⊙ support for community initiatives such as peace zones or mine action committees;
- ⊙ cutting off mine supply internationally; and, most broadly,

- ◎ social transformation towards peace and justice in its local and global aspects.

Which strategies will be effective is very much a matter of the particular context. However, certain principles, such as impartiality, clarity and transparency of objectives and capacities, maintaining confidentiality about discussions with NSAs, being guided by local capacities and voices, and, wherever possible, a joint approach to state and non-state actors (not least in order to gain access to the NSA in the first place) can guide all external interventions.

roles of different actors

Landmines are very much a global issue, with many groups — from private companies to international organisations like NATO — involved in creating the problem. Many actors likewise have a role in solving the problem, and particularly in engaging NSAs, including other NSAs. While governments can play a facilitating role and help provide resources, NGOs in many cases will have greater latitude to engage directly with NSAs, particularly international NGOs. NGO freedom should not be exaggerated however; NGOs may be dependent on governments, and engaging with NSAs may jeopardise other important aspects of their work. And it cannot be stressed enough that international NSAs, if they want to help, have to learn to work with local NGOs and community-based initiatives.

linking mine action with peace initiatives

It is difficult to imagine an approach to NSAs on the landmine issue which could be conducted in isolation of a whole range of other issues, including other international humanitarian law (IHL) initiatives and whatever peace processes may be underway. Publishing a statement on landmines from a group which makes use of children as combatants, for example, might interfere with concurrent initiatives by child soldiers campaigners. The ways in which external aid interventions can actually feed into conflict and have unintended negative consequences has been well documented⁵. Many of these lessons are pertinent for the landmines campaign as well. Great care must be exercised to avoid doing harm in highly volatile situations, where the stakes

are people's lives.

It is suggested that technical cooperation on mine action can help to build connectors at the community and even national level between conflicting parties. These may then be useful for other initiatives aimed at conflict transformation and peace-building. In any case, how landmine initiatives by local or external actors are conducted should be shaped by a concern for the implications for long-term peace and justice.⁶ Part of what this means is that external actors must respond to the needs, aspirations and priorities of the people who are the heart of the matter, those affected by landmines. ©

notes

- 1 The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction, also known as the Mine Ban Treaty.
- 2 See, for example, Rae McGrath, "Open letter to Prime Minister Axworthy," 2000.
- 3 See, for example, German Initiative to Ban Landmines, "Why Anti-vehicle mines must also be banned," 2000. Available www.landmine.de
- 4 "Mine Action Programmes from a Development Oriented Point of View", revised June 1999. Available via www.landmine.de.
- 5 Anderson, Mary, *Do No Harm: How Aid can support peace or war*. Boulder, Colorado, 1999.
- 6 See Alejandro Bendana, "Building a Social Transformation perspective for Mine Action Programs" 1999 and Thomas Gebauer, "Mine action in the context of social integration — on the way to an effective abolition of mines" 1997. Both available www.icbl.org (NSA Working Group page).



chapter 1

opening words

conference rationale and objectives

Miriam Coronel Ferrer
Non-State Actors Working Group Co-chair

The term “Non-State Actors” or NSAs is very controversial in many ways. First, it can refer to so many different kinds of groups — the private business sector, NGOs, and state-supported paramilitary groups as well as anti-state insurgents. For our conference, even as we limit the use of the term to armed opposition groups, the wide variety of such groups continues to faze us.

But even more controversial is that NSAs are perceived differently by different people and institutions; by states, civil society, the grassroots where many of these NSAs operate, the global community, and perhaps even NSAs themselves. To partisans, they are either good or bad, while others are caught in between. Indeed, their legitimacy lies in the eyes of the beholder.

That is why working with NSAs is treated sensitively, cautiously, if not with fear and suspicion.

Despite their being controversial, the global movement to ban landmines cannot turn a blind eye to NSAs (i.e., the armed opposition groups). Why not?

There are several considerations. One, many of these NSAs use or may use mines, defensively and/or offensively. Two, some states justify their continued use or stockpile of mines on the basis of such NSA presence or even mere threat. Three, producers continue to produce mines since there are users such as these NSAs. Likewise, traders continue to sell and transfer since there are buyers. And four, there are soldiers and people killed or maimed by NSA-planted mines just as there are NSAs killed by state-planted mines or mines of their own making.

In short, NSAs must be engaged because NSAs are part of the landmine

equation. They are part of the problem, and they are part of the solution. They may be perpetrators but they or the people or the cause in whose names they fight can also be victims. They too have, or can have, a stake in stopping the inhumane destruction caused by landmines.

Realizing this, three country campaigns of the International Campaign to Ban Landmines (ICBL), from Colombia, South Africa and the Philippines, initiated the formation of an ad hoc NSA Working Group (WG) in 1997. Later in the year, they were joined by the Swiss campaign. In March 1999, the ICBL General Assembly formally recognized this Working Group of the ICBL. The NSA Working Group is, at time of writing, composed of 16 country campaigns and several others have expressed interest in the work. One of the first activities of the NSA Working Group after its formalization was to form a committee of six country campaigns to organize the conference we are now attending.

This conference brings together a wide range of people — state and NSA representatives, the landmine ban community and other interested parties — to:

- ◎ understand the varying contexts and assess the extent of landmine production, stockpile, use, transfer and victimization with special reference to NSAs;
- ◎ enhance appreciation for engaging NSAs as a complementary strategy to universalize the ban on mines, within the greater quest for just and peaceful communities around the world; also,
- ◎ to identify and discuss the sensitive issues complicating meaningful engagement of NSAs; and, finally,
- ◎ to illumine the frameworks, ways and means whereby these issues can be addressed, and NSA commitment to a landmine ban and mine action forged.

This conference is pioneering in its efforts to bring all parties together to start off the process of dialogue for a truly universal mine ban. We are therefore grateful to our host canton, city and organization, and to governments and groups who made this conference possible.

But by no means is this conference the first in this approach. Globally, there has been increasing realization of the need to engage non-state actors in the areas of human rights and humanitarian law, areas where traditional

focus has been on state actors. The complementary focus is only a response to the predominance of domestic wars or conflicts between state and non-state actors. In addressing non-state actors, therefore, the global campaign to ban landmines is only keeping pace with the realities on the ground and the contemporary world's challenges.

We have come here to Geneva, site of historic settlements for peace, wearing several and different hats, and thinking differently in varying degrees on the subject at hand. We have come here with different organizational, personal or life his-/herstories. We come with different tasks and mandates bearing on us. We do not share the same degree of optimism nor of scepticism towards the conference, states and NSAs, or even about life and human nature, in general. Nor do we have the same sympathy or dislike for one person's politics and another's.

This conference will not pre-judge our respective starting points, but rather seek to understand. To understand, so we can engage. To engage one another so that we can create enough momentum to propel us to a shared future — a world without mines, a world without wars, a world where there is no cause and wherewithal to go to war, a just and peaceful world.

the role of geneva

Guy-Olivier Segond

President of the Conseil d'Etat de la République et Canton de Genève

In the name of the parliament and executive body of Geneva, I have the pleasure and honour to warmly welcome you to Geneva.

As you know, Geneva is a canton of Switzerland, but also an international city which inherited and has, for several centuries, continued the philosophical and practical tradition of men and women who proclaimed the primacy of spiritual values.

We have Jean Calvin, the reformer who made of Geneva a "Protestant Rome." There is also Jean-Jacques de Sellon, the founder of the Universal Society of Peace, which was the first international humanitarian organisation. Then there was Jean-Jacques Rousseau, the pre-eminent citizen of Geneva, whose ideas and writings influenced not only the French revolution but the

American revolution, and greatly contributed to establishing human rights. And there was another Genevan, Henri Dunant, who founded the Red Cross, which today has become the most important humanitarian movement in the world.

Geneva is very much rooted in this humanitarian history, which has never ceased to be adapted over the centuries to international reality. As you probably know, in August 1999, we celebrated the 50th anniversary of the Geneva Conventions. It is remarkable that these Conventions have served the international community for 50 years. But it must be said at the same time that the world has evolved during this time. It is now necessary to develop the capacity of international law to meet the realities of the new armed conflicts around the world and the new actors involved.

There have been significant changes in the structure of conflicts and weaponry over the last 50 years. At the end of the Second World War — a conflict among states and their alliances — the “cold war” began, whose main actors were again states and supranational alliances. But today, although states remain the decisive actors in armed conflicts, the importance of “non-state actors” has greatly increased. And the campaign against landmines, like any serious attempt to mitigate the impact of war, must face the reality of non-state actors. Efforts to eliminate the use of landmines have, up until now, focused chiefly on states. Notably, the Ottawa process did not engage non-state actors and the treaty does not address them.

An increasing number of armed groups have acknowledged the need to discuss the problem of mines. Some of these groups publicly committed themselves to banning this weapon. Unilateral statements and bilateral agreements with clear references to mines have been made by non-state groups in different parts of the world. Other actors have indicated their willingness to make a renunciation of mines. And others appear willing to support mine clearance and victim assistance programmes in areas under their control.

These promising developments encourage a systematic and concerted approach to engaging non-state actors in the landmine ban. These are the aims of the conference.

The Conference brings experts together to discuss the problem of landmines as it relates to non-state actors. With a firm grasp of the realities of current armed conflicts, the Conference will search out possibilities in international humanitarian law, as it presently exists and in new directions it could take.

What could Geneva contribute?

Geneva, well acquainted with the mechanisms of international humanitarian law, could, through the Swiss government, try to introduce an amendment to the Ottawa Treaty based on Article 96, paragraph 3 of the first Additional Protocol to the Geneva Conventions. This measure provides that representatives of a people engaged in a war of liberation against a State Party can, through a unilateral declaration, bind themselves to the Conventions and the Protocol as pertains to the conflict. A step in this direction undertaken by the Swiss government — that is, proposing the adoption of such an amendment to the Ottawa Treaty — would be slow, long and difficult, but has a precedent in the first Additional Protocol to the Geneva Conventions. In the meantime, waiting for this initiative to succeed, Geneva declares itself prepared to act, insofar as it is useful, as guardian of such commitments on an intermediate basis. ©



chapter 2

framing the problem

a global look at non-state armed actors

Gérard Chaliand
Fondation pour la recherche stratégique

I would like to situate the problem in the larger historical and global context.

First of all, “non-state actor” is a very fashionable word these days and relatively new. I would like to point out, however, that there have been many non-state actors since the end of the Second World War; in Algeria, Vietnam, there were the various national liberation fronts, the Vietcong, Vietminh, etc. These were non-state actors. From this point of view, we are not in such a different situation now. However, before 1991, politics, at least for the Americans and Russians, were essentially perceived in terms of the East-West conflict. One wasn’t interested in national liberation fronts as such — only whether they were perceived as being close to the Russians or Chinese, or whether they were dangerous to American or European interests.

Now the problem is posed in new terms, those of the post-Cold War era. How to characterise the new context? It is not, as American professor Samuel Huntington argued, a “clash of civilizations,” with Marxism replaced by the new enemy of “Islam-Confucianism.” This clash already took place in the 19th century, when Europe conquered Africa and most of Asia during its imperial expansion.

Today it is also said that conflicts have multiplied considerably since the end of the Cold War. This is not true: there are roughly about 30 armed conflicts today, many of which have been in existence since Cold War times. A few have disappeared, like those in Central America and Mozambique. Some are new, particularly of course those in the former USSR, notably in the

Caucasus. But I think most of them have been around since I began visiting guerrilla organisations about 40 years ago. I've been familiar with the Colombian groups since I was there in 1968 and the Kurdish groups since I was there in 1960. Angola's conflict started in 1961; the Sri Lankan conflict is now more than 20 years old; the Moros have been fighting for a long time in the Philippines; I'd say the Palestinians' problem started in 1948; and so on.

So the global situation, if one looks at it from a geographic point of view, is as follows. In Latin America, where we had so many conflicts in the 60s, there is essentially only Colombia left. East of India, where we had a multitude of conflicts in the 60s and 70s, we have primarily the Moros. The situation in Timor is on the way to being fixed; the worst, if I may say so, has passed since the West discovered it two years ago — even though it has been around since 1975. (We must recall here that the West has a double-standard in applying human rights to its allies and its enemies.) And finally, conflicts are continuing in what one could call the arc of conflict — from Algeria through to Sri Lanka, with particular flashpoints like Palestine, the Kurds, Afghanistan, Pakistan (the last two being centres of Islam), Kashmir and north-east India, and Sri Lanka, the country where we presently find the most impressive and best organised armed movement in the world, the Tamil Tigers. Then we have a situation which has just developed in the last few years, probably as a result of the Cold War and also as one of the consequences of economic development in Africa and the large population growth in the area known as the Great Lakes region. And there continues the old conflict in Angola, which has been interpreted in so many different ways, from what was originally seen as an east-west conflict, Savimbi starting out pro-Chinese, pro-American and pro-South African, to what is now discovered to be an Angolan conflict with an ethnic basis complicated by economic issues. And then we have Sierra Leone and Liberia.

An aside with respect to these last conflicts: some rather questionable analyses are being made. For example, we are now told that it is the civilian population who are the victims of armed conflict. True, but since the Second World War it is certainly nothing new that civilians are the main victims. Just because the media is saying it is new doesn't make this true. The bombing of Coventry, Dresden, Tokyo, the concentration camps, and Hiroshima targeted civilians. All conflicts involving decolonisation or national liberation movements have civilians at their heart: either the colonial troops or the rebel

groups/national liberation movements control the population. We are also told these days that there is a growing participation of children in conflicts. For the 40 years that I have been frequenting them, I have seen youth from 13 to 15 participating in guerrilla wars. First of all, not everyone has the same definition of childhood. Thirteen is the age of the rite of passage from childhood to adulthood in some places. In many societies there is no concept of an adolescence lasting until 25. In short, you certainly get the feeling that the West came up with these ideas.

So, while we are being told that there is a new emergence of intra-state warfare (that is, domestic conflicts), what is true is that during the whole colonial period, the colonial empires considered the conflicts to be taking place within their own territories. For the French, the Algerian war was an internal conflict. Numerous conflicts took place inside independent countries because the right of peoples to self-determination, as proclaimed in 1948, was primarily the right of people to liberate themselves from the domination of Europe. One saw other independence struggles elsewhere, of course: we can think of Bangladesh, thanks to Mrs. Gandhi; or Eritrea, thanks to the fall of the Marxist regime of Colonel Mengistu.

For the others, it is a fact that most of the countries of Asia and Africa, so many of which are non-democratic, are dominated by ethnic, religious, or sometimes social groups which tend to oppress the others. And it is not by accident that there are internal conflicts in these states between the minorities and sometimes the majority who feel oppressed or discriminated against.

Finally, it must be added to my global overview of armed groups that the end of the Cold War forced many movements to find new sources of financing, formerly provided by friendly countries, and that these finances are often found — not always, but often — through criminal economies. It should be said though, that the nature of a political movement must be measured first of all by its social depth and not by the origin of its revenues. In Africa — though this isn't the only place, there is also Colombia with cocaine and Afghanistan with opium — governments are weak. This is the case in Sierra Leone, Liberia, Angola, where the fighting is definitely over resources such as oil, diamonds and mineral resources.

I would add to this array of non-state actors those we can call the new mercenaries; that is, actors like Executive Outcomes, who didn't exist before the late 1990s and who have played a role in maintaining a status quo

favourable to the West in African countries such as Angola and Sierra Leone. Britain's Sandline International, which has participated militarily in diverse conflicts in Africa, is another example. One could also note a multiplication of security companies which are not combatants but help to maintain the status quo in various weak states in Africa.

That is the context, as I see it, of what one can call non-state actors. I will conclude by noting that, in comparison to the generally well-structured and disciplined movements of earlier times, the movements of today, especially in Africa, are a result of economic difficulties. For a large number of youth without occupation or work, the profession of taking up arms is a solution. Resource wars tend to last as long as the political goals of the belligerents are outweighed by the material interests in prolonging it. This makes it difficult for the work of NGOs or the International Red Cross who wish to bring humanitarian aid to the populations — it is not very clear whom they should engage nor even where the threats to lives are coming from.

“one man’s terrorist is
another man’s liberator” —
the landmine ban and non-state actors

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The Ottawa process, supported by the International Campaign to Ban Landmines (ICBL), culminated in a state ban on the use, manufacturing, production, and transfer of anti-personnel mines (APMs) in 1997. One hundred and thirty-five states have, so far, appended their signatures to the convention, which regulates the conduct of states.

Since the late 15th century in Europe, elaborate norms, conventions and rules have been created to guide and inform international relations. These have gone hand in hand with the rise of the nation-state; consequently, the rules reflect state attempts to gain a monopoly on violence both within their own borders and when operating elsewhere. There is consequently little space for armed rebel groups to become engaged in the process. The Ottawa Treaty, for example, requires states to enforce its provisions on non-states (Article

9). In the real world, however, some states are “weak, imploding or behaving like rogue states.” Both the legitimacy and capacity of such states to enforce the treaty provisions is problematic.

Even as the world celebrated the removal of the indiscriminate and lethal device from the repertoire of weapons available to combatants, it became clear that an increasingly important element in the various conflicts throughout the world had not been addressed. Of the 27 major violent conflicts occurring in the world as we approached the new millennium, 25 involved internal wars in which non-state actors played an important role. These actors are known variously as rebel groups, opposition armed elements, local strongmen at the head of armed supporters, warlords, or, simply, non-state actors (NSAs).

Anti-personnel mines have commonly been referred to as the “poor man’s weapon” because of their supposed “multiplier effect” on the impact of a small force on a wide front on the battle-field. This way of thinking led many non-state actors to resort to manufacturing, acquiring and using anti-personnel mines. Recently, however, some of these NSAs have come forward and stated that they are prepared to reconsider their landmine policies. According to *Landmine Monitor Report 1999*^a, the unilateral response by NSAs started almost at the same time as that of states and has continued ever since:

- ◎ In November 1996, the Sudan’s People’s Liberation Army (SPLA) issued a Resolution on the problem of anti-personnel mines.
- ◎ In April 1997, the Southern Sudan Independence Movement (SSIM) as well as the Sudanese Government included a reference to mines in their peace agreement.
- ◎ In November 1997, the Philippine and Moro Islamic Liberation Front (MILF) included a provision on landmines in an agreement on cessation of hostilities.
- ◎ The self-declared republic of Somaliland issued an open letter indicating its willingness to sign the landmine treaty in December 1997.
- ◎ In March 1998, the Government of the Republic of the Philippines and the National Democratic Front included a landmine ban in an agreement on human rights and international humanitarian law signed in the Hague.
- ◎ In July 1998, the National Liberation Army (ELN) reaffirmed a commit-

ment about its use of landmines.

- ◎ In September 1998, the Somali Patriotic Movement also stepped forward, adding its voice to the growing ranks of NSAs which sought to voluntarily limit their actions in order to benefit mankind.
- ◎ In October 1998, the Taliban announced their intention to ban landmines.
- ◎ In March 1999, Saharawi authorities asked that their activities be recognized as adhering to the general principles of the Ottawa Treaty.
- ◎ In March 1999, the UN Special Representative on Children and Armed Conflict apparently secured an agreement with the SPLA and, separately, with the Government of Sudan to stop using mines in certain areas.

Other groups are known to be waiting in the wings to see what action the international community is going to take before they also come forward. If this process is supported, it is likely to benefit related areas, such as mine clearance, victim support initiatives, as well as diverse aid programmes.

Both the international institutions established by states in order to regulate the international system and individual states have found themselves in a dilemma. How can they respond without undermining the very core of statehood and sovereignty? And yet, if we are serious about our efforts, these players in violent conflict throughout the world cannot be ignored.

Globally, there are at least 191 NSAs of different persuasions and seeking diverse objectives in Africa, America, Asia, Europe and the Middle East.² This figure is higher than the current number of states recognised by the United Nations.³ There is a need for the landmine initiative to respond to this unstructured grouping, some of whose members are manufacturing, distributing and using APMs. Without detracting in any way from the achievements that have been attained so far with states, there is a need for a parallel and complementary mechanism that addresses this gap in the comprehensive process of banning anti-personnel mines.

Neither the UN, a state organization, nor the International Committee of the Red Cross (ICRC), an institution that has enjoyed the confidence of all parties in conflict, can engage non-state actors without offending their main constituency or sacrificing hard-won reputations of balance and neutrality. It is therefore left to civil society to take up the challenge and, in the most transparent and inclusive manner, seek to create a conducive environment

for dialogue and establish internationally credible mechanisms that will result in NSAs signing and depositing the necessary instruments that will bind them to the standards contained in the 1997 landmine treaty.

Accordingly, this paper seeks support for the establishment of a new mechanism that addresses the gap in the 1997 landmine treaty as part of a concerted effort to broaden the Ottawa process. It seeks to provide a rationale for engaging with non-state actors, while demonstrating that not all of them will be inclined to take up the challenge to reduce human suffering by abandoning the use, manufacturing and distribution of anti-personnel mines.⁴

It is my belief that a truly universal ban on anti-personnel mines will not be possible until it embraces those non-state actors prepared to observe the provisions of the 1997 landmine treaty. This will not only carry the ban forward, but also help to create an environment conducive to mine action. The general method advocated here is engaging non-state actors in dialogue while issuing an appeal laced with incentives and positive pressure in order to draw them into a renunciation of anti-personnel mines.

Non-state actors can be categorised according to their diverse motivations. In the remainder of the paper, I will attempt to offer broad suggestions on which kind of NSAs are likely to respond to political incentives and humanitarian appeals and to identify those that are unlikely to do so. Once confidence and trust has been established with those non-state actors that espouse clear political objectives and are concerned with observing and upholding humanitarian values, the agenda might be broadened from landmines to respect for the rights of civilians in war zones more generally.

what are non-state actors?

The history of armed groups that seek to challenge the power and influence of central authorities is substantial, reaching back before biblical times. They have been known variously as warlords, rebel movements, armed opposition groups, anti-government guerrilla movements, and now non-state actors. There is by no means agreement on these terms. A.J.P. Taylor considers almost any general or political leader who rules in a dictatorial way — from Attila the Hun to Napoleon, Mussolini, Hitler, Churchill, Stalin, Roosevelt, and the Japanese Admiral Tojo — to be a warlord.⁵ John McKinley, in con-

trast, provides a working definition of “warlord” as any strongman operating in a power vacuum who is able to hold territory, command several thousand combatants, and act in the international system financially and politically without interference from the nominal state in which he operates.⁶

In its December 1999 workshop on engaging NSAs, the Henri Dunant Centre defined non-state actor as a group exhibiting the following three capacities:

- ⊙ basic command structure;
- ⊙ capacity to plan armed operations; and
- ⊙ basic understanding of the rules of humanitarian law.

Throughout the process of the establishment of the nation-state system, with its coterie of diplomatic traditions, conventions and legal norms, states tried to appropriate to themselves rights of action on a number of issues. One of the most important of these was the state’s monopoly on violence, exercised with the support of other states. This was concretized soon after the First World War with the formation of the League of Nations, the fore-runner to the United Nations, which emerged in its turn after the Second World War, over 55 years ago. But, despite the robust attempts by states to shut out any pretenders from their diplomatic, territorial and political sovereignty, non-state actors did not disappear. The environment in which these flourish include weak, weakened, collapsed or imploding states; that is, an absence of central authority in large areas of the state and diminished local government support. In such areas, strongmen appear and begin to control access to territory and resources, normally keeping the forces of the weakened state at bay. Furthermore, the ethnic factor, never far away from internal conflict, also tends to rear its head and compound the already complex conflict.

Between 1945 and 1990, over 140 states emerged from former colonial rule to full independence as mostly European empires relinquished their control. Many of the states established were not exactly representative of the communities that had been under colonial rule. In this situation, NSAs formed that were widely respected internationally, despite their status; some of these later became states. The African National Congress (ANC) in South Africa and the South West Africa People’s Organisation (SWAPO) in Namibia are examples. Such groups had clear political objectives and used the instrument of force for political purposes within defined and internationally acceptable

parameters. Their statesmanlike behaviour as non-state actors feeds current perceptions that emphasize the inclusion of non-state actors who are prepared to act as states in the landmine ban process.

However, there are other non-state actors who do not have the same kind of political focus. These will not respond to overtures by the international community to respect norms, conventions or other legally binding international laws. The motivation of this type of armed group is economic or based on aspirations for very localized power and control. The emergence of such groups generally stems from contemporary problems.

a global inventory of NSAs

There are more NSAs than states in the world today. Any effort that manages to harness their support for diminishing the causes of conflict and the use of indiscriminate weapons such as anti-personnel mines will benefit humanity. A global inventory of NSAs reveals⁷:

Africa: There are nearly 58 NSAs that meet the criteria set out by the Henri Dunant workshop as well as McKinley's definition (above). These are in the following countries: Algeria, Angola, Burundi, Congo Brazzaville, Democratic Republic Congo (DRC), Djibouti, Egypt, Eritrea, Guinea-Bissau, Lesotho, Liberia, Namibia border with Angola, Niger, Mali, Morocco/Western Sahara, Rwanda, Senegal, Sierra Leone, Somalia and Somaliland, Sudan, and Uganda. It can be noted in passing that there are also a variety of mercenaries and private security companies.

The Americas: There are 15 NSAs identified. These are operating in the following countries: Brazil, Chile, Colombia, El Salvador, Guatemala, Mexico and Peru.

Asia: There are 62 known NSAs. These are in Abkhazia, Afghanistan, Bangladesh, Burma, Cambodia, Kampuchea, China, India, Pakistan, Indonesia, Japan, Laos, Nepal, Papua-New Guinea, Philippines, Sri Lanka, Thailand and Tajikistan.

Europe: Thirty different NSAs operate in this region. The following are affected: Azerbaijan, Bosnia-Herzegovina, Chechnya, Georgia, Latvia, Russia, former Yugoslavia, Croatia, Greece, Spain, the United Kingdom and the Republic of Ireland.

Middle East: There are 26 NSAs active in this region, with the following states affected in some way — Iran, Iraq, Israel, Palestine, Turkey, Lebanon and Yemen.

By this rough estimation, over 190 NSAs are known to be operating. These entities represent thousands of armed combatants controlling several large tracts of land on which millions of civilians live. These are the people who will directly benefit from attempts to get NSAs to conform to internationally recognized standards of conduct which place the welfare of civilians before political or economic aims.

is there hope of success?

A growing number of NSAs wish to gain the respect of the international community and the support this brings. These groups must be encouraged to become part of the total ban on the use, trade and transfer of anti-personnel mines. There are NSAs, of course, who will not respond to the current process. These are generally guided by motives other than political aspirations; their activities are informed by organized crime or banditry. These types of NSAs must be exposed for what they are and distinguished from those which have humanitarian concerns as part of their aims.⁸ The latter need our support.

conclusions

The paper has tried to show that the 1997 landmine treaty has not addressed an important set of actors involved in conflicts around the world — NSAs. With over 190 NSAs, a parallel process that aims at coordinating an approach to NSAs in some internationally acceptable and transparent manner makes good sense. The aim would be to enhance and complement the positive gains made so far with states under the 1997 landmine treaty. It is my firm belief that developing a sustained dialogue with NSAs, with the full knowledge and support of states and important international players such as the ICRC, may prove beneficial not only to the landmine agenda but to related humanitarian concerns about civilians in wartime.

minefields and non-state actors

Rae McGrath

Post Conflict Response Consultant, Co-founder of ICBL

I'd like to talk about minefields rather than landmine treaties. I've been told that this conference is considered controversial or, on the other hand, ground breaking; clearly divergent views, but both perceptions which somewhat surprise me.

I first established a humanitarian mine clearance operation in the late 1980s in Afghanistan, prior to the Soviet withdrawal, working in Mujahideen-controlled areas. On 2 January 1990, we took the first ever UN operational humanitarian mine clearance teams into Kunar Province to begin work. All the de-miners were drawn from the ranks of former Mujahideen—non-state actors by strict definition.

Soon afterwards, I went to Cambodia to research the 'Coward's War' report for Human Rights Watch. Meeting with fighters from the three Thai-based armed opposition groups — the Khmer Rouge, the Khmer Peoples National Liberation Front (KPNLF) and the Armée National Sihanouk (ANS) — as well as with the Cambodian Government (itself an 'NSA' in the eyes of much the world at that time) and its army, we worked to establish data on the use and impact of landmines during the conflict. I then went to Northern Iraq to work with the Peshmergha NSAs, the PUK and KDP, to survey the minefields left after the Iran/Iraq War.

So we have been engaged in dialogue and working with NSAs from the very start of the landmine initiative. And it would have been extraordinary if that were not the case, since NSAs have been, in company with governments, laying mines, killed by landmines, and, most importantly, controlling mined territory.

There was some confusion experienced by the NGOs involved in the emerging process of mine action; we were, after all, NSAs of a kind ourselves, despite the fact that our funding often came from governments. Those same governments sometimes provided the landmines which were used by the NSAs. Cambodia was a classic example, with China arming the Khmer Rouge, the United States arming the so-called non-communist resistance (the KPNLF and ANS) and the UK providing special forces training for them — and all

three groups combining to oppose the Vietnamese-supported government.

There have been few conflicts where landmines have been used in the past 30 years which have not involved one or more NSAs. And since the International Campaign to Ban Landmines was established to eradicate landmines, in order to stop their impact on non-combatants and their persistent post-conflict devastation, rather than to make political statements, it is perhaps surprising we've taken so long to come to the stage where we are holding this conference.

What is the practical purpose of a treaty which only addresses half the 'Mine Laying Actors'? A treaty which ignores, for reasons of diplomatic nicety, some of the most active users of the weapon? I accept that there are many reasons why governments and NSAs may be restricted by prevailing circumstances from engaging in direct dialogue or recognizing each other's legality. But the ICBL is an international partnership of NGOs with a mandate to stop human misery caused by landmines. We have no such restrictions, nor should we have.

That's easy to say, but how realistic is it in practice?

Here I'd like to draw on my own experiences and those of my colleagues. This work is not really the stuff of conferences, nor of formal meetings with NSA representatives, but of interaction on the ground between mine-action teams, field commanders from all forces involved, and soldiers. At that level, the language is perhaps less refined and the risks are greater — but there is a common language.

Any soldier or fighter using landmines recognizes or has the capacity to grasp the contradiction inherent in fighting for land which you make unusable in the process. The value of a post-war clearance capacity is easily recognised, while the continued use of landmines may initially be too firmly entrenched as a fighting strategy to be abandoned easily. But dialogue is really possible at this level and it is dialogue that, over time, can influence a force's thinking and strategy on mine-laying.

That may seem a long way from a parallel treaty, but, on the other hand, it is perhaps no more difficult than a breakthrough with governments who have not signed the Ottawa Treaty. The NSA argument that the landmine is the weapon of the poor has no less logic than, say, the United States' argument for the retention of the Korean minefields, or the case put by the UK and

Canada, among other States Parties, for the retention of claymore-type anti-personnel mines. All these arguments have commonality in that they are recognisable as pure cant in the face of the real human, economic and environmental costs of continued landmine use.

There are, of course, many concerns for NGOs which become involved in this kind of interaction with an NSA. A key consideration must be whether their primary objectives, their day-to-day humanitarian work, is harmed or helped by such dialogue. Are their staff or the communities they work with placed in danger by their interaction with NSAs?

Clearly the critical factor is mutual trust. This does not mean that the NGO must support the political aims of the NSA, but that its role is seen as neutral and humanitarian. I found that the day-to-day interaction of de-mining teams with communities over a period of time can clearly demonstrate their neutrality, their humanitarian objectives, and establish at least a basic level of trust with groups engaged in combat. There are, after all, no hidden agendas in minefields. There may, however, be a tendency to expect, and perhaps claim, unrealistic progress on the part of an NGO.

The nature of the landmine problem is that it exists at two levels, both of which must be influenced to accept change before change is actually achieved: 1. the leadership must be convinced at a political level of the need to stop deploying landmines; 2. the fighting force must not have mines available for use because history and human nature dictates that soldiers who have mines will use them.

Here there are no clear guidelines I can offer to resolve what must always be a 'chicken and egg' situation. The ideal would be to have working contact simultaneously with field commanders and political leaders. However, because of the nature of NSAs and the conflicts they are engaged in, these two levels of decision-making may be physically remote from each other and even, in some cases, in different countries. With this reality, NGOs dedicated to the eradication of landmines must cooperate among themselves first and make use of each organisation's contacts to establish a comprehensive approach.

Progress will necessarily be slow. I was a soldier myself for 18 years, and I understand that the logic of giving up a weapon which seems to be a protection against unexpected attack, and therefore capture and perhaps death, is not immediately apparent. The suggestion will not necessarily be welcome. The instinctive answer of the fighter will be, "Why should I give up a weapon

which the enemy continues to use against me?”

And when the answer to that question is that the enemy, the government, has in fact pledged to stop using mines, the initial response from the fighter may well be, “Then why should I give up a weapon which gives me an advantage over the enemy? We cannot afford the tanks and the airplanes — the anti-personnel mine is a poor man’s resource. The people’s weapon.”

Of course the ultimate answer lies in the community, which both the governments and the NSAs claim will benefit from their victories. It is the communities who always pay the long-term price for the use of landmines. We as NGOs, as landmine specialists, as the international campaign, have seen it all before. When a farmer steps on a mine in the hard-won peace, he doesn’t ask if it was a mine laid to oppress him or to free him. He simply steps on a mine, and his family go hungry, and when this happens every day for years, there is no freedom in that community.

Land mines are oppressors of the poor and the disenfranchised. That is why engaging with NSAs is as important for the International Campaign to Ban Landmines (ICBL) as the long diplomatic process of engaging with governments.

discussion

supply and demand

Speaker. It needs to be asked where the NSAs procure mines and how to control this trade. Where arms exist, they are going to be used. Often NSAs are operating in countries which don’t have a big production capacity. The big powers who have not signed the Ottawa Treaty are the producers — although they say the production is for their own use and that they are committed to the control of unauthorised use of these mines. Isn’t it necessary to work at this level?

Gérard Chaliand. There isn’t only one way of procuring mines. If you are an ally of, for example, the Americans or the British, they will supply you. If you are allied with no one, as in the case of the Tamil Tigers, you may have a well-organised diaspora who supports you financially and can rely on the black market for supply. So it depends, but in a fluid international market where there are profits to be made, one can always get what one needs if one has

basic financial support or allies.

Rae McGrath. I agree, you have to monitor and stop the continued transfer and sale of landmines to any fighting group. But at the same time, you have to take the parallel approach of entering into dialogue with NSAs. It's not an either/or situation; both need to be done.

landmines and peacebuilding

Martin Rupiyyah. Whereas in a physical sense landmines deny space, in another sense they perhaps create some space; space for dialogue. In some cases, the parties to the conflict may have a mutual interest in discussing the use of these weapons. That dialogue about landmines, perhaps, on some occasions, can lead to dialogue on a wider range of issues. Some may say this is naïve, but there may be occasions where a mutuality of interest in the use of this particular weapon between military commanders on the ground, may lead to a dialogue embracing larger issues.

Speaker. Here is where it is important to make the distinction between dialogue among military people on the ground and political leaders.

Rae McGrath. A word of caution on this point. The trust necessary to enter into a dialogue is very often based on the fact that you are talking about a specific problem, the problem of mines. For instance, discussions with a group in Eritrea began because, having taken control of an area of land, the fighters found themselves facing a community which demanded that they clear their landmines. Then they realised what a problem it was and were prepared to discuss it. But if you try to use that opening to go on to discuss peace, then you risk putting up a barrier. I think we have to be very careful that we don't see this dialogue to stop the spread of anti-personnel mines as a doorway to political solutions. If that comes, then it is good, but that shouldn't be the aim. ☉

notes

- 1 The following is based on "NSA Working Group Annual Report 1999" in *Landmine Monitor Report 1999*, Human Rights Watch - USA, p. 942. Available www.icbl.org

(NSA Working Group page).

- 2 Non-State Actor Database, "Region and Country Survey", October 1998.
- 3 This presently stands at about 189 including the recent application of Tonga.
- 4 As argued in the summary of "International Law and Non-State Actors: A Workshop on the responsibilities of Armed Groups toward Civilians," held by the Henri Dunant Centre for Humanitarian Dialogue in Geneva, 14-15 December 1999.
- 5 AJP Taylor, *The War Lords*. London: Penguin Books, 1977.
- 6 Based on a draft, later revised and published as a Centre for Defence Studies *Working Paper*.
- 7 Based on NSA Database, "Region and Country Survey," October 1998.
- 8 Lynne Hopkins and Martin M. Kaplan, "Report on the International Effort to Eliminate APMs and Organized Crime as a New Threat to Transitional Societies" presented at the Pugwash Conference on Science and World Affairs, Rustenburg, South Africa, 7-13 September 1999.



chapter 3

legal and normative frameworks

The following papers provide an overview of legal and normative frameworks for engaging NSAs in a landmine ban. Frameworks with an “s” — plural, not singular; not only legal, but also normative frameworks.

overview of legal and normative frameworks

*Soliman Santos¹
Philippine Campaign*

The three main frameworks to be considered are International Humanitarian Law (or the international law of armed conflicts), International Criminal Law (or the international prosecution and trial of war crimes, crimes against humanity, genocide and aggression), and International Human Rights Law (which deals with fundamental rights and freedoms of human beings). Some might also add International Refugee Law, which is related to each of these other three.

These can be considered the main frameworks. But there are other frameworks, some of which I will now touch on briefly. These won't be our main focus, but it is important to be aware of these other frameworks for engaging NSAs in a landmine ban.

Main frameworks for engaging NSAs in a landmine ban:

- International Humanitarian Law (IHL)
 - International Criminal Law (ICL)
 - International Human Rights Law (HR)
-

other frameworks for a landmine ban

First, take the major themes of the 1899 Hague Peace Conference, the centenary of which was celebrated last year. In addition to IHL (one of the major themes which will be examined later), we have peaceful settlement of disputes. This is of course the ultimate solution to the landmine problem. A total ban on anti-personnel mines can be understood in this framework as a confidence-building measure for peace, as indeed stated in the preamble of the Ottawa Treaty. Another theme of the Hague Peace Conference was arms control and disarmament. The Ottawa Treaty can be understood as a disarmament measure in the sense that it totally bans a specific weapon and provides a compliance mechanism. To rebels or NSAs, however, “disarm” might seem a suspicious word — hence this last Hague theme might not be the best framework in which to raise the issue with NSAs.

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- Examples of other frame-works:
- ⊙ Themes of Hague Peace Conference (1899)
 - ⊙ Regional cultural traditions
 - ⊙ Religious doctrines
 - ⊙ Revolutionary doctrines
-

Regional cultural traditions may serve as strong points of reference for NSAs and can also frame the landmine issue. Our first example falls under what can be called African humanitarian traditions. Throughout Africa, there is a tradition which says that the “envoy or the ambassador is never insulted or struck.” An envoy is on the same footing as a stranger to whom full consideration is due. This tradition is visible in such proverbs as: “Everything which comes goes”; “The stranger is like the dew, if he does not leave in the morning, he leaves in the evening”; “Your stranger is your griot [witch doctor cum minstrel]”; and “Your stranger is your god: if he does not make rain fall, he will bring you the dew.” Traditions such as these may provide a framework for a ban on landmines.

The chivalric ideal of Arabian epics indicates another tradition which might be mobilised to support a ban. The following verses demonstrate this:

When the drums of war resound,
When relentless faith is to warfare bound,
Remember the rights of women and children

Thou shall not kill them,
nor shall thou ill-treat them
And their dignity violate or threaten.

In the battle field, when men fight,
It must man to man and that is right.
But women and children kept out of sight
Shall not become victims of the battle's plight.

A third example of a traditional framework, which could provide a touchstone for the landmine ban in South Asia, is the Hindu code of Manu, the oldest and most authoritative repository of Hindu law. This Code provides, among other things, that treacherous weapons (for example, barbed arrows, poisoned arrows and points ablaze with fire) shall not be employed against the enemy.

And finally we have the oldest of them all, the earliest writing on the strategy of war from Sun Tzu. His work, *The Art of War*, was written in the 6th century B.C. in China and has been influential ever since. Even now, 26 centuries after it was written, we can see its influence in Mao and even in contemporary business strategies. Sun Tzu said (and many of us may be able to draw lessons from this):

Lords must not raise armies out of rage; commanders must not launch battles out of fury... For, those enraged may be happy again, and those infuriated may be cheerful again, but an annihilated country may never exist again nor may the dead ever live again.

Religious doctrines are a third source of alternative frameworks. We focus here on Islamic doctrines (*see adjacent box*). Many NSAs are inspired by Islam. Islamic laws could be considered “international law” in the sense that they hold sway for one-third of humanity, the world’s 800 million Muslims.

Whosoever killeth a human being for other than man-slaughter or corruption in the earth, it shall be as if he had killed all mankind; and whoso saveth the life of one, it shall be as if he saved the life of all mankind. (*verse 32, Surah Almaidah, the Holy Qur’an*)

Qur’anic verses and sayings of the Prophet Mohammad were in fact cited by the Taliban in its declaration of a total ban on landmines.

Materials on mines from an Islamic perspective have been developed by the Afghan Campaign to Ban Landmines.

Finally, revolutionary doctrines themselves can in some cases provide the foundation for a landmine ban. Looking at the one example of Maoism, it is easy to see how the following elements could support a landmine ban: viewing the peasant base as a “sea” in which the rebel “fish” swim, not alienating the masses (with e.g. landmine accidents), and winning hearts and minds.

main frameworks

Now we come to the main framework for engaging NSAs in a landmine ban, International Humanitarian Law. This is discussed further in Peter Herby’s paper (see *“International Humanitarian Law and the Public Conscience,” Chapter 3*) and here I will touch on only a few aspects.

But first I want to look briefly at the use of “NSA” and other terms found in international legal instruments and used by experts in this field.

There are many words used and definitions given to describe the groups we want to address. Canada’s proposed “Global Convention Prohibiting the International Transfer of Military Small Arms and Light Weapons to NSAs,” for example, defines “NSA” as any organisation not in the list of “state actors,” with the list of armed state actors confined to “government-controlled military and police organizations and law enforcement agencies.”² I don’t know how helpful that definition is. Professor Peter Rowe defines “rebels” as “any group carrying out acts of violence for political purposes in opposition to the

Terms in international legal instruments:

dissident armed forces; organised armed groups; political organisation; irregular armed groups.

Terms used by international law experts:

rebels; rebel movements; armed insurgent groups; armed opposition groups; armed groups; non-state entities

government.” The International Council on Human Rights Policy uses the term “armed groups”, referring to “groups that are armed and use force to achieve their objectives and that are not under state control.”³ My suggestion is to use “NSAs,” “rebel movements” and

“armed groups” interchangeably so we know what we are referring to, and that we are not referring to multinational organisations or non-governmental organisations (NGOs). The issue of terminology and definition needs further exploration, however.

Now to **International Humanitarian Law** on the landmine ban. We start with the

1997 Ottawa Treaty. It is a total ban or prohibition in the form of State Party undertakings, but contains no specific applications to NSAs or to non-international armed conflict. Anti-personnel mine use is made an international wrong, but not an international crime. This could be among the possibilities for review and amendment of the Ottawa Treaty in the future. Criminalisation is left to the national level. Reading Article 9 on National Implementation Measures (*see adjacent box*), it isn't hard for us to see which of its provisions would make NSAs see red. Although provision for coercive processes is standard to national implementation measures, it is, or may be, anathema to NSAs and needs to be complemented by more persuasive approaches. This is one limitation of the Ottawa Treaty as an instrument to engage NSAs.

In addition to the 1997 Ottawa Treaty, there is the 1996 Mines Protocol. This is the

IHL on Levels/Categories of Armed Conflict

- ⊙ International armed conflict and wars of national liberation: apply 1949 Geneva Conventions and 1977 Additional Protocol I
 - ⊙ Non-international armed conflict of “high intensity” (threshold): apply 1977 Additional Protocol II (and certain customary IHL)
 - ⊙ Other non-international armed conflicts (“low intensity”): apply common Article 3 (and certain customary IHL)
 - ⊙ Internal disturbances and tensions: apply national law and HR
-

Ottawa Treaty, Article 9, National Implementation Measures

Each State Party shall take all appropriate legal, administrative and other measures, including the imposition of penal sanctions, to prevent and suppress any activity prohibited to a State Party under this convention undertaken by persons or on territory under its jurisdiction or control.

Amended Protocol II to the 1980 UN Convention on Certain Conventional Weapons (CCW) (which is not to be confused with the 1977 Additional Protocol II to the 1949 Geneva Conventions). The 1996 Mines Protocol provides for restrictions, rather than a ban, on the use of landmines, but covers both anti-personnel and anti-tank mines. It is specifically made applicable to both international and non-international armed conflicts and includes a provision about the non-transfer of APMs to non-state entities. It leaves criminalisation to the national level and legalises the use of landmines under certain restrictions. It can operate or be viewed as complementary to the Ottawa Treaty.

Overall, International Humanitarian Law is partly treaty-based, meaning formal written agreements between and among states and binding only to the Parties. The other part of IHL is customary law, meaning generally accepted principles and rules binding on all, based on the practice and legal opinion of states. The key principles or rules of Customary International Humanitarian Law are as follows: distinction between combatants and civilians; proportionality of means to ends; not unlimited means and methods of warfare; and dictates of the public conscience.

It is debatable whether there is already customary, as distinguished from treaty, IHL on landmines. A number of studies have looked into this question. A study for Landmine Monitor says that a framework for an anti-personnel landmine ban, based on three principles of customary IHL, already exists, but that there is not yet an explicit customary ban against them⁴. The rapid embrace of the Ottawa Treaty is itself the basis for arguing that a total ban on anti-personnel mines is emerging as a new customary norm. This will have crystallised when China, Russia and the US subscribe to the ban.

The ICRC study on this question is less optimistic. It says the level of consistency needed for custom is not yet sufficient. The practice is too young. The case for the Ottawa Treaty as a customary norm is somewhat weakened by the 1996 Mines Protocol, which permits certain uses of APMs and was recently revised and therefore confirmed.

A case to test the legality of APMs before the International Court of Justice, similar to the test case on nuclear weapons⁵, might be desirable.

And that, briefly, is IHL on the question of engaging NSAs in a landmine ban.

We come now to a second major framework, **International Criminal Law**. Here we focus on the Rome Statutes for the International Criminal Court. Article 8 on War Crimes criminalises weapons which cause superfluous injury or unnecessary suffering or are inherently indiscriminate, provided that they are subject to a comprehensive prohibition *and* are included in a list annexed to the statute. Anti-personnel mines (APMs) meet the other criteria but are not yet annexed. Even if they were listed, the statute covers individual rebels but not rebel groups. This needs a deeper discussion elsewhere.

The third and last major framework for engaging NSAs in a landmines ban is **human rights (HR)**, the universally recognized fundamental rights and freedoms of human beings. The landmine ban can be seen not only as an IHL or disarmament measure, but also as a human rights measure, in terms of the rights that would be protected by a total ban. This would strengthen the emergence of such a ban as a new customary norm, not only of IHL but also of international law, which includes human rights law.

It could be argued that anti-personnel mine use constitutes a violation of the following human rights:

- ⊙ Three basic rights (to life, to human dignity and to develop);
- ⊙ *Convention on the Rights of the Child* (to life, health care and protection); and
- ⊙ *International Covenant on Civil and Political Rights* (to life, liberty of movement and to choose one's residence).

In relation to NSAs, the question is whether human rights create obligations on NSAs, that is, whether human rights standards can be applied to NSAs. And this is a grey area of legal debate. Under a conventional view, HR was intended to regulate conduct of and create obligations on states. But under a dynamic view, HR constraints aim not to regulate governments but to assert the human rights of individuals against all forces, including NSAs.

Leaving aside the legal debate for the moment, I would like to offer the following useful concept developed by the International Council on Human Rights Policy. They use the term “human rights abuses” to refer to conduct or practices that clearly infringe on standards of HR and/or IHL. It is a practical concept to continue the work of engaging armed groups even while the legal debate remains unresolved.

frameworks are means,
not ends

I'd like to end this broad overview by proposing that flexibility in frameworks is the best policy, given the real diversity we face. The bottom line is NSA adherence to a landmine ban as a contribution to the overall humanitarian effort to solve the global landmine problem, for the sake of its victims. The frameworks serve the bottom line and not the other way around.

We can still identify a core international legal framework which approaches the landmine ban as a combined humanitarian and human rights measure. IHL and HR are terms of reference generally acceptable to most NSAs themselves. At the same time, both IHL and HR have gaps and need further development, in which NSAs might play a role.

That said, IHL and HR are not necessarily the most compelling norms for all NSAs. And this is where the other frameworks may help. This kind of flexibility in frameworks suits civil society or NGOs, which have fewer restrictions than governments.

Ideally, engagements with NSAs and governments are framed by broader peace-building and conflict-resolution processes. Special agreements on landmines as part of a peace agreement or process are the best scenario, because they have the advantage not only of mutuality but also flexibility.

international humanitarian law and the public conscience

Peter Herby

Coordinator, Mines-Arms Unit, International Committee of the Red Cross

I will highlight a few points related to the existing treaty and customary rules of international humanitarian law (IHL) regulating and prohibiting the use of landmines.

First, let's begin with the three basic customary rules of IHL which apply to all combatants in all states at all times, whether or not they have adhered to the treaties that contain these rules. These three rules were confirmed in the 1996 advisory opinion on nuclear weapons of the International Court of Jus-

tice as indeed being rules of customary international humanitarian law.

The rules prohibiting weapons which are **inherently indiscriminate** and which inherently cause more suffering than is justified by the military purpose (**superfluous injury or unnecessary suffering**) were cited in the preamble of the Ottawa Treaty as the basis on which States Parties have prohibited anti-personnel mines. So indeed these rules are the explicit basis of the prohibition of AP mines in that treaty.

But I think that it's very important to look at the third rule, which is the prohibition of weapons which **violate the dictates of the public conscience**. If you look at the list of weapons which have been controlled or prohibited over the last 100 years, you could argue that most of them should be illegal on the basis of the first two rules, but you would probably continue arguing for a very long time. In most case, it has been the role of "public conscience", the mobilisation of public conscience, which has in fact been the driving force behind these prohibitions — whether of chemical weapons, biological weapons, blinding laser weapons or others.

As regards the specific application of these rules to anti-personnel mines and landmines in general, we count three treaties: in addition to the two Sol Santos mentioned, we have the original version of Protocol II of the 1980 Convention on Certain Conventional Weapons. It is still in force and will remain so until all of its State Parties have become party to the amended Protocol. I won't go into details concerning the contents. It is simply a weaker version of the newer, amended Protocol II.

The amended version of Protocol II is important, even for States Parties to the Ottawa Treaty, in that it applies also to categories of weapons other than anti-personnel mines. It restricts the use of anti-vehicle mines and other similar devices, including booby-traps. It is the ICRC's view that anti-vehicle mines are an important part of the humanitarian problem which we have been seeking to address in the context of the landmines campaign. The amended Protocol also applies in non-international armed conflicts. It establishes, for the first time, a clear legal obligation that those who use mines are responsible for clearing them. It improves the requirements for minefield mapping and recording, and provides new protections for UN and other humanitarian workers. It also introduces a prohibition on the transfer of certain types of mines.

As regards the Ottawa Treaty, it is important to look at the process which produced this unique instrument. It is essential to see law, including international law, as a social construction. In my view, the law is not the reason, first of all, why states or non-state actors change their behaviour. The law is a construction which reflects social and political norms which have often been created through painstaking social processes and debate. In this case, the process began with the awareness of the scale of the problem which had been created by anti-personnel mines. A great part of the public was moved by the incredible level of human suffering, which was most often inflicted on civilians and after the conflict had ended, when the weapon served absolutely no military purpose. This awareness led to the “stigmatisation” of this weapon in the public conscience. The public, and then political leaders, concluded that this was a weapon which, whatever justification it might have in military terms, was not justified in light of its human costs. This mobilisation and stigmatisation brought about a political commitment of states, in late 1996, to engage in the process of prohibiting this weapon. It is extremely important to note that even before the “Ottawa process” was launched, about 40 states had already committed themselves unilaterally — because of stigmatisation, because of public pressure — to end the use of APMs by their own armed forces. This observation is very relevant to the kind of process which needs to occur if we are to hope that non-state actors will also refrain from the use of this weapon.

In closing, I would suggest that the first steps in this process — awareness, stigmatisation, creation of political will — are what need to be looked at in engaging NSAs in a ban on anti-personnel mines. The issues which need to be considered involve not only the non-state actors themselves, but their societies, the populations on which they depend for their support. It may in some cases be possible to pass messages about the human costs of this weapon and the need to refrain from its use, through the population that a group claims to represent. The fact that states have engaged themselves legally to no longer use this weapon and have outlawed it is important, but it is not likely to be the primary reason that non-state groups would refrain from using anti-personnel mines.

The Ottawa Treaty represents a commitment by most states not to use the weapon. Non-state users can no longer justify continued use on the basis of use by states. The law and the existence of the rapidly universalising norm

contained is one element in engaging non-state actors. But it would be a mistake to rely on the law as the sole or even primary reference point. Rather, we need to look at much broader social processes and long-term strategies of engagement.

‘the dynamic approach’ to public international law

Andrew Clapham

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I’m going to take what Sol Santos called ‘the dynamic approach.’ I’m going to take that approach from the perspective of somebody who works in Public International Law. Something that has not been said yet is that all the treaties that we have seen, and all the law which has been mentioned, concerns Public International Law, a coherent legal order. I’m going to try to suggest that some rules from Public International Law may inform our interpretation of the applicability of Human Rights Law.

First I want to explain why I am using the expression ‘NSAs’ rather than ‘Armed Opposition Groups’. The answer is that, from my perspective as a public international lawyer, not only armed opposition groups have obligations under Public International Law. There are all sorts of other actors, non-state actors, who have obligations. The obvious example, which has already been mentioned, is mercenaries and their parent corporations; but the United Nations is also a ‘non-state actor’ in Public International Law. It is not a state, but it clearly has international obligations under International Humanitarian Law, under Human Rights Law, and under Customary International Law. Similarly, to take the most pertinent example today, NATO, as a legal entity, is an NSA.

Now this last example is interesting, because NATO clearly has obligations similar to those found in the treaties that we’ve been talking about. It has the obligation, not because it is a party to those treaties, but because those treaties represent Customary International Law. What I will try to suggest is that there has been some radical rethinking amongst public interna-

tional lawyers as to what sort of obligations bind NSAs.

First of all, let's look at International Criminal Law. The statute of the International Criminal Court is a radical departure in that it clearly fixes on individuals who can be judged at the international level without any cooperation from their state of nationality. If you commit a crime, for example, in a state party to the ICC statute, you can be judged in the International Criminal Court. This holds whether you are an individual member of an NSA, or a state actor, or working for the UN, or indeed working for NATO; the individual can be judged.

Turning to the specific subject of the use of landmines, let me mention straight away that, while it is true that landmines were not annexed to the statute, this avenue is not closed. Paragraph 8(2)(b)(xx), which relates to the criminalization of certain weapons in international armed conflict weapons, begins:

provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this statute,

and continues:

by an amendment in accordance with the relevant provisions set forth in articles 121 and 123.

Articles 121 and 123 refer to amendment and review and so there is the possibility for amendment and review after seven years of entry into force of the statute. Seven years from the date that the Criminal Court comes into existence, it will be possible to include weapons subject to a comprehensive prohibition in a new annex to the statute. So instead of thinking that the battle was lost in Rome, we can say that the question was deliberately held over until seven years after the Court enters into force.

The second radical change is that public international lawyers now take a different view as to which actors have international legal personality in Public International Law. I'll come back to this later, but in the meantime, an example is mercenaries. Under the Organisation of African Unity (OAU) Convention on Mercenaries, the mercenary himself or herself and the organisation which employs the mercenaries commit an international crime as an NSA. This is recognised directly in the treaty.

The third thing which I think has changed is that there are now positive obligations relating to NSAs. There are some of course in the Ottawa Treaty, but there are also positive obligations in International Human Rights Law. The European Court of Human Rights, for example, will create positive obligations on the state party to the treaty where it fails to investigate or suppress crime committed by a NSA. That has forced public international lawyers to accept that what happens outside the sphere of state activity is still a question of human rights law.

The last change I would like to highlight is perhaps the most controversial and I'll return to it later. This is that there are rights in International Human Rights treaties which are rights of NSAs. A political party or NSA, as such, can bring a complaint directly to the European Court of Human Rights, for example, if it has enough international standing to be given rights directly under the treaty. The treaty is therefore not only relevant for states, as commonly assumed, but it is also relevant for those NSAs who have international rights under the treaty.

I would like to give you a brief overview of what I think is happening, which I've separated into four dynamics. (These are dealt with in more detail in a paper which was prepared for the International Council on Human Rights Policy, "Whither the state of human rights protection, new ways to hold non-state actors accountable.") The four dynamics are fragmentation, globalisation, privatisation and feminisation.

Fragmentation. I think it is fair to say that there has been a necessary recognition that, in the context of civil war or internal disturbance, the international community has had to report on human rights abuses committed by NSAs. If you look at the reports of the UN Secretary-General to the Security Council, they talk about human rights abuses committed by all sides to a conflict. And that has been the necessary result of the sorts of conflicts under discussion here.

On globalisation, the key change from my perspective is that corporations now have enough international legal personality to bring arbitration complaints, for example, in the International Centre for Settlement of Investment Disputes (ICSID) in Washington. Corporations can go to arbitration against the state and there are treaties which specifically allow them to do this. This has meant that they are treated less as private individuals and more as players on the international stage. I don't want to get into the legal com-

plexities of jurisdiction but it is an indication that the international community no longer sees itself as comprised solely of states: other actors are considered to have rights and obligations.

The second thing that has happened in the context of globalisation is that regional bodies have been given international legal personality. The European Community has legal personality. It is bound by Customary Human Rights Law. If the European Community violates somebody's international human rights, there can be accountability. Similarly, the World Trade Organisation (WTO) has international legal personality. A few years ago, I probably would not have thought of the General Agreement on Tariffs and Trade (GATT) as an NSA but now, as you know, the WTO is considered by some to be a threat to human right. In fact, it has enough legal personality to be held accountable. This is not my invention — the treaty says that the WTO has legal personality. It is there in international law and we have to accept that international law recognises various rights and obligations for entities with international legal personality. Let's take one other actor which recently had its international legal personality recognised, the ICRC. In a case before the International Criminal Tribunal for the former Yugoslavia, they pleaded immunity from being forced to testify before the Tribunal. The Tribunal concluded that the ICRC had enough international legal personality to have that immunity recognised. The ICRC is an NSA. Now I don't want to blur the distinctions of the conference, but I believe this broader discussion is necessary to understand the legal framework.

From my perspective, everything that is not a state is an NSA, and many of these organisations now have a specific legal personality. I've mentioned mercenaries. International Alert has produced a briefing paper for the UN to show that private security companies now have to be treated as having international legal personality and have specific responsibilities at the international level.

What is the relevance of privatisation, my third category of change? It has become obvious that many states now are privatising functions that used to be thought of as falling within the exclusive domain of the state. Security for embassies is an obvious one, but we also have private prisons. There are a number of decisions at the international level and at the national level which find that a private entity such as a prison must recognise international human rights. There are decisions in American courts about private prisons where

international human rights law has been used to start to hold prison governors or individual prison guards accountable for human rights violations.

Feminisation. Why should I introduce that? I think the women's movement has shown that the public/private divide in the context of internal armed conflict cannot make any sense for the rights of victims. It makes no sense to say that if you are attacked or raped by a government soldier, that constitutes a human rights violation, but if the rape or attack is perpetrated by the NSA side, that somehow does not raise issues of international law. The women's movement has forced international law to rethink the public/private divide and consider the biases that it introduces when we apply it to violations of women's rights.

Let me conclude. What happens when an NSA commits an international crime, whether by using landmines deliberately to attack civilians or using them in an indiscriminate way as described by the ICRC? What happens when that actor travels to another country where there is universal jurisdiction? A number of countries are now introducing national legislation in preparation for ratifying the Rome Statute for the International Criminal Court. The national legislation that I have studied creates universal jurisdiction in countries such as Belgium so that any state actor or NSA who has committed one of those international crimes anywhere in the world and who travels to Belgium, could be tried in that country, even though there is no link to the Belgian people or the Belgian government. This counts for internal armed conflict as well as for international armed conflict. And it creates a completely different international legal framework — different from anything we understood until now.

What happens if you don't travel to another country? What happens if you remain in the country where there has been an internal armed conflict? Are you touched by these international treaties as an NSA? I think the revolution that I've tried to describe in Public International Law means that NSAs do get touched by international treaties, even if the NSA concerned has never approved of the treaty in question. One can go back to some very old decisions of the Permanent Court of International Justice which state that treaties between states can create obligations for NSAs and for individuals. Professor Lauterpacht has developed that logic in a way which I think makes the point well:

It may also be noted for the sake of completeness, that individuals

are the real subjects of international duties not only when they act on behalf of the State. They are the subjects of international duties in all cases in which international law regulates directly the conduct of individuals as such. This applies, for instance, with regard to piracy. Individuals engaged in piracy break a rule of international law prohibiting piracy. They would not, but for the rule of international law, be subject to the jurisdiction of any foreign State into whose hands they fall. The position is analogous in cases in which in numerous anti-slavery and similar treaties the injunction is addressed directly to individuals or in which the contracting parties grant one another the right to punish offenders who are nationals of the other party.⁶

But he goes on:

these examples show that there is nothing in the existing international law which makes it impossible for individuals to be directly subjects of international duties imposed on them as such. The question is one of technique and procedure which at present tends to impose upon the State as such the direct responsibility for the fulfilment of the object of the treaty. Secondly, reasons have been given why even in those cases in which States are formally made subjects of international duties, the actual centre of legal and moral responsibility is in the individual and not in the metaphysical personality of the State. Decisive reasons of progress of international law and morality seem to favour that construction.⁷

I don't want to get too much into the legal argument but I think you can see that it is possible for an international treaty to create obligations directly on NSAs. I think the most obvious one that has been adopted recently is the treaty on child soldiers.

Where does that leave us? There are two things that I'd like to leave you with. First of all, even if an armed opposition group as such can't be held accountable before the International Court of Justice or the International Criminal Court, legal obligations do exist, and that means there is a legal framework for NGOs to engage with NSAs in the sense I've been describing. If you need to engage with NATO or the UN, the UN cannot say that they are not bound by this law. They clearly are, and I think that NGOs can engage them within that framework. The second point, the point that I will end on, is that seven years after the Rome conference will be a crucial year for the

criminalisation of the use of landmines for both state actors and non-state actors.

discussion

defining NSAs

Speaker. What do we mean by NSAs? Armed groups or any organisation which is not a state? Are we talking about organisations like NATO and the UN, or just armed opposition groups? Mafia groups? Mercenaries?

Speaker. Most of the NSAs represented at this conference are either armed groups or groups who previously used armed struggle. The ICRC and other groups may have good working definitions which could be consulted for the landmine initiative. In general, a pragmatic way of approaching this question, in order to take this work further, is to draw up a list of armed groups, predominantly with a political motivation, country by country.⁸

Speaker. It is important not to allow this question about definition of NSAs to become clouded by a fear of legitimising some groups. The focus is on the removal or ban of landmines irrespective of who uses them, it is not about giving organisations legitimacy.

Speaker. The working definition that we use in our landmine work in Burma is “a political organisation that has an armed wing and that is active in the field.” There are some groups that we don’t approach on this issue because, though they are armed, and though they are an NSA, they don’t have any political objectives but are mainly drug manufacturers and traffickers. Other NSAs whom we consider approachable vary in other respects: some command hundreds, some command thousands, some of them have land under their control and some don’t.

Speaker. I want to add some complexity to this question of definition. For example, the people in Southern Mindanao have their own kind of revolutionary government, which is operating outside the framework of the Philippine government, with its own territory, army, constitution and people. How can we address this entity? Can we call them an NSA? In fact they are a state, a government, although they are not recognised by the existing government and the international community does not even know that they exist. There

have been plenty of struggles for the right to self-determination which resulted in the establishment of a state. How can we consider this in defining NSAs?

Speaker: A comment in connection with common Article 3 of the Geneva Conventions and the affirmation of International Humanitarian Law, especially Protocols I and II of 1977, as an adequate framework for this area of work. I think that this affirmation is necessary, because I believe that there has been a tendency since the end of the so-called Cold War to criminalize and depoliticise many of the armed struggles going on in the world today, to make them a matter of criminal law rather than International Humanitarian Law, which recognises non-state combatants. Of course organised international crime and organised international mafias are a matter of concern. We have to be very realistic and clear on that, morally and legally. But this reality should not be used to criminalise all forms of political protest, nor to put all these groups on the same legal footing.

Second, I believe that governments, the community of states, have to acknowledge that some or many of these armed opposition groups have been created by states in the first place. In fact, many armed groups operating in one country are actually supported by states in another country. This should not be forgotten when states demand that non-state groups improve their behaviour. The categories of state and non-state are not always so clear cut.

Speaker: And let's not forget that there are a number of NSAs that are already recognised and acknowledged at the UN and worldwide. There are a number of governments that were formerly NSAs — SWAPO, ANC, etc.

Speaker: In India we have more than 20 NSAs fighting. Some NSAs want independence and some want a change of government or social system. The Pakistan intelligence services are supporting the NSAs in Indian Kashmir. Recently mercenaries from more than 13 countries were found to be in Kashmir. They are fighting for money. How do we deal with mercenary use of landmines?

Speaker: One obvious answer is a mercenary fights because he's paid. Surely you need to speak to the people who are paying the mercenaries rather than the mercenaries themselves.

Speaker: I think the definition of an NSA is not very important. The important thing is to be guided by the objective of eradicating landmines, whoever

is using them. It is important to decide who is approachable right now, and who is controlling areas.

what is the role of law?

Speaker: However useful law might be, it is important to keep in mind that it is just an instrument. If law can assist in banning mines, that's fine. But there are other approaches more efficient, more rapid and more important and we should not neglect them. Especially when law becomes an obstacle behind which people hide to justify inaction or delay in making decisions about changes that society wants.

Speaker: Where I come from, the issue of landmines is not seen as a legal issue. It is seen as more of a moral issue than a legal one. The Ottawa Treaty was a states' club agreement, which does not involve NSAs. We think that this initiative should not make the same mistakes. It has been almost two years now and most of the governments who signed the treaty are still going on planting their landmines, nobody is actually monitoring them.

Now, for those operating in an NSA area it is a moral issue because these people are fed up with mines, because they kill the very people the NSAs want to liberate. There will come a time when the NSAs will know that these things are completely bad, and they will join us in this process.

I do not think we should concentrate very much on legal issues, because this only addresses the governments or UN organisations; the grassroots do not know anything about laws, and they are the very people who are suffering. The governments who make them do not even go and educate the people about them. Also, it seems that Humanitarian Law allows war. It is a legal right for states and non-state actors to kill themselves, only they should not affect the civilian population. That in itself is ridiculous.

Speaker: I think we have to look at why and how we want the law to apply. There is a purpose for the criminal law in terms of punishment, but very often that's not practical. Generally we use international human rights law simply to judge behaviours against certain standards. This can then be used to mobilise shame in order to reform bad behaviour. This certainly can be done with NSAs and landmines, using standards which one can argue apply to NSAs. And we can also ask NSAs to accept that those standards apply to

themselves. The mobilisation of shame can be complementary to engagement with NSAs. We can ask NSAs to accept legal standards and then hold them accountable to those standards.

tolerance of dissent

Speaker: A crucial issue for engagement with armed groups is tolerance of dissent, both within the ranks and within the NSA's constituency. If we want armed groups to renounce the use of landmines, they have to hear from their constituencies that mines are unacceptable. And for this it is necessary to have tolerance of dissent within the armed group, or its constituency will be too afraid to speak out. For example, in 1980, the ANC renounced the use of landmines. One of the key reasons they did this was because constituencies that supported the ANC, including church groups, spoke out. It wasn't so much an initiative of the leadership's; it came from within the broad united front of the ANC which was able to speak out. But in a number of cases — by no means all, and no more than is the case with governments — armed groups are quite intolerant of internal dissent. I think this is very important for conclusions about how you approach armed groups and which normative frameworks to use. It speaks of the need for a broader normative framework than IHL. You need to approach NSAs within a normative framework broad enough to cover tolerance of dissent; that is, human rights law.

universality

Speaker: A question about universality in the context of the International Criminal Court convention. Obviously implementing legislation is not limited to what is in the treaty; it can go beyond that. Many states are grappling now with the question of how to shape their implementing legislation for the International Criminal Court convention. What if implementing legislation included a provision for universal jurisdiction to deal with landmines? The question is whether you would be violating international law by assuming universal jurisdiction; for example, covering someone in your territory who is a national of a country that hasn't signed the Ottawa Treaty.

Andrew Clapham. I think international lawyers are divided on this question. For example, in connection with the Pinochet case, the question arose

whether Spain has the right to have universal jurisdiction for the crime of genocide as it is defined by Spain; that is, in a wider sense than genocide as accepted by Chile or the United Kingdom or anywhere else. The question is, can you create universal jurisdiction in your country and try somebody for something like “political genocide” when that crime doesn’t exist at the international level? In other words, can countries create crimes over which they have universal jurisdiction when there is no international agreement on it? I think international lawyers would be divided on this question. It depends where you think we’re heading. If the number of signatories to the Ottawa Treaty is taken to mean that there is some consensus that this sort of behaviour should be outlawed at the international level, then perhaps it would not be overstepping the mark to create universal jurisdiction for the crime at the national level. But I’m sure a number of international lawyers would argue that it is not allowed. My reading of international law is that there is no international law that says you can’t create such a crime in your territory. Following the argument that a state can do whatever it likes under national law until international law says you can’t do it, if any country wants to criminalise landmine use and try people on its territory for doing that, even when the landmines were used elsewhere, I think it can be argued that they can do it under international law. ☉

notes

- 1 Soliman M. Santos, Jr. is a lawyer and peace activist in the Philippines.
- 2 Canadian Mission to the UN in New York, “Discussion Paper: A proposed Global Convention Prohibiting the International Transfer of Military Small Arms and Light Weapons to Non-State Actors,” December 1998. Available http://www.nisat.org/export_laws-regs%20linked/canada/discusion_papera_proposed.htm
- 3 International Council on Human Rights Policy, “Ends & means: human rights approaches to armed groups,” 2000. Available www.international-council.org.
- 4 “International Customary Law and Antipersonnel Landmines: Emergence of a New Customary Norm,” *Landmine Monitor Report 1999*, Human Rights Watch USA, pp 1020-1036. Available www.hrw.org/reports/1999/landmine
- 5 1996 Advisory Opinion of the International Court of Justice on nuclear weapons.
- 6 H. Lauterpacht, “General Laws of the Law of Peace” in E. Lauterpacht, ed., *Collected Papers*, Vol. 1 (Cambridge: Cambridge University Press, 1970) at 284.
- 7 *Ibid* at 285.

- 8 See, for example, NSA Working Group and Geneva Call, “Non-State Armed Actors: Region and Country Survey”, March 2000. Available www.icbl.org (NSA Working Group page).



chapter 4

views from the ground

Moderator, Eduardo Marino
member Coordination Committee of ICBL

There are already important experiences of armed movements which have stopped using landmines and of anti-mine campaigners engaging armed groups with this objective. Among these, we want to recall the pioneering effort of the Cambodian campaign against landmines, which is not represented here today and entered into communication with the Khmer Rouge in the mid-1990s asking them to cease mine laying and give the information necessary to prevent even more people becoming victims in one of the worst mine-victimised countries. Over many months in another mine-disaster country, the Afghan campaign, with co-operation from the Pakistan campaign, engaged in a dialogue with the Taliban, who in October 1998 finally declared and prohibited landmine use as “un-Islamic”. We hear from the Afghan campaign that the Taliban mine ban has been actually working¹.

The following reflections from some of those present today represent a varied and valuable experience of people who have been active on the ground, some already working to engage armed groups regarding landmines.

working with NSAs in burma

For a long time Yeshua Moser has combined the attributes of the thinker and the campaigner, writing political philosophy and activity reports. A US national and Bangkok-based, his concerns have indefatigably been war and peace. He informs us that in Burma, landmines truly and tragically are weapons of the poor — that is, in the sense that they victimise and self-victimise the poor.

Burma has more NSAs than any other part of the planet. More than Somalia. More than the former Soviet Union, more than any place in the Middle East, more than India. This is, in part, due to the high concentration of

unique ethnic groups in that area that we call Burma. We can't really even call it a state. It was brought together piecemeal by the British empire. Since that colonial power left, it has never been under the complete control of any single political organisation. Burma is currently run by a council of five military officers. These military officers, and most senior Burmese military officers, and the democratic opposition, all belong to the Burman ethnic group.

The NSAs are mostly within the other major ethnic groups. The largest of these are the Mon, the Karen, the Shan, the Katchin, the Rakine and the Rohingya peoples. The current government recognises at least 135 unique nationalities within the borders.

So there are many NSAs within Burma and the first difficulty is contacting them. NSAs, by their nature, are involved in illegal activities, such as unauthorised border crossing, unauthorised defence purchases and creative fund-raising techniques.

The ethnic groups are mostly in the border areas of the country and in some areas they are currently engaging in fighting with the government. Mines are being used in the warfare. We count the number of NSAs at 29 currently, of which about seven or eight are involved in active mine laying. Some have cease-fires, or are not currently involved in active fighting with the government. Some produce, some use, and some stock mines.

Some local NSAs produce battery-operated mines themselves. The only good thing about this is that they use cheap batteries which go dead within a year. I've asked ethnic military commanders, "Would you walk through that minefield after a year?" I got the answer "Yes" and I had no doubt in my mind, from the way they replied that indeed they had walked through that minefield one year afterwards.

A new "advance" the NSA producers have made is a mine that does not require a battery. It has a field life of about five to 10 years. This brings it close to the level of the government-manufactured mines that we are very concerned about. The NSAs also recycle dud mortar shells that the government has fired at them. They replace the malfunctioning fuse with a detonator and re-deploy it as an APM.

My approach to each of the NSAs was to be transparent, but indirect. I was always transparent about what my goals were and what my capacities were. I was, however, usually indirect when talking to them about their own

mine use. I focused a lot on mine victim assistance. And if you talk about mine victims long enough you get to talk about mines. By the time you're talking about their mines the stage is set for dealing with them in a comfortable way. I found that generally they were very straightforward. I remember asking one commander of the National Democratic Front, a coalition of several NSAs, "How many of your mines kill your own people?" He was very quiet for a while and then he said "50 percent kill the enemy". After a longer pause he said to me, "But it's our mine production that is the most deadly occupation." I said, "How many of them die? 30 percent?" He said "80 percent. Sixty percent of them are killed out right and 20 percent are maimed for life." He went on to tell me illustrative stories, "I was looking for an old friend and I asked 'what happened?' to another person. My friend replied, 'His mine blew up.'" At other times he said he would see someone he knew, but with his face now disfigured, and he would ask "What happened to you?" "Oh, my mine went off," was the reply. "So many of them die," he ended.

I had the feeling that we were beginning our Landmine Monitor research on Burma at a very appropriate time, because people were beginning to see the results of what was happening. One week ago, I got a message from a person, a missionary, who frequently goes into the field with one of the ethnic armed groups. He usually sees them carrying M14-style American made mines on their belts, but this time he didn't see them any longer. He asked what had happened, and if their supply were low. They replied that one of their own doctors had just done a survey and found out that their mines were killing their own people. Up to 30 percent of the mine victims were from that ethnic group's own population, so they were changing their policy.

When I've approached NSAs about joining the ban, I do not dispute the military value of this weapon directly. They understand the military capacities and the liabilities of this weapon very well. I separate what I call the military utility from the political utility and open a dialogue with them on the political advantage of ceasing to use them. Several NSAs have now asked us for more information. They have sought materials which they can give to their coordinating committees or central committees to discuss the matter of a mine ban. We have developed a packet with our Landmine Monitor report, the entire text of the Ottawa Treaty, and some special documents we have created for this purpose. Each one of these is made out with the name of a particular ethnic group and it goes directly to their leadership. It is always

hand-delivered by us. These materials are all in Burmese. We asked the NSAs, “What languages do you want this in?” We had a great fear that each one of them would want it in their own language, which would have been a real headache, but fortunately for us, they said English and Burmese.

One of the pieces we developed are Q&As related to the mine ban. These Q&As have been developed and informed by our experience of dialogue with different NSAs. We discovered that it was necessary to take all concepts apart into their most basic components. We discovered that dialogue with people who are operating in very desperate circumstances is open to great misinterpretation. We’ve added questions about what kind of demining help they can get. I will tell a story of an experience which caused us to put this in the Q&A document.

At one particular time, I crossed a border with an armed group. I had gone to their camp to ask them if they would share information with me on where mines were laid in their area. The officer with whom I was speaking had to ask his commander, who then gave permission. This officer spent about four hours with me marking mine fields on maps, telling me mine-laying techniques used by the enemy, telling me what types of mines they have, and showing me some video footage on a handcam that his patrol had taken in minefields. When he was finished briefing me, he asked, “When are you going to start teaching us how to demine?” I was shocked, I had never said anything about demining. I realised later, on reflecting on this, that this was a result of their own desperate circumstances. They had interpreted, on their own, that my interest in landmines meant I would help them with demining. My mouth fell open and I said weakly, “We can’t do that.” This was, of course, exactly the wrong thing to say. At that point, I had some well-armed people getting very unhappy, very fast, all around me. I very quickly back-tracked and said, “Actually we have all of the resources necessary to train you in demining techniques. But none of these resource people and organizations would consider coming to help until the fighting is stopped, because new mines could be laid, and it would be a waste of their effort and time.” Fortunately, that was acceptable.

Initiating these dialogues has awakened me to the perceptions that people might have, and this was why we prepared the question and answer sheets which we are now distributing.

I think that by the end of this year, we might have many of the NSAs in

Burma agreeing to issue their own statements in relation to a mine ban. We are encouraging them to write their own statements, a different tactic than Geneva Call is using. We believe, based on our experience, that a prepared statement is open to misinterpretation. Instead, we are encouraging them to study the treaty and look at what the states have been asked to do. We then ask them how they can meet these responsibilities. We ask them to come up with their own response. This approach also helps increase the level of political sophistication within the NSA groups.

Yeshua Moser-Puangsuwan
Non-Violence International - Thailand

mines in the caucasus

He and his people have been familiar with conflict, intra-state, inter-state, post-state, pre-state, non-state, to the point where categorisation becomes meaningless, when the real effects on real people tend to be similarly destructive across time, groups and frontiers. As Vladimir Kakalia has been reporting, landmines are not new to his part of the world but the big numbers are new. He tries to understand and explain why. His current temporal retreat in a university allows him to study with calm and perspective, before he goes back to his less quiet environment.

Listening to the experience in Burma, I was pleased to learn that there is another region in the world whose problem is more complicated than the Caucasus.

Maybe I have a chance here to let people know more about my region. But to be honest with you, to say in this short space everything that is happening in the region is too ambitious. I refer you to the Landmine Monitor Report where most of the issues related to landmines in the Caucasus are covered in quite a comprehensive manner. Here I will try to give a brief introduction to what is happening there.

The Caucasus is the mountain range between the Caspian and the Black Seas, which stretches over a thousand kilometres. It is home to something like 50 ethnic groups. As long as history has existed, as long as people can

remember, there has been conflict between these groups. Modern times have provided a modern weapon: now where there are conflicts, there are landmines.

At the moment, there are four internationally recognised states in the Caucasus, namely Azerbaijan, Georgia, Armenia and Russia. None of those states are signatory to the Ottawa Treaty, all of them use landmines. In addition, all of those parties in the Caucasus who have military interests, belligerent groups, use landmines. The active use of landmines began in the late 80s when the war broke out between Azeris and Armenians over Nagorny-Karabakh. Then, later, Georgia became a very turbulent region and landmines were used by the Georgian guards. This is now an illegal group and their leader is in prison, but at a certain point in the past the leader of this group was the prime minister of Georgia. The landmines are also used by the Abkhazian armed forces. Though the Abkhazian government is not recognized by the international community, it is in fact in control of its territory, which is mined. There are in addition a couple of groups who would like to be independent operating in Western Georgia. They use landmines and recently they started using more sophisticated mines. Obviously, there is also a war in Chechnya. Both the Russian forces and the Chechen rebels, however you view them, use landmines.

The general awareness of the Ottawa process and other efforts to stop the use of landmines in the region is very low. Likewise, outside knowledge of the area is limited. The international media is primarily covering events within shooting distance of the oil pipes. Interest very rarely extends beyond that. A limited number of specialists know what is going on in the region quite well, but unfortunately those specialists are not always heard. The peace efforts of the UN and other international organisations haven't succeeded in bringing stable peace to the region.

The Abkhazian campaign does all it can to spread knowledge about landmines among the population, but communication is difficult. There is very little knowledge in Abkhazia about what is going on in other parts of the Caucasus. There is very little access to internet, people are preoccupied with their daily needs, and if there is another explosion somewhere near by, well, it is just another one and people tend to think 'thank god it's not me today.' There is a kind of siege mentality, if you like. Unfortunately, the region is full of many quite competent people, from a military point of view, who know how to use landmines and other sophisticated equipment and very often those

people don't have a job to do. They have their homes, their farms; and people often protect their own fields with landmines. Overall, I would say that the situation is very complex, and it needs a careful approach with equal participation of all parties in the process of banning landmines.

There are more and more people who feel that there will be a day when landmines will be a thing of the past. Mainly these are people who either know what landmines are from their own experience, or are educated enough to understand what they are. My message would be that, generally, the region needs awareness campaigns, carefully targeted and coordinated with all people in the Caucasus.

Let me finish by looking at how the outside world views the region: it's a crossroads of interests, a place where Christianity meets Islam, strategic interests of powerful states meet, where oil pipelines are being built, a place which everyone calls 'our gain'. I would say instead it is 'our lives.' I would appeal to the world to look at the region from the perspective of International Humanitarian Law and Human Rights. Certainly people in the Caucasus deserve to know more about the rest of the world, as much as the rest of world deserves to know more about the Caucasus.

Vladimir Kakalia
Abkhazian Committee of the ICBL

mines in the context of the zapatista struggle in chiapas/mexico

They both belong to that very special kind of people who have come to understand, in the words of the Universal Declaration of Human Rights, the use of arms as a last resort and who, at the same time, do their best to follow non-violent ways of political and social transformation. Epigmenio Marquez and Alma Rosa Rojas have traveled all the way from a southern Mexican village to call attention to the fact that conflicts that do not get transcended positively tend to get resolved negatively.

The armed uprising of indigenous peoples of the state of Chiapas, which began in January 1994, fundamentally corresponds to their desperate claim

against the Mexican central government and the Chiapas government in order to be able to enjoy their human rights to dignity, liberty and democracy that they have been deprived of over centuries. This is why the Ejército Zapatista de Liberación Nacional (EZLN, Zapatista Army of National Liberation) declared war on the Federal Army on 1 January 1994 — risking lives for the sake of the natives of Chiapas and other indigenous peoples elsewhere in the country.

To the armed uprising the Federal Government replied with fire against the EZLN and the communities during the first 10 days of that month until voices of sympathetic protests nationally and internationally got the Government to declare a cease-fire and propose a policy of dialogue and negotiation with the EZLN. However, the results of this did not meet the demands from the communities supporting the EZLN and the dialogue was interrupted. In fact, in February 1995 the Government put the communities under siege provoking their massive displacement to the mountains, suggesting a Government preference for ending the conflict through military force.

A subsequent less negative period of intensive discussions would lead to the signing of the San Andres Accords on Indigenous Rights and Culture between the Government and the EZLN in February 1996.

However, the process to develop the San Andres accords through meaningful constitutional and legal reforms was soon frustrated and the situation regressed to one of “low intensity war” through intensified military and police deployments in Chiapas.

This “low intensity war” concretely consists of compact militarisation of the zone considered to be “in conflict”, i.e. in the territory of the indigenous communities, constant control and intimidation of the population through military road checkpoints under the pretext of the law concerning weapons and explosives, xenophobic campaigns against international observers, harassment of community leaders, constant land patrolling and air low surveillance flights over communities known as EZLN’s *aguascalientes* (hot waters), playing at the division of the communities through calculated political and economic means, and use of social assistance programmes for the sole benefit of groups affiliated with the Government Party, PRI, are taking place.

Because it privileges a political exit over the armed struggle for this conflict between the indigenous population and the Government, the EZLN is hiding in the mountains of forest ‘La Candoná’ and, as far as we know, they

have not chosen to use landmines in order to safeguard the territory.

The communities that genuinely support the EZLN keep on resisting, hoping for better living conditions, the implementation of the San Andres accords and waiting for the will of the Government to re-establish the dialogue.

*Epigmenio Marquez and Alma Rosa Rojas
Collective for Education & Peace CEPAZ in Chiapas*

situation of guatemala in a central american context

For the Mayas there is no frontier between Guatemala and Mexico ; the Maya country does comprise northern Guatemala and southern Mexico. Southern Mexico includes Chiapas. The ancient Maya people have been the worst affected by both the Guatemalan and Mexican Chiapas conflicts. Maria Eugenia Villarreal is a Mexican for years crossing up and down the no-frontier with Guatemala to work for human rights and peace at the community level. When we heard that the URNG (National Revolutionary Union of Guatemala) might not be able to be represented in this conference to announce their intent to proclaim a ban on landmines as part of their agreed cease-fire with the Guatemalan Government, we invited her to take the floor.

Fortunately, in early 1997, after four decades of armed struggles in the Central American region, the last of these conflicts arrived at its end in Guatemala.

In all of these armed conflicts in Central America, landmines were used. My purpose in this presentation is to refer particularly to the specific cases of El Salvador and Guatemala. These two wars may have ended but, indeed, their consequences do still prevail. Suffering and violence have not been fully controlled yet, not even through peace agreements. One of the most urgent problems we have to confront today among many others remaining unsolved, is the actual elimination of some still prevailing conflict effects. Let us first refer to the El Salvador case.

As you know, the first Central American peace agreements were signed in Chapultepec, Mexico, and a two-year term Commission began to work since 1992 to find a landmine-elimination solution. This commission, effective until

1994, would involve many process-financing actors: government authorities, international agencies, and country organizations as well.

One of the most important actors would be UNICEF. At the time it realized that a significant number of casualties among mutilated and handicapped population were children, then it proceeded to create a committee involving the Armed Forces, the FMLN front, and ONUSAL, each one of them with a different role to play. For example, the Armed Forces would be in charge of transporting all material and equipment needed in landmine elimination; on the other hand, UNICEF was in charge of financing the process with the help of friendly European countries; and then the FMLN would take the first steps in the marking of minefields and proper landmine detection. The role of the ONUSAL — the UN Mission for El Salvador — would be to coordinate and support this work, consisting of four main aspects.

The first step was the mapping and marking of mined locations: the Armed Forces would mark the places with some kind of sticks or stakes and would add signs and notices to make them detectable as no-trespassing areas. The Armed Forces were trained for this purpose and 250 members of the Army's Engineering Battalion should be responsible for developing this process up to the mine clearance stage.

But these steps were not enough, and that is just what I want to highlight at this meeting.

Although landmine-elimination campaigns are undoubtedly important and urgent, parallel help and support to the suffering civilian population is even more necessary. We cannot ignore nor put aside the mental health of children and populations of zones having suffered any such horrible experiences. For remedial purposes, UNICEF launched a campaign with the main community actors. But who are they? These actors are the priests and professors, the community leaders, and so forth, all of them in charge of conveying all landmine-related information to their people. A health campaign was also initiated. It was carried out — let us say — by the Army, since mental clinics were opened in each outpost by troop detachments. Even so, I believe this is a matter for further serious discussion regarding the mental and physical situation of these populations. This explains my insistence in going back to the subject of victim assistance, since we must build an integral program as the real answer to the social phenomenon we are confronting here; otherwise, we would not be able to put an end to the fighting despite peace agreements.

Without taking care of conflict survivors conflicts are going to prevail. This is my perception.

At this point, I would like to establish a parallel with the Guatemala experience. As mentioned above, this is the most recent case involving peace agreements.

We have in Guatemala even preceding the Ottawa agreements a legal frame to support landmine elimination. In addition, there is a Congress Decree and a specific demilitarization and landmine covenant within the frame of the Guatemalan peace agreements, where today landmines can be found in four departments. But what is actually happening? There is little political goodwill to really carry out and finish the job well. I will first refer to the government actors involved — and a very important role is played by the Organization of American States (OAS) as being in charge of landmine-elimination technical matters; also the United Nations Mission for Guatemala (MINUGUA) as well as the Army, the URNG and fire brigades. But what happens at the time of reintegration, I mean, the first step in reintegrating former combatants to civilian life after the signature of the peace agreements?

Firstly, the delivery of the relevant mapping to establish landmine locations was requested from the Guerrilla and the URNG. Unfortunately, the latter did not submit complete information, with the explanation that landmines had been sown in a unorganized manner. The same can be said about the Army's incomplete mapping. Therefore, we are facing a serious mine-detection problem. Last but not least, we had the Mitch hurricane, which aggravated this problem by displacing and dispersing the mines. What could we do to confront this issue? It is here where the non-government actors became very important. With our help and the aid of some specialized teams, the population itself started mapping again. Civilians in the affected communities were the ones who pointed us in the directions they thought we should look for. We have relied highly on their support.

Moreover, I do believe that our role as non-government actors has to go much beyond the passing or receiving of information to or from the civilian population or alerting them about how much in danger they are. As NGOs, we must also play a lobbying role, and exert pressure on the government to comply with the terms of the agreements.

Finally, I think that the work of the NGOs is most significant in victim assistance. We have had different experiences in this area, first with children

recruited as soldiers and subsequently with general casualties from among the population. After the peace agreements, two points of view were present at the time of rebels' reintegration regarding the way to conduct the process: The United Nations' opinion was that victim assistance programs should be extended to the whole affected population, obviously in the conflict areas. The European Union had a different vision : special assistance should be given to the URNG ex-combatants, leaving to the army the task of taking care of medical assistance to its own men.

For us, these were very complicated and conflicting positions since we perceived any and all of them as victims on an equal footing, with no distinctions whatsoever: under-aged soldiers were both casualties and accomplices because forced recruitment took place in Guatemala — and this has to be emphasized — where children from age 12 onwards were involved in the armed conflict. Should they not deserve special support too? Therefore, we had conceived a much wider practical experience, where this problem had to be solved by including them all. Fundamentally, and this has to be said, most victims were of native origin since genocides perpetrated in this war were in part of ethnic nature. The war was also oriented to the extermination of many indigenous communities, with 440 massacres taking place in indigenous villages, hence people we had to help as well. For this reason — in meetings like this one, which I find very useful — I have often discussed with my colleague-members of International Alert my own experience in Mozambique where, in order to give an answer to all these questions relating to victim assistance and providing them with help, the best solution was using the communities' own resources: that is, where rituals play a very significant role.

Then I told myself: this is the right way, it has to be in this direction in Guatemala, with the help of Mayan religious rituals. If it is true that government actors have a part to play, then we actually have to push them further to carry out and complete all of the programs agreed within and by the times and terms they have been scheduled to be fulfilled.

On our side, we are pondering the psychological and physical support required by these populations and feeling concerned about the two-way response in front of us: a mental-health solution with the use of traditional rituals, and material assistance provided through the donation of prosthesis and wheelchairs by Spain, Italy, and the United Nations.

Then I think that we must go on working; we must develop a much more

integrated work not only restricted to landmine elimination. We have to go much beyond, and this is why I want to share with you this concern in order to find a proper integral solution together.

Maria Eugenia Villarreal
Central America Campaign

on mines in colombia

The three Colombian armed groups, i.e. FARC, ELN and EPL, were invited to participate in this conference. The Government of Colombia, through its Ambassador to the UN in Geneva, was informed about this invitation. ELN and EPL acknowledged the invitation explaining that for practical reasons they could not travel from the interior of the country given the current situation of the armed conflict. FARC let the conference know their disposition to discuss the landmine problem at a later stage.

In the international community of political exiles and refugees there is a growing number of Colombians with a direct knowledge and experience of the armed conflict in their country and the perspective gained from a distance to comment. Among them is Asdrubal Jimenez, recognized by the UN as a refugee since 1988 following an attempt on his life in the streets of Medellin in the course of his work as a lawyer with rural trade unions. He was invited to make a contribution to this conference because of his comprehensive knowledge of the armed conflict in Colombia, including its problems of international humanitarian law that he has experienced personally and his role as member of the Colombian peace dialogue panel that met and failed in Venezuela and Mexico some years ago.

A concrete problem such as landmines to be solved demands at least some understanding of its antecedents which are found with the long history of violence especially in rural Colombia. Almost 200 years ago we had a war of independence from Spain which, however, was not followed by peace but by 19 regional or national civil wars between liberals and conservatives throughout the 19th century. Political and social opposition have always been regarded with intolerance breeding violence, including assassinations. Often the State has been a violent actor itself.

From the 1980s onwards, even though a dialogue was initiated in 1982

between the Government and the FARC, EPL, M-19 and other smaller armed groups, truces and cease-fires ended in new bloodshed when the peace process was sabotaged by what in Colombia is known as *guerra sucia* (dirty war) with complicity and participation of agents of the State, characterised by the elimination of political opponents. Especially in rural Colombia paramilitary groups were created sometimes with the acquiescence of Army personnel and the economic collaboration of drug traffickers which became a new major landed power. After losing many thousands of unarmed sympathisers, former combatants and many of their own leaders while they were in dialogue with the State, in addition to the killings of impartial human rights lawyers, trade unionists and other peaceful people, many inside the guerrilla groups abandoned the idea of easily giving up the armed struggle.

That is the context within which all forces have been using mines. At least until recently the Army considered anti-personnel mines to be a dissuasive instrument. Paramilitary groups disperse mines over the regions which they gain making guerrillas retreat and also appropriating for themselves lands belonging to peasant cultivators who are expelled and moved away when not massacred. Guerrilla groups use landmines in their areas of influence. Narco-traffickers use mines to protect their farms, their laboratories and their plantations.

Even if Colombia in general has not realised the extent of the national tragedy represented by landmines, official press releases recently refer to 70.000 planted landmines while the Red Cross estimate is 120,000.

Given the double standards that have characterised the armed conflict regarding human rights and other subjects, one can wonder what is going to happen with the Ottawa Treaty that the State has signed (although not ratified yet) in the light of what has happened with human rights treaties.

To conclude, I'm afraid the landmine problem won't be solved in Colombia immediately. On the contrary, it may get worse as war intensifies and all armed actors intensify their recourse to landmines as weapon of death and destruction.

Asdrubal Jimenez
Government-Guerrilla Peace Panel 1991-1992

conflict transformation in northern ireland

The conflict in Northern Ireland, where mines have not been a problem, may at first seem remote from the landmine project. The following accounts are from two men, both of whom were born in Belfast, one in Northern Ireland and the other in the North of Ireland, and both of whom are former combatants. Eddie Kinner was active in the Ulster Volunteer Regiment, one of the Loyalist groups. He was convicted at the age of 17 and he served in prison for 18 years. Rodney McCartney, from the Nationalist, Catholic side of the conflict, served 21 years in prison. When they were released in the late 80s and early 90s, they became active in the peace process and are now working with peace organisations in Ireland and the UK. Their stories are rooted in life, in suffering and experience, and this is what we need to understand in our work with NSAs.

Together, they give us two messages. The first one is that what we are doing needs or implies a profound humanity. The second is that when we speak about agreements, we must realise that the problems come with the implementation. We must also keep in mind that the negotiators are not always going to be the ones who actually implement the agreement.

Eddie Kinner

Some of the experiences we have been hearing make some of our [Irish] conflict experiences appear insignificant. But I think it's important to see any single casualty and any conflict as an injustice. I feel that the experience I have had within the Northern Irish peace process, as a representative of an NSA, may be of benefit to the people of this conference. This is the reason I decided to come.

The peace process in Northern Ireland has been a long and painful process. A process of community and parliament consultation was established, where NSAs were given a voice and were consulted in preliminary talks to establish a format and a strategy for negotiation. All parties involved had representatives. Their role was to maintain communication between the process and their constituencies. The whole idea was to keep people aware, to create and maintain a level of ownership of all involved. The attempt at that point was to make the process completely inclusive. States were represented as well — British, Irish and American — who attempted to present themselves as referees and are not part of the conflict that was taking place.

The negotiations culminated in the Good Friday Agreement. The difficulties that emerged have arisen from the different state and non-state interpretations of the agreement and how this was in turn communicated to their communities. This has become one of the major stumbling blocks which has stalled the process.

On the one hand, there was a belief by the states that the conflict had been resolved. On the other hand, the NSAs understood that the conflict had only been transformed from a violent to a non-violent conflict. The conflict itself was not resolved. Over this difference, the expectation from the agreement that NSAs would decommission their weapons got hung up.

At this point, the peace process has stalled. The whole process itself was successful when there was a level of ownership by the whole of the community. Now there is a danger that people will feel that they no longer have any access to or control over what is going on.

Rodney McCartney

In the conflict I was involved in, it was made a duty to kill British soldiers, RUC men, and Loyalists. It didn't matter how, just that the task was accomplished. This was the mindset. From my experience, then, I believe that in the process of getting rid of landmines, you have to look at the mindset which allows people to use them.

I was in prison when there was a bombing in London, I think it was in 1984. Three years later I actually met the men who did the bombing. I asked one of them why he had done it. I mean, it was totally indiscriminate. He said, "They were only Brits." In his mind, the people had actually been reduced to animals, or even worse than animals. In order for that person to carry out what he had to fulfil, he took part in an action that was totally indiscriminate.

But I believe that people do change. It can be the smallest thing that can make you change — a candy when you are not expecting it! It happened to me when I was in prison. A prison governor came along one day. When I saw him come I wondered what was going to happen, because they had a habit of moving people about the prison system. At that point I had been in 43 prisons. But he came and said that what had happened in the past, had happened, that we should take it from there and see where we got to. And he actually

worked hard to get me transferred back to the North of Ireland. I wondered what he wanted. What's going on here? But it actually made me think: "This is your former enemy, whatever way you want to look at it. And he can do something to help you, even though they may not agree with what you're doing or what you believe in." I am still the same in terms of beliefs but I have developed different methods.

Now Eddie and I could go out and have a good time. I know Eddie believes in the British government in Ireland and I know I believe in United Ireland. I do believe there is going to be a United Ireland but I don't think Eddie does. The fact is that we can argue forever but Eddie is not going to change his views and I'm not going to change my views. What has changed, though, is our methods.

I believe that within every person there is an ability to change. But it's the person himself or herself who has to bring about that change. In order to assist with that change, you have to provide a mechanism which recognises and uses the skills which all people have.

We are involved in an organisation called Seeds of Hope. When this person came to talk to me about the organisation two or three years ago, I wasn't convinced. But I met him later as I was sitting with a friend. I saw that he was engaging in conversations with people. What we have come to realise is that there are a lot of common needs which need to be addressed: financial needs and need to create employment, for example. What Seeds of Hope is trying to do is find ways of using the skills that ex-prisoners developed within prison to address these needs, for the benefit of themselves, their communities and their families.

I think that when you're looking at the countries which are most affected by landmines, you have to look at the political, social and economical circumstances within those countries — at the needs of all the people involved. I think you have to look at the problem from the perspective of what could be done to avoid the use of landmines. I do believe that they should be banned but, to be quite honest, I believe that all weapons should be banned. A conference like this one can only be beneficial to let people know about the effects of landmines, and of war more generally.

mine action in southern sudan

Aleu Aleu was formerly a senior officer of the Sudan People's Liberation Army (SPLA). He was engaged in fighting and in using landmines for 14 years. In 1996, he was commissioned by the SPLA/M to establish a mine action program in areas controlled by the SPLA/M. He is now the managing director of Operation Save Innocent Lives - Sudan (OSIL).

I just received a message that one of my senior deminers stepped on a landmine yesterday and has been amputated. He has been fighting landmines for the last three years. Two days before I came here, he sent me a message that he had come across a minefield of Chinese and the American less-metallic mines, planted deeply, with a small stick up to the surface. This makes them very difficult to detect. One of them got him yesterday.

I come from Sudan, was born in war, grew up in it, got a job in it. Sudan has the longest civil war in the world. Thirty-two out of its 44 years since decolonisation. According to the US Centre for Refugees, Sudan has suffered more war-related deaths than any other nation. They estimated that 1.9 million people have died. Sudan's death count is larger than fatalities suffered in current and recent conflicts in Bosnia, Kosovo, Afghanistan, Chechnya, Somalia and Algeria combined. In addition, there are four million internally displaced people. Three hundred and fifty thousand people are refugees in neighbouring countries. Some have relocated to Europe and America. Approximately 2.5 million in Southern Sudan face war's famines every year.

Central to this human catastrophe are landmines. The history of landmines in Sudan dates back to the Second World War, especially in the North, when the British and the Germans were fighting on the Sudanese, Libyan and Egyptian border. Those mines were not removed and they are still killing nomadic people. Since the Sudanese conflict started in 1955, landmines have been extensively used as part of insurgency and counter-insurgency, by the government and the NSAs in the conflict.

In 1997, the government of Sudan requested the UN Department for Humanitarian Affairs (UNDHA) to do a landmine assessment. The assessment found that roughly one-third of Sudan (that is, 300,000 square miles) is affected by landmines and explosives. It was estimated that there are between

500,000 and two million landmines in southern Sudan alone. The government of Sudan estimates two landmines per inhabitant in Southern Sudan. The ICRC has reported 5,000 amputees registered in hospitals. According to the Sudanese government, there are 700,000 amputees from mines and similar explosives. The UN assessment also reported three million heads of livestock killed by landmines. That would mean 200 to 400 cows killed every day. I don't know how correct that figure is. In relief activities, over 50 percent of funds received for relief are spent in air transport to avoid landmines on roads, in areas where the war has been over for several years.

The UNDHA's conclusions express no doubt that landmines are causing a great deal of dislocation and death in Sudan. But they could not come up with any recommendations, considering the continuing conflict. So according to their recommendations, the people have to go on suffering from landmines until a political solution is found. Only one organ of the UN, UNICEF, is supporting a mine action program in the Sudan. They are doing this because the very children that they are saving from polio, through their vaccination programme and health service support, are being killed by landmines.

The government of Sudan is a signatory to the 1998 UN Convention on Certain Conventional Weapons (CCW). They have also signed documents respecting International Humanitarian Law. And they have also signed the Ottawa Convention. They have not yet ratified any of these. Recently I interviewed a colonel who is a prisoner of war (POW). He told me that he had never heard of these conventions; neither in the military academies or elsewhere. So they are hidden somewhere in the Ministry of Foreign Affairs. Soldiers do not know about them.

The government and the NSAs and the UN sat down and worked out a tripartite agreement for relief purposes. This led to the formation of Operation Lifeline Sudan (OLS), in which UNICEF and the World Food Programme conduct relief work.

The Sudan People's Liberation Movement, as one of the largest NSAs, had ground rules with UNICEF, based mostly on International Humanitarian Law. Those ground rules have helped in solving most human rights violations and especially the rights of children. UNICEF has organised several workshops with senior SPLA officers to educate them about international protocols. In 1999, the SPLA attended the Maputo conference and signed a protocol on the rights of the child and the use of child soldiers.

The ICRC has also held workshops with SPLA senior officers to educate them on the Geneva Conventions and POWs. For the last few years, the SPLA has released several POWs as a result of such interaction with the international community.

In 1996, the leadership of the SPLA announced a moratorium on the use of landmines — provided that the government reciprocated. It stated, “SPLM/A, deeply concerned over the tragic consequences of indiscriminate use of anti-personnel mines in particular and the presence of unexploded sub-munitions from cluster bombs and unexploded ordnance; particularly alarmed at the significant increase in the number of mines and sub-munition victims among the civilian population; having considered voluntarily the 1980 CCW [and a UN resolution on] respect for International Humanitarian Law and support for humanitarian action in armed conflicts; the SPLM/A commits itself to unilateral demining efforts in the areas under its control, . . . and appeals to the international community to support OSIL-Sudan in this humanitarian endeavour.”

After coming back from Ottawa in 1997, the government of Sudan requested support for national mine action in the areas they control. They have not yet received any support because they have not yet ratified the conventions they have signed; and they endanger the civilian population in the most contaminated areas where the landmines are behind the NSA front lines.

When we started humanitarian mine action we also had our problems. Most people did not trust the initiative because of the possibility of recycling the cleared mines, the possibility of areas cleared being captured again, the possibility of the funding finding its way into the conflict.

So what you have here is a unique situation where both the government and the NSAs are attempting to promote the implementation of international standards and would like to be part of an overall strategy to improve the protection of civilians in a situation of armed conflict. Again, here is an attempt by the two parties in the conflict to gain political legitimacy within their constituencies and the international community. The government is asking for mine action, the NSAs have already started mine action in their areas.

Especially in areas where war is over, we don't need to make people wait until there is a political settlement before removing the mines, especially where people are already coming back to their villages.

A second reason to begin now is to support international relief efforts. These are costing the international community one million dollars a day, most of which is spent on air transport. Roads have to be opened. We also feel there is a need to develop a local capacity to fight mines now, rather than to wait for peace.

Third, we believed that the international support would make it possible to monitor any violation. Since we started there has been only one violation, in which an isolated SPLA unit was being attacked by government militias and laid mines. They were forced by a committee that was elected from civil society to de-mine the mines they put in.

Altogether, our experience has been that it is not completely impossible in a conflict situation to save lives through mine action and even, by stigmatising the use of mines and educating the people who are laying them, to stop them from being used. For the last three years, we were able to remove 196 anti-tank mines and 1,815 anti-personnel mines, 76,408 cluster bombs, missiles and rockets, and we have cleared 527 miles of roads. We have also cleared 2.2 million square meters of land in areas to which refugees were returning from neighbouring countries. They are now leading a normal life.

These achievements would not have been possible without the support of the SPLA. They provided us in the beginning with information on minefields which added to my own knowledge of their location.

We had several challenges when we started. One of the main challenges was the SPLA rank and file. The leadership of the SPLA knew the importance of removing mines and stopping the use of mines, but most of the rank and file still felt that mines were legitimate weapons and saw civilians killed by mines as acceptable collateral damage. So the SPLA soldiers were our biggest targets in mine awareness. Most now are convinced that they are also victims of landmines.

We also had difficulties in material resources and personnel, especially converting former military engineers into humanitarian mine action personnel. We got international support: equipment and training by the Mines Advisory Group in international standards. This has helped. But we have also suffered from a certain tendency of international organisations to universalise experiences from Angola and Afghanistan, where areas that were demined were re-mined again and again.

The affected communities themselves have been a big problem because most of them have been living with mines for the last 40 years. This has made them very fatalistic and most of them think that mines have no solution. Our challenge is to change this mentality and to make them believe and give them hope that mines can be removed and that people who are laying them can be stopped from laying them.

We have been able to get over all of these challenges, thanks to the support we have been getting from the SPLA, as the de facto authority, organisations like UNICEF, Christian Aid and others, and also the dedication of our staff. They were ready to go on without insurance or anything, because the people who are dying are their own children, parents and relatives.

I strongly believe that mine action is possible within conflict. It can:

- ⊙ reduce mortality and morbidity;
- ⊙ facilitate resettlement, repatriation, food security, the building of infrastructure, rehabilitation and economic recovery; and,
- ⊙ in cases where the parties to the conflict are in dialogue with the international community, help ensure conflict parties adhere to international standards.

Indeed, we have been doing mine action in conflict for the last three years.

In conclusion, for a long time I considered the ICBL to be an ivory tower, which had nothing to do with populations living among landmines. I consider this initiative to involve NSAs a very big achievement. In the Sudan conflict, both the government and non-state sides have an incentive to get landmines cleared as soon as possible. Sometimes prejudgement or prejudice stops good intentions; this has been the biggest problem for the NSAs and the government of the Sudan. But Sudan is a living example that peace with landmines can be achieved within a conflict. Development within a conflict is possible, and mine action can create an enabling environment in areas where active fighting is over and where people can live safely and where victims' needs can be addressed. This is a welcome initiative to hold both state and non-state actors responsible for restoring hope to the millions of people affected by landmines and to commit both sides to the eradication of landmines.

Aleu Ayieny Aleu
Operation Save Innocent Lives-Sudan

difficulties in addressing landmines in palestine

While working full time for children as Palestinian representative of Defence of Children International, George Abbud Al-Sulaf understood that he could not do this without also working full time against landmines.

To begin, just a word on the difference between the Palestinian Liberation Organisation (PLO)² and the Palestinian Authority. The Palestinian Authority exists inside the Palestinian Autonomous Areas. The PLO, which was established in 1965, still exists, but it represents all the Palestinians wherever they are, in the Arab countries and elsewhere.

As you know, Palestine has been an arena of war for decades. It has been subject to many rules: Turkish, the British mandate, through the Israeli occupation and Jordanian rule, and now finally it is under the Palestinian Authority, established after the Oslo accords in 1993. There are about five million Palestinians who are still living as refugees outside Palestine. The PLO was established in this situation and it began its military struggle against Israeli occupation from outside Palestine, first from the Jordanian borders, and later on, in 1972, it moved to the Lebanese borders. After the 1982 war, when Israel invaded South Lebanon, the Palestinian Liberation Movement moved to Tunisia.

During the period between 1965 and 1982, the Palestinian Liberation Movement, consisting of about 13 factions, engaged in an armed struggle against the Israeli occupation, in the course of which they used landmines and other explosives. Later, however, during the Intifada in the 1980s, there was no use of landmines by any part of the PLO.

After the 1993 Oslo Agreement, the Palestinian National Authority and the Palestinian Leadership were established. This latter consists of members of the Palestinian Executive Committee of the PLO and the Ministers of the Palestinian National Authority. This represents a combination of the two authorities inside the Palestinian Autonomous Areas. The Palestinian security forces were also established after 1993. By the terms of the Oslo Agreement, they only have the right to use machine guns and then only through the authorisation of the Israeli authority and imported through Israel. The Pal-

estonian Authority doesn't have any border control. In effect, Israel controls all the security; the Palestinian Authority is restricted in this regard.

The Palestinian Authority has declared several times that it supports the Palestinian Campaign to Ban Landmines. The problem of landmines in Palestine exists as a result of the series of occupations of Palestine. The landmines were planted by others — Israelis, British and Jordanians — and the victims of these landmines and unexploded ordnance are the Palestinians. The Palestinians are victims of a problem that is created by other parties. This is why the Palestinian Authority supports the campaign.

At the same time, there is internal debate regarding the Ottawa process: if Palestine had the legal status to sign and ratify international conventions, would they join the Ottawa Treaty? There is not agreement on this yet. The Palestinian National Security Forces are involved in the Palestinian Campaign to Ban Landmines and they are in favour of Palestine signing and ratifying the Ottawa Treaty. But the official position of the Authority is that we will not sign unless the Israeli government does. This is the same position as other Arab countries such as Lebanon and Egypt.

I should mention that Hamas and the Islamic Jihad, who are outside the PLO and are involved in military struggles against the Israelis, are also within the autonomous areas. I will not discuss them here.

Another problem facing the Palestinian Authority is that the Israeli authority is not allowing them to have demining equipment, or any kind of detection devices for mines. If they discover unexploded ordnance, the Palestinians have to call the Israelis to come and deal with it. The problem of landmines and unexploded ordnance in Palestine is made much more difficult by the fact that the Palestinian Authority doesn't have any control over landmine fields and open military training zones. And the Israeli authority is neglecting the problem, because it is not affecting Israeli civilians. There are 15 minefields in the occupied West Bank. We hope that international pressure on Israel will help the PLO and the Palestinian Authority to get equipment in order to de-mine areas as they come under Palestinian control following withdrawal.

George Abbud Al-Sulaf
Palestinian Campaign to Ban Landmines

challenges in engaging the LTTE

Outside Sri Lanka and outside governments, nowhere is there more information and experience about the Tamil war than with the International Working Group composed of individuals and organizations in several countries in all continents linked by a common concern and resolve to assist in conflict resolution in Sri Lanka. IWG's Executive Director Peter Bowling is one of those with such knowledge including the experience of moving from one to another frustrated peace effort over the years, without losing sight and hope.

Among other pressing issues, the urgency to act against landmines in the midst of war, without waiting to do it as a post-war activity, has become clear. In too many countries we have already learnt how to wait is self-defeating. For many people there will not be a post-war even in "peace" times as long as there are mines around them.

One way or another, a war against mines — both state and non-state mines — within the larger war will have to be fought.

There have been 17 years of war in Sri Lanka between the forces of the government and the Liberation Tigers of Tamil Eelam (LTTE), also known as the Tigers. Over those 17 years, three-quarters of a million people have been killed, of whom probably about 50,000 were civilians. Among those deaths, we can probably count about 35,000 to 40,000 deaths directly attributable to landmines.

The landmines issue has been a very difficult issue to raise in Sri Lanka, both with the state and NSA. The state of Sri Lanka is not a signatory to the Ottawa Convention. It has claimed that it will sign the convention when the NSA stops using landmines. So what pressures can be brought on the NSA to stop using landmines?

Let's look at constituencies. There are the people, Tamils, living in areas under the effective control of the LTTE. There are three issues here. First there is the issue of dissenting voices: it takes a very brave person to dissent against the control of the LTTE. Second, there is the issue of information. And finally there is the issue, also raised in the context of the Caucasus, of acceptance of landmines. People have come to accept landmines as a regular part of day-to-day life.

Very interestingly, on this last point, questions around the use of

landmines did arise in the north of Sri Lanka when the UNDP started the demining process. People began to get the idea that there could be other possibilities besides standing on landmines every day. It was only after the demining process started that people started talking about mines as an issue in itself. In the north of Sri Lanka it is said that the Tamil Tigers are fighting for a homeland, so now it is asked: “Do you want a homeland or do you want a mineland?” And people are starting to ask social, economic and political questions around landmines.

Then there is another problem, the problem of actually speaking to the LTTE. The LTTE may decide that they are not prepared to enter into negotiations around the use of landmines. What can be done to engage in dialogue with an NSA who has made a clear strategic decision to follow a military path and does not have a political or humanitarian wing? I think that is a very big problem that we have to face.

And finally, I think there is a problem with the government, the state itself, who has declared the LTTE a terrorist organisation, as has the American government. It is actually illegal to talk to the LTTE within Sri Lanka. This makes it very difficult for the peace community, the anti-landmine community, the conflict resolution community, the human rights community in the south of the country, to actually speak to the LTTE.

Peter Bowling
International Working Group on Sri Lanka ☉

notes

- 1 See Annex 1.
- 2 The Palestine Liberation Organization, for our purposes an “NSA,” is recognized by the United Nations as representative of the Palestinian people.



No less than with governments, public statements from non-state actors are important as reference points and, in some cases, indicate the beginning of dialogue. The following statements were made by NSA representatives at the March conference.²

It is not too much to say that most of the NSAs who participated had something fundamental to say, which came from deep inside them, reflecting their experience, and often reflecting the suffering of their people. Mines exist because of fear and hatred in our hearts and minds which are reflected in the words we use, the words we write, the accusations we make of others. This is where the battle against mines starts: in trying to use words which are not aggressive, which are not humiliating to others.

former kosovo liberation army (KLA or UCK) (kosovo / former yugoslavia)³

I greet you on behalf of the Kosovo Protection Corps⁴ (KPC). I would like to explain the mine situation in Kosovo. Four per cent of the territory in Kosovo was mined by Serb soldiers. This means 400 square kilometers contain anti-personnel mines.

I would like to assure you that the UCK strictly respected the norms of the Geneva Conventions during the war. We did not use, transport or stock anti-personnel mines. We are against the use of this weapon, as much as we are against chemical weapons and dum-dum bullets. . .

APMs have created a lot of victims for us in Kosovo. Ninety percent of these victims are women and children — civilians. I want to make everyone aware of this so that they can help us to get rid of the mines and to demine Kosovo, by providing detectors and experts to train people in Kosovo. The border between Kosovo and Albania. . . is mined. These mines must be removed because there are many victims and this is very costly. . .

In the name of the UCK combatants, in the name of the KPC, we call for

the elimination and destruction of all mines which exist in the world. We call for an end to production of mines by the producer countries, because illegal transfers are always possible and as long as they are produced, we will have mined land. We call for measures against everyone who does not respect agreements to a convention like that of Ottawa.

The Kosovo Peace Accord between KFOR and the Serb forces is not being respected. The Serb military should have provided their mine maps, but they have not done so, and moreover they haven't demined. So I appeal to you today, to help bring an end to mines in the areas between Kosovo and Serbia, as well as in the rest of Kosovo. Every day, the Serb military continues to mine Mitrovica and the west. . . .

kurdistan workers' party (PKK) (northern kurdistan / turkey)⁵

We are here on behalf of the PKK (Kurdistan Workers' Party) and we would like actually to keep our speech concerning the agenda about the landmines. We respect your struggle against landmines, due to its serious danger, which mainly harms civilians. We would like to express our solidarity and wish success to all the governmental and non-governmental organisations who are putting all their efforts to struggle against those mass destructive weapons under such difficult economic situations and circumstances.

The PKK was found in 1978, aiming to prove the existence of the 40 million Kurdish populations and to achieve the right to live in freedom. As Turkey and no other state ever approached the Kurdish question by a dialogue, the Kurdish people had no other choice but to take up arms.

We would like to keep our speech on the tragedies of the 15 years war in the frame of our agenda. Turkey, since 1950 has used an enormous number of landmines in the Kurdish rural areas. In 1950, Turkey placed landmines on the boarder of Syria for nearly 800 kilometers length and a wideness of 600 meters. With the military coup of 1980, landmines were placed in the areas where the civilians live, in the name of targeting the Kurdish guerrillas. Since 1991, Turkey has put 80,000 landmines in the borders of Iraq and Iran. Landmines create a heavy influence on the security of the people living there.

Landmines have created a lot of harm and destruction in Kurdistan, South-Eastern Turkey and Northern Iraq basically.

The pro-Kurdish party called HADEP, based in the Turkish part, now has a project, which is returning people to their own villages, because now nearly 4,000 villages have been depopulated in north Kurdistan and we would like the organisations here as well as the states represented here, to be in contact with the HADEP party, to help them in the process of bringing back the people to their village, because one of the major problems there is the landmines that have been planted in all those villages.

The PKK would like to express our strong belief and our agreement to the international campaign against landmines.

moro islamic liberation front (MILF) (philippines⁶)

The Bangsamoro Islamic Armed Forces (BIAF) of the Moro Islamic Liberation Front use of landmines (anti-tank mines and anti-personnel mines) is strictly defensive and discriminate. MILF “defensive and discriminate” use of landmines is strictly in accordance with Islamic rules and discipline. It refers to such use of landmines to defend selected areas which are necessary for the defence, preservation or survival of the MILF and the Bangsamoro people with due regard to the rights and safety of innocent people so as not to kill, injure or harm those who do not fight, like animals, environment, nature, etc.

As a matter of fact, the Implementing Operational Guidelines of the GRP-MILF Agreement on the General Cessation of Hostilities signed by the Government of the Republic of the Philippines and the Moro Islamic Liberation Front on November 14, 1997 included “landminings” among the aggressive actions considered as “prohibited hostile acts.”

If needed for defense (self-preservation), the MILF/BIAF will use anti-personnel mines, but discriminately, only when the need of it arises or as the situation dictates, and upon order of the concerned MILF Commander on the ground during actual combat.

MILF/BIAF anti-personnel mines and anti-tank mines, foreign and home-made, are command-detonated, use tripwire, or are pressure-triggered. So

far there are no civilian casualties or victims of landminings blamed on the MILF/BIAF, due to strict precautionary measures, secrecy, and proper monitoring undertaken by BIAF commanders, considering that the MILF is a mass-based resistance movement. The production, stockpiling and/or transfer of landmines are beyond the reach and without the participation of unauthorised members or civilians.

Along this line, the MILF has already formally declared to support the international campaign to ban anti-personnel mines and has adopted internal regulations prohibiting the use, stockpiling, production and transfer of APMS.

I would like to read another official MILF declaration, signed in March 2000 by Ghazali Jaafar, Vice-Chairman for Political Affairs, MILF Central Committee.

“The Moro Islamic Liberation Front or, in short, MILF is reiterating its 1997 formal declaration to support the international campaign to ban anti-personnel mines. Except in a strictly “defensive and discriminate” use of landmines for the defence, preservation, or survival of the MILF and the Bangsamoro people with due regards to the safety and rights of innocent people to live a full life and not to kill, injure or harm those who do not fight, the MILF has adopted internal regulations prohibiting the use, stockpiling, production and transfer of anti-personnel mines. The Implementing Operational Guidelines of the GRP-MILF Agreement on the General Cessation of Hostilities signed by the Government of the Republic of the Philippines (GRP) and the Moro Islamic Liberation Front (MILF) on November 14, 1997 included “landminings” among the aggressive actions considered “prohibited hostile acts”. The MILF has strictly observed this agreement and hopes that all governments and other resistance movements can also agree to ban anti-personnel mines.”

To give more emphasis to and better understanding of MILF’s support for a landmine ban, I’d like to read the provisions of Article 3, ground rules of the Implementing Operational Guidelines of the GRP-MILF Agreement which I just mentioned. One of the ground rules is that the GRP and the MILF shall desist from committing any prohibited, hostile and provocative act as described in the implementing guidelines and ground rules. In the enforcement of this agreement, the ground rules provide that the Coordinating Committee for the cessation of hostilities shall inform immediately the commanders

of the GRP and the MILF forces whose units or members are alleged to be violating these implementing guidelines and ground rules. It shall be the responsibility of the GRP and the MILF to take immediate and necessary action to stop any violation and punish those forces who violate these implementing guidelines and ground rules.

This conference is very timely because the last major military [operation] in the south of the Philippines was just last week. When we left, the war was still going on, there was still no agreement to cease fighting. So I think that there is a need to provide mechanisms for implementation of agreements banning landmines. The MILF's predicament is that it has no recourse if the government violates this agreement or the Implementing Operational Guidelines. There is third party mediation in the ongoing GRP-MILF formal peace talks. I think that mechanisms and monitoring of State Parties as well as NSAs need to be provided.

polisario front (western sahara/morocco)⁷

Polisario delegate from Western Sahara⁸. Along the 2,000 kilometer-long walls built by Morocco to secure its occupation of the Western Sahara, there is a five kilometer-wide corridor protected by no less than five million anti-personnel mines. Such is the formidable obstacle keeping the Saharawi refugees and Polisario army, encamped for years on the Algerian frontier, separated from the rest of the Saharawi population in Western Sahara itself.

Over the last few years (until early 2000), the NGO Norwegian People's Aid cooperated with the Saharawis to conduct a landmine-related programme in the Saharawi refugee camps in Algeria, on the border of Western Sahara. The programme had the following components: mine awareness among the population; locating mines in the desert; mine and UXO clearance; and assistance to mine victims. By and large, the programme achieved its objectives in the areas under Polisario control.

The mine clearance programme promoted by the United Nations was frustrated when, in 1998, a UN team made up of Pakistani and Swiss personnel was obstructed by Morocco. The result was three weeks of fieldwork, compared to the six months originally envisaged, and only one mine found and

deactivated.

...

The Saharawi Arab Democratic Republic, recognised by the Organization of African Unity, and the Polisario are decided to sign and comply with mine use prohibition agreements.

Seniya Ahmed, Swiss Representative of the Polisario Front. I take this opportunity to thank you for doing something useful for prohibiting the use of the landmine, which is a very dangerous tool. At the same time, I would like to say that my country and the Polisario Front are ready to sign and to give any help to support this treaty or any treaty to ban landmines. I think the most important purpose of this conference is that it aims to create mechanisms for compliance, whether governmental or non-governmental, with a ban on this dangerous weapon. We think it is a wonderful idea to show that state and non-state actors have the same objective, which is banning landmines. It is also good to do something that can make state and non-state actors work in the same direction, without conflict, dealing with one objective, fighting against landmines. It is true we are a nation, we are members of OAU as a nation (but not the UN), but we support all work that can further the banning of landmines. We support the Saharawi NGOs becoming active in Western Sahara.

rebolusyonaryong partido ng
manggagawa-pilipinas and the
revolutionary proletarian army-alex
boncayao brigade (RPM-P/RPA-ABB)
(philippines)

This is our declaration against the use and production of landmines, based on our experience when we were in the New People's Army and the Communist Party of the Philippines. In 1998, we split from that group because of the strategy being used, that cost thousands of civilian lives, destruction of properties, and destruction of men and nature.

Full human development should be the essence of social progress and must be the end result of a social conflict or war. This is the greatest desire of

all revolutionaries. In our revolutionary struggle towards socialism, we tread the precarious and hostile road, the only road, leading forward without oppression, suppression and de-humanisation of the working class. With this aim, we are drawn into conflict with the ruling oppressive class who possesses all the implements of counter-revolution. And yet we strive, we fight, we sacrifice until victory.

So the landmine question is also a question of comprehending the social conflict going on in the Philippines, as well as the aim to put our efforts towards full human development.

For more than three generations now, the Philippines has been the arena of bloody armed conflict between the Maoist Communist Party of the Philippines-the New People's Army-the National Democratic Front (CPP-NPA-NDF), waging a protracted war, and the government waging an anti-insurgency war. After our split with the Communist Party of the Philippines, the Revolutionary Workers' Party (RPM-P) and its army looked back at the long history of armed conflict and saw that the sacrifices of human lives — foot soldiers and civilians — and the damage to properties were regrettable, if not condemnable. These were the errors that needed to be corrected as we instituted a new orientation of our revolutionary struggle. Therefore, we are pursuing a new orientation, a reorganisation based on the development of humanity and pursuing a genuine peace.

In pursuing the revolutionary struggle, the RPM-P/RPA-ABB believes that it is the surge of revolutionary movement for and according to the masses of the working class and all oppressed peoples that will be decisive while armed struggle and other forms of struggle are complementary, supporting forms. Therefore, we rejected the war strategy and we are stressing the role of the masses in changing society and also the decisiveness of the masses: what form of struggle they will pursue and what we think of the struggle they want to use against the oppressor.

We believe, therefore, that the destruction of lives and properties, as a consequence of armed conflict, is an antithesis to our desire for a better world. We believe that while we are fighting to achieve full human development and social progress, we must respect the lives of the people and of nature — uphold and promote human rights and protect the environment.

So, based on our politico-military orientation, we always plan that there will be no single civilian that will be damaged in our military operations

against the state, the oppressor.

The use of anti-personnel mines, as a weapon for destruction, has been proven to have been extremely prejudicial to lives and safety. Our experience was that thousands of civilians were killed because of our war strategy, during the time that we are part of the Communist Party of the Philippines, New People's Army.

We have plenty of landmine factories all over the Philippines. We have regular landmine trainings in all of our platoons because these are the weapons that are very cheap and inflict great damage on the state, the armed forces of the Philippines.

This is a weapon commonly utilized in battlefields, both by revolutionary or rebel forces and reactionary forces, to weaken, maim or destroy each other.

Even if the Armed Forces of the Philippines admitted squarely that they are using landmines against the revolutionary forces, based on our declaration, we are not for the physical elimination of our enemy, but for the empowerment of the oppressed people and the improvement of the economic conditions of the people who are the victims of these landmine operations.

It is a fact that anti-personnel mines have been killing civilians, destroying properties, destroying the environment and inflicting damage on innocent civilians more than they have served their military purpose. So, we put civilian safety first, before we engage in military operations against the military forces of the government.

The Rebolusyonaryong Partido ng Manggagawa-Pilipinas (the Revolutionary Workers' Party) and the Revolutionary Proletarian Army-Alex Buncayao Brigade declares its opposition and rejection of the use and production of anti-personnel mines. We give our full support to the worldwide campaign against its use and we call for the immediate stop to its production. We discourage stockpiling and production of landmines because of our re-orientation and our struggle to humanise the war.

Our adherence to the humanisation of conflict in practice means that we strive to avoid by all means the loss of lives and destruction of properties in the course of our armed struggle. Where is the victory for us, for the people, if the people themselves are killed or injured because of these destructive weapons?

RPM-P/RPA-ABB believes in the necessity and correctness of humanising the struggle between the revolutionary forces and reactionary forces. Fighting for genuine peace, social justice, political liberty, and a safe and clean environment are all in the service of the human race. Destroying the world and sacrificing innocent lives with the use of anti-personnel mines does not serve this purpose. So we call for an end to the use and the production of landmines. Onwards with the revolutionary struggle.

sudan people's liberation army (SPLA) (sudan)

One is very pleased to be in such an international gathering. . . We do come here with a very open mind of participation. I would like to discuss transparency at the overall level and our commitment.

A Kenyan poet wrote "The cell is wet and cold/ the rain is heavy outside/ It reminds me we are not alone;/ we are with those who will never give up, / who will never betray!"⁹ I mean to say that this is a very serious endeavour, and, as normal at the beginning of such endeavours, the demands are very great. . . . when we started this awareness and the mission of de-mining while the war is going on, we had a look behind and we saw the victims. We have been seeing ourselves as the victims, the soldiers as the victims, then the women and the children as the victims.

I remember one time when we were entering a town during battle and our vehicle was blown up by a landmine. Whenever it comes to my mind it chills my body. . . . You see it's not a simple issue. It's an experience that stays with you for as long as you remember any bad thing you have encountered in life.

The areas where people are supposed to live have been closed. The strategy of the government of Sudan was to close off routes that lead to or from refuge. Mines are very heavily laid along the borders with Uganda, Kenya and Ethiopia. Right now there is a battle going on in North-Eastern Sudan and mines have been laid there along the Sudan-Eritrean border. Mines are also laid in the interior because of the nature of the war. The SPLA is active in about 45 percent of Sudan; the south alone is one-third, and it is also active in the Nuba mountains, the Blue Nile region, the Red Sea hills, and almost to the

Red Sea region.

There is use of mines around the towns or the garrisons where the government forces are; they do this as part of their defence, they see it as appropriate. This is happening even though they are signatories to the Ottawa agreement. . . . Our records in OSIL are clear and open for all to see, but the . . . government has never carried out a single demining process, despite signing agreements.

One of the problems we have had was in gaining support for our mine clearance effort. People wondered whether these rebels would be able to demine and whether they are sincere about it. It seems that Operation Save Innocent Lives – Sudan (OSIL), with its mandate to interact with all international NGOs and international governments who wish to support our de-mining effort, has shown that we can be trusted, even though we are not a state. . . . However, it seems that some still doubt our capacity, perhaps because our costs are so much lower than those of the international experts. . .

One last point. There are many kinds of NSAs. Some are secretly controlled and supplied by governments. This is the case of the *Murahaleen* in Sudan, the paramilitary Popular Defence Forces (PDF). They have used landmines, and the SPLA was blamed for it.

...

This conference is significant for the fact that many of the NSAs for the first time in history have found themselves almost together. This is quite unique. Yesterday, as I was sitting there, to my right and to my left, there were two NSAs from one country: one Marxist and the other one Islamic, and I was in the middle. I found that it was so great that they are existing in the same room, under the same roof.

I believe that the message that goes beyond all that has happened or whatever has been said, is the fact that one human being has the capacity of reaching the other one. Given an atmosphere of fairness, if you give time to listen to the other, dialogue itself starts.

I take this opportunity to address my NSA colleagues. I believe that we have come together around one of the real problems facing humanity as such, the mines that brought us all here. We came not knowing whom else we were going to meet from the other side. How does he think? What are his plans? What is the next step he is going to take in the field? All of these things have

come. But we are going back with one thing: we have shared our experiences. We are now also for the first time sitting together and asking the international community to come in and assist in telling the states that they ratify agreements and don't implement them. But we also come to the same position; so, without waiting to ratify the agreements, please let the NSAs proceed! The SPLA/M has a very modest example: we've started to demine while the war is still going on. Demining areas to give room for the people in whose name you are moving, is a way of minimizing human suffering.

...we take this opportunity to say that the Movement, the SPLA, is ready at any moment to share opinions and experience with anybody, be it a Muslim movement, be it a Christian movement, be it a Communist movement. I think that part of fear of reaching the other in us has been broken and we are going to keep it. ☉

notes

- 1 A word on who is not represented. The Palestine Liberation Organisation, as well as the Palestinian Authority were invited but a scheduling conflict prevented their Geneva representatives from participating. Likewise, the Taliban were invited and interest was expressed, but a combination of factors prevented them from attending (see Taliban statement in Annex 1). A former member of the MK, the now disbanded armed wing of the African National Congress, was also invited to share the experience of making the transition from being a mine-using NSA to an anti-mine government. Finally, efforts were made to obtain the participation of NSA groups from Burma; again, there was interest, but the turbulent situation on the ground made it impossible in the end for the groups invited to attend.
- 2 Needless to say, the conference in no way endorsed these statements. Some of the longer statements have been paraphrased and abbreviated to maintain the focus on landmines.
- 3 This is an unofficial translation of the original statement, which was made in French.
- 4 The Kosovo Protection Corps (KPC or TMK) is the successor organisation to the Kosovo Liberation Army (KLA or UCK) in Kosovo.
- 5 The PKK prepared a written text which was distributed after the conference, and is included in Annex 1.
- 6 See also the "MILF Internal Regulations on Use, Stockpiling, Production and Transfer of Anti-personnel Mines" in Annex 1.
- 7 Not all the groups represented here have the same status. Polisario, the military arm of the Saharawi Arab Democratic Republic (RADS), has diplomatic recognition from

the Organisation of African Unity (OAU), the vast majority of OAU member states, and about 30 other states.

8 The original statement was made in Spanish; this is an unofficial translation.

9 From “We are not alone” by Onyamo Olo.



chapter 6 state perspectives



new approaches to NSAs

Martin Griffiths

Henri Dunant Centre for Humanitarian Dialogue

I'd like to provide some input from two government conferences on NSAs and humanitarian norms that took place in December 1999 and February 2000¹. The two were occasions to discuss, in some detail, the issue of humanitarian engagement with armed groups — and I stress that it was the issue of humanitarian principles and humanitarian engagement with armed groups. The summary I will give is what our centre took from those two discussions. Those who were present at either of the meetings might well have different points of view.

We started from the premise that humanitarian engagement with armed groups, particularly in the last few years, has been extremely ad hoc. Different principles of engagement are applied to different agreements between humanitarian organisations — whether they're NGO, unilateral, or intergovernmental — and armed groups. I think perhaps the International Committee of the Red Cross is the only organisation which has not been ad hoc; it has, as usual, continued its very direct and disciplined approach. But, having worked for five years in the United Nations, I know that the approach in general has been very ad hoc. And yet there is a lot to be learned from that wealth of diverse experience, to try and make the approach more consistent, to try and deal more straightforwardly with the questions about the principle of sovereignty it raises. Here are the broad conclusions that we took from those two meetings.

First, there is a need to articulate basic minimum requirements for engagements with armed groups for the humanitarian community. Perhaps this could start from the work being done on the fundamental standards of humanity. This would ensure that there is at least a common threshold upon

which one can build, so that if you have principles of engagement for the Democratic Republic of the Congo and principles for engagement with the Taliban, there would be some reference between the two. Common minima need to be articulated.

Secondly, in any process of engagement with armed groups, there needs to be a defined and clear humanitarian objective which is articulated and understood prior to engagement. This sounds absolutely obvious, but unfortunately it is not always the case. A clear objective may be easy in the case of the landmine community, but objectives are not always so clear in the context of broad humanitarian assistance and a civilian protection approach. One of the problems we discussed at these two conferences is that of objectives changing through the process. This confuses the interlocutors on both sides, as well as governments watching this process.

Thirdly, detailed analysis, both of the armed group and of the broader situation, is fundamental. Here there are clearly possibilities of dealing with both governments and the private sector to share information and analysis. Analysis of sources of leverage, of resources, of legitimacy are needed to begin with. These are important for negotiation. I have had some experience in negotiating with armed groups where we simply turned up and started discussions the same day. This is an extraordinarily unprofessional approach, but I'm quite sure that in most negotiations these days it is still the case. The analysis should focus on leverage of influence.

Fourth, there is a problem in the humanitarian community with representation. Who represents a humanitarian community in a particular area of conflict? The UN tends to suggest itself, the ICRC stays clear of other representations, and NGOs have diverse views. I think we can at least agree that, if there is a consortium approach, the lead representative should be clearly identified. Operation Lifeline Sudan is one of the most evolved examples of such a consortium, and it is not without its difficulties. There should be clarity as to who is entitled to negotiate, and for what (back to that second point of defining the humanitarian objective).

Fifth, we discussed the comparative advantage of different organisations undertaking this kind of work: official organisations like the UN have certain pros and cons; ICRC operates on its own mandate; NGOs have a certain amount of latitude. Government support groups are another option. We've had some experience with government support groups in different parts of the world,

particularly in Afghanistan and in Rwanda. Government support groups are typically defined as donors. That is obviously inadequate and restrictive. Support groups should include those governments interested in the process of engagement. The problem with government support groups is that they tend to change, and, unsurprisingly, they tend to lack consistency in policy support for engagement with the armed group. This often causes great difficulty. We have examples from Sudan, Afghanistan, and Angola. Success may depend on the clarity of the original objective and the situation analysis. Generally, having consistent government support groups can be very useful but such groups can also have a very negative impact.

The sixth point is that a lot of progress needs to be made. Humanitarian engagement with armed groups is a legitimate, appropriate activity, and, for example, visa regimes need to reflect this. We have wanted senior representatives of armed groups to participate in certain meetings but have had difficulties in getting them into some countries for this purpose. We understand the political problems, but if you recognise the legitimacy of this engagement, then policy should follow. The government of Switzerland has a very open policy and distinguished record in this regard.

Seventh point, we discussed different forms of agreement at length. Should there be an agreement? Who signs? Is it co-signed on one document? Is it two documents separately signed? Is a signed agreement or document actually worthwhile? It depends, typically, on the stage of evolution of the engagement. Often an agreement can be constraining. For example, some people felt that the UN Memorandum of Understanding with the Taliban, signed in 1998, was a constraining instrument. Then there are many different formats for agreements. Our own centre is involved in certain negotiations in which we can already see the advantages of different kinds of signature arrangements. In the case of the Taliban, it was an enormous issue how they would describe themselves, how they would be represented on a piece of paper. Obviously, it all had to do with the balance between legitimacy or recognition on the one hand, and obligation and accountability on the other.

One related matter that was felt to be a general weakness was the dissemination of agreements. Dissemination within the area of conflict, to the opposing forces, and down the chain of command can be very important.

Finally, if negotiations fail to make at least some progress towards objectives, we need to look at how sanctions, for example travel sanctions, can be

made far more targeted, in line with the work being done in Switzerland on financial sanctions². Sanctions, as many people have said, obviously need to be balanced with positive incentives. Recent discussions on Angolan sanctions indicate that there is still a long way to go in developing this tool.

statements by governments³

The following statements were made during the March conference or sent by letter prior to the conference.

australia

The government [of Australia] welcomes and supports [this] initiative in organising this conference to address the serious question of non-state actor compliance with the Ottawa Convention. The achievement of a landmine-free world — a long-term goal of the Australian government — can only be accomplished if non-state actors as well as states are engaged in questions of compliance. It is encouraging that some non-state actors have acknowledged the need to discuss the landmine problem.

canada

My congratulations to the organisers of this event. It goes without saying that there are a number of sensitivities associated with taking on this issue, and certainly there will be a number of lessons from this conference, and from the organisation of it. But what is clear is that the dialogue on this matter has certainly begun. Canada believes that it is a positive development that the international campaign is addressing the behaviour of the NSAs with respect to AP mines. Changing the behaviour of any actor with respect to the use of AP mines is the most important measure to prevent the global landmine problem from getting worse. If these weapons are being used by NSAs as well as states, then some attention must be given to getting both NSAs and states to stop using them.

That said, Canada will use caution and prudence in supporting initiatives to engage NSAs on landmines issue. The sensitivities for states on this issue are certainly well known, and are probably even more well known to the

organisers of this event after undertaking this effort. We must, for example, take into consideration the sensitivities of “pro ban” states: those states which have been extremely supportive of the Ottawa Convention, particularly those states that can make a contribution to moving forward on this issue, and those pro ban states which themselves may have NSAs operating within their territories.

Just a couple of points I’d like to reinforce, that were made yesterday. First, Canada believes that the presence of an armed NSA in a particular state is no excuse for that state not to accept the comprehensive ban on landmines. For a variety of reasons, it is not necessarily legitimate for any state to argue that it cannot accept the obligations of the Ottawa Convention simply because it is in conflict with an NSA using AP mines.

Second, in undertaking future work in this area, we would recommend, as some speakers already mentioned yesterday, working beyond simply a focus on a legal instrument and looking at other underlying means to ensure NSA compliance with a ban on the use of AP mines. Looking, for example, at means to ensure that constituencies support a ban on landmines by an NSA which they may support... or other means to actually prevent the use of landmines by NSAs.

republic and canton of geneva

The Republic and Canton of Geneva announced that it would ask the Swiss government to introduce a clause covering NSAs, inspired by additional Protocol I of the Geneva Conventions, at the review conference of the Ottawa Treaty in 2004. In the meantime, Geneva offered to act as a guardian of unilateral declarations of mine renunciation made by NSAs and received by the Geneva Call, an NGO working to engage NSAs in IHL (see “Words of Welcome from Geneva” in Chapter 1).

the philippines

The Department of Foreign Affairs representative endorsed the Philippine Campaign’s co-sponsorship of the Pioneering Conference on Engaging Non-State Actors in a Landmine Ban convened in Geneva from March 24 to 25, 2000.

slovenia

Allow me to welcome this interesting exchange of views and congratulate the organisers. As a representative of the government of Slovenia, I'm honoured to have been invited as an observer. Slovenia welcomes the inclusion of the non-state actors in a process that will ultimately lead to a total landmine ban. It has become clear that governments [alone], no matter how many Ottawa conventions or CCW protocols they abide to, cannot effectively bring about a total control over the landmine problem.

It seems to us that, further, the NGOs have a major role in bringing NSAs into the campaign, to achieve the ultimate goal of a world free of landmines. They seem to be best fitted to engage NSAs in a variety of ways. Flexibility and informality are much needed in such an activity.

It also seems to us that it would be worth exploring ways and means of a fruitful cooperation between governments and NGOs, with a view of furthering the process of bringing about a total landmine ban, including bringing on board the NSAs in this process.

The government of Slovenia has been engaged in a variety of ways in the struggle to eliminate landmines. . . . ours and many other similar projects around the world are helpful and much appreciated by the people [affected. However, these measures are] only a cure. What is equally, and I believe maybe even more efficient and important, is the preventive part. Not to have the mines planted to begin with. Therefore, we believe that it is worth spending more time and effort in pursuing more energetically the path of seeking effective ways of mine laying prevention. Hopefully this gathering will further our common understanding of the problem of engaging NSAs and that the ICBL and others will continue this effort.

switzerland

Switzerland considers the issue of NSAs as one of the most important we face in our days. Not only with respect to humanitarian principles, but also in regards to conflict prevention and peace promotion. On the one hand, NSAs can be a threat to International Humanitarian Law and peace; but on the other, they are often part of the solution to humanitarian political problems.

International organisations, national NGOs, and corporations, find them-

selves frequently in a better position than states to engage with NSAs. We therefore encourage them to continue their efforts, reinforcing humanitarian principles as well as reconciliation and peace.

We, at the same time, emphasise the obligation of states to respect and to ensure respect for International Humanitarian Law, as it is outlined in common Article 3 of the Geneva Conventions. In giving more attention to the issue of NSAs, we are actually making our first steps towards finding appropriate ways to engage NSAs. This conference contributes to this objective, and we therefore are very grateful to the organisers for their initiative. More initiatives must follow, in order to improve human security worldwide and, in the context of this conference, to promote the universalisation of the mine ban treaty.

discussion

The following exchange points to some of the key differences in perspective of the various actors and to challenges which lie ahead on this path.⁴

confidence-building and the role of NGOs

Martin Griffiths. A few points. One of the things which motivate us at the Henri Dunant Centre is the very unoriginal thought that humanitarian issues could actually bring conflicting parties together and create confidence between them. That must be even truer in the context of banning the use of landmines. We have had recent experiences in a couple of conflicts where this notion of humanitarian bonding has been articulated by the conflicting parties themselves.

Second point is that in the case of this campaign, there is a clarity of objective and, on the whole, policy support. Those are huge advantages. One of the most difficult problems when dealing with armed groups is the conflicting policies and objectives of other governments, particularly major powers changing their policies and using humanitarian engagement as one lever.

A final point, and there has been quite some research on this: using humanitarian or other aid as a piece of conditionality for influencing the activi-

ties of armed groups simply does not work.

Speaker. I want to underline one of the points made by the representative of Switzerland. It is very important not only to acknowledge that we are dealing with humanitarian principles, but to put this in the broader framework of conflict or war prevention, conflict resolution and peace processes.

Speaker. My comments are about confidence-building and the role of international humanitarian organisations in convincing armed revolutionary groups to participate in banning landmines. There is a very concrete question of trust. Revolutionary groups, armed groups, are very suspicious of humanitarian organisations that enter the revolutionary base to talk to the leadership. It is believed that some international organisations do intelligence work. This is one of the points that must be addressed before armed groups can be convinced of the seriousness of the effort to ban landmines.

Second, international humanitarian organisations should also convince states to participate in banning landmines. Otherwise the dominant state will think that the revolutionaries are using this issue for the interest of the revolutionary organisation or for propaganda purposes. (For example, if there were no peace negotiations going on in my country between the armed groups and the existing government, I believe I could not have attended this conference — the government would have turned down my visa application.) At the same time, how can we mobilise revolutionary groups to stop using landmines, if they do not see that pressure is being put on states to do the same? I believe it is very important to approach both parties; then they will trust the objective of putting an end to these landmines that cost millions of lives and inflict damage on humanity and the environment.

Martin Griffiths. It is unfortunately true that credentials need to be demonstrated. At the same time, I know of no evidence that humanitarian organisations are involved in intelligence work. It is a frequent allegation, but I think this sort of claim should be made very carefully. However, I agree with you that one cannot assume credibility or trust from the outset. That is part of the importance of having a clearly articulated objective.

Secondly, we think that bringing conflicting parties together to discuss humanitarian issues is an untapped opportunity for building confidence. It is odd that initiatives of this kind are still comparatively rare.

Speaker. My comment is about whether the ICBL NSA Working Group can

play a liaison role between NSAs and governments in the same country. I think this would be a very important role. They could work to build trust so that the two sides can agree that they will not use landmines in their conflict, on the realisation that they hurt civilians more than military forces.

which landmines to ban?

Speaker. Mine is a question that comes up whenever I hear “anti-personnel mine” without reference to other mines. Other mines are not always presented with the same seriousness, with the same air of danger, with the same eagerness as anti-personnel mines. My question here is to the representative of the government of Canada. In his remark, he mentioned APMs, but made no mention of other kinds of mines. I come from a place where people know that anything that is planted in the earth and explodes is equally a danger to life. Could he explain the Canadian position in a way which would make sense to the people who don't know how to read and write in the field down there?

Canada. With respect to Canada's support for what is generally referred to as mine action, there is no discrimination in terms of what is lifted from the ground or removed from polluted areas. We don't provide funds to remove APMs alone, but also other weapons and ordnance found in polluted areas. With respect to a ban on landmines, Canada has accepted an obligation to ban APMs as defined in the Ottawa Convention.

Speaker. I want to emphasise what the earlier speaker said, that only talking about APMs is a half-hearted approach to the problem. I know very well from where I'm working, that there is no difference between an APM, an ATM, and a cluster bomb. They are all mines, they are all killing people. Even other explosives, like mortars and missiles, are improvised into very dangerous APMs. There is a need for a new definition, especially in this conference. I've seen some proposed definitions which still go back to the Ottawa definition. They will never solve the problem. There is need to approach the problem in a way that will solve it once and for all.

Speaker. Regarding anti-personnel mines. According to my understanding, any suspected object that can be exploded by one person is dealt with as an APM, whether it is UXO, an APM or an anti-tank mine. There are different kinds of ATMs, but usually an ATM requires a lot of pressure to explode. After a long

time in the ground, exposed to the natural elements, however, it can be exploded by less pressure, by any human being stepping on it. So, according to the Ottawa Treaty, this is dealt with as an APM.⁵

targeting sanctions

Speaker: I wanted to raise the issue of travel bans. I wish to engage virtually everyone in a total ban on landmines. However, we have groups who are subject to travel bans imposed by the UN. How do we get these groups to participate in events like this one, without risking violating a ban imposed by the international community?

Martin Griffiths: I think when sanction regimes are created, concerns about unintended negative impact that are being discussed in the smart sanctions debate, should be taken into account. In the case of the UN Security Council sanctions on Angola, for example, it is possible to make contact with representatives of UNITA for certain humanitarian purposes. This is provided for in the resolutions establishing the sanctions. It is vital that such allowances should be made. But it is true that there is a great risk and that this kind of provision is not universally applied. ☉

notes

- 1 A small government workshop, “International Law and Non-State Actors: A Workshop on the Responsibilities of Armed Groups toward Civilians” was hosted by the Henri Dunant Centre for Humanitarian Dialogue in Geneva, 14-15 December 1999. The larger conference, “Humanitarian Principles: Engaging with Non-State Actors” was held in February 2000 at Wilton Park. More information on the latter is available through www.wiltonpark.org.uk/conferences.
- 2 The “Interlaken process” has been developing thinking about better targeting of financial sanctions; information available via www.smartsanctions.ch. See also the proceedings of the Bonn International Center for Conversion’s Bonn-Berlin process on smart sanctions (forthcoming, www.bicc.de).
- 3 As with the statements by NSAs, the conference did not endorse the statements by governments.
- 4 See also the discussion on the definition of NSAs at the end of Chapter 3.
- 5 This would be an unusual interpretation of the definition in the Ottawa Treaty. For

more on the question of definition of landmines, what is and what should be banned, see: ICRC, "Information Paper: Anti-vehicle mines equipped with anti-handling devices," 1999; HRW, "Anti-vehicle mines with Anti-handling Devices," 2000; ICBL, *Landmine Monitor Report 2000*, pp. 10-12 and pp 1089-1091; an alternate definition in the "Bad Honnef Guidelines," available www.landmine.de; Mines Advisory Group, "Definitions and Anti-Handling Devices Discussion Paper," July 1997; German Initiative to Ban Landmines, "Why Anti-vehicle mines should also be banned," 2000; Rae McGrath, "Cluster bombs – The military effectiveness and impact on civilians of cluster munitions," Landmine Action UK, 2000.



chapter 7

engaging non-state actors in integrated mine action



NSAs may have de facto control over areas which are mined. This is the case in Southern Sudan, Burma, Angola and elsewhere. It is important for the people living in those areas that the NSAs permit and support mine action — victim assistance, mine clearance, and community rehabilitation. Beyond the difficulty that NSAs may encounter in obtaining help from the mine action community, or that the mine action community may face in working with NSAs, there may be the added difficulty of conducting mine action in the midst of violent conflict.

integrated mine action

Mereso Agina

Kenya Coalition to Ban Landmines

What is mine action? Mine action is actually everything that we need to do in relation to removing mines, creating mine awareness, assisting the victims, surveys — all of this is called mine action. All the people doing different components of mine action realised that mine awareness, surveys, demining, and victim assistance each could not stand alone without the others. Likewise, community reintegration and development cannot stand alone. All of this work has come to be known as “mine action”.

Mine action is more than clearing mines. It requires achievement of sustainable improvements in the living conditions of mine victims and their communities. It goes beyond the technical aspects of surveys, mapping, clearing and awareness to include the psychological, socio-economic and cultural rehabilitation of mine victims.

Mine action must be part of peacebuilding, reconstruction and development. It has to be a concerted approach: no single organisation, whether local or international, has the overall knowledge or competence on its own. And, as we have heard, there is a need to have the good will of the communities living in that area, as well as governments or NSAs. There is a need for close collabo-

ration of all key players. Looking in detail at what is involved in victim assistance, mine clearance, and community rehabilitation, we can see that no single component can stand alone.

victim assistance

Susan Walker

ICBL Victim Assistance Working Group

Mines, *mines*, *minas*, that is why we are here. I would also say victim, *victime*, *victima*. Any single casualty in any conflict is an injustice. Particularly when those victims are civilians. The vast majority of mine victims are now civilians.

Why must NSAs be engaged in the landmine problem? They, or the people or the cause in whose names they fight, can also be victims. They too have a stake in stopping the inhuman destruction caused by landmines; and I would emphasize inhuman, because innocent civilians are most often the victims, often for years, if not decades, after the conflict has ended. If mines are used, people return home after the conflict to a mineland instead of a homeland, a land which takes life rather than sustains it.

The first time I heard of banning APMs was in 1991. I thought, "Of course! For 10 years we've been putting legs on patients, on men, women and children, and as medical people why aren't we looking at prevention?" From a public health perspective, we should prevent injuries; and the best prevention in this case is not to have the mines in the first place. Anti-personnel mines have been banned in two-thirds of the world, 137 countries have signed the Ottawa Treaty and 94 countries have ratified it. It is progressing faster than any international treaty in history.

Certainly the most cost-effective way to provide victim assistance is by removing the need to provide it at all: not having victims. However, that is not the case today, and it won't be for decades to come. Those who have already been injured, who are being injured right now, will need a lifetime of care.

NSAs may have an even greater interest in not using mines because facilities to treat the sick, much less the severe and deadly injuries caused by mines, are often not available in the conflict areas in which NSAs are operating.

A large percentage of patients die before reaching medical facilities. We can expect this percentage to be high in areas where NSAs operate, as it may be especially difficult to arrange evacuation to remove patients to hospitals. And then patients need surgical facilities, they need blood for transfusions, and large amounts of it.

But it does not end there: not only medical evacuation and surgery and hospital care are needed. That's just the beginning of a lifetime of care — from physical rehabilitation to prostheses to assistive devices like wheelchairs. Psychological and social support, employment and economic integration. And access: if you are in a wheelchair or are a double amputee, you still need to be able to get into buildings and move around, sometimes in difficult terrain.

I won't go into a long explanation of the details of victim assistance, but I would point out some of the many resources available to guide the setting up of victim assistance programs. On the preventive side, there are the UNICEF *International Guidelines for Landmines and Unexploded Ordnance Awareness Education*¹. There are the UN *Standard Rules on the Equalization of Opportunities for Persons with Disabilities* (1993). There are the International Red Cross guidelines on emergency medical care. The ICBL victim assistance working group has drawn up very specific *Guidelines for the Care and Rehabilitation of Survivors of Landmines*². And there is the *Mine Action Programmes from a Development-Oriented Point of View* (or Bad Honnef Framework) for an integrated approach to mine action³. I would urge any NSAs working with survivors, first of all to include any survivors in discussions about victim assistance programmes, and then to make use of these resources.

The best that NSAs can do for their own communities of men, women and children, and their own future, whether or not they are fighting for a homeland, is to take the most effective preventive action, by no longer using landmines.

clearing the way to peace

Rae McGrath

Post Conflict Response Consultant, Co-founder of ICBL

Landmine clearance is no mystery. It is a disciplined field engineering process and I could take 10 minutes to teach you the essentials. There are

four key parts to the process. The first is assessment and survey. You could summarise that step as 'know the problem'. It normally starts with what is known as 'Level One Assessment', which is a form of socio-economic survey to work out the impact of landmines and the areas known to be denied. The next step is a technical survey. That means actually going to the minefields and identifying the parameters of each minefield. The next step involves more choice. Having identified the parameters of mine fields, you can mark them, and you can do so temporarily or permanently. At the same time, you can run educational programs, to teach people about the dangers of mines and also to suggest ways that they can live as normal a life as possible without becoming victim to a mine. And the last step is actual mine clearance, the eradication of landmines.

On this last point, let me clarify something. Although the Ottawa Treaty bans anti-personnel mines, when I talk about mine clearance and when we talk about mine action, we're talking about clearing anti-personnel mines, anti-tank mines, unexploded ordnance, cluster bombs, bombs, whatever. This really makes sense when you think about it. If you clear somebody's field of landmines and then say, "Okay, it's fine now, you can go back and farm your fields" and he asks, "But what's that big thing here in the middle?" And you say, "Oh sorry, I only deal with landmines and that's a bomb," he's not going to be very happy! We clear everything.

Now, what do we mean by "clear"? Without going into too much detail, first you have to find the dangerous objects, the mines or the unexploded ordnance within an area. They may be on the surface or they may be buried. You first identify where the object is in general terms. The essential tool that we use is still metal detection, because even though there are non-metallic mines, most mines have some metal content. You could also use dogs — there are various ways of doing it. There is also a lot of money being spent by some very committed and very large companies to develop ways to detect where the mines are, using equipment designed to be hung on the bottom of stealth bombers or using satellites and so on, but these techniques are not going to be available to the average farmer.

Having found the mine, you expose it. This is done face to face, with protective clothing, using a probe and trowel.

At that point, you don't play with it, you are not interested with what is inside it, you blow it up. The general rule is that you destroy mines *in situ*, that

is, where you find them. But very often this is difficult in practice. For example, if most of the mines you are finding are fragmentation mines and you are using metal detection techniques, you are going to have to keep starting again if you blow them up *in situ* because the minefield would be scattered with hundreds of pieces of metal each time you blow one up. In those cases, you would defuse the mine and take them to a place for collective destruction at the end of the day.

Let's look at how useful each of these steps is. First, marking. If you accurately mark the minefields, you can reduce injuries by something like 70 percent. You may ask why not 100 percent. The reason is that if you are living in a situation where you depend on the land for your livelihood, your survival, then even a fence may not be enough to stop you from going in to cut wood or to plant. Marking is a very effective way of reducing injuries, but it does not return the land to use. All it can do is make clear to the population which areas can be used safely and which are used with risk.

Education or mine awareness. It is a bit of a problem quantifying it. Although there must be people whose lives were saved by attending mine awareness classes and mine awareness is obviously very important, it is also true that the great majority of people who get blown up by mines have, at some stage or other, been exposed to mine awareness. Mine awareness is essential, but it is not a solution.

The 100 percent solution is mine clearance. If there are no mines, then there is nothing to blow you up.

Who does mine clearance? Local people must be trained to do the job. There is no point to parachuting in "experts," because this is a long-term task. An indigenous capacity to deal with the long-term problem must be established. Very often the people we are talking about at this point will be NSAs.

Here we come to the realities of peace. The country as a whole may not be at peace, but a whole part of the country may nevertheless have been at peace for long enough to begin mine clearance. This was true, for instance, in Afghanistan.

Secondly, when starting to train people, you must realise that they may come from different sides of the conflict. This is important because, although there may be a political peace process, farmers and fighters aren't invited to sign the treaties, and they very often need convincing themselves that the

time has come to work together for a peace. Mine clearance can be very much part of that process, through the very fact that people are working together in something that is constructive, something that is moving towards peace, removing and destroying weaponry. This is particularly true in war areas. People can see that there is a change, that something is happening that is different than war. This process should not be underestimated within the whole movement towards peace.

Finally, we must talk about the clearance in terms of its humanitarian objectives. Sometimes people are a little bit embarrassed when they say it is humanitarian, perhaps because it sounds a bit like a dream and somewhat utopian in a context of war. But the fact is that this humanitarian objective is the only thing that makes sense of mine clearance. I was 18 years a soldier, and I learned how to clear mines, but I learned nothing that was of any use, other than the technical process, which we know is a very small part. Understanding why you are clearing mines helps set priorities of why you are clearing here rather than there — and it is the key to mine clearance. Once a team begins to understand the humanitarian nature of what they're doing and to establish trust with the communities in which they are working, the war is over in those communities.

discussion

Speaker. A major problem in Palestine is that the Israeli authorities are not allowing the Palestinian authority to import the necessary equipment for demining or checking suspected areas. For example, the Austrian government offered to donate equipment to the Palestinian community, but unfortunately, Israel refused. What happens now is that if suspected objects are found in Palestine, the Palestinian National Security Forces evacuates people from the area, ties the suspected object with a rope and pulls on it. If it explodes, fine; if not, they carry it with their hands to an area under Israeli control and ask the Israeli authorities to come and explode it. This is a high risk procedure. The Israelis recently withdrew from one of the minefields and now it is under Palestinian authority control. The only possible way of dealing with the minefield in the present circumstances is to mark and fence it. The Canadian government is going to fund fences and warning signs around the minefield. In this minefield alone, about 70 Palestinians were either in-

jured or killed in the last few years. What are the possibilities for solving such a problem, and how can international intervention help?

Rae McGrath. There are two issues that you've raised. One is quite clearly political and the other is engineering. Let me deal with the engineering problem. When I talked about clearing minefields using mine detection equipment, in a way I talked about luxury. There are alternatives. Let me give you an example. We couldn't begin working in the way we wanted to in Northern Iraq, because the Turkish authorities wouldn't allow us to take mine detectors into Northern Iraq. They were green, they were seen as military. So we started those teams using manual techniques, and we cleared some huge minefields in this way. That is, we used probing methods. It is a very disciplined, very safe way to clear. If I were to clear my back garden of mines, I'd use probing because it is very effective. So it is still possible to clear your minefield. Having said that, it is obvious that there is some need for intervention to ensure that you can get the best equipment to do the job as quickly as possible. If the minefield can be cleared, there's no need to spend money marking it.

Speaker. It is the same situation in Western Sahara. There was an opportunity to start a demining project in cooperation with Norwegian People's Aid, but it became impossible to do the job because, when Morocco heard about it, they immediately sent a message to the foreign minister in Norway telling them that the political situation was very dangerous in Western Sahara due to discussions about the referendum. So they only did the mine awareness, the first step, and have not been able to start the survey. Now they are going to give support to mine victims. This a political problem. It must be made clear to Morocco or the UN that it is a humanitarian effort and not political.

community rehabilitation

Markus Haake

Coordinator, German Initiative to Ban Landmines

I am happy to have the opportunity to present the Bad Honnef Framework⁴ which presents a concept of integrated mine action from a development point of view.

The Bad Honnef framework says nothing explicitly about rebel groups, nor about how to protect the community in “hot” conflicts. On the other hand, it implicitly gives an answer to this question, by calling for political advocacy.

To illustrate this point I would like to relate an incident which shows that the solution to the landmine problem lies not in the follow-up, after mines are planted, but in a proactive, political approach. Last week in Germany, two people out for a walk found a strange little black box on the ground where the frontier between east and west Germany used to be. They were curious about it and kicked it, until one of them suddenly remembered the lessons he learned in the army. It was a landmine. Twenty years after the military of the former German Democratic Republic cleared what was probably one of the best recorded minefields in the world, and 10 years after private companies undertook a second mine clearance operation in the area, this anti-personnel mine still remained. The incident shows that the use of landmines cannot be controlled or restricted in a way which ensures that civilians are not threatened. Only a ban can exclude that possibility.

The Bad Honnef framework was developed in 1997 by international experts from the campaign and the field, from the North and the South. This first conference was followed by a Review Conference in 1999 which adopted the framework in the present form.

The Bad Honnef framework defines mine action programmes as part of national reconstruction, development and peace building. In a sense, the framework encourages an end to armed conflicts and encourages seeking political solutions.

The framework sets out a comprehensive, integrated approach to mine action. Community rehabilitation is one element of a cluster of activities which include mine clearance, first aid, victim assistance, mine awareness, and political advocacy. Community rehabilitation is the most prominent element of this holistic approach.

The Bad Honnef framework describes a way out of the problem created by landmines, which requires more than technical activities such as removing landmines or fitting prostheses. It is essentially about restoring peace and rebuilding the social fabric.

An example, from the German-based social-medical development and human rights organisation Medico International. Together with the Ameri-

can organisation Vietnam Veterans of America Foundation, and the British Mines Advisory Group, Medico International established an integrated mine action programme in Luena, Angola immediately following the peace agreement between the Angolan government and UNITA.

Luena is the capital of Moxico, the most eastern province of Angola. In former times the economic life of the city centred around the Benguela railroad which connected the copper producing areas of Zambia and of former Zaire with the Atlantic port of Lobito. During the civil war, and especially between 1992 and 1994, approximately 80,000 people fled to Luena from other parts of the province. Moxico, with its 200,000 square kilometers, is more than double the size of Portugal but has only 300,000 inhabitants. When the war was declared over, more than half of Moxico's population was concentrated in Luena.

Partly to prevent UNITA from entering the town, partly to prevent its inhabitants from leaving, a huge quantity of mines had been planted by both parties. Some minefields even reached into the centre of the town. The mine belt surrounding Luena was so dense, that, for years, the city could only be supplied by air. As a result, the population was forced into a state of inactivity. Because of the mines, people who used to live in dispersed villages, and who made their livings by farming, hunting or fishing, were forced into the crowded city with its overcrowded shelters and camps.

There the refugees' own attempts to plan and construct the future constantly failed because of destroyed social relations, increasing violence, and the barely hidden corruption of the authorities.

These were the difficult circumstances in which an attempt was made to realise the comprehensive approach to the landmine problem set out by the Bad Honnef framework.

One of the basic assumptions of the Bad Honnef framework is that no single organisation has the knowledge or capacity to organise all elements of mine action. Accordingly, Medico, the Mines Advisory Group, the Vietnam Veterans of America Foundation, the Jesuit Refugee Services, the Lutheran World Federation, Medecins Sans Frontieres, and the Norwegian Trauma Care Foundation together built up the "Community-oriented Rehabilitation Centre of Luena," beginning in 1996. Such co-operation among organisations, assigning responsibility for different tasks within a single programme according to different capacities, was new for the mine action community.

The Luena project now provides first aid for mine victims, and a prostheses workshop is being built up. The workshop now has an annual capacity of 720 prostheses. Linked to the production of artificial limbs are a physiotherapy department with accommodations for patients coming from distant rural areas, and a social outreach programme.

Medico takes responsibility for the social reintegration of mine victims and capacity-building, as the fundamental precondition for ensuring sustainability. Social integration of mine victims requires building a stable and legitimate social fabric into which people can be reintegrated.

Locally, Medico works with the Angolan Centre of Support for Community Promotion and Development (CAPDC). The present work of CAPDC is to organise “social teams”. The social teams consist of three to four community promoters. Their first task was to build up a network of “mobilisers” to ensure close contact between communities and the teams.

The social teams take responsibility for the entire outreach work of the rehabilitation centre. Given special training, the teams encourage communities to formulate their needs according to their priorities. This psycho-social work of the comprehensive programme attempts to revive the self-confidence of disabled individuals, along with that of the community; to strengthen the sense of personal initiative and willingness to accept responsibility among the people.

Thus, the social teams assist the communities to formulate plans of action and carry them out. A few examples of the activities initiated in this way: small-scale agriculture projects, like family gardens or livestock programmes, to improve nutritional resources and provide a small surplus for market; a health centre built by the community, with training of local health promoters financed by the project; small workshops, like candle and soap production, carpentry; a cinema. All of these projects are designed to improve the relationship between disabled and non-disabled people. Sports, especially soccer, have also supported the re-integration of mine victims. Three disabled people, trained by the social teams, now serve as referees and a local league has been established. All of these initiatives helped to weave a stable social fabric.

These efforts and successes were damaged when the armed conflict between the Angolan government and UNITA began again. The promising process of local reconciliation between UNITA and Luena’s population, which had

already started through initiatives like offering access to the rehabilitation centre to mine victims from both sides of the conflict, immediately came to an end. The government used the return of the war to cut back nearly all social services. The conflict with UNITA provides the authorities with a perfect excuse for doing nothing.

In conclusion:

- ⊙ Community protection is best ensured by banning landmines. Once landmines are planted the only immediate possibility is to increase mine awareness, which is always an insufficient step.
- ⊙ Taking a preventive stand has to include — in addition to a ban on landmines and providing technical assistance for a ban — the elimination of the social circumstances which led, and continue to lead, to the use of mines.
- ⊙ The least NSAs can do is to conduct their struggles without using landmines. ⊙

notes

- 1 Available www.unicef.org/landguide/guidelines.htm. Also see ICRC, “Towards safer villages: mine/UXO awareness programmes,” Geneva, 2001.
- 2 Available www.icbl.org/wg/va/guidelines.php3. Also see ICRC/WHO, “Victim assistance: a public health response for landmine victims,” Geneva, 2000.
- 3 Available www.landmine.de.
- 4 Available www.landmine.de.



chapter 8

developing approaches



The following three sections summarise the discussions held in three workshops at the March 2000 conference. Each workshop looked at a different aspect of the process of engaging NSAs in a landmine ban. In order to capture some of the rich diversity of perspectives present in the workshops, a summary of each discussion is followed by a lengthier recording of the highlights of that discussion.

1 principles of engagement¹

Questions of recognition, neutrality, and solidarity and how anti-mine advocacy should relate to other initiatives to create a lasting peace were discussed in the first workshop.

summary

Beginning with the clear consensus that an impartial application of principles (use of landmines is unacceptable in all situations, by all actors) is essential, participants stressed the importance of the following:

- ⊙ addressing NSAs in their own terms;
- ⊙ building allies within NSAs who could encourage change from within, in their own language;
- ⊙ being clear and transparent about goals and capacities;
- ⊙ maintaining strict confidentiality about discussions with NSAs;
- ⊙ understanding each unique situation or context, for strategic purposes and to avoid unintentional negative consequences in very delicate situations; and
- ⊙ developing strategies specific to the situation.

Certain complexities in working with NSAs were discussed:

- ⊙ appealing to self-interest of NSAs as a reason to join the ban might be

perceived to be promoting their interests as against those of their government opponent;

- ◎ any level of engagement with NSAs can be perceived as a recognition of their legitimacy (i.e. whether or not recognition was intended); and
- ◎ any approach to NSAs is open to political manipulation by either side and hence must be undertaken with caution to (minimally) avoid doing harm.

It was suggested by several that, given these complexities, it would be important to consult further in developing principles for approaching NSAs, comparing the experiences of different organisations working in diverse situations with different NSA groups, each with their various histories and cultures.

It was also suggested that there was nothing unique about anti-landmine work among humanitarian approaches to NSAs, and that principles already established by, for example, the ICRC for its work with armed groups could be adapted.

The importance of taking into account the interactions between anti-landmine initiatives and initiatives aimed at establishing peace was a matter of discussion.

highlights of discussion²

- ◎ **Namibia.** I think it is very important to understand why there is conflict. So, the conflict context has to be established first. Then we can go on with other positions.
- ◎ **UK.** The historical context of a conflict is itself a point that creates conflict. We cannot assume that it is possible to say that this is the context, now we understand it. I think this is something that will come over and over during the whole negotiating process.
- ◎ **UK.** How do you define non-state actors? Until there is a clear definition, the approaches will always be ad hoc. And there are all kinds of non-state actors. How you deal, let's say, with UNITA is quite different from how you deal with other groups trying to work out a position on the landmine issue.
- ◎ **US.** The campaign is very simple. It is a campaign to ban landmines. It is

based on the premise that the landmine is an illegal weapon. It has nothing to do with understanding the context of conflict. It has nothing to do with why non-state actors are using it, why a government uses it. I don't care who uses it. The principle of the campaign is simple: landmines are illegal and no one should use them. So, why spend time trying to find out how to speak to somebody using it? That is the message when we speak to the Kosovo Liberation Army: it is an illegal arm, you cannot use it. When speaking to the Russians, we say it is an illegal arm, you cannot use it. Our message is clear and simple, it does not depend on who uses landmines. And that is why we have succeeded. I have the impression that this conference is about conflict resolution; this is something that I do not recognise from the very simple message of the campaign. It does not matter whether you are a guerrilla, whether you think you are a liberation fighter, the message of the campaign is ban landmines.

- ◎ **Nepal.** In my Nepalese context, over the last five years, because of the conflict between non-state actors and the government, the non-states actors started to use explosives and gradually, they started to import landmines also. On its side, the government also started to use mines to protect themselves. So, in my experience, in my country, landmines is not a separate issue from the context of conflict. For sure the message of banning landmines is clear and simple, but in my country, it is linked to context. A second point I'd like to make is about impartiality: it is very important to gain some capacity to tell the truth. In my country, both the non-state actors and the government have prejudice. We need impartiality to tell the truth.
- ◎ **Burma.** I would like to respond to some of the issues that have just been raised. The motto of our campaign is no mines for anybody, anywhere, anytime. Very simple. Unfortunately the simplicity of our campaign starts and ends there. Yesterday, several people gave their field experiences in approaching non-state actors about the issue of landmine use. When we go there and say no landmines for anybody, for anywhere, what kind of responses do we get? One of the things I learned from the process of approaching NSAs is the importance of being totally transparent. Because I found I needed to worry about what I said to whom, to states, non-states and non-armed people. I was clear with everybody about what my goal was: no landmines anywhere, anytime. But coupled to transparency,

I used confidentiality. What I discussed with them was not public information, unless they were making a public declaration. So I practised what I called transparency with confidentiality. I am transparent about me, totally open about what my goals are and so forth. However, the conversations I had with these groups were confidential. I believe that what we need to discuss is these types of frameworks based on our experience. This doesn't mean moving into any kind of negotiation or conflict resolution.

- ◎ I think one can make a mistake of optimism. One has to be careful about what is actually said in unilateral declarations by NSAs. What they have agreed to and on what basis? One of the difficulties is that the rightness of the cause is not necessarily self-evident and you are not necessarily talking to people who have recognised international humanitarian principles. You may be talking to people who do not think in terms of principles. I remember a conversation I had in Angola. People said they were simply guided by their anger.
- ◎ **Ireland.** I am trying to establish from my own experiences how this work can be carried out. It can look like someone from the outside trying to command those non-state actors and tell them how to do things. From my experience, I would say you have to identify people within those non-state actors to approach. Their principles and their actions are based on some kind of injustice that has been carried out by the state or by non-state actors. You start by identifying things of mutual concern with them on this basis.
- ◎ Keeping the message very straightforward and very simple can mean a wider support for the undertaking. But the way in which one brings these different groups towards that objective depends on the context, on the shared analysis, on the capacities and sometimes also on the timing — that is, whether there is a peace process, a post-conflict situation and so on.
- ◎ I understand the concerns to keep the message simple, these are quite right. But I think it is also necessary to understand why there is usage of landmines. It is important in order to know who we can dialogue with. One of the people we listened to yesterday was a former SPLA officer who is now clearing mines. What struck me is that he decided not to use landmines because they were dangerous even to his own community.

Now what I would like to know is what changed his mind. It would be interesting to make an analysis of this change. It is by comparing experiences of that nature that we can understand how to approach NSAs.

- ◎ **Namibia.** Let us just look at how things stood before we had a ban. We were trying to convince people why we needed a treaty. We cannot just start with the treaty, saying well, we have the law, you have to comply with the law. Before there was a treaty, we were trying to convince, we were lobbying. I think we have to apply the same approach here if we want to get NSAs to comply with the ban. We should not have a double standard. We should precisely go on with the same approach.
- ◎ **US.** I think one of the things we should remember is that what convinces people ultimately to adopt broader principles is not the principles themselves, but seeing that these principles are in their interests. I do not think morals or international law are going to convince people. They are going to be convinced if they are brought to see the cost of the use of landmines and also that ending their use can be in their own interests. I think without that, hardly anybody is going to move. States sign principles when they are convinced it is in their own interest. And I think that is the message when we address non-state actors: it is in your interest. Not only it is good for people, but being good for people is also in your interest; being able to demonstrate that you are doing good for your people is good for you; complying with international principles can help your cause to be recognised at the international level.
- ◎ Raising the question of good for your people and your cause also reminds us that we have to bear in mind that we are speaking simultaneously to non-state actors and to governments and to their constituents. This is sometimes very difficult.
- ◎ When we go to Russia, we also tell them that we are going to USA and to China. We let them know that we are not solely focusing on them and that the message is the same for everybody. Tactics vary in different countries; they depend on languages, phrasing, appeals, media, religion, different ways to raise awareness. But the bottom line is still the same.
- ◎ I think we all agree that the message and the overall objective of our campaign are simple. But I also think that we have to be extremely pragmatic in working out how we are going to lobby different groups. We cannot approach them as if they were a homogenous group. That is even

more important when dealing with what we have called non-state actors, because these groups can comprise a lot of things, much more than states. We more easily understand what a state is, but regarding non-states actors, I am sure even in this room different people have different understandings of what non-states actors are. That is why strategies have to be very pragmatic.

- ◎ Guidelines that are useful in one context might appear completely useless in another situation. So I think we need to make it up as we go.
- ◎ Why have certain people in NSAs come to the conclusion that they don't want to use landmines any more? One thing in common I have noticed is age. Those who have come to this conclusion are older. And several times the statement they are making is "I have seen so many people killed," or "I have killed so many people with landmines and it has not made any difference." They are the survivors, the ones who survived up to that age and they have experience. Unfortunately, one of the things that is going on now is that much of the leadership in NSAs is being transferred to younger groups, who are harder headed and who do not have the advantage of that experience. We have been polling some of these elders who are still respected and discussing how they can begin to try to influence people as a group, unified across the struggle. I don't know if we are going to be successful in doing that, but that is something I have noticed.
- ◎ **Western Sahara.** I also want to know how to approach states and tell them to ban landmines. It is not only the non-state actors that are using landmines. The biggest nation is still making mines. In Italy, they closed the factory that was making mines but the owner opened it in Egypt. Now they say Egypt is producing mines, but the factory belongs to Italians.
- ◎ So without handling the issue of mines with states that produce or use them, can we achieve much with non-state actors?
- ◎ **US.** In developing principles of approaches to non-state actors with regard to landmines, is there anything unique or different about that approach? From a humanitarian standard, there are many concerns about conflicts involving non-state actors. Is there something unique about this one that is going to give us something new and thereby contribute to those others?

- ◎ One thing that may be unique with landmines is that because of the campaign, there is widespread support for this issue. Fighting parties would not agree on many other issues.
- ◎ **Zimbabwe.** One of the general questions that needs to be addressed in all humanitarian approaches to NSAs is the question about recognition. There is always the danger that by simply approaching an NSA that you give them a status. This is the case even in the landmine campaign, which is so well known. Exercising principled impartiality is important.
- ◎ It is important to gather basic information about the NSAs we're dealing with, as has been done in Burma. I think that is perhaps a model for other kinds of taxonomic analysis of NSAs, which will also help to confine the definition of an NSA a little bit. After that basic analysis is done, the question is really how to prioritise NSAs. Should we start with those more likely to agree to the principles? Or is it more important to reach groups who are, for example, manufacturing mines as well as using them?
- ◎ **Burma.** In Burma, we focused first on getting a statement from a non-combatant party which had huge moral authority — the winners of the 1990 election in Burma, who have a political organisation within Burma and have endorsed the Mine Ban Treaty. They have stated that when they can convene their parliament, as elected, they would accede to the treaty. That statement gives us enormous moral authority. Now we are looking at minor players, who are using landmines. We are trying to persuade them first, before we go after the major players, because if we get the smaller ones, then it helps us talk to the bigger ones. But this would be different from one situation to another.
- ◎ I think the thing that is different in approaching NSAs is that, while it is still the same message of no mines for anyone, anywhere, at any time, we are now approaching organisations who, by their nature, are illegal. The international campaign and all of the previous efforts have focused on states or formal power authorities and therefore the emphasis has been on legal frameworks. Why should NSAs care about legal frameworks? What has a legal framework done for them? There has to be a difference in approach at this level. It is a huge experiment.
- ◎ I'm not sure how much we have to do to develop general guidelines. I think much of this work has already been done by organisations like the ICRC and others who are providing medical care on an impartial basis to

both sides of the conflict. Their guidelines are based on impartiality and transparency: “we help you because you are wounded”, “we don’t care what colour of uniform you have”. And I think our approach has to be very much the same. However, when they deal with NSAs and when they deal with the former military, they need different approaches and so will we.

- ◎ **US.** I agree. Obviously our approach has to be different for NSAs. But let me give an example. Russia’s response to the “ban the weapon” message was “we can’t do that right now, we have a terrible conflict and until we can resolve the conflict, there will be a need to use the weapon”. I think it is not our job to understand contexts of conflicts. We know why people use them. They are cheap. They terrorise the opposition. We have been successful because we have been clear that our message is still the same: “give them up”.
- ◎ **Philippines.** It is important to draw some lessons from different experiences in different conflict situations which very often people feel are unique. That is why a lot of ad hoc attempts have been made on the ground. But in the rare times when people are gathered together, there can be a kind of a cross-fertilisation of different experiences from diverse continents. We may be able to learn some lessons, draw some commonalities from this diversity beyond merely saying that we should stick to the simplicity of our message and deal with NSAs in the best way possible.
- ◎ One way would be to compare the different approaches being used to engage NSAs and see if there are valid differences there.

2 tools for engagement³

A second workshop looked at questions relating to options for NSAs to make formal commitments to a landmine ban, standards and legal points of reference, adequacies and shortcomings of these options for various types of NSAs; and discussed what mechanisms could usefully be developed.

summary

The workshop explored, in general terms, the approaches that could be taken to sensitize NSAs to the problem, encourage them to adopt a ban, and hold them to their commitment. The necessity of developing strategies appropriate to specific contexts was evident to all.

The following **international legal instruments** were discussed both as international frameworks of reference (in a persuasive approach to NSAs) and in terms of their legal applicability (in situations where a “harder approach” might be useful):

- ◎ The 1977 Additional Protocol I to the 1949 Geneva Conventions applies to national liberation movements fighting colonialism, racism or alien occupation, who are representative of the people, and are engaged in armed conflicts with state signatories to the protocol. It prohibits the use of weapons like landmines which do not discriminate between civilians and combatants, and which inflict unnecessary suffering or superfluous injuries.
- ◎ In some instances, NSAs could be prosecuted under international criminal law for use of mines. Grave breaches of International Humanitarian Law are war crimes.
- ◎ International Human Rights Law.
- ◎ The Ottawa Treaty, which is up for review in 2004 and the benefits of trying to amend it to cover NSAs could be explored.

Negotiated **domestic peace treaties** or **cease-fire agreements** with specific reference to landmines and mine action can be very useful tools for engaging NSAs in a ban and can also establish monitoring mechanisms acceptable to both parties.

Unilateral declarations can be made either as standard or individualised

statements. The utility of a standard statement is that it can act as a universal guideline. However, individualised statements that meet certain criteria (e.g. total ban, mine action cooperation) provide flexibility to respond to diverse situations, reflect diverse values (e.g., Marxist or Islamic), and also allow NSAs to be involved in the process more deeply, thus developing a better understanding of the issues. It was suggested that the NGO Geneva Call could act as depository for such unilateral declarations, with the Canton of Geneva acting as official guardian.

In general, appealing to the NSA's own values, e.g. Marxist or Islamic values, in calling for a ban was considered a useful strategy of approach.

It was suggested that international relations are very dynamic presently, and that there is room for more **creative approaches**, where NSAs are involved in educating and perhaps monitoring each other. It was also suggested that an NGO like Geneva Call could share information with NSAs and facilitate such communication among them. This would obviously require much trust among the parties concerned. A meeting among NSAs to discuss these ideas further was also suggested, possibly under the auspices of Geneva Call.

The importance of monitoring compliance with official positions on landmines, in a reciprocal fashion (i.e., both NSAs and states), was stressed. This could be carried out by Landmine Monitor, an NGO like Geneva Call, at the national level in the context of a bilateral agreement, at the regional level, or at the local level by communities affected (as in the Philippine 'peace zones'). The need to educate and mobilise civilians was stressed in this regard.

It was thought that an NGO would have the freedom to play a key role in approaching and monitoring NSAs, while governments, which might possess diplomatic and trade relations with governments who are in conflict with NSAs, would find it more difficult.

On the question of who to engage, it was suggested that not only groups presently using mines, but groups who could use mines in the future should also be engaged.

expert input

input 1.

tools of engagement, Soliman Santos

The main objective of any tool for engaging NSAs in a landmine ban would be something like a total ban on APMs (use, development, acquisition, stockpiling and transfer) and cooperation in mine action (stockpile destruction, mine clearance, victim assistance and mine awareness). These are the basic elements of the Ottawa Treaty. But the various tools we can use to engage NSAs can go beyond these basic elements, and we will see this when we come to the forms these tools can take.

We can distinguish “soft approaches” from “hard” criminal penal sanctions. Soft approaches rely on dialogue and education, including dissemination and training, and may utilise formal agreements. There are various forms that formal agreements with NSAs can take. We have unilateral declarations, bilateral agreements between governments and rebels (possibly in the context of the broader peace process) and Memoranda of Understanding (MOUs) involving NGOs, like the SPLA/M MOU which mentions Operation Save Innocent Lives (OSIL) Sudan. More creatively, we could make use of mine-free zones, multilateral undertakings among rebel groups, or organisations like Geneva Call acting as depositories for unilateral declarations. Let’s look at some of these tools in more detail.

Unilateral declarations can come in different forms: a formal written declaration or a simple letter of intent. You will note that the Taliban statement, for example, goes beyond the Ottawa Treaty parameters by very explicitly saying “all types,” not just anti-personnel mines, are banned. Here are some recent examples of unilateral declarations on landmines by NSAs:

- ⦿ Sudan People’s Liberation Army (SPLA) Resolution on the Problem of APMs, November 1996;
- ⦿ National Liberation Army (ELN) of Colombia public declaration reaffirming its earlier commitment not to use landmines against civilians, July 1998;
- ⦿ Somali Patriotic Movement (SPM) banning landmines in Jubaland, September 1998;
- ⦿ Taliban (Islamic Emirate of Afghanistan) statement banning all types of landmines, October 1998; and

- ◎ Polisario (Saharawi Authorities) announcement of readiness to sign the Ottawa Treaty.

A new mechanism to anchor unilateral declarations is being developed, **Geneva Call**. Geneva Call is an independent international organization formed under Swiss law, which calls upon NSAs to commit themselves to a total ban on APMs and to cooperate in various forms of mine action. It aims to provide a mechanism for NSAs to adhere to a common or standard deed of commitment, or to deposit their unilateral declarations, subject to certain criteria. It was inspired by the legal “precedent” or “model” of the 1949 Geneva Conventions and 1977 Additional Protocol I, which, under Art. 96 (3) provides for national liberation movements to deposit their declarations of adherence. Geneva Call’s long-term vision is to develop a new international instrument, reflecting greater inclusiveness of NSAs in the development of legal and normative standards. The key point is providing a mechanism for NSAs to sign (and adhere) to a common or standard deed of commitment, and/or to submit their unilateral declarations (with the basic elements of a total ban and support for mine action). The custodian or guardian for these deeds is the Conseil d’Etat de la République et Canton de Genève. Geneva Call can provide the basis of some kind of accountability and transparency; it can provide information and possibly also monitoring, verification, periodic visits and inspections. This still has to be developed.

Another tool to engage non-state actors is a **bilateral agreement** between NSAs and the respective government. Martin Griffiths (*see Chapter 6*) discussed different forms such agreements can take. These are usually not limited to landmines, but part of a broader peace or ceasefire agreement. Final peace agreements terminating hostilities, ceasefire agreements while peace talks are going on, or partial peace agreements covering the area of human rights and International Humanitarian Law (like the Human Rights and International Humanitarian Law agreement between the Government of the Republic of Philippines (GRP) and NDF) can all include a prohibition on landmines. Mine clearance can also be covered by these agreements, especially post-conflict agreements. The advantages of bilateral agreements are mutuality and reciprocity, and the fact that they are specific to the country and conflict context. They are given a legal basis in common Article 3 of the Geneva Conventions, as special agreements between parties to the conflict. Some examples:

- ⊙ provisions for location and destruction of booby-traps in the tripartite peace agreements/arrangements among the Communist Party of Malaya (CPM) and the Governments of Malaysia and Thailand, December 1989 (this resulted in joint mine clearance operations in the border area and would make a good case study);
- ⊙ provision on clearing mine fields in the Sudan Peace Agreement between the Sudan government and the South Sudan United Democratic Salvation Front (UDSF), Sudan People's Liberation Movement (SPLM), Equatoria Defence Force (EDF) and South Sudan Independence Group (SSIG), April 1997;
- ⊙ provision on landminings as prohibited hostile act in the ceasefire guidelines between the Moro Islamic Liberation Front (MILF) and the Philippine government, November 1997; and
- ⊙ substantial provisions on landmines in the Comprehensive Agreement on Human Rights (HR) and International Humanitarian Law (IHL) between the National Democratic Front (NDF) and the Philippine government, March 1998 (this is a good model for textual and language analysis).

Such agreements can go beyond the Ottawa Treaty framework; the landmines ban is addressed under a section on respect for human rights, as well as the section on humanitarian law in the last agreement listed, for example.

Memoranda of Understanding between NSAs and international organisations or NGOs can cover landmines among other humanitarian issues. Some examples of MOUs with NSAs on humanitarian standards (not necessarily covering landmines) are:

- ⊙ ICRC MOU/ Bosnia-Herzegovina, 1992;
- ⊙ UNICEF Ground Rules/ Sudan, 1995;
- ⊙ UN MOU/ Afghanistan, 1998; and
- ⊙ UN Principles of Engagement/ Democratic Republic of Congo, 1998.

Multilateral undertakings, which could be considered to fall under the department of “wild and crazy ideas,” could also be envisaged. This would involve a gathering of NSA representatives to discuss and adopt standards for armed conflict, including on landmines. This could result in a rebel code of conduct, protocol or treaty. The closest legal precedent or model for this is the

1974-77 Geneva Diplomatic Conference in which national liberation movements participated and which produced the Additional Protocols.

Another tool for engaging NSAs in a landmine ban is a **mine-free zone**. Although mine-free zones may be regional, they are likely more feasible at the local community level. The ideal scenario is a trilateral dynamic between state, NSA and local community, where the local community demands or even declares such zones (as in the peace zone experience in the Philippines). An initial concept paper on the idea has been drafted by the South African Campaign to Ban Landmines. Legal “models” can be found in safety zones, neutralized zones, non-defended localities, and demilitarized zones under the Geneva Convention IV, Arts. 14 & 15, and Protocol I, Arts. 59 & 60, respectively.

I’ll just address one more item in the long list: long term **peace-building** and **conflict resolution**. It’s not enough to ban landmines, we must end the war, to end the reason for using landmines; and to end the war, we must resolve the conflict, especially its causes or root causes.

input 2.

the law: tool to engage non-state actors
in a landmine ban, David Matas⁴

The tool I want to suggest that we use to engage non-state actors in the landmine ban is the law. There are few lawyers in non-governmental organizations promoting the landmine ban. There are even fewer lawyers in the armed opposition groups which may be using landmines. Non-governmental organizations may have no legal status in the countries in which they operate. Armed opposition groups, by their very nature, are outside the reach of the law. So, why do I suggest that the law is a useful tool for NGOs to engage NSAs?

Sol Santos, in his paper titled “The Ottawa Treaty and Non-State Actors”⁵, refers to two approaches to using the law, the hard approach and the soft approach. He describes the hard approach as the coercive approach exemplified by the use of international criminal law. The soft approach is persuasive, educational.

For those uses of landmines that amount to a violation of international criminal law as either war crimes or crimes against humanity, the law serves as a deterrent. Members of armed opposition groups can be told, ‘do not use

land mines to commit these crimes, or you can become subject to prosecution’.

War crimes and crimes against humanity are universal jurisdiction offences, which means that a person can be charged wherever in the world the person happens to be, even in a state that has no connection at all with the victims or the territory of the crime. Local immunities that may be negotiated or imposed at the end of an armed conflict have no legal effect outside the territory of the state that has granted the immunity. There is no limitation period for prosecution of war crimes or crimes against humanity. Perpetrators are subject to prosecution no matter how far back in time the commission of the crimes.

However, not every use of land mines amounts to a war crime or crime against humanity. For states, in situations where individual criminal responsibility is not engaged, the value of law is to set a standard to which states ascribe and by which they can be held accountable.

Non-state actors cannot subscribe to law in the same way that states can. Non-state actors cannot sign the landmines treaty nor indeed virtually any other international treaty. The First Protocol on International Armed Conflict to the Geneva Conventions on the Laws of War is an exception. That Protocol allows national liberation movements fighting colonialism, racism or alien occupation to sign on to the Geneva Conventions and the First Protocol [Protocol Article 96(3)]. In spite of that exception, no liberation movement has ever, as far as I am aware, acceded to that Protocol.

Objectively, there are few armed struggles today that can be characterized as a fight against colonialism or alien occupation. The situation is different for racism. Many governments that rule by force manifest intolerance towards a racial, ethnic or national minority. The scope for application of Protocol I is significant.

Use of Protocol I requires engaging both states and non-state actors. Protocol I applies only to those national liberation movements engaged in an armed struggle with a state signatory to the protocol. Before the International Campaign to Ban Landmines can try to persuade an armed opposition group to sign on to Protocol I, it must first persuade the state in whose territory the conflict is being fought to join the Protocol, if it is not already a party.

Protocol I is a useful tool, but it suffers from the defects both that it goes too far and that it does not go far enough. It does not go far enough in the

sense that it does not refer specifically to landmines.

However, it does incorporate general humanitarian law prohibitions which would apply to the use of landmines. These principles prohibit use of weapons which do not discriminate between civilians and combatants and which inflict unnecessary suffering or superfluous injury. Landmines arguably fall within these categories. I say “arguably,” although to many there may not seem to be much of an argument that could be made in favour of landmines as being discriminating, necessary or not superfluous. The fact remains that there are some states which would argue that the general prohibitions of humanitarian law do not imply a specific ban of all landmines.

Protocol I goes too far in two ways. First, it gives captured armed opposition group members prisoner of war status. Once both a state and an armed opposition group are parties to Protocol I, then the state cannot prosecute a captured armed opposition group member for engaging in armed conflict, but only for violating the laws of war. States that have not already signed on to Protocol I and are in the midst of an armed conflict are unlikely to want to give their rebels even this sort of limited immunity. Nor would the International Campaign to Ban Landmines necessarily have an interest in persuading states to give rebels that sort of immunity.

Protocol I goes too far in a second sense. It is not only states in whose territory the conflict is to be found which must be addressed. All states, through inter-state organizations, must be engaged.

According to Protocol I, national liberation movements must represent a people. Armed opposition groups are in no position to contest elections. In the absence of elections, an indicator of representativity is international recognition. Yet, international recognitions of national liberation movements are few and far between. Right now, I am aware of only two such recognitions, the Palestine Liberation Organization, recognized by the United Nations as representative of the Palestinian people, and POLISARIO, recognized by African states as representative of the Saharawi people. Again, the International Campaign to Ban Landmines has no interest in persuading states to recognize any national liberation movement as representative of a people.

Though armed opposition groups cannot sign on to international treaties, they can sign on to domestic treaties, be it peace treaties or ceasefire agreements with the government forces they have been fighting. These treaties can and should incorporate human rights and humanitarian norms, including

a landmine ban. Acceptance of human rights and humanitarian norms, whether before or during the negotiation of domestic treaties, is a confidence-building measures which assists the peaceful settlement of disputes.

Outside Protocol I of the Geneva Conventions on the Laws of War, non-state actors have no possibility of signing international instruments. However, non-state actors can acknowledge the applicability of those instruments to their armed struggle. The international law banning landmines, like all law, depends on voluntary compliance for its effectiveness. There has to be widespread acceptance and understanding of the need for any law for that law to be effective. The law is a norm that expresses community will. Unless that community will exists, the law is just oppression.

Rebel groups, by their very nature, reject some laws. However, there is a difference between rejecting some laws and all laws. International human rights and humanitarian law set out basic norms accepted by all humanity, whether in peace or war, whether the conflict is internal or international.

Even though human rights and humanitarian norms are an expression of the will of the global community, that does not mean that everyone in the global community knows these norms. The value of these norms has to be relearned with each armed conflict. However, the norms themselves do not have to be reinvented.

Because the norms are there, we can avoid the horrors and tragedies of past armed conflicts. We need only to pay attention to the experience of the past encapsulated in existing human rights and humanitarian norms. Communicating human rights and humanitarian norms to the parties in an armed conflict is nothing less than communicating the wisdom of civilization accumulated from the depths of past human suffering.

Non-governmental organizations are a useful channel of communication for these norms in large measure because they are not representatives of states. They bring to the communication neither a political nor economic agenda. They are specialists only in human rights or humanitarian work. Their informal status makes them the voice of human rights and humanitarian law alone and not the voice of the legal structure which the armed opposition groups, by their very armed struggle, oppose.

Even though armed opposition groups cannot sign on to international human rights and humanitarian law treaties, with the one exception I just

mentioned, they are still bound by those treaties. I have argued at length the applicability of international human rights law to armed opposition groups in an earlier article⁶, and I will not repeat that argument here.

However, it is one thing to argue that armed opposition groups are bound by international human rights and humanitarian law. It is quite another for these groups themselves to accept that they are bound by this body of law. Explicit acknowledgement of the applicability of human rights and humanitarian norms by armed opposition groups is essential to promote respect for these norms.

Once armed opposition groups accept the applicability of these norms, it becomes possible to compare their behaviour with their statements. There is a parallel between ratification of and/or accession to international human rights and humanitarian law treaties by states and acceptance of the applicability of international human rights and humanitarian norms by armed opposition groups. Just as states, once they sign on to international human rights and humanitarian law treaties, can be held accountable for their promises to comply with those treaties, armed opposition groups, once they explicitly acknowledge the applicability of international human rights and humanitarian norms, can be held accountable for that acknowledgment.

Much of the work of the non-governmental community in human rights is compliance assessment, comparing what governments say, through human rights treaties, with what governments do. This compliance assessment, with its attendant publicity and mobilisation of shame, is an important tool in promoting compliance. Once armed opposition groups accept the applicability to them of international human rights and humanitarian norms, the non-governmental community can engage in that same effort of comparison, comparing what armed opposition groups have said, through their acceptances and acknowledgments, with what they do.

Armed opposition groups cannot sign on to the Ottawa Treaty. They can, nonetheless, acknowledge that the treaty, once signed by the government of a state in whose territory they are fighting, applies to them. They can undertake to acknowledge that the treaty, if signed by the government of a state in whose territory they are fighting, would apply to them. They can accept that international humanitarian and human rights law renders the use of landmines illegal, whether the government of a state in whose territory they are fighting has signed on to the Ottawa Treaty or not.

These sorts of acknowledgments or acceptances help to develop understanding and respect for the law on landmines; they provide an incentive to states to sign on to the Ottawa Treaty; they make compliance by states with a landmine ban more likely; and they provide an instrument for the non-governmental community to mobilize compliance by all parties to a conflict with the landmines ban.

There is a tendency to leave law to lawyers. Yet, for law to be respected, the whole community must be engaged. The law has a contribution to make to a landmine ban amongst non-state actors. The tool of law can and should be used.

input 3.

NSAs and the Ottawa Convention, Steve Goose

I'd like to make a couple of remarks about NSAs and the Ottawa Convention. When the treaty was negotiated in Oslo in September 1997, there wasn't a lot of consideration of this issue. It wasn't something the ICBL focused on and it was not something the ICRC focused on and it was not something that the governments themselves were paying a lot of attention to.

Nevertheless, relatively late in the negotiations, we began to think about it more. The government of Colombia put forward a proposal that was aimed at applying the convention in some way to NSAs, with language they introduced about common Article 3 of the Geneva Conventions. There were objections to this, largely on the grounds that it might restrict the scope of the convention. Common Article 3 applies to international conflicts, and the convention was to apply in all circumstances.

ICRC, with support from the ICBL, then introduced some alternative language, based on the idea that there needed to be some kind of reference to the obligations of NSAs under international humanitarian law in the convention. They proposed the simplest language possible, which was that the obligations of this treaty apply equally to NSAs. This was debated, though not at great length. It received support from a handful of governments as well as the ICBL, but eventually was not adopted.

It was not adopted, perhaps in large part because there hadn't been enough thought given to it. Groundwork, such as speaking in advance to a large number of countries to build support for the idea, had not been done. I

think that was probably the key reason. Perhaps there was also some nervousness that this would lead to legitimising NSAs, giving them what some governments believe to be undue recognition and status, although that was never articulated clearly in the debate.

This is all background to say that, should one wish to pursue this when there is an amendment conference of the Ottawa Treaty (likely to happen in connection with the review conference in the year 2004), this issue could certainly be raised again, either with the kind of language that the ICRC proposed back in 1997, or some variation of that. It would then take generally the same approach as the Geneva Conventions or customary International Humanitarian Law, which applies to all actors, be they state, non-state or individuals. We would have to start building support for this early on in the process if we want to pursue it.

There have also been discussions about the possibility of pursuing the criminalisation of the use of anti-personnel mines through the International Criminal Court. This would be down the road a fair bit; it can only happen seven years after entry into force, which is itself going to take any number of years.

I would say that we need to think about this issue of when one can consider the ban or the Ottawa Treaty to be part of customary International Humanitarian Law. When the world is convinced that this is part of customary International Humanitarian Law, it will apply equally to states and NSAs. Ultimately that norm-building may be the best way to get application to NSAs.

Peter Herby. The proposal by Colombia was seen by a large number of states as somehow recognising, implicitly or explicitly, non-state groups as having a particular legal personality, and even an international personality. Of course this was unacceptable to a large number of states. I think these reasons for rejecting it are questionable: in Protocol 2, as in common Article 3 to the Geneva Conventions, there is no great implication in terms of their recognition. You could even write into the text that recognition is not implied in any way. So perhaps the real reason it was rejected was that it was a new issue, brought up at a late moment in the negotiations. Delegations didn't have instructions and didn't understand the complex issues it involved. So I think it's an issue that, in theory, could be reopened at a future date. I am not sure whether it's wise to do so, given that the convention already indicates quite clearly that the obligations apply in all circumstances and given that every

time you reopen a convention for an amendment there is an opportunity to weaken it. I think we would be quite concerned about that happening. I think that the most important work in this area is engaging armed opposition groups on the moral, political and legal issues involved. Also to change the political and social environment in which they operate so that there is a chance of getting them to change their behaviour.

input 4.

geneva call, Elisabeth Reusse-Decrey

I would like to provide you with some background information on Geneva Call. When we started discussing the NSA issue within the ICBL, the Swiss Campaign approached the Swiss government to ask if they would be willing to act as depositary of unilateral declarations on landmines being made by NSAs. The Swiss government decided not to accept this role. Due to the politics involved, it is easy to understand why. Such a role could lead to certain tensions with those governments facing NSA activity and thereby strain diplomatic relations. The idea then arose of setting up an independent, non-governmental organisation to act as depositary of the commitments made by NSAs. Freedom of association is total in Switzerland. It was then very easy to set up such an organisation, an organisation we named Geneva Call (*Appel de Genève*). The incorporation of Geneva in the name is a reference to International Humanitarian Law, which is commonly referred to as “Geneva Law”. It also represents the decision by the Government of the Canton and Republic of Geneva to stand as custodian of the declarations of commitment received by Geneva Call.

This is where Geneva Call stands today.¹ It is in its early stages of evolving as a new non-governmental mechanism. Geneva Call has already received declarations of intention by certain NSAs, so now it is up to us to work with them and monitor whether the groups that intend to deposit a declaration of commitment under Geneva Call will comply with the terms of commitment we have established. At this point, there are any official pledges but many promising intentions have been made.

We need to look at some of the questions raised by Martin Griffiths (*see Chapter 6*) such as the level of representation of NSAs. Many factors will have to be studied closely, as we develop, slowly but surely. The idea is to get the process rolling now, so that there is a mechanism available for NSAs, which

are not allowed to enter into the governmental Mine Ban Treaty, to commit themselves to a total ban on landmines; such a mechanism will make sure that their commitments are widely known, thereby obliging them to abide by their pledges.

We also need to ask the same questions that are being asked concerning governments, which do not respect their engagements, questions about incentives and sanctions, and others about ensuring that these entities abide by humanitarian norms.

To sum up, Geneva Call can be seen as a developing mechanism. It may well turn out to be a transitional instrument if, in a few years, the Ottawa Treaty is amended to allow NSAs to adhere, or if these questions are satisfactorily addressed by the International Criminal Court. At this point, Geneva Call would no longer need to exist. However, until then, we feel that there is a gap, which it is essential to fill.

highlights of discussion

- ◎ When governments are present, there is a possibility that NSAs will not speak frankly about their positions and levels of understanding of the issue. What I suggest is allowing the NSAs to discuss the issue among themselves. Is it possible that Geneva Call could provide a venue for NSAs to discuss the question of landmines more openly and deeply? I have spoken with other NSAs present here, and they have all said they could not express their opinion due to the limited time, the structure of the conference, and other problems. How can we get the real feelings of the NSAs about this sensitive issue? They are deeply involved in the issue, have lots of victims amongst them; they have to be given the opportunity to express their opinions freely.
- ◎ There seem to be two schools of thoughts about what kind of declarations from NSAs are most useful. Either a standard declaration, which I think is the approach of Geneva Call, or a more flexible, individualised declaration which depends upon the situation. I think there is utility in developing standard statements because these could act as a guideline for NSAs. But I would like to hear more about the arguments for and against these two models.

- ⊙ I think it doesn't make a big difference whether there is a standard declaration or NSAs formulate unilateral declarations themselves, as long as certain elements, certain criteria like total ban and mine action are met. The NSAs could in fact be given an option on whether they prefer a standard deed or their own unilateral declaration — or both.
- ⊙ We have such a great variety of NSAs, some want to be states themselves, and some do not pronounce or express any demands. It might make sense to some to agree to the Ottawa Treaty and make commitments to comply with other laws connected to landmines. Geneva Call could receive these commitments. A standard deed would not be able to accommodate such arrangements.
- ⊙ Geneva Call is a pilot project and of course there are many more questions than answers. First of all, I disagree that we should have some state control, state monitoring, state decisions in this. As non-governmental associations, there is no need for us to ask permission and be controlled by the Russian government, for example.
- ⊙ I think the aims of Geneva Call should be more clearly stated. There seem to be three main aims and goals of Geneva Call. I think the primary aim of the Geneva Call is to facilitate universal implementation of the ban. This will mean working with both governments, whether we want to or not, and NSAs. The second main goal as I see it would be to ensure that NSAs adhere closely to humanitarian law regarding landmines. I think the third aim is to be a depositary for NSA commitments, if requested. To meet these aims, Geneva Call will have to find the right people locally, dedicated people who can do research. This is not so easy, from my experience in Russia.
- ⊙ From my experience in the post-Soviet area, I think that in most cases, NSAs will support the idea of landmine-free zones. These can be initiated at the non-governmental level. Codes of conduct are not so easy: in Georgia and Abkhazia, for example, these would not work. Mine awareness, on the other hand, can be extremely useful: reaching the constituencies. Finally, it is important to understand the historical background in formulating an approach.
- ⊙ Imagine that I am an NSA and, let's say, the head of a warring faction, and the international community is putting pressure on me by banning my travel and canceling my bank account in Geneva because there are alle-

gations that I am using APMS. So I say to you, sure I'll sign any treaty and I hand it to you. There were about 70 or 80 treaties completely disregarded and broken in the 18 months of the Bosnia conflict between 1992 and 1994. People simply use these bits of paper in a very cynical and manipulative way because they mean a lot more to the international community than to the people signing them. Who is actually going into my territory to check that I am honouring that treaty? If no one is, what value does that sheet of paper have?

- ⊙ Simply, we have to try. There is of course a risk that some NSAs will make use of their signatures to try to improve their image, even as states do. Although Turkey signed the convention against torture — in order to be able to enter the European Union — we know very well that Turkey is violating its commitment every day. But we do not do away with the convention on torture simply because some states use it only for political purposes. We should not give up a tool if it has some value in combating landmines. There would be no conventions in the world today if the fact that they have been used for political purposes or the fact that they are not being respected were taken as a reason to abandon them.
- ⊙ Nobody will be doing intrusive detailed inspections and nobody should put too much emphasis on these pieces of paper that may be signed (and it should be made clear that they do not have a legal status). That does not mean that the declarations are not useful tools. If they are signing them because they want to get good public relations value out of it, that means that they are sensitive to public relations. They'll get very bad public relations if they go back on their public declarations. It also just serves the purpose of showing that NSAs have been educated about and are sensitive to the issue.
- ⊙ **Philippines.** Every revolutionary organisation or armed group has its own norms, for example, in conducting military operations. Although we didn't read Protocol 1 and 2 in the International Laws of War, in practice we follow them. We did not read the Ottawa Treaty — it did not reach our community — but in fact it is already captured in our principles and our orientation in conducting war.
- ⊙ Looking at the Philippines experience, we have groups who are willing to make some kind of a commitment through Geneva Call. I think to a large extent monitoring is possible in the Philippines case, if we have

structures with which both states and the NSAs cooperate, especially if these are within the framework of a peace process or ceasefire process. We have a joint ceasefire monitoring committee and, since landmines are specifically identified as hostile acts in the ceasefire agreements, we already have a mechanism to monitor implementation of both the government commitment to the Ottawa Treaty and the NSAs' possible commitment to Geneva Call. So the monitoring does not have to be done at the international level; it can be done at the national level, or at the regional level, if the facilities cannot be instituted at the national level. Or even at the community level: we have what we call "peace zones" that are very local, even just a village structure. These peace zones are maintained by people in the community. The community declares its village a peace zone and no armed group can bring in arms or undertake any armed offensive. It is the community that does its own enforcement. Of course, the community does not have its own arms to enforce the rules or its own penal institution to sanction violators; they operate largely on moral persuasion and moral pressure. These various approaches are practical and can effectively help to stop the use of landmines.

- ◎ **Philippines.** In the recent armed confrontations in the Philippines, the government is accused of using mines in provocative acts in contravention of the ceasefire agreement. There are some NGOs who have come to the rescue, as agreed by the MILF and the government; the quick response team and an NGO coalition. But there is still a gap in terms of monitoring; Geneva Call could play a useful role in monitoring in this situation. If the government continues to violate this agreement, we will have no other recourse but to use landmines in order to survive. This is our call to the Geneva Call to make its own commitment to NSAs; because any commitment from NSAs must have a corresponding commitment from Geneva Call. Geneva Call could also help to persuade the Philippines government to adhere to the landmine ban.
- ◎ The MILF declaration does not go very far — it says we will ban landmines unless we really need to use them; we are going to keep them in stockpile and if we really need them we are going to use them. That's not a ban on landmines, that's a ban in peacetime. Still the MILF declaration is useful in the sense that it shows that they're sensitive to the issue.
- ◎ I have a number of problems with Geneva Call as it is set up, both with

the precise language of the call, which I think is problematic in a number of places, but also with the concept in some ways too. It is probably desirable to have a convenient central place where these declarations can be deposited, although “deposit” makes it sound too official — where they can be sent. It may make sense or it may not be all that important. If the MILF wanted to give their declaration to the Philippine Campaign and the Taliban wanted to give it to the Afghan Campaign, it might be just as useful. But perhaps having a spot where they are all together is useful. It could be any NGO, but if the Geneva Call is established for this purpose, I think that’s fine. However, it seems to me that you are trying to do too much. First, to give it too much of an official, legal status when it does not have any, any more than any other NGO in the world. In some of the Geneva Call literature, it talks about trying to make Geneva Call into a new international instrument. But it doesn’t have any legal status. There is also mention of Geneva Call doing inspections. But would it be permitted to do so? Would it have the staff capable of doing that, and of monitoring globally? In reality, it is just a place where NSAs can send their declarations. The declarations can be individualised or made according to some standard form, neither has any more legal status. To have a central place, to give NSAs some kind of idea of what a declaration should look like is fine. But talking about new treaties and inspections, or about some sort of official status because the Canton of Geneva is the guardian — I don’t see how this helps. And in some ways, it may even be misleading, by making NSAs think that they’re doing something that is official.

- ◎ I’d like to say that international relations are very dynamic currently, particularly in the area of approaching NSAs. There is a lot of debate and movement on how to approach NSAs. In the past two or three years, we have seen very different international approaches to NSAs in international affairs. This leaves a lot of space for very creative work at state and NGO levels with NSAs. I think the situation is perhaps not as static as has just been suggested.
- ◎ On the role of Geneva Call. First, monitoring, there will always be an issue here, particularly in monitoring areas that are in fact controlled by NSAs. Then, Geneva Call could be a place that brings NSAs together to start discussing the issues. Practically, there are ways of sharing information among NSAs that may really help bring them to a decision to ban

landmines. It may be much easier for an NSA to convince another NSA to ban landmines than for an NGO.

- ◎ I think the best way of securing NSA support for a ban is to involve them in the process itself. If they are involved in the process, so that they believe in the necessity of serving the humanitarian values, they feel it is theirs. Second, most NSAs are either Marxist or Islamic. We can open a dialogue with these groups in Marxist or Islamic terms.
- ◎ We should not wait until we have an armed group using mines and then go to them and discuss the mine problem. In the Palestinian experience, none of the Palestinian factions are currently using any kind of armed struggle, including landmines, but no one knows what will happen in the future. Negotiations may collapse and we may enter a new stage of conflict, which might lead to the use of landmines. We should open discussions with groups that might use landmines and involve them in the process to guarantee the non-use of these weapons in the future.
- ◎ One of the items the MILF is proposing in the peace talks in the Philippines is a comprehensive agreement on respect for human rights and for humanitarian laws. But we found that the government is reluctant to sign such an agreement, saying that they have already signed these treaties internationally, and it is not necessary for them to enter into the same agreements with the MILF. The MILF has proposed some sort of mechanism to monitor the implementation of the agreement to ban landmines.

3 monitoring and supporting implementation⁸

The third workshop examined means of monitoring and supporting compliance with a mine ban commitment. How can a renunciation of landmines be supported and encouraged? What coercive mechanisms are available and when is it appropriate to use them? How should compliance measures relate to other initiatives involving NSAs?

summary

If monitoring is to take place, all parties to the conflict must be treated equally in terms of what they are held responsible for, and in terms of an inspection regime. It must also be clear to NSAs by what standards they are

expected to abide. Lack of coordination in the humanitarian community vis-a-vis NSAs can be confusing. A clear legal framework will help NSAs know what the expectations of those monitoring them are. Monitoring should be based on dialogue which includes all the parties affected. Wherever possible, NSAs should be involved in monitoring.

Suggestions for concrete monitoring mechanisms included:

- ⊙ asking NSAs to submit reports, to a relevant body, on their compliance with norms related to landmines, including a report modeled on Article 7 of the Ottawa Treaty (UNICEF reported that, in a similar manner, two Sudanese NSAs submit reports on its compliance with the Convention on the Rights of the Child),
- ⊙ instituting other forms of self-regulation on the part of NSAs, perhaps agreed to as part of a formal ban agreement,
- ⊙ applying local community pressure, perhaps through local humanitarian mine action committees,
- ⊙ utilizing the Landmine Monitor, other NGO and donor monitoring,
- ⊙ site inspections by Geneva Call, NGO, UN or donors, and
- ⊙ developing a capacity for systematic monitoring and early warning by linking up with local capacities and existing organisations in different regions involved in peace activities.

The shifting nature of NSAs — that is, the fact that NSAs may be very fluid organisations — was raised as a difficulty that needs to be considered when developing ways to secure NSA mine action cooperation over time.

In general, the workshop agreed that adequate monitoring mechanisms for NSAs already existed and did not need to be reinvented. Developing further monitoring mechanisms was given lower priority than educating NSAs, building their political will and providing them with the support necessary to develop a capacity to implement a ban. In some cases, failure to comply is less a matter of will than lack of capacity and resources. There are, moreover, obvious political complications to external monitoring in a conflict situation and the workshop gave a greater importance to engagement and providing support for a ban.

Providing support obviously has political difficulties of its own, both for states and NGOs, and so would have to be carried out with attention to the

context, with an understanding of the political objectives of the NSA, and be integrated into existing conflict resolution and peace-building initiatives. It was cautioned that while government support for such initiatives is important, it opens the door to political interference.

In general, an integrated approach, where support for mine action is integrated with bans on similar weapons and other peace-building and development efforts, was strongly endorsed. In this context, capacity-building for NSA demining and funding for other humanitarian initiatives in NSA-controlled areas was called for.

Workshop participants called for a follow up meeting with more stakeholders.

highlights of discussion

- ◎ With states, there is automatic succession. It does not matter which government signed on behalf of the state. Successive governments inherit the obligation automatically and they are held responsible. But the same cannot be said of NSAs. NSAs can evolve much more flexibly — into new NSAs, split into different movements, or even evolve into governments. That is the rule of the field. We need to keep this in mind when talking about monitoring. It is an ever-changing situation and will always be so. We have to establish our way of working in this reality. If all of today's NSAs agreed to live up to these standards, tomorrow's NSAs would not be held to the same standards. We have to be flexible enough to deal with this.
- ◎ In my understanding, compliance with the treaty is not only a problem of lack of political will, or of law, but also a problem of capacity and a problem of money. This treaty is not only about banning landmines, but also about mine action and stockpile destruction. You need more than just the will to do these things. What we need first is to build a capacity, help NSAs to develop a mine policy, to coordinate mine action, to find funds for de-mining, and to provide them with these funds.
- ◎ Addressing the question about who is the custodian of agreements. A lot of work still has to be done by the NGOs in terms of building awareness worldwide. Perhaps we are misreading human psychology in relation to war itself. War uses so many weapons, and we only picked up one weapon

called landmines and tried to make it the worse of all weapons. We shouldn't be quicker than human development itself. We have to do the necessary groundwork, meaning awareness, prior to conferences such as this. And then we need to allow all the actors — states, non-states actors, NGOs — to work out definitions such as landmines (APMs or mines in general) together. Then the custodian will be all of us, not only Geneva Call. The fact is we have to do it all together.

- ◎ But how do we secure a commitment? Instituting a process of global awareness, global education... it sounds like we are reinventing the wheel. What is important is how do we secure the commitment of NSAs and how do we enforce the commitment that has been taken?
- ◎ We came here because we trusted the appeal, but also because it has become a moral issue that is confronting us in the field itself, among our own people.
- ◎ I want to address the issue of how to monitor compliance. I think there are a couple of issues we need to think about. First, forming strategic alliances between this group and groups involved in other work related to conflict, and look at the existing capacities of other groups for monitoring. Specifically in relation to monitoring, there are a range of early warning activities that may enable this campaign to survey and systematically monitor the use of landmines. For example there is a capacity at the University of Maryland in the United States that monitors news on war around the world. That may be one way of enabling a systematic survey of the use of landmines by different groups and different governments in a more ongoing and systematic way and perhaps in a low cost way. In addition, there are networks of organisations in different regions involved in peace making and peace building activities. They have access to NSAs and are also a source of information and analysis. Our relation with these groups can, on the one hand, provide an ear on the ground in terms of the use of landmines (by governments as well as by NSAs), and also serve as a channel for constructive engagement with these groups. So, when new NSAs emerge, for example, or in general, one should draw on existing capacities for monitoring and local capacities for engagement.
- ◎ Perhaps there needs to be some kind of trade or exchange; in terms of one party to the conflict committing not to use landmines and another

group committing not to use carpet bombing, for example. Perhaps there needs to be an exploration of how some of these different issues can be linked, taking an approach which doesn't focus solely on landmines but which looks at a range of weapons and their use. Perhaps we can find ways of negotiating the non-use of different weapons as a package.

- ◎ My recommendation, from Sri Lanka experience, is a gradual phasing out of different types of ordnances. In the Sri Lankan context, we have air forces of the state distributing ordnances, which can be classified as mines. We have an NSA which has a surface-to-air capacity with heavy artillery capacity.
- ◎ In terms of connecting banning of landmines to broader peace building and peace making efforts, I think there are inherent tensions if you link the banning of landmines to other peace making issues. You might touch on contentious issues which may compromise your ability to effectively do something about landmines. So this is a very case-sensitive question, I don't think there are any generic answers to it. But definitely there is a scope to explore what opportunities there are for making such links.
- ◎ Monitoring and exploring implementation is the last part of the whole approach. I think the most important thing is the moral and political goodwill of the parties involved — the states and the non-states.
- ◎ There should not be two different agreements: one signed by NSAs and another signed by states. The whole thing is how to bring states and the NSAs to agree on what has been agreed internationally. Once they have signed then we can rely on the mechanisms in the Ottawa Treaty for monitoring and supporting implementation.
- ◎ But that is the question: how are we going to relate the NSA initiative to the treaty? Article 9 can be read as giving states the obligation to force NSAs to comply with the treaty. Clearly, this can only apply post-war. During war, the state does not have the authority or the capacity to do this.
- ◎ It would be very good to have a frank working discussion with the ICRC because they know a lot about this area of work and don't make this work public. Also a dialogue with deminers. We might also learn from the experiences of monitoring other arms-related treaties and agreements.
- ◎ We are talking about monitoring, but I think we should be putting the

emphasis on support. Let's say you have an NSA who comes forward, not for some propaganda reasons, and wants to adopt the spirit of the Ottawa Treaty. Well, you know that some monitoring has happened already, because the prime reason that the NSA has come forward is probably that they're being monitored by the communities they seek to represent. And if those communities have lands which are covered with mines, they will ask questions of the NSA. In a way, the life blood of a lot of the NSAs are those communities. So I think we need to talk about supporting, not monitoring. Monitoring is fine, but it is primarily an external legalistic process. I have never seen any monitoring which really relates accurately to what is happening on the ground. It's a very vague process. It's supporting that counts. If you have this willingness, then find a way to support that process. And I don't think there can be a generic way — how you support this process in South Sudan would be different from how you would support the same kind of process in Southeast Asia. Finally, on the monitoring issue, I do have a concern. If NGOs are seen as a monitoring body, this may jeopardize their other work. Very often if you are working in post-conflict or conflict situation, especially where you have internal conflict, you have to learn to be confidential about some things. That is the reality of working in a conflict. I think we should be concentrating on supporting. There is a need for monitoring, but the first thing is to get the NSAs involved in the process. We can find a way for monitoring as the process progresses.

- ◎ Why do we want to ban landmines? Not for some political reasons, not for peace making reasons; it's because of the impact on non-combatants and post-conflict. I'm not so interested in the legalistic side of the process, but more in developing practical approaches to get NSAs to renounce the use of APMs in their actual situations, including what support they need and what we can help them with. That's a much more practical way to deal with it than to say 'right you agreed with this, so now we're going to monitor you'.
- ◎ The reason why we are having this pioneering meeting is that we have some NSAs who out of their own will have written commitments, and some have even gone further and started demining and clearing areas. We need commitments but when the commitment is there, those people need assistance to begin demining.

- ⊙ On monitoring, people should be self-regulating, but self-regulating could also be addressed in the agreement itself. Then if the NSAs are aggravated by the government or vice versa, they can point to these agreements. The role of NGOs in this process will be crucial.
- ⊙ Monitoring is already going on with governments and NSAs through the Landmine Monitor. I don't think we need to go into more details on that. I think it would be complementary if NSAs, once they commit to the Ottawa Treaty or a similar commitment, could submit their own status report, like states do. But I agree that actual support is very important. The question is, what kind of support can governments provide NSAs?
- ⊙ What possibilities are there for states to support NSAs? I would say that from a humanitarian point of view, it's very simple: you help whoever is doing a good job where it is really needed. But the problem is that state actors are also political actors. It is more difficult to convince them to support an NSA than to give bilateral support to another state.
- ⊙ Before approaching NSAs, there need to be some kind of rules of engagement.
- ⊙ On the problem of states getting involved with NSAs, let me give an example. Switzerland now has commercial relations with Turkey. If the PKK or another NSA in Turkey asks Switzerland to recognize their commitment not to use mines, that could be understood as Swiss recognition of the legitimacy of the movement. And this could lead to Turkey suspending diplomatic relations with Switzerland. Only an NGO has the independence to play this role; an NGO does not have diplomatic relations, commercial relations. It has the neutrality and independence necessary for the role.
- ⊙ **Sri Lanka.** I'm here representing a consortium of humanitarian agencies. I clearly see a political problem in that the organisation that I represent includes three UN organizations, the ICRC, and at least nine funders, including the European Union. If I, for example, work with Geneva Call (which I don't have a problem as an individual), some of the member organisations would have political problems. So, we have to bear in mind some of the country settings where even NGOs have political problems.
- ⊙ NSAs, theoretically, are assumed to come from a political background. They are coming from a political argument which I think is something

that weighs very heavily in any kind of process which tries to be apolitical. I support developing a set of principles in the context of a country setting, where not only all NSAs but also state actors are taken into account.

- ⊙ In South Sudan, UNICEF has been working to promote the Convention of the Rights of the Child. Two NSA groups now submit compliance reports to the committee on the rights of the child. We call these alternate reports, because it is not the governing state, but the NSA who is submitting. The alternate reports allow the official body to respond to the NSAs on the issue. That may be an example for the landmines work.
- ⊙ We don't want a situation where today we deposit with UNICEF, World Food Programme (WFP) tomorrow, Geneva Call, the day after, etc. There should be coordination. We do not want to be competing with the Ottawa Treaty or NGOs to be competing with the governments, we do not want that.
- ⊙ New NSA groups can break away from old ones and leadership changes. Perhaps the leadership, both political and military, supports a ban on mines; but in five years down the road, the leadership splits. Is this a concern? How do we deal with it?
- ⊙ **Sudan.** In a conflict situation, monitoring could mean spying. It's a very delicate word in a conflict situation. We already have some monitoring for our mine clearance work, which we set up ourselves, at regional level as well as at the grassroots level. The best thing we did was to form a Board of Directors which involved civil society, churches, women's union, the SPLA itself, and donors who are supporting our program. They support the plans and go to the field to see that what has been agreed upon is being implemented. At the grassroots level, we have humanitarian mine action committees from civil society in areas where we operate. Those people are responsible for prioritising our work and providing us with information about where mines are and even whether there is somebody who is planting mines again. This happened when there was a violation; it was civil society who brought it to our attention and to the board, as well as the SPLA. So there is already a local mechanism for this. That could be the only approach that works without arousing suspicions.
- ⊙ Make NSAs partners in the whole process of monitoring and also partners in the process of victim assistance.

- ⊙ I think we've heard several times around the table that the first responsibility for compliance lies with the parties making the commitment, not outside with people who do monitoring.
- ⊙ We need to talk about support; the monitoring system already exists with Landmine Monitor. I think a lot of education needs to be done and that is what NGOs can do.
- ⊙ I think we've got a bit of a false and unnecessary distinction between states and non-states in terms of where we're going. In the treaty for states, there are a variety of different mechanisms for compliance, but there are not specific mechanisms such as sanctions. There is a monitoring element, which is both external and internal. States do self-monitoring under the treaty and then Landmine Monitor is an external monitoring process. I don't see why it has to be different for non-states: external monitoring through Landmine Monitor and their own version of compliance reporting. There is a kind of a carrot and stick approach in the treaty to encourage compliance: obligations to clear areas, destroy stockpiles, but other states who have the resources have obligations to support those states. Maybe if we give it a broad interpretation, those states have the obligation to help the mine-affected communities as opposed to simply support states. Then we can go back to the support question that has been raised. What is quite key here is that everybody involved gains if we help NSAs who have mine-affected communities deal with the mine problem.
- ⊙ Partial commitments from NSAs can provide opening for dialogue. It works the same way with states. One thing that might help partially committed NSAs to arrive at a total ban is seeing that NSAs who have totally embraced the whole principle of the Ottawa Treaty are given support for implementing it.
- ⊙ It would be good to have this discussion with a broader set of people, especially more stakeholders.

guidelines for engaging non-state actors in a landmine ban

The following guidelines were drafted on the basis of the workshop discussions, not as a consensus document, but as a tool which some groups might find useful for their work. It was proposed that this draft be developed through regional workshops by the ICBL NSA Working Group.

introduction

Landmines have been and continue to be produced and used by non-state forces as well as state forces.

Consequently, the objective of the Non-State Actors Working Group of the International Campaign to Ban Landmines (ICBL) is to develop an inclusive and complementary approach to the 1997 Ottawa Convention aimed at securing the banning of anti-personnel mines by non-state actors.

Engagement with non-state actors may best be facilitated by civil society. These guidelines are intended to provide a framework within which non-state actors might be engaged in landmine bans.

Whilst recognising the diverse nature of entities that may be regarded as non-state actors, or that may have legal status as such in international law, for the purposes of these guidelines non-state actors are defined as armed opposition groups. Furthermore, the objective of these guidelines is to assist in planning strategies that address the engagement of non-state actors that use landmines.

legal framework

Existing landmine treaties fail to incorporate a ban on the use of landmines by non-state actors. The Ottawa Convention provides only for States Party undertakings or obligations. Sub-national entities become obligated only through national implementation measures to be undertaken by each State Party as required by Article 9. The landmines Protocol II of the Convention on Conventional Weapons also leaves criminalisation to the national level.

However, non-state actors are bound by customary international humanitarian law and human rights law. For example, customary international humanitarian law applies normative rules to parties to a conflict whether or not they have signed landmine treaties. These principles include: the prohibition of the use of arms which do not discriminate between civilians and combatants; the prohibition of the use of arms that may cause unnecessary suffering or superfluous injury; and that the means of war should not exceed the dictates of public conscience.

1. Principles of engagement

- 1.1 **Objective:** the humanitarian objective of engagement is to encourage non-state actors to recognise and address the destruction caused by the use and manufacture of landmines. This will require a flexible and transparent approach to the use of these guidelines.
- 1.2 **Neutrality and impartiality:** in recognition of the sensitivities of all parties in relation to any complementary process to ban landmines, the overriding principle for those engaging with non-state actors is to act with political neutrality and impartiality. This is necessary to meet non-state actor concerns about counter-insurgency, as well as state concerns about sovereignty. Seeking to ensure careful engagement with all parties in a region is an important part of this process.
- 1.3 **Information and analysis:** strategies for engagement with non-state actors must be based on accurate information and sound analysis and understanding of the political and historical context of the conflict, and the legitimacy, resources, and influence of the groups involved.
- 1.4 **Representation:** in any engagement or negotiation, the basis or authority for representation of the participating groups must be clear from the outset.
- 1.5 **Cultural traditions:** the process of engagement with non-state actors should have due regard to and respect for regional cultural traditions, not least because these may provide an additional foundation for a ban on landmines.
- 1.6 **Communities:** engagement with affected communities is key to the success of attempts to bring about bans on landmines. In addition to engagement with non-state actors, therefore, it is important to engage with the communities from which they spring, enabling their voices to

be heard with due sensitivity to the level of dissent permitted in any given situation.

- 1.7 **Support by other parties:** the potential for support by other parties, including governments, should be incorporated into strategies for engagement. For example, governments have an important role to play in enabling groups to participate.
- 1.8 **Written agreements:** before entering into any written negotiated agreement, the appropriateness of this approach, the legal status and processes for the dissemination of such documents should be clarified. It is necessary to ensure that all parties are clear on the interpretation of any written agreement.

2. Tools for engagement

- 2.1 **Dialogue:** the fieldwork experience of mine action NGOs is that dialogue with non-state actors is often required. The exchange of views on the use of landmines, based on a neutral and impartial approach, can build mutual trust and understanding.
- 2.2 **Education:** there is a clearly identified need for education work with non-state actors and the communities which support them. This should aim to raise awareness of the landmines issue in general, of the impact of mines on civilians, and of the relevance of international humanitarian and human rights law.
- 2.3 **Unilateral declarations:** non-state actors should be encouraged to make unilateral declarations renouncing the use of landmines. This may involve non-state actors signing a deed of renunciation for deposit with the authorities of Geneva (or Geneva Call) or a statement based on their own understanding of the obligations on states contained in the Ottawa Convention.
- 2.4 **Bilateral agreements**, or undertakings within peace agreements: government-opposition agreements on a landmines ban, ideally as part of a wider peace agreement, have the advantage of mutuality and reciprocity.
- 2.5 **Multi-lateral undertakings**, including mine-free zones and codes of conduct: a range of possible mechanisms and precedents exist for joint undertakings on the non-use of landmines.

3. Monitoring and supporting implementation

- 3.1 Commitment: the commitment made to banning landmines creates a self-regulating moral imperative among non-state actors wishing to sustain goodwill among their communities.
- 3.2 Compliance: the Landmine Monitor, Geneva Call, and possibly site inspections by NGOs or the UN. NSAs renouncing landmines should be required to submit reports.
- 3.3 Support programmes: an integrated approach which bans all dangerous weapons should be undertaken including general peace building and development efforts. The level of assistance at all levels, for example funding for humanitarian demining including the technical capacity of NSAs in demining activities, should be increased.

4. Integrated mine action

- 4.1 The experiences of integrated mine action must be shared and discussed with non-state actors, especially in the territories of mine affected communities.
- 4.2 The Bad Honnef Guidelines for mine action, integrating advocacy, capacity building, professional training, socio-cultural rehabilitation, socio-economic rehabilitation, physical rehabilitation, medical aid, mine awareness and demining, should serve as the basis for implementing integrated mine action programmes with non-state actors.
- 4.3 Practical operational differences, such as resources, physical location, when dealing with non-state actors as opposed to states should be acknowledged. ☉

notes

- 1 Ed Garcia of International Alert facilitated the discussion, with Yeshua Moser of Non-Violence International acting as rapporteur.
- 2 To give some sense of the different backgrounds of participants, wherever possible, speakers are identified according to the country in which they have been working .
- 3 The workshop was facilitated by Miriam Coronel Ferrer, of the Philippine Campaign, and David Matas, of Lawyers for Social Responsibility. Vladimir Kakalia, Abkhazia

Campaign, was rapporteur. Elisabeth Reusse (Geneva Call), Sol Santos (lawyer, Philippines Campaign), and Steve Goose (Human Rights Watch) were resource people.

- 4 David Matas is a lawyer in Winnipeg, Manitoba, Canada. He is a member of the Board of Directors of Lawyers for Social Responsibility.
- 5 Available via www.icbl.org (Non-state actors Working Group page).
- 6 Matas, David. "Armed Opposition Groups" *Manitoba Law Journal*/vol 24, issue number 3.
- 7 Geneva Call was launched in March 2000 by members of the NSA Working Group. More information is available at www.genevacall.org.
- 8 Olu Arowobusaye facilitated the session, Lare Okungu of the Kenyan Campaign was rapporteur; and Rae McGrath and Eduardo Marino were resource people.



chapter 9

recommendations from conference organisers



to the NSA working group of the ICBL

- ⊙ continue to support work of members already underway at the field level;
- ⊙ further develop the framework of approach drafted during the conference through workshops at the field level, integrating the experience and research of the Henri Dunant Centre, ICRC and other humanitarian organisations working with NSAs; finalise this through an internal ICBL review; and make it available to members and other interested parties;
- ⊙ consider ways of collaborating with and supporting Geneva Call as a clearing house for unilateral declarations and a body to monitor NSA commitments;
- ⊙ consider the possibility of supporting an inter-NSA conference on landmines, as proposed by NSAs at the conference;
- ⊙ consider how best to use webtools to create dialogue with NSAs on the issue, such as website and email listservs;
- ⊙ provide input to ICBL participation in the Inter-sessional Standing Committees of Experts (ISCE) on Victim Assistance and on Mine Clearance to ensure attention is given to NSAs and areas under NSA control;
- ⊙ provide other ICBL initiatives with input related to NSAs;
- ⊙ raise discussion on the merits and risks of amending the Ottawa Treaty to include provisions on NSAs at the 2004 review within the ICBL, and in discussion with relevant bodies such as the ICRC, NSAs and the ISCE on General Treaty Status;
- ⊙ initiate discussion in ICBL and develop strategies to ensure that the International Criminal Court (ICC) statute is amended in its first review conference (seven years after its entry into force) to make the use of landmines an international crime;

- ⊙ encourage and support NSAs to report on their implementation of international norms on landmines, where useful following reporting requirements of Article 7 of the Ottawa Treaty;
- ⊙ consult with Landmine Monitor about the development of a training workshop for Landmine Monitor researchers on conducting research in NSA areas of control;
- ⊙ consider the serious concerns raised about anti-tank mines and cluster munitions, and how this should shape education programmes and other efforts to engage NSAs in a ban;
- ⊙ conduct further research on NSA involvement in the landmine problem to obtain a more precise picture of the impact of landmines used by NSAs, impact of landmines on NSAs and their constituencies, information relevant to prioritisation and specific strategies of approach;
- ⊙ based on the map, develop a clear plan of action, including prioritisation of targets, and strategies of approach;
- ⊙ assess local capacities and potential alliances with NGOs already in region before supporting or making any approach to NSAs;
- ⊙ open communication with other NGOs, international organisations and networks working on other IHL and human rights projects with NSAs;
- ⊙ conduct further study of legal and normative frameworks, including a combined humanitarian law and human rights approach, and how they might be used to engage NSAs in a landmine ban.

to states

- ⊙ Sign, ratify and implement the Ottawa Treaty without delay;
- ⊙ Consider entering into technical dialogue with NSAs operating in territory on non-use of mines and technical cooperation on mine clearance and victim assistance;
- ⊙ Cease supporting NSA mine use through training, supply of mines and resources;
- ⊙ in the ISCEs on Victim Assistance and Mine Clearance, discuss how states can support mine action in areas under NSA control;
- ⊙ consider providing material and financial support for mine action

programmes in areas under the control of NSAs;

- ⊙ through the General Treaty Status Working Group of the Intersessional Standing Committee of Experts (ISCE) process and in discussion with the ICBL, consider the merits and risks of amending the Ottawa Treaty to include NSAs at the 2004 review;
- ⊙ through the General Treaty Status Working Group, consider ways in which Ottawa Treaty states can support non-use of mines by NSAs; and
- ⊙ begin preparation for the first review conference of the International Criminal Court (ICC) statute (seven years after its entry into force) to ensure the use of landmines is made an international crime.

to non-state actors:

- ⊙ Adopt policies to cease use, production, transfer and stockpiling without delay;
- ⊙ Consider entering into technical dialogue with states on non-use of mines and technical cooperation on mine clearance and victim assistance;
- ⊙ Seek information on the impact of landmines and on international standards related to landmines;
- ⊙ Issue public statements on their landmine policy; and
- ⊙ Commit available resources to necessary mine action in territories and to stockpile destruction and seek support where resources are not available. ⊙



chapter 10

closing words



Elisabeth Reusse-Decrey
Swiss Campaign to Ban Landmines and Parliament of Geneva

On behalf of the Conference organisers, I wish to thank all those that helped us : the governments of Switzerland, Canada and Norway, the canton and republic of Geneva, l'Agence Intergouvernementale de la Francophonie, the Open Society Institute, Bank Pictet and the members of the Non State Actors Working Group of the ICBL. I wish to thank all those who accepted our invitation to come to work with us during two very full days, among you the representatives of armed movements from several countries who gave us your trust and shared with us your views.

Thanks to all of you there is now not only more understanding about the problem we proposed to discuss but a well defined sense of action to deal with it.

We are all well aware of the obstacles and dangers in our field of activity. These were precisely one of the major reasons to have this Conference. At the end, we feel more confident that all of us together can overcome most of the difficulties and reduce all the risks.

We have talked long enough, we are ready to do much more. ☉



selected statements by NSAs

taliban declaration

6 October 1998

As Allah Almighty has made Human beings his representatives on Earth, both his life and death are regarded with much respect in Islam. God Almighty teaches us in the holy Quran: 'Whosoever killeth a human being for other than man-slaughter or corruption in the earth, it shall be as if he had killed all mankind, and whoso saveth the life of one, it shall be as if he saved the life of all mankind' (Verse 32, Surah Almaidah, The Holy Quran).

Prophet Mohammad (PBUH) says, 'The summit of Faith is Kalma-e-Toheed and the foundation is clearing the path from peril and modesty is part of the belief.'

In addition to various social and economical problems in Afghanistan, the presence of landmines in large numbers is also considered one of the main problems of Afghanistan. Landmines have caused death and maiming of thousands of innocent Afghans including women and children during the last several years of war. Even now everyday about 10 innocent Afghans fall victim to the blind terrorism of anti-personnel landmines. Landmines are also considered a major threat to the reconstruction of Afghanistan and repatriation of the refugees and displaced persons to their homes. The Islamic Emirate of Afghanistan (IEA) believes that, unless a total ban is imposed on the production, trade, stockpiling, and use of landmines, this tragedy will continue not only in Afghanistan but in the whole world.

The IEA in consideration of its Islamic and humanitarian feelings and in consideration of the antagonistic effects of the landmines, strongly condemns the production, trade, stockpiling and use of landmines, and considers it an un-Islamic and anti-human act.

While strongly supporting the Afghan Campaign to Ban Landmines (ACBL) and the Ottawa landmine ban treaty, the IEA invites the attention of the Muslim Ummah and the international community to the following points:

1. At the international level, the IEA calls for a total ban on the production, trade, stockpiling and use of landmines, and is ready to actively co-operate in this regard.
2. At national level, the IEA announces a total ban on the production, trade, stock-

piling and use of landmines, and makes a commitment to the suffering people of Afghanistan and the international community that the IEA would never make any use of any type of landmines.

3. The IEA asks all the opposition groups to avoid the use, trade and stockpiling of landmines and do not cause more harm to the bereaved and suffering people of Afghanistan.
4. Those who use landmines in personal, political or any other differences in Afghanistan would be punished in accordance with the Islamic law.
5. The IEA thanks all those countries that have signed the Ottawa Treaty, and urges all those countries that have not yet signed this treaty to immediately stop production, trade, stockpiling and use of landmines in respect of the Ottawa international treaty.
6. The IEA ask the whole international community and neighbouring countries to stop export of landmines to Afghanistan immediately and thereby do not increase the sufferings and hardships of the Afghan people. The IEA strongly condemns the exporters of landmines to Afghanistan and considers such acts violations of international law.
7. As Afghanistan is a war torn and worst off country, the IEA requests the international community to provide further financial and technical assistance to mine action operations in Afghanistan to enhance these efforts in order to get rid of the landmines and release the people of Afghanistan from dangers and worries of landmines as soon as possible.
8. The IEA requests the international community to provide generous assistance to the hundreds of thousands of mine victims in Afghanistan in order to enable them to start their normal social and economic life and play their part in the reconstruction of Afghanistan.

Finally, the IEA once again calls on the international community in general and the neighbouring countries in particular to support a total ban on the production, trade, stockpiling and use of landmines in order to end this human tragedy in the world as soon as possible. In addition, the IEA requests the international community to provide generous assistance to mine action activities and other rehabilitation and reconstruction programmes in Afghanistan to enable people to stand on their own two feet and resume their normal and peaceful life.

Sign and seal of:

The servant of Islam

Amir Almonineen (Mujahid) Mulla Mohammad Omer Akhund

moro islamic liberation front –
MILF internal regulations on use, stockpiling,
production and transfer of anti-personnel mines

21 March 2000

The MILF use, stockpiling, production, and transfer of anti-personnel mines are strictly in accordance with Islamic rules and disciplines. The MILF has thus adopted the following internal regulations:

- I. The MILF has strictly prohibited the indiscriminate use of anti-personnel mines even during armed conflict.
- II. The MILF has prohibited the participation of minors, women, and un-authorized members or civilians in the use, stockpiling, production, and transfer of anti-personnel mines.
- III. The MILF has prohibited the use, stockpiling, production and transfer of anti-personnel mines near population centers, places of worship, schools, business establishments, residential areas, farms and farm-to-market roads, and even areas inhabited by working animals.
- IV. There shall be no use, stockpiling, production and transfer of anti-personnel mines without order or clearance from MILF commander on the ground during actual combat when the enemy attacks MILF camps.
- V. There shall be no use, stockpiling, production and transfer of anti-personnel mines outside MILF camps, except when needed for the defense of MILF camps and upon clearance from the Chief of Staff of Bangsamoro Islamic Armed Forces (BIAF).
- VI. The use of anti-personnel mines during actual combat shall be strictly monitored with the use of location maps, and visible marks shall be placed on the ground indicating it as a 'Mines Areas—Keep Out'.

Ghadzali JAAFAR
Vice Chairman for Political Affairs
MILF Central Committee

kurdistan workers' party (PKK) statement²

March 2000

We respect your struggle against landmines due to its serious danger which mainly harms civilians. We would like to express our solidarity and wish success to all governmental and non-governmental organisations who are putting all their efforts to struggle against these mass-destructive weapons under such difficult eco-

conomic situation and circumstances.

Mines, as the most cheap and effective war tools, have caused hundreds of thousands of peoples' lives.

First of all, we would like to briefly inform you about the extent and the reasons for the war in my country. Kurdistan, socio-economically and geographically, is situated in a very strategic region. It is rich in petrol, water and other mineral deposits. Besides being occupied by four countries, the support of NATO to Turkey against the Soviet blocade during the Cold War has determined the destiny of the Kurdish people. Therefore, the Kurdish question is an extensive international problem. Twenty years ago, at the time when our people's very basic and legitimate rights were denied with genocide, in front of the eyes of the world, nobody found it relevant. The aim was to wipe out my nation from history and to assimilate them.

The PKK was founded in 1978 aiming to prove the existence of the 40 million Kurdish population and to achieve the right to live in freedom. As Turkey and no other state ever approached the Kurdish question via dialogue, the Kurdish people had no other choice but to take up arms.

We would like to keep our speech on the tragedies of the 15-year war in the frame of our agenda.

Turkey, since the 1950s, has used an enormous number of landmines in the Kurdish rural areas. In 1950, Turkey placed landmines on the border of Syria for nearly 800 kilometer length and to a width of 600 meters. With the military coup of 1980, landmines were placed in the areas where civilians live in the name of "targeting the Kurdish guerrillas". Since 1991, Turkey has put 80,000 landmines on the borders of Iraq and Iran. The numbers we have released to you are the official ones revealed by the authorities. In fact these numbers are less than the reality. Since 1987, the Turkish army has put strongly destructive mines mainly on the roads of the villages. Hundreds of civilians have lost their lives while travelling or while driving their agricultural vehicles. Mining the productive lands has been a way to force the people living in villages to flee from their homes. As a result of this strategic policy, four million people left their country. Of course this has also created a heavy influence on the psychology of the people and has become a threat mechanism.

- ◎ In Southern Kurdistan (Northern Iraq) the number of unexploded landmines is almost 20 million. Which is nearly 10 percent of the landmines worldwide. Furthermore, according to the official information given by the Turkish authorities there are a couple of million unexploded landmines in North West Kurdistan (South East Turkey).
- ◎ 10 percent of the land near the borders of Turkey is not used due to mines which

affects the poor economy of the region.

- ⊙ Landmines are a serious threat while gathering firewood in regions like Hakkari and Dersim, where people use wood in harsh winters.
- ⊙ Landmines have even been planted in abandoned villages in order to prevent the return of people to their homes.
- ⊙ In 1991, tens of thousands of Kurds crossed the border of Iran-Iraq after the government vigorously oppressed the uprising. People running in panic passed through minefields. For days in the border towns of Sune and Sehne sounds of explosions were heard.
- ⊙ Between August 1991 and 1992 alone, in 10 hospitals, 1,269 people died as a result of mine explosions and 3,325 people were injured.
- ⊙ In the city hospital of Suleymaniye alone, between March and September 1991, 1,625 people were taken to hospital as a consequence of mines.

In conclusion, our people, with the high sacrifices during the struggle of 20 years, have earned their national identity. The Kurdish issue — in essence an international issue — has today taken its place in the political agenda. In this reality, our Party's General-President, Mr. Abdullah Ocalan, arrived in Europe in 1998 for a political solution. After his illegal abduction, even though he is under extreme circumstances, he has resumed this aim in the Island of Imrali³. He presented his defense, the Democratic Republic Project, to the court as a solution. Peace, for the Kurdish and Turkish peoples to live in the principle of peace and respect. To this end, our party started [withdrawing] its military force in September 1st 1999 [to] beyond Turkey's borders. . . . In January 2000, in the PKK's 7th Extraordinary Congress, the ARGK which was the army of the PKK officially stopped the war and took the name of People's Defense Forces. . . . The PKK is gradually developing civil initiatives and democratic forces to continue its diplomatic work throughout the world.

In the wartime, the PKK never targeted civilians. We would also like to mention the PKK never used the anti-personal landmines and the anti-tank landmines were only used in the areas of the military bases. In 1995, in the opinion of the Red Cross, the PKK signed the Geneva Conventions and the 1977 Additional Protocol.

There is a lot of work for peace. . . The peace project that was presented to the Turkish and European countries in the Party's 7th Extraordinary Congress openly expresses the principal conditions for peace. The peace project at the same time carries the meaning of one country's economic development. The people who have been forced to migrate and want to go back to their homeland should be guaranteed both internationally and from Turkey. The 4,000 villages in Kurdistan that have been emp-

tied should be raised to liveable standards and cleared of mines. Medical treatment should be provided to women, children and villagers who have been disabled by mines. . . . To clear the minefields in Kurdistan is not only the duty or work of the Kurds. It is the duty of those who, by supporting the Turkish military for their own benefit, have turned Kurdistan into a minefield. . . . we invite all the organisations who fight against mines to work with our people.

Finally we would like to express the strong belief and agreement of the PKK with the international campaign against landmines and all the war instruments. ☉

notes

- 1 Other NSA statements on landmines, as of March 2000, can be found online at www.icbl.org (Non-state actors Working Group page, "Statements by NSAs Under IHL) or by contacting the NSA Database (nsadba@international-alert.org). NSA positions on the landmine issue may also be found in the Landmine Monitor Report and by contacting Geneva Call, geneva.call@worldcom.ch.
- 2 This statement was prepared by PKK delegates for the March 2000 conference but not read in full.
- 3 An island near Istanbul, where Ocalan is imprisoned by the Turkish government.



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ment On The Recent Landmine Incidents In The Mindanao Conflict: Coming To A Higher Level Of Attention and Engagement,” 2000. Available justpeace.net.ph/updates/campaigns/c2000_0811_01.htm

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notes

- 1 This list has been restricted to studies relevant to the topic of non-state actors and landmines. Other works referred to in the conference papers have not necessarily been included here.



programme

Engaging Non-State Actors in a Landmine Ban
A Pioneering Conference

*International Conference Centre of Geneva (CICG), rue de Varembe 15, Geneva
24th March 2000 - Friday*

8:00 Registration

9:00 Opening

Welcome, *Elisabeth Reusse-Decrey, Parliament of Geneva, Swiss Campaign*

Words from Host Country, *Guy-Olivier Segond, President of the Conseil d'Etat de la République et Canton de Genève*

Opening Words, *Conference Chair, Jean Freymond, Centre for Applied Studies in International Negotiations*

Conference rationale and objectives, *Miriam Coronel Ferrer, University of the Philippines, Philippine Campaign*

9:30 Panel 1 **Non-state Actors and Landmines**

Introduction, *Martin Rupiya, Centre for Defence Studies, University of Harare, Zimbabwean Campaign*

Global overview of non-state armed actors, *Gérard Chaliand, Fondation pour la Recherche Stratégique, France*

Irregular Warfare and Landmines, *Rae McGrath, founder and former director of Mines Advisory Group (MAG), co-founder of ICBL*

Questions and discussion

10:45 Coffee break

11:00 Panel 2 **Legal and Normative Frameworks**

Introduction, *Soliman Santos, Philippine Campaign*

International Humanitarian Law and Customary Law, *Peter Herby, ICRC*

International Criminal Law, *Carla del Ponte (TBC), International Criminal Tribunal*

International Human Rights Law, *Andrew Clapham, Graduate Institute of*

International Studies (HEI), Geneva

Questions and discussion

12:30 Lunch

14:00 Panel 3 **Country Experiences and Views from Non-state Actors**

Introduction, *Eduardo Marino, ICBL Coordination Committee*

Afghanistan, *Habib-Ur-Rahman Asem, Afghanistan Campaign*

Burma, *Yeshua Moser, Nonviolence International, Thailand Campaign*

Guatemala, *Maria Eugenia Villarreal, Central America Campaign*

Sudan, *Aleu Ayieny Aleu, Operation Save Innocent Lives (OSIL) - Sudan*

Caucasus – *Vladimir Kakalia, Abkhazia Campaign*

Ireland & UK – *Eddie Kinner & Rodney McCartney – peace organisations*

Sri Lanka conflict – *Peter Bowling, IWG on Sri Lanka*

Colombia – *Asdrubal Jimenez, Government Guerilla Peace Panel 1991-1992*

NSA Views (in order)

Zapatistas (Mexico)

Former UCK-KLA (Kosovo)

PLO/PNA (Palestine)

Polisario (Western Sahara)

SPLA (Sudan)

MILF (Philippines)

RPA-ABB (Philippines)

15:30 Coffee break

15:50 Continuation

Country Experiences and Views from Non-state Actors

Views from representatives of non-state actors in Africa, Americas, Asia and

Europe

Questions and discussion

17:00 Break

18:00 Aperitif offered by the State of Geneva

9:00 Informal Dialogue With Government Representatives

Introduction, *Martin Griffiths, Henry Dunant Centre for Humanitarian Dialogue, Genève*

Questions and discussion

10:00 Coffee break

- 10:15 **Panel 4 Non-state Actors and Integrated Mine Action**
 Overview, *Mereso Agina, ICBL Coordination Committee, Kenya Campaign*
 Non-state actors and Victim Assistance, *Susan Walker, Handicap International*
 Non-state actors and Mine Clearance, *Rae McGrath, founder and former director of Mines Advisory Group (MAG), co-founder of ICBL*
 Non-state actors and Community Rehabilitation, *Markus Haake, German Initiative to Ban Landmines*
 Questions and discussion
- 11:00 **Engaging Non-state Actors in a Ban**
 Introduction, *Mary Foster, Mines Action Canada*
 Overview of Principles, Tools and Support, *Soliman Santos, Philippine Campaign*
 Questions and discussion
- 11:30 Workshops (simultaneous)
 Principles of Engagement, *facilitator Edmundo Garcia, International Alert*
 Tools for Engagement, *facilitators Miriam Ferrer, Philippine Campaign, and David Matas, Lawyers for Social Responsibility*
 Monitoring and Supporting Implementation, *facilitator Olu Arowobusoye, Nigeria*
- 13:00 Lunch
- 14:30 Reports from Workshops
 Principles of Engagement, *Yeshua Moser, Non-Violence International*
 Tools for Engagement, *Vladimir Kakalia, Abkhazia Campaign*
 Monitoring and Supporting Implementation, *Lare Okungu, Kenya Campaign*
- 15:30 **Guidelines for Engaging Non-State Actors:** Synthesis of Discussions and Workshops, *Richard Lloyd, UK Working Group on Landmines and Patricia Pakpoy, Australian Campaign*
- 16:00 **Follow up proposals,** *Paul Hannon, Mines Action Canada and Martin Rupiya, Centre for Defence Studies, University Harare, Zimbabwean Campaign*
- 16:30 Closing

workshop process

A. questions addressed in workshops

Workshop 1: Principles of Engagement

Key issues of recognition, neutrality, impartiality, solidarity, and the legitimacy of violence need to be addressed in a consistent way when approaching NSAs about a landmine ban. This is necessary in a purely strategic sense to meet NSA concerns about counter-insurgency, on the one hand, and state concerns about sovereignty, on the other. It is also necessary to avoid doing harm in a sensitive situation.

facilitator: Ed Garcia, International Alert and Liz Bernstein, ICBL coordinator

rapporteur: Yeshua Moser, Non-Violence International

resource people: Professor Moustafa El Said Hassouna; Damian Lilly

Questions to be addressed (25 min. each):

1. How can neutrality and impartiality be balanced with the need to be sensitive to the political context and the underlying reasons for the conflict? How is legitimacy determined and how should this affect the approach? When is solidarity called for? How can real concerns about counter-insurgency and about state sovereignty be met? Does recognition imply legitimacy? When is this a concern? How to balance, for example, transparency with confidentiality?
2. How should the question of the legitimacy of the use of violence be treated when promoting non-use of landmines?
3. How should the landmine ban initiative relate to other IHL and humanitarian initiatives and to the broader peace process? How can the landmine ban initiative support efforts to end the war? How can conflicts with the peace process be avoided?

Workshop 2: Tools for Engagement

What options exist for NSAs to make formal commitments to a landmine ban? What standards and legal points of reference can be employed? What are the adequacies and shortcomings of these options for various types of NSAs? What can usefully be developed?

facilitator: Miriam Coronel Ferrer, Philippine Campaign, and David Matas, Lawyers for Social Responsibility

rapporteur: Vladimir Kakalia, Abkhasia Campaign

resource people: Elisabeth Reusse; Sol Santos; Steve Goose

Questions to be addressed (25 min. each):

1. Are there creative ways in which existing international standards can be used to

- formally engage various types of NSAs in a landmine ban? What other points of reference are available (codes of conduct, MOUs, landmine-free zones, bilateral agreements, etc.) and how useful are they? *input: Sol Santos, Philippine Campaign*
2. How should NSAs be addressed in the first review of the Ottawa Treaty? What criteria for NSAs would be appropriate for the Ottawa Treaty (level of organisation, ability to follow through on commitment, commitment to principles of IHL and HR, objectives)? *input: Steve Goose, Human Rights Watch*
 3. What is the potential role of Geneva Call? How should the Geneva Call and its Deed of Renunciation relate to IHL, traditional values, customary laws, ideology, other unilateral declarations, codes of conduct, MOUs and bilateral agreements with states? What criteria should be met before a unilateral declaration is accepted by Geneva Call (level of organisation, ability to follow through on commitment, commitment to principles of IHL and HR, objectives)? *input: Elisabeth Reusse*

Workshop 3: Monitoring and Supporting Implementation

How can a renunciation of landmines be supported and encouraged? What coercive mechanisms are available and when is it appropriate to use them? How should compliance measures relate to other initiatives involving NSAs?

facilitator: Olu Arowobusaye, Nigerian representative – International Alert

rapporteur: Lare Okungu, Kenya Campaign

resource people: Rae McGrath; Davin Bremner; Aleu Ayieny Aleu

Questions to be addressed (25 min. each):

1. How can compliance be built into the commitment in the first place (e.g., requirement that signatory demonstrates authority to make commitment and ability to comply (in terms of internal enforceability as well as technical capacity and other resources), for example, by means of a compliance plan and requests for specific support)? Can monitoring mechanisms be made part of the commitment? Who is the custodian of the various types of commitments (e.g., stakeholders' committees, Geneva Call)?
2. After a commitment has been made, how can the NSA be held to it? In what ways can international and domestic opinion be a useful tool for ensuring compliance? When are positive and negative publicity techniques harmful, when are they ineffective? What are the implications of getting support from government sponsors, corporations, diaspora community supporters, local populations and constituencies in holding NSAs to their commitment on landmines? When is there a useful role for sanctions? How can exposing the sources of mines

and other support to NSAs be helpful?

3. What kind of support programmes — including technical assistance, education and advocacy, capacity-building for internal monitoring and regulatory systems — can be useful for ensuring NSAs follow through on their commitment? What are the implications for these various types of support on the conflict? How can they be integrated into humanitarian relief, other IHL initiatives, development and the broader peace process?

B. workshop protocol

Ed Garcia, International Alert

The International Campaign to Ban Landmines requires a marathon mentality. But it is through modest step-by-step approaches that perhaps we can achieve what we wish to realise. I just want to remind people of the three pillars of workshops: the participants, the process and the outcomes.

On participants, it is important first of all to respect the person and to have reverence for the word. Perhaps the only rule during the workshop would be that the word is lord — that it is important to listen deeply to what people wish to say, as we have done during the past days here. In the workshops though we wish to broaden the participation. I would hope that people are aware in particular of gender. I think we have had very inspired testimonies and experiences shared yesterday, but there is more room now for more people to participate.

Regarding the process, first of all we want to establish safe spaces, so that people can truly speak their minds and hearts. We are already involved in very difficult and stressful situations; therefore, what we would like to do is to reduce the stress, to provide room to disagree without being disagreeable, and to have care for each other. Many of us are care-givers and we need to have care for the care-givers. The other thing that is important is that we are transparent and we want to build trust; therefore, the facilitators of each workshop should help to establish rules that participants trust. Then, finally, it is very important that we also recognise differences. It is not always possible to achieve full consensus, and it is important to recognise that our work here is work in progress.

Finally, regarding the outcome itself, yesterday, many of us shared very concrete experiences. So today, in the workshops, hopefully we will be able to move from the concrete to the general, from the personal to the public. Here it is also important to recognise again that we may not be able to achieve consensus on some issues, but that partial agreements can also be useful. Finally, and this is last word, the workshops are focused because we want to have outputs that would be valuable; therefore, I think it is important to remind ourselves to keep to the topic.

participants¹

name	organisation
ABDELHAY Boibat Cheikh	Western Sahara Polisario Front and Saharawi Campaign to Ban Landmines
ABU AL-ZULOF George	Defence for Children International Palestine and Palestine Campaign to Ban Landmines
ABYEI Edward Lino	Sudan People's Liberation Army/Movement (SPLA/M)
AGINA Mereso E.	Kenyan Coalition Against Landmines
AHMED Seniya	Polisario Front
ALI Lanang	Moro Islamic Liberation Front (MILF) Philippines
AMUM OKECH Pagan	Sudan People's Liberation Army/Movement
ANGELET Damien	Mission permanente de Belgique Genève
AROWBUSOYE Olubukola	Nigeria International Alert, West Africa
ATWOOD David	Quaker, United Nations Office Geneva
ALEU Ayieny Aleu	Operation Save Innocent Lives (OSIL) – Sudan
BENAVIDES Fulvia Elvira	Mission of Colombia to the UN, Geneva
BENDO Genti	Mission permanente d'Albanie Genève
BERNSTEIN Elizabeth	International Campaign to Ban Landmines
BOCKA Ilir	Deputy Minister of Defence; Chairman of Albanian Mine Action Committee, Albania
BOUSQUET Emilie	Student Observer
BOWLING Peter	International Working Group on Sri Lanka, London
BREMNER Davin	Institute for Conflict Analysis and Resolution, George Mason University, USA
BRIGOT Sylvie	Handicap International France
BRINKERT Kerry	Department of Foreign Affairs and International Trade, Canada
CARRIGAN Ana	Public Writer, Ireland and United States
CHALIAND Gérard	Fondation pour la Recherche Stratégique France
CHAVAZ Benoît	Student Observer
CHITRAKAR Purna Shova	Ban Landmines Campaign Nepal
CLAPHAM Andrew	Graduate Institute of International Studies, Switzerland
CORONEL FERRER Miriam	Philippine Campaign to Ban Landmines
DËRGUTI Ilaz	Kosovo Protection Corps, former Kosovo Liberation Army

name

DASTOOR Tehnaz
D’COSTA Tony
DERYA Nucan
DESVIGNE Laurence
DIOT Michel
DURAI Suba Chandran
ERO Comfort

FAIZ MUHAMMAD Faiz
FAURE Françoise
FOSTER Mary
FRANK Ulrich
FREYMOND Jean

GARCIA Edmundo
GASSER Tobias
GEBAUER Thomas
GEGA Margarita
GLAVINA Nina
GLOOR Anne
GODET François

GONTARD Jean-Pierre

GOOSE Steve
GRANT Stefanie
GRIFFITHS Martin

GÜNES Aynur
GWENA Tafadzwa
GWENA Mavis
GYAN-APENTENG Kwasi
HAAKE Markus

organisation

UNICEF New York
Pax Christi Ireland
Kurdistan Workers’ Party (PKK)
International Committee of the Red Cross (ICRC)
Fédération Suisse de Déminage
Institute of Peace and Conflict Studies, India
Centre for Defence Studies, King’s College, United Kingdom

Pakistan Campaign to Ban Landmines
Association Suisse-Palestine
Mines Action Canada
Mission permanente de l’Autriche, Genève
Centre for Applied Studies in International Negotiations, Switzerland

International Alert, London
Swiss Campaign to Ban Landmines
Medico International, Germany
Mission permanente d’Albanie à Genève
Croatian Campaign to Ban Landmines
Federal Department of Foreign Affairs, Switzerland
Geneva International Centre for Humanitarian Demining

Graduate Institute of Development Studies, Switzerland
Human Rights Watch
Student Observer
Henri Dunant Centre for Humanitarian Dialogue, Switzerland

Kurdistan Workers’ Party (PKK)

Zimbabwe Campaign to Ban Landmines
West Africa, African Topics Magazine, London
German Initiative to Ban Landmines

name	organisation
HALITJAHA Sadik	Kosovo Protection Corps, former Kosovo Liberation Army (KLA)
HANNON Paul	Mines Action Canada
HARPER John	Non-State Actors Database (NSA-DBA), London
HASSOUNA El Said Moustafa	Institute of Diplomacy and International Studies, University of Nairobi, Kenya
HERBY Peter	International Committee of the Red Cross
HONEYWELL Martin	International Alert, London
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KAKALIA Vladimir	Abkhazian Committee of the ICBL
KATALA Maurice	Action Intérrationale pour la Paix et le Développement dans la région des Grands Lacs
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International Campaign to Ban Landmines

Namibian Campaign to Ban Landmines

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feedback

First of all, accept my warmest praise for putting together an unusual conference. I think it achieved some spectacular results and allowed most of us to meet a wide of range of new faces.

*John Mackinlay, Centre for Defence Studies,
London*

Just a quick note to congratulate you on the conference and to thank you for the invitation. I certainly found much of the meeting useful for my work in Sri Lanka. I am keen to be kept in touch with the Geneva Call process and ICBL NSA working group.

On reflection, I think that our meeting in Geneva was indeed groundbreaking and I hope only the start of a continued and long dialogue with — and most importantly, between NSAs on landmines in particular and more widely on human rights and responsibilities. We stand at a critical time as notions of global interdependence, of state sovereignty, the basis for international relations are changing and I fear that this change is currently being dictated — as ever — by the powerful multinationals and states. Any dialogue that may bring to the fore other voices — whether you agree or not with those voices must be supported.

*Peter Bowling, International Working Group
on Sri Lanka*

In my mind there is no doubt that it is most appropriate for the ICBL to be undertaking this sort of action. And I think that is the question that the ICBL should be asking. “Now that the rest of the world has caught up with us, how

do we get out in front again?” One obvious answer is through this NSA project.

Sure, it seems an impossible project. But so was a government-level ban in 1992. Ottawa fixed that. Of course there will be difficulties. Of course there will be existing sensitivities to worry about. But that is nothing new. They have all existed right from the start of the campaign. They were coped with, and will have to be coped with again.

My thanks to you and all your colleagues for the great work that was done by you all.

Neil Mander, New Zealand Campaign

In this e-mail I would like to thank you so much for your efforts in making the NSA conference achieve all of this success. All of my congratulations, and I hope all these efforts will bring better situation for the human being in the future.

George Abu Al-Zulof, Palestine

Je vous adresse mes plus vives félicitations, à vous et à tous vos collaborateurs, pour la réussite de vos démarches avec les groupes non-étatiques pour la lutte contre les mines antipersonnel. Votre travail est remarquable!

François Dunant, Switzerland

Just to thank you once again for hosting a stimulating conference. I would like to stay in touch with those of you on the NSA working group

*Comfort Ero, Centre for Defence Studies,
London*

Félicitation pour le travail que vous avez

réalisé avec la conférence. Si vous souhaitez diffuser de l'information, nous nous ferons un plaisir de la relayer via le centre d'Accueil.

Sébastien Ziegler, Mandat International, Genève

This is just a note to thank you for the NSA conference. I learned a great deal. I appreciate the enormous effort the organization of this meeting must have taken. And the risks involved.

David Atwood, Quakers International

Juste un petit mot pour vous féliciter et vous remercier pour votre superbe travail, votre dynamisme et votre courage. C'est dans le domaine des NSA que se situe l'avenir concret de l'éradication des mines et UXO, et l'impact réel des mesures entreprises avec le processus d'Ottawa.

Henri Leu, Président de la Fédération Suisse de déminage

It has been a good experience with NSAs in the recent meeting. Please keep up this very important undertaking.

Phil ya Nangoloh, Namibian Campaign

Our institute presents its compliments to the Swiss Campaign to Ban Landmines and with reference to the invitation forwarded to our institute, has the honour to register its deepest and warmest appreciation to the organizers and sponsors of the esteemed pioneering conference on engaging non-state actors in a landmine ban.

The purpose of this message is to confirm the consolidation of the institutional links thus developed between the institute of diplomacy and the Swiss Campaign to Ban

Landmines.

Moustafa El Said Hassouna, Nairobi, University

I would like to thank you once again for inviting me to "Engaging Non-State actors in a Landmine Ban — a Pioneering Conference..." Organisations like ICBL, Swiss CBL, etc. have to carry on their work at various levels — political, judiciary, legislative and socio-economic levels. The aim of banning landmines seems to be far from a reality at this stage. Last but not least I would like to congratulate you for successful organization of the conference and in mobilising a number of organizations worldwide working on this issue.

P.R. Satapati, Switzerland

Congratulations por la conferencia

Victor G Ricardo, Colombian High Commissioner for Peace, Head, Government Observer Delegation

Congratulations for the Geneva conference.

Jan Egeland, former Deputy Foreign Minister of Norway, one of the main organisers of the Mine Ban Treaty Preparatory Conference Oslo 1997

I think that was a remarkable conference and I think it was probably very difficult to organise. I found it quite moving to meet and to listen to activists from the field and to representatives of these non-state, non-NATO, non-mafia, non-corporate and non-UN, non everything else actors who may or may not use landmines. . . . The conference reminds me of the early days of the campaign. Slightly chaotic, creative disagreement but full of a

moral purpose. I think it's important as Jody and Susan both reminded us over the course of the last two days, that underneath these complications there is a very simple issue, and that is why the campaign works, and this is a consistent moral purpose, which I think continues into perhaps this new phase of the campaign. I'm very happy to be here and I thank the organisers for organising it.

John Ryle, Open Society Institute

This conference is significant in the fact that many of the NSAs for the first time in history have found themselves almost together, and this is quite unique in a way that yesterday, as I was sitting there, to my right and to my left, were two NSAs from the same country. This one is a Marxist, the other one was Islamic, and I was in the middle. And I found that it was so great that they are existing in the same

room under the same roof. I believe that the message that goes beyond all whatever happened or whatever was being said, is the fact that a human being has the capacity of reaching the other one, given the atmosphere of fairness, if you give time to listen to the other, dialogue itself starts. . . . So, I feel that it has been a very great achievement. Those who spent day and night organising this conference, the Geneva Call, they have our appreciation and we take this opportunity to say that the movement, SPLA, is ready at any moment to share opinion and to share any experience with anybody, be it a Muslim movement, be it a Christian movement, be it a Communist movement, I think that part of fear of reaching the other in us has been broken and we are going to keep it. Thank you very much.

Edward Abye Lino, SPLA/M

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