

# disarmament forum

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ENGAGING NON-STATE ARMED GROUPS



UNITED NATIONS INSTITUTE FOR DISARMAMENT RESEARCH

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## EDITOR'S NOTE

This issue of *Disarmament Forum* explores how to engage non-state armed groups in disarmament processes. How do these groups obtain weapons—be they small arms or less conventional weapons—and how can they be effectively engaged in disarmament processes? Can the international system deal with NSAGs? The current legal complexities of NSAGs are examined, as is the recent practice of creating terrorist blacklists and targeted sanctions. Diplomatic means of disarmament—such as engagement and mediation—are also considered, as are pre-emptive and preventive measures to counter the threat posed by those more extreme groups that seek to obtain weapons of mass destruction.

The next issue of *Disarmament Forum* looks at options for a new arms control dialogue in the Middle East. Authors analyse the current security dilemma facing the region, including the nuclear question—while some states are advocating the creation of a zone free of weapons of mass destruction throughout the Middle East, others seem intent on nuclearization. Lessons are drawn from the last official dialogue on arms control—the Arms Control and Regional Security Working Group, which stalled in 1995, and ongoing diplomatic efforts in the region are examined, with a view to potential future arms control activities.

UNIDIR held its annual two-day conference on outer space on 31 March–1 April. This year's conference focused on how to ensure that the next generation of space technologies is used to peaceful effect. Speakers first considered what these technologies would be, and how they would affect future generations. The subsequent sessions discussed how to build trust among states, and how to encourage states to move toward cooperation, and even to agreement, in their use of outer space. The conference report and proceedings will be published by UNIDIR later in the year. Previous years' conference reports are available on our web site.

In the latest in a series of activities on information security, UNIDIR held a two-day meeting on 24–25 April on Information and Communication Technologies and International Security. This meeting brought together a wide range of diplomats, technical experts, decision makers and representatives from international organizations to examine the complex issues surrounding information warfare and cyberterrorism. The meeting participants considered the existing and potential threats, discussed the unique challenges posed by the hostile use of ICTs to international security and explored various potential responses to these threats. This meeting follows an issue of *Disarmament Forum* (no. 3, 2007, available on our web site) offering an introductory exploration of a range of information security issues, as well as a seminar held during the First Committee of the General Assembly in New York in October of last year.

UNIDIR is delighted to announce the recent appointment of Christiane Agboton Johnson to the position of Deputy Director. Dr Agboton Johnson was previously President of the Movement Against Small Arms in West Africa (MALAO), based in Senegal, and a member of the United Nations

Secretary-General's Advisory Board on Disarmament Matters. Dr Agboton Johnson holds a PhD in the medical sciences. Her significant expertise on disarmament and arms control, with a particular emphasis on small arms and African security issues, will both broaden and deepen UNIDIR's research programme. Dr Agboton Johnson can be reached at [cagboton-johnson@unog.ch](mailto:cagboton-johnson@unog.ch).

*Kerstin Vignard*

## SPECIAL COMMENT

There is an increasing need to allocate time and space to debate the different aspects that the concept of non-state armed groups (NSAGs) entails. We recognize the necessity of more structured discussions on definitions, as they vary in accordance with each national experience.

The international community must recognize the need to engage the issue of NSAGs. In this regard, several measures have already been taken in different settings that deal with preventing the access to weapons of these groups. United Nations Security Council resolution 1540, adopted on 28 April 2004 to prevent access to nuclear, chemical and biological weapons, their means of delivery and related materials, is a major step forward in this matter.

Other regional and international efforts address concerns according to specific topics, such as man-portable air defence systems (MANPADS). The United Nations, the Organization of American States (OAS), the Conferences of Ministers of Defense of the Americas, the Inter-American Committee against Terrorism (CICTE) and the International Civil Aviation Organization (ICAO) have all strengthened multilateral efforts to prevent terrorist threats against transportation systems and to confront the threat posed by terrorists' acquisition and use of MANPADS. These institutions have all adopted decisions, measures and guidelines necessary to mitigate the threat posed by the unauthorized use of MANPADS.

These international initiatives have addressed the issue using different concepts, such as terrorists, non-state end users or non-authorized users, but there is still the need to address the notion of NSAGs in a more insightful manner in other arms categories, such as small arms and light weapons.

In Colombia, NSAGs are the primary cause of violations to both human rights and international humanitarian law; they are also the primary agents of violence. Their terrorist actions are funded by an international criminal business—drugs and the illicit trafficking of small arms and light weapons.

NSAGs in Colombia, and in other parts of the world, gain access to small arms and light weapons through the black market and the diversion of arms in the trade among states.

The acquisition of small arms and light weapons by non-state armed groups is a daily threat that we must face and fight. Yet there is no decisive, constant effort by the international community to look for ways to engage in this discussion.

The arms flow is international. There is shared responsibility and everyone must be part of the solution. There is a need for a joint effort to embark on discussions, in a consistent and resolute manner, and to try to create a common understanding about the problems and obstacles in effectively tackling the issue of preventing the spread of weapons to NSAGs.

We understand the complexity of the issue and the different points of view regarding how it should be approached. We welcome the initiative of *Disarmament Forum* in dedicating a space to

dealing with non-state armed groups, a topic that poses a security challenge to democratic institutions and the civilian population. We hope this matter will continue to gain more interest in the international community and become a part of the agenda in arms control and disarmament negotiations.

***Ambassador Clemencia Forero Ucros***

Permanent Representative of Colombia to the United Nations  
and other International Organizations in Geneva

## Weapons to non-state armed groups—back to Westphalia?

Robbie SABEL

The focal issue of international law has traditionally been the relations between sovereign states. Since the 1648 treaties of Westphalia, international society has been based on the division of the world into territorial states; in 1928 Briery wrote in his seminal treatise that "The Law of Nations, or International Law, may be defined as the body of rules and principles of action which are binding upon civilized states in their relations with one another."<sup>1</sup> Classical laws of war<sup>2</sup> were also intended to be applied to inter-state conflicts, imposing the obligations of the laws of war on the states party to the conflict. Although there could be individual criminal responsibility for the commission of war crimes, it was states that bore international responsibility. In this neat "classical" theoretical world there was little provision for non-state actors; there were states, and of course individuals that could act on behalf of states, but no intermediary bodies.

The twentieth and twenty-first centuries have, however, seen a proliferation of non-state entities whose activities are transnational or have transnational effect. There has been a multitude of armed conflicts involving non-state entities in a non-international context. Armed non-state actors play a (usually nefarious) role in modern international relations and the phenomenon of international terrorism is, to a large extent, the result of acts by non-state armed groups (NSAGs). The fact that these non-state groups obtain weapons is of cardinal concern to the international community and the question is whether international law has a part to play in eliminating or controlling the supply of weapons to NSAGs. Key to this is whether there is any utility in examining the international legal obligations of NSAGs:<sup>3</sup> under international law, only states and intergovernmental organizations have international legal personality. The classical law of armed conflict grants NSAGs belligerent status in certain circumstances, but this primarily imposes obligations on the state involved in the conflict rather than the non-state group.

International law is notoriously difficult to enforce, but as Morgenthau writes: "during the four hundred years of its existence, international law has, in the most instances, been scrupulously observed".<sup>4</sup> Most non-state armed groups, however, do not possess legal personality in international law, have no regard for laws as such and it is therefore irrelevant to talk about their compliance with international law. Nevertheless, international law can be of relevance for some non-state groups, and is clearly relevant as regards the behaviour of states in their relations with non-state groups. This paper endeavours to examine what, if any, rules of international law apply to NSAGs and, more pertinently, what rules apply to states supplying weapons to NSAGs.

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Robbie Sabel is Visiting Professor of International Law at the Hebrew University Jerusalem. The author would like to thank Moshe Hirsch for his comments and Yogev Tuval for his assistance in researching this article.

## *Categories of non-state armed groups*

The term non-state armed group can refer both to intergovernmental organizations and to non-governmental organizations (NGOs). The term NGO is normally ascribed to voluntary civil society organizations advancing some benign cause but taken literally it can also encompass organized armed groups and even terrorist organizations. A NSAG will normally have a hierarchical structure and the ability to use force to achieve its goals, and a certain degree of independence from state control.<sup>5</sup> NSAGs can be divided roughly into the following categories.

### ARMED INTERGOVERNMENTAL ORGANIZATIONS

This category comprises international organizations that are military in nature or have military functions. They include the United Nations and such military treaty organizations as the North Atlantic Treaty Organization (NATO). An intergovernmental organization possesses an international legal personality that is separate from the legal personality of the states that created or that are members of the organization.<sup>6</sup> International law is clearly of relevance to intergovernmental organizations as they have rights and duties under international law, and are responsible for any violation of international law. The United Nations, for example, has recognized on several occasions its obligation to respect international humanitarian law and fundamental human rights during peacekeeping operations.<sup>7</sup> When NATO is engaged in armed conflict it is clearly bound to respect the humanitarian rules applicable in armed conflicts.<sup>8</sup> The thorny question of the division of responsibility for a violation between the state whose armed forces are involved and NATO itself is beyond the scope of this paper.

### ARMED NGOs IN OPPOSITION TO THE STATE

An armed NGO in a state, which is in opposition to that state, can be completely subsumed in the civilian population, such as the German Baader-Meinhof group (Red Army Faction) and the Japanese Aum Shinrikyo, or have some territorial base, such as the Lord's Resistance Army operating in Uganda, the Liberation Tigers of Tamil Eelam in Sri Lanka, the Liberians United for Reconciliation and Democracy in Liberia, and the National Union for the Total Independence of Angola (or UNITA), which was fighting against the Marxist regime in Angola. (It is worth mentioning in this regard that activity of armed rebel groups within a state can create in certain circumstances a failed state, whose central government is so weak or ineffective that it has hardly any impact and almost no control over much of its territory, e.g. Somalia, Afghanistan.<sup>9</sup>)

Under classical laws of war, armed rebel groups obtained belligerent status if they had effective control over some part of the territory and if the acts of violence between the parties to the conflict were not just sporadic but reached a certain level of intensity and duration.<sup>10</sup> There does not, however, appear to be any modern practice where states have formally granted rebel groups such combatant status. According to the Geneva Conventions, the state is bound to apply basic humanitarian rules when fighting an "armed conflict not of an international character occurring in the territory of one

*It is debatable whether there is any utility in referring to a rebel armed group's legal obligation to comply with an agreement.*

of the High Contracting Parties"<sup>11</sup> or against groups that are under responsible command, and which control sufficient territory to permit them to carry out "sustained and concerted military operations".<sup>12</sup>

In some cases, agreements are signed between armed rebel groups and states or other international actors, such as the International Committee of the Red Cross or UN humanitarian agencies. Such agreements clearly bind the states or intergovernmental organizations that sign them,<sup>13</sup> but it is debatable whether there is any utility in referring to a rebel armed group's legal obligation to comply with an agreement. It could

well be argued that, in terms of international law, there is not a binding agreement at all but rather a unilateral undertaking by a state that is made conditional on certain reciprocal behaviour of the rebel group. In other words, it is only the state that has a legal undertaking, but its undertaking is conditional on a factual situation, which in this case would be behaviour by a non-state armed group (which has no legal collective personality). If the armed group subsequently becomes the government of a state, then acts of the group will be considered retroactively to be acts of that state, for the purposes of state responsibility.<sup>14</sup>

#### "NATIONAL LIBERATION" ORGANIZATIONS

Organizations fighting to end a military occupation or colonial regime occupy a twilight position between being a rebel group in a state and having a recognized international legal personality. They usually identify themselves as "national liberation organizations". However, it is not an easy task to identify these groups or even to label them as NSAGs. The terminology used to describe these groups is controversial and intensely political. In Andrew Clapham's words: "In some ways it is clumsy to list NLMs [national liberation movements] as non-state actors. Their representatives may reject the label of non-state actor as, not only may they wish to stress their putative state-like aspirations and status, but they may sometimes already be recognized as a state member in certain regional inter-governmental organizations."<sup>15</sup> This problem is also relevant of course to states-in-the-making such as the Palestinian Authority (PA) and in the past the FLN in Algeria.<sup>16</sup> The 1977 Protocol I considers armed conflict by national liberation movements fighting against "colonial domination", "alien occupation" or "racist regimes" in the exercise of their right of self-determination to be an international armed conflict.<sup>17</sup> Moreover, 1977 Protocol I provides that national liberation movements may undertake to apply the Geneva Conventions and the Protocol in relation to a conflict by means of a unilateral declaration addressed to the depositary.<sup>18</sup> If they do so, then, according to Protocol I, they assume "the same rights and obligations as those which have been assumed by a High Contracting party".<sup>19</sup> Unless the national liberation movement is recognized as having a legal personality in international law, the significance of imposing legal obligations on it is not clear. It should be added that no state in modern times has ever acknowledged that it is an alien occupation, colonial domination or racist regime fighting a national liberation movement, and it is highly unlikely that any state will ever do so in the future. Nevertheless, the provision could be relevant in a situation where an outside legal body has to make a determination as to the status of a particular armed conflict.

#### COMMERCIAL SECURITY BODIES

This category consists of private companies that provide military and security services. Such services may range from logistics and communications support to armed protection of facilities, personal protection, military advice and training, intelligence, interrogation services and even direct participation in combat. Private security companies today play a major role in conflict and post-conflict situations.<sup>20</sup> A well-known example of this phenomenon is their use by the United States during the war in Iraq.<sup>21</sup> Indeed, the United States has relied on private security companies such as DynCorp International to support military forces and rehabilitate national infrastructures in Afghanistan, Bosnia, Kosovo, Liberia and Somalia. However, it is important to mention that private security companies are not contracted only by states. Armed rebel groups in Angola, Colombia, the Democratic Republic of the Congo and Sierra Leone have all used private security companies to bolster capacity through training and military assistance.<sup>22</sup> Private security companies might be considered "mercenaries" under international law when they are hired to fight armed conflicts,<sup>23</sup> as was the case for Sandline International and Executive Outcomes in the conflicts in Angola and Sierra Leone.<sup>24</sup> Private companies are clearly subject to the civil and criminal laws of the state where they are registered and where they operate.<sup>25</sup> Commercial

bodies have civil tortious responsibility for acts they commit<sup>26</sup> and since they enjoy no immunity, they may well find themselves subject to the civil jurisdiction of foreign states. But such armed commercial bodies do not possess international legal personality. They may possibly have criminal responsibility for violations of international law,<sup>27</sup> but the most relevant issue for international law is to what extent the state where they are registered or where they operate may have international liability for delicts and crimes committed by such commercial bodies. International liability will apply if the acts can be attributed to the state or if the state could and should have prevented the criminal or tortious acts.

#### ARMED GROUPS OPERATING IN A STATE IN COLLUSION OR WITH THE ACQUIESCENCE OF THE STATE

This category includes, for instance, terrorist organizations like Al-Qaida, Hizbullah and the Janjaweed militias. Here again it is futile to try and postulate what international norms should be applied to such groups; they are clearly not guided in their activities by the minutiae of international treaties. It is, however, relevant to examine the obligations to international law of the host state in regard to such activities.

#### TERRORIST GROUPS

Any armed NGO can be considered as a terrorist group if it engages in terrorist activities. Although there is no universally accepted definition of terrorism, the UN General Assembly has defined terrorism as "criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes".<sup>28</sup> The UN General Assembly further declared that such acts of terrorism "are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them".<sup>29</sup>

This definition appears to reflect a broad consensus. Although most states would label as terrorism a politically motivated attack by armed civilians against its armed forces, international law apparently limits the designation of terrorism to those attacks directed against civilians. It is relevant to emphasize the UN General Assembly statement that the motive or espoused cause of the terrorist behaviour never justifies terrorism. There will always be some criminal elements that will use terrorism to further their cause.

Clearly, there can be no utility in analysing what rules of international law are applicable to terrorist groups. Their very *raison d'être* is to achieve their political aims by means that flout norms of law and humanitarian behaviour. The UN Security Council has recognized that states have a right of self-defence against terrorism, a right that includes the use of armed force. Whether such use of armed force should be covered by criminal law or by the laws of armed conflict would seem to be dependent on the scale and intensity of the hostilities.<sup>30</sup> The international legal community has over the years also created an impressive network of treaties that require states to prosecute or extradite persons who have committed acts of terrorism.<sup>31</sup>

#### *Sanctions against violations by non-state armed groups*

Beyond the use of force, commentators have suggested different approaches to deal with human rights violations committed by NSAGs;<sup>32</sup> some have proposed commencing dialogue with NSAG leaders, and building capacity and pressure by "naming and shaming".<sup>33</sup> UN bodies and human rights organizations have addressed violations of human rights and of humanitarian law committed by NSAGs without attributing them to states. For example, in a 2004 report UN Secretary-General Kofi Annan drew

attention to "human rights violations" by the Forces Nationales de Libération in Burundi, even though this armed group did not form part of the transitional government of Burundi when the report was published,<sup>34</sup> and in his 2006 report to the Security Council, Annan recommended sanctions against the Liberation Tigers of Tamil Eelam, such as arms embargoes and financial restrictions, in response to human rights violations committed by this group.<sup>35</sup> Furthermore, after the 2006 Lebanon war, UN Secretary-General Ban Ki-moon and several human rights organizations issued reports detailing the humanitarian law violations of Hizbullah during the above-mentioned conflict.<sup>36</sup>

*Even if NSAGs were willing to comply with international rules they lack the facilities and resources that make full compliance with humanitarian law possible.*

Armed non-state groups acting in opposition to the state where they are present will usually have no inclination to limit their activities to those prescribed by international law. However, even if NSAGs were willing to comply with international rules they lack the courts, prisoner-of-war camps, and other important facilities and resources that make full compliance with humanitarian law possible.

### *State responsibility for acts of non-state armed groups*

The rules of state responsibility for the activities of NSAGs have been examined by the International Court of Justice (ICJ) in the *Nicaragua* and *Iran Hostages* cases, and later by the International Criminal Tribunal for the former Yugoslavia (ICTY) in the *Tadic* case.<sup>37</sup> In *Nicaragua* the ICJ determined that a state must exercise "effective control" over the operations of a NSAG in order for the acts of that group to be imputed to the state, wherein even "financing, organizing, training, supplying and equipping" as well as "the selection of its military or paramilitary targets, and the planning of the whole of its operation" is not enough to meet the exacting threshold.<sup>38</sup> However, in the *Tadic* case the ICTY has concluded that *Nicaragua's* "effective control" test set too high a threshold for holding a state responsible for the acts of NSAGs. According to the majority decision in the *Tadic* case it is sufficient that a state has "a role in organizing, coordinating, or planning the military actions of the military group" [italics in original], in order to exercise "overall control" over these groups.<sup>39</sup> Another possibility to hold a state accountable for the actions of NSAGs is if it acknowledges and adopts such actions *ex post facto*, as in the *Iran Hostages* case.<sup>40</sup> Both the "control" and the "acknowledgement" tests for state responsibility were included in the International Law Commission's articles on Responsibility of States for International Wrongful Acts.<sup>41</sup>

#### STATE RESPONSIBILITY FOR CONTROLLING OR ORGANIZING NSAGs

Under general principles of international law:

Every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State.

Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts...<sup>42</sup>

Where a state has effective control over a NSAG or where the state has a role in organizing, coordinating or planning the military actions of the military group, then the actions of the group can be imputed to those of the state and we have clear, direct state responsibility for the acts of the NSAG.

### A DUTY TO PREVENT NSAGs FROM COMMITTING OFFENCES?

In a situation where a non-state armed group is not acting under the control or organization of a state the assumption would normally be that a state has no obligation to take positive steps to prevent such a group from committing an offence. No state has the obligation to act as a universal policeman. Nevertheless, in relation to genocide the ICJ has recently ruled that:

responsibility is however incurred if the State manifestly failed to take all measures to prevent genocide which were within its power, and which might have contributed to preventing the genocide. In this area the notion of "due diligence", which calls for an assessment *in concreto*, is of critical importance.<sup>43</sup>

The court carefully limited its dictum to the crime of genocide. However, it leaves open the possibility that a future decision would extend such responsibility to other violations of international law.

### *State responsibility for supplying arms to non-state armed groups?*

A further question is as to the responsibility, if any, of a state that provides weapons to a non-state entity but has no further control or role in the acts of the group. This requires a brief examination of existing international law rules controlling the sale by states of weapons to NSAGs.

#### SUPPLYING WEAPONS TO TERRORIST GROUPS

There are clear UN General Assembly and Security Council resolutions obliging states not to cooperate with terrorists. After the attacks of 11 September 2001, the UN Security Council, acting under Chapter VII of the UN Charter, adopted a mandatory decision calling upon states to refrain "from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and *eliminating the supply of weapons to terrorists*" [emphasis added].<sup>44</sup>

As regards the recent conflict in Lebanon, the Security Council in its Resolution 1701:

15. Decides...that all States shall take the necessary measures to prevent, by their nationals or from their territories or using their flag vessels or aircraft:

(a) The sale or supply to any entity or individual in Lebanon of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, whether or not originating in their territories; ...

(b) ... except that these prohibitions shall not apply to arms, related material, training or assistance authorized by the Government of Lebanon or by UNIFIL<sup>45</sup>

The use of the phrase, in the preamble to the resolution, that "the situation in Lebanon constitutes a threat to international peace and security" together with the use of the word "decides" and the absence of any reference to the requirement of agreement by the states concerned clearly points to the Chapter VII character of this part of the decision.

Decisions of the UN Security Council that are adopted under Chapter VII of the Charter bind all UN Member States and take precedence over any other legal obligation.<sup>46</sup> A state supplying weapons to a terrorist group would be in violation of such a resolution, and, theoretically, would itself be liable

to be sanctioned. Nevertheless, in the Lebanese situation, it has been reported that Syria and Iran have continued to supply weapons to Hizbullah.<sup>47</sup> However, the political reality being what it is in the Security Council, there is little possibility of sanctions being applied to the two states.

#### SUPPLYING NUCLEAR, CHEMICAL OR BIOLOGICAL WEAPONS TO NON-STATE ACTORS

The one category of weapons where there exists an unambiguous prohibition on transfer to all non-state actors is in regard to nuclear, chemical or biological weapons. The UN Security Council, in 2004, acting under Chapter VII of the UN Charter:

1. *Decides that* all States shall refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery<sup>48</sup>

Thus a state supplying biological, chemical or nuclear weapons to any non-state group is in violation of a mandatory UN Security Council resolution and, again theoretically, is itself liable to be sanctioned for such supply.

#### SUPPLYING CONVENTIONAL WEAPONS TO NSAGs OTHER THAN THOSE DETERMINED TO BE TERRORIST GROUPS

There is no general prohibition on a state transferring conventional weapons to a NSAG that is not designated as a terrorist group. There is, however, a treaty prohibiting trade in illicit firearms, the term illicit being applied to weapons that are not marked or are manufactured without authorization from the state.<sup>49</sup>

There are, furthermore, a series of measures promulgated both by the United Nations and by the Organization for Security and Co-operation in Europe that provide for:

- transparency through the register and other exchange of information;
- national controls and licensing on manufacturing;
- marking to enable tracing;
- record-keeping;
- effective export control;
- registration of arms dealers and brokers;
- border and customs control;
- information exchange between authorities; and
- physical arrangements for storage and destruction.

These measures are not mandatory, though their general effect, like other measures of "soft", non-binding law, may be to lay the groundwork for future binding injunctions.

#### SMALL ARMS

It has been estimated that "small arms alone are instrumental in the deaths of more than half a million people annually – approximately 10,000 per week or one person every minute. The vast majority of victims were civilians."<sup>50</sup> The UN General Assembly has initiated a Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms, which calls upon states, inter alia "to exercise effective control over the production of small arms and light weapons", "to establish as criminal offences under their domestic law the illegal manufacture, possession, stockpiling and trade of small

arms and light weapons", to "apply an appropriate and reliable marking on each small arm and light weapon as an integral part of the production process", and to ensure records are kept of manufacture and transfer of such weapons.<sup>51</sup> Trade in such weapons is considered illicit if they are manufactured without a licence, are considered illicit under the law of the state within whose territorial jurisdiction the small arm or light weapon is found, they are not marked, or the transfer is in violation of a UN Security Council embargo.<sup>52</sup> Implementation of these measures would be an important step, though existing stocks are so immense and widespread that the immediate prospects of restricting the supply are not high. It should, moreover, be pointed out that weapons such as man-portable air defence systems (MANPADs), anti-tank missiles, and anti-personnel and anti-vehicle explosive devices can wreak havoc with civilian targets such as aircraft, trains and buses and it is questionable whether there is justification in the distinction between small arms and other weapons.

#### BLANKET PROHIBITION OF ARMS SALES TO NON-STATE GROUPS?

There is at present no general international legal instrument requiring that weapons be transferred only to states and the corollary is that there is no prohibition regarding transferring weapons to non-state groups. As the law stands today such transfer can be legal. The United States has argued against a restriction, claiming that it might interfere with the "the rights of the oppressed to defend themselves

*There is at present no general international legal instrument requiring that weapons be transferred only to states.*

against tyrannical and genocidal regimes".<sup>53</sup> It would, however, seem that the objection could be overcome by permitting such direct transfer if approved by the UN Security Council or perhaps a regional intergovernmental organization such as the Organization of American States or the African Union. A further argument against prohibiting transfer of weapons to armed non-state groups could be that it would hamper normal commercial sales of hunting and sport firearms to private persons. This argument should not be decisive, since most states already require import licences for firearms and if they wish to do so they can authorize such imports.

#### *Conclusion: back to Westphalia?*

It is argued here that the only practicable way that international law can be a tool in combating the activities of non-state armed groups is by imposing obligations on states and not by creating legal fictions that armed NGOs have obligations under international law.

There is clear state responsibility for the results of the use of weapons by a NSAG where the state has control of the group. This can be an effective deterrent. The litigation in the United States against Libya concerning the Lockerbie case is an example. There could also be responsibility in circumstances where a state should and could have prevented the action by the armed group. Transferring arms to terrorist groups is already prohibited. The legal situation today is that there could be state responsibility for terrorist actions where a state transfers weapons, knowingly or recklessly, to a terrorist group by virtue simply of having transferred the weapons. The analogy could be to that of an individual knowingly supplying a terrorist with weapons or explosives.

What is still missing is a blanket prohibition on transfer of weapons to any armed NGOs. Exceptions could be made with the approval of a host state, the UN Security Council or regional intergovernmental organizations. Such a prohibition, if it is enacted, must be directed at states, for ultimately it is they that have legal obligations under international law.

## Notes

1. J.L. Brierly, 1928, *The Law of Nations, An Introduction to the International Law of Peace*, Oxford, Clarendon Press, p. 1.
2. United Nations bodies and the International Committee of the Red Cross nowadays use the term "international humanitarian law applicable in armed conflicts" or simply "international humanitarian law" rather than the older term "laws of war".
3. See, for example, Mary Ellen O'Connell, 2005, "Enhancing the Status of Non-state Actors through a Global War on Terror?" *Columbia Journal of Transnational Law*, vol. 43, no. 2, pp. 438–439; Liesbeth Zegveld, 2002, *Accountability of Armed Opposition Groups in International Law*, Cambridge, Cambridge University Press.
4. Hans J. Morgenthau, 1978, *Politics among Nations, The Struggle for Power and Peace*, fifth edition, Alfred A. Knopf, p. 281.
5. For different definitions and characteristics of non-state armed groups, see Pablo Policzer, 2002, *Human Rights and Armed Groups: Toward a New Policy Architecture*, Calgary, Armed Groups Project, at <[www.armedgroups.org/sites/armedgroups.org/files/\\_1\\_Policzer.pdf](http://www.armedgroups.org/sites/armedgroups.org/files/_1_Policzer.pdf)>; C. Bruederlein, 2000, *The Role of Non-state Actors in Building Human Security: The Case of Armed Groups in Intra-state Wars*, Geneva, Centre for Humanitarian Dialogue, at <[www.isn.ethz.ch/pubs/ph/details.cfm?lng=en&id=7284](http://www.isn.ethz.ch/pubs/ph/details.cfm?lng=en&id=7284)>.
6. The legal personality of international organizations was recognized by the International Court of Justice in two important cases. See International Court of Justice, *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion of 11 April 1949, at <[www.icj-cij.org/docket/files/4/1837.pdf](http://www.icj-cij.org/docket/files/4/1837.pdf)>; International Court of Justice, *Certain Expenses of the United Nations*, Advisory Opinion of 20 July 1962, at <[www.icj-cij.org/docket/files/49/5259.pdf](http://www.icj-cij.org/docket/files/49/5259.pdf)>; For interpretation of these cases see I. Brownlie, 2003, *Principles of Public International Law*, sixth edition, Oxford, Oxford University Press, p. 649.
7. *UN Secretary General's Bulletin: Observance by United Nations Forces of International Humanitarian Law*, UN document ST/SCGB/1999/13, 6 August 1999.
8. A. Clapham, 2006, *Human Rights Obligations of Non-State Actors*, Oxford, Oxford University Press, p. 83.
9. Somalia, for instance, has a weak central government (the Transitional Federal Government), which currently controls only the central region of the country. For a comprehensive analysis of the situation in Somalia and other failed states, see The Fund for Peace's Failed States Index 2007, at <[www.fundforpeace.org/web/index.php?option=com\\_content&task=view&id=229&Itemid=366](http://www.fundforpeace.org/web/index.php?option=com_content&task=view&id=229&Itemid=366)>.
10. See A. Cassese, 2005, *International Law*, second edition, Oxford, Oxford University Press, p. 125.
11. Article 3 common to all four of the Geneva Conventions of 12 August 1949 (Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; Convention (III) Relative to the Treatment of Prisoners of War; and Convention (IV) Relative to the Protection of Civilian Persons in Times of War).
12. Additional Protocol II to the Geneva Conventions, Relating to the Protection of Victims of Non-international Armed Conflicts, 8 June 1977, Article 1.
13. See for instance the San Jose Agreement on Human Rights between the Government of El Salvador and the Frente Farabundo Martí para La Liberación Nacional signed on 26 July 1990 (reproduced in UN document A/44/971–S/21541, 16 August 1990); Clapham, op. cit., pp. 272–273.
14. *Report of the International Law Commission, Fifty-third Session, 2001*, UN document A/56/10(SUPP), paragraph 76, reproduces the text of the draft articles adopted by the Commission on the Responsibility of States for Internationally Wrongful Acts:
 

*Article 10*

*Conduct of an insurrectional or other movement*

1. The conduct of an insurrectional movement which becomes the new Government of a State shall be considered an act of that State under international law.
15. Clapham, op. cit., p. 273.
16. On the status of such states-in-the-making see Eyal Benvenisti, 1993, "The Israeli-Palestinian Declaration of Principles: A Framework for Future Settlement", *European Journal of International Law*, vol. 4, no. 4, pp. 542–554; Geoffrey R. Watson, 2000, *The Oslo Accords: International Law and the Israeli–Palestinian Peace Agreements*, Oxford, Oxford University Press; Robbie Sabel, 2001, Book Review: "The Oslo Accords: International Law and the Israeli-Palestinian Peace Agreements", *American Journal of International Law*, vol. 95, no. 1, pp. 248–252.
17. Additional Protocol I to the Geneva Conventions, Relating to the Protection of Victims of International Armed Conflicts, 8 June 1977, Article 1(4).
18. 1977 Protocol I, Article 96(3).
19. *Ibid.*, Article 96(3b).

20. See Laura A. Dickinson, 2007, "Accountability of Private Security Contractors under International and Domestic Law", *ASIL Insight*, vol. 11, no. 31, December, at <[www.asil.org/insights/2007/12/insights071226.html](http://www.asil.org/insights/2007/12/insights071226.html)>.
21. See Caroline Holmqvist, 2005, *Private Security Companies: The Case for Regulation*, SIPRI Policy Paper no. 9, at <[books.sipri.org/files/PP/SIPRI09.pdf](http://books.sipri.org/files/PP/SIPRI09.pdf)>.
22. See P.W. Singer, 2001–2002, "Corporate Warriors: The Rise and Ramifications of the Privatized Military Industry", *International Security*, vol. 26, no. 2, p. 32; A.-F. Musah and J.K. Fayemi (eds), 2000, *Mercenaries: An African Security Dilemma*, London, Pluto Press.
23. Article 47 of 1977 Protocol I defines a mercenary as a person who:
  - (a) is specially recruited locally or abroad in order to fight in an armed conflict;
  - (b) does, in fact, take a direct part in the hostilities;
  - (c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party;
  - (d) is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;
  - (e) is not a member of the armed forces of a Party to the conflict; and
  - (f) has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.
24. See Tim McCormack, 1998, "The 'Sandline Affair': Papua New Guinea Resorts to Mercenarism to End the Bougainville Conflict", *Yearbook of International Humanitarian Law*, vol. 1, pp. 292–300.
25. In some circumstances US law grants immunities from suit to commercial security firms operating on behalf of the US Government.
26. See, for example, United States Court of Appeals, *Kadic v. Karadzic*, 70F.3d 232 (2d Circuit, 1995), pp. 239–240, 243.
27. See, for example, *United States v. Krauch* (the *Farben* case), in the *Trials of War Criminals Before the Nuernberg Military Tribunals Under Control Council Law No. 10: "The I.G. Farben Case"*, vol. VIII, Washington, DC, US Government Printing Office, 1952.
28. UN General Assembly resolution 51/210 of 17 December 1996, UN document A/RES/51/210, 16 January 1997, paragraph 2.
29. *Ibid.*
30. See Gregory E. Maggs, 2006, *Assessing the Legality of Counterterrorism Measures without Characterizing Them as Law Enforcement or Military Action*, GWU Law School Public Law Research Paper no. 257, Washington, DC.
31. For example: Convention on Offences and Certain Other Acts Committed on Board Aircraft, Tokyo, 14 September 1963; Convention for the Suppression of Unlawful Seizure of Aircraft, The Hague, 16 December 1970; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal, 23 September 1971; Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents, New York, 14 December 1973; International Convention Against the Taking of Hostages, New York, 17 December 1979; Convention on the Physical Protection of Nuclear Material, Vienna, 3 March 1980; Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Montreal, 24 February 1988; Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Rome, 10 March 1988; Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, Rome, 10 March 1988; Convention on the Marking of Plastic Explosives for the Purpose of Detection, Montreal, 1 March 1991; International Convention for the Suppression of Terrorist Bombings, New York, 15 December 1997; International Convention for the Suppression of the Financing of Terrorism, New York, 9 December 1999. For the full text of all these treaties, go to <[untreaty.un.org/English/Terrorism.asp](http://untreaty.un.org/English/Terrorism.asp)>.
32. See William A. Schabas, 2003, "Punishment of Non-State Actors in Non-International Armed Conflict", *Fordham International Law Journal*, vol. 26, no. 4; Jordan J. Paust, 2002, "Sanctions against Non-State Actors for Violations of International Law", *ILSA Journal of International and Comparative Law*, vol. 8, no. 2.
33. See for example, David Capie and Pablo Policzer, 2004, *Keeping the Promise of Protection: Holding Armed Groups to the Same Standard as States*, Expert Policy Brief for the UN High-level Panel on Threats, Challenges, and Change, at <[www.armedgroups.org/sites/armedgroups.org/files/\\_3\\_-\\_Capie\\_and\\_Policzer.pdf](http://www.armedgroups.org/sites/armedgroups.org/files/_3_-_Capie_and_Policzer.pdf)>; Clapham, *op. cit.*, pp. 70–83; Bruederlein, *op. cit.*
34. *Second Report of the Secretary-General on the United Nations Operation in Burundi*, UN document S/2004/902, 15 November 2004.
35. *Report of the Secretary-General on Children and Armed Conflict in Sri Lanka*, UN document S/2006/1006, 20 December 2006.

36. *Report of the Secretary-General on the Implementation of Security Council Resolution 1701 (2006)*, UN document S/2007/392, 30 October 2007; Amnesty International, 2006, *Under Fire: Hizbullah's Attacks on Northern Israel*, September; Human Rights Watch, 2007, *Civilians under Assault: Hezbollah's Rocket Attacks on Israel in the 2006 War*, vol. 19, no. 3(E), August, at <[hrw.org/reports/2007/iopt0807/iopt0807web.pdf](http://hrw.org/reports/2007/iopt0807/iopt0807web.pdf)>.
37. See ICJ Reports 1986, *Case Concerning the Military and Paramilitary Activities in and Against Nicaragua, Nicaragua v. United States of America*, Judgment of 27 June 1986; ICJ Reports 1980, *Case Concerning the United States Diplomatic and Consular Staff in Tehran, United States v. Iran*, Judgment of 24 May 1980; ICTY, *Prosecutor v. Dusko Tadic*, Judgement, Case no. IT-94-1-A, 15 July 1999.
38. ICJ Reports 1986, op. cit., paragraph 115.
39. ICTY, op. cit., paragraph 137.
40. ICJ Reports 1980, op. cit.
41. Articles 8, 9 and 11 of the International Law Commission's articles on Responsibility of States for International Wrongful Acts, UN General Assembly resolution 56/83 of 12 December 2001, UN document A/RES/56/83, 28 January 2002, Annex:

*Article 8*

*Conduct directed or controlled by a State*

The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.

*Article 9*

*Conduct carried out in the absence or default of the official authorities*

The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact exercising elements of the governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements of authority.

*Article 11*

*Conduct acknowledged and adopted by a State as its own*

Conduct which is not attributable to a State under the preceding articles shall nevertheless be considered an act of that State under international law if and to the extent that the State acknowledges and adopts the conduct in question as its own.

See also James Crawford, 2002, *The International Law Commission's Articles on State Responsibility*, Cambridge, Cambridge University Press.

42. *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations*, UN General Assembly resolution 2625 (XXV) of 24 October 1970, Annex, paragraph 1.
43. International Court of Justice, *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro): Judgment*, 26 February 2007, at <[www.icj-cij.org/docket/files/91/13685.pdf](http://www.icj-cij.org/docket/files/91/13685.pdf)>, paragraph 430.
44. UN Security Council resolution 1373 (2001), UN document S/RES/1373(2001), 28 September 2001, paragraph 2(a).
45. UN Security Council resolution 1701 (2006), UN document S/RES/1701(2006), 11 August 2006.
46. Charter of the United Nations, signed 25 June 1945 in San Francisco, Article 103.
47. "Iran and Syria Helping Hizballah Rearm", *Time*, 24 November 2006, at <[www.time.com/time/world/article/0,8599,1562890,00.html](http://www.time.com/time/world/article/0,8599,1562890,00.html)>; "Lebanese Military Analyst: Hezbollah Possess Sophisticated Weapons", *International Herald Tribune*, 15 August 2007, at <[www.iht.com/articles/ap/2007/08/15/africa/ME-GEN-Lebanon-Hezbollah.php](http://www.iht.com/articles/ap/2007/08/15/africa/ME-GEN-Lebanon-Hezbollah.php)>
48. UN Security Council resolution 1540 (2004), UN document S/RES/1540(2004), 28 April 2004.
49. Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, Supplementing the United Nations Convention against Transnational Organized Crime, reproduced in UN General Assembly resolution 55/255 of 31 May 2001, UN document A/RES/55/255, 8 June 2001. Entered into force 3 July 2005.
50. Statement by Mr Stanislav Vidovic, Republic of Slovenia, on behalf of the member countries of the Human Security Network, at the United Nations Conference to Review Progress Made in the Implementation of the Programme of Action on Small Arms and Light Weapons, New York, 26 June 2006, at <[www.humansecuritynetwork.org/docs/2006-09-salw-govor.pdf](http://www.humansecuritynetwork.org/docs/2006-09-salw-govor.pdf)>.

51. Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, section 2, reproduced in the *Report of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*, UN document A/CONF.192/15, New York, 2001.
52. Draft International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons, reproduced in UN document A/60/88, 27 June 2005.
53. Statement by Robert G. Joseph, United States Undersecretary for Arms Control and International Security, at the UN Conference to Review Progress Made in the Implementation of the Program of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, 27 June 2006, at <[www.un.org/events/smallarms2006/pdf/arms060627usa-eng.pdf](http://www.un.org/events/smallarms2006/pdf/arms060627usa-eng.pdf)>.

# Engaging non-state armed groups or listing terrorists? Implications for the arms control community

Nicolas FLORQUIN and Elisabeth DECROY WARNER

Although non-state armed groups (NSAGs) played an active role in conflict as early as the fifteenth century BC,<sup>1</sup> it is only since the 1949 Geneva Conventions that the international community has begun to recognize that such actors' respect of international norms would contribute to the protection of people living in zones affected by armed conflict and human rights abuses.<sup>2</sup> Since the late 1990s, international and regional organizations have provided strong political support to initiatives aiming at engaging NSAGs in adhering to the anti-personnel (AP) mine ban.<sup>3</sup> The majority of states has prohibited this type of weapon since 1997 because of its indiscriminate and inhumane effects. Advocating non-state armed groups to follow suit has been a necessary and largely successful strategy complementing the state process to ensure that all users of landmines—state and non-state—adhere to the AP mine ban norm. As a result, the engagement of NSAGs—efforts to explore, instigate, enable or sustain contact with an NSAG—on weapons issues is no longer at an experimental stage and has produced positive, measurable impacts on people's lives.<sup>4</sup>

However, since 11 September 2001, the use of the "terrorist" label to describe some NSAGs, although not a new phenomenon, has regained momentum, and this has challenged many efforts to tackle security issues in ways that are inclusive of NSAGs.<sup>5</sup> This article discusses how this development, and in particular reliance on "terrorist lists", has affected international peace and humanitarian efforts, and why it should also be of concern to the arms control community.

## *Toward ever broader definitions of NSAGs*

Academic understanding about the significance of NSAGs to global security is increasing, as illustrated by discussions on how to define NSAGs and who to engage.<sup>6</sup> While humanitarian and human rights actors have tended to limit their definition of NSAGs to armed organizations independent of state control that use violence to achieve political ends,<sup>7</sup> expert Pablo Policzer proposes to define them as *any* "challengers to the state's monopoly of legitimate coercive force".<sup>8</sup> This broad understanding paves the way for engaging not just traditional, politically motivated rebel movements, but also paramilitary organizations, criminal organizations and private military companies.

While engaging such a wide variety of entities on international norms may seem impossible in practice, at least in the short term, broad definitions can only gain prominence as states' monopoly

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Nicolas Florquin, Programme Officer for Africa at Geneva Call, has previously worked as a researcher with the Small Arms Survey and recently took part in the United Nations Panel of Experts on Liberia. Elisabeth Decroy Warner is President and co-founder of Geneva Call. She has served as a member and President of the Parliament of the Republic and Canton of Geneva, and has also worked with various NGOs on issues relating to refugees, torture and landmines. Colleagues at Geneva Call, as well as Glenn McDonald, Pablo Policzer, Marco Sassoli and Camilla Waszink made very useful suggestions on earlier drafts. The usual disclaimers apply.

of force appears to lose ground. The vast majority of active conflicts involve at least one NSAG; some involve only NSAGs. In line with the international community's resolve to embrace the broader notion of human security and the linkages between development and armed violence,<sup>9</sup> comprehensive notions of NSAGs, which encompass all actors, appear the most relevant conceptually and in practice. Humanitarian action and conflict resolution efforts will require the engagement of a wide array of NSAGs if they are to have any impact on contemporary challenges.

### *From defining to labelling NSAGs*

In contrast to academics' broader understanding, there has been a trend among states "affected" by NSAGs, as well as intergovernmental organizations, of using labels such as "terrorist" to refer to organizations that would otherwise fit perfectly into Policzer's definition. Thirteen international conventions already exist to prevent and suppress specific terrorist acts,<sup>10</sup> but there is to date no internationally agreed definition of a terrorist. The frequent use of this label in recent years appears to be politically charged; it dismisses the challenges NSAGs present to state sovereignty and territorial control and justifies responses based on—at times unrestrained—force rather than dialogue. It also helps in soliciting financial support in the context of the "global war on terror". It has been argued that the international community's portrayal of the Union of Islamic Courts (UIC) as jihadis, which is partly due to the presence of some of its senior members on the United States' terrorist list, overshadowed the regional dynamics and roots of the conflict between Eritrea and Ethiopia.<sup>11</sup> The Ethiopian government was able to take advantage of this simplified rhetoric to justify its invasion of Somalia and garner international support, despite the fact that the UIC had succeeded in providing some sense of safety in the capital Mogadishu during much of the second half of 2006—for the first time since the early 1990s—and might have been more productively engaged through peaceful means.

More problematic than political rhetoric is the institutionalization of "terrorist blacklists" at the international and national levels. Although the official designation of certain NSAGs as terrorists can be traced back to the early twentieth century, the use of blacklists has become a particularly prominent part of global efforts to address terrorist threats since the events of 11 September 2001.<sup>12</sup> Lists maintained by intergovernmental organizations such as the European Union (EU)<sup>13</sup> and the United Nations Security Council<sup>14</sup> usually involve member states making requests to the international bodies to include organizations and individuals, which then become subject to targeted sanctions—such as travel bans, asset freezes and arms embargoes. The criteria for inclusion on these lists, and the level of evidence required, are unclear, however, leaving room for politically motivated listing. National lists are usually more transparent with respect to procedures and criteria. States such as Australia,<sup>15</sup> Canada,<sup>16</sup> the United Kingdom<sup>17</sup> and the United States<sup>18</sup> maintain terrorist lists that are generally embedded into national legislation and can provide for tough punishment through criminalization, although procedures and lists vary from country to country.<sup>19</sup>

Procedures for establishing international blacklists have been harshly criticized from a legal and human rights standpoint.<sup>20</sup> While the use of targeted sanctions can be seen as an improvement over country-wide sanctions and embargoes that impact upon entire populations, a recent review of the Security Council and EU lists by the Council of Europe's Committee on Legal Affairs and Human Rights concluded that these sanction regimes:

...fail to provide satisfactory protection of fundamental human rights, including both procedural and substantive rights.

87. Individuals or entities listed under the UNSC sanctions regime are often even unable to appeal their listing, and have no access to any type of independent and impartial review mechanism. ...

88. Furthermore, parties listed under targeted sanctions regimes lack adequate remedies to address any cases of unlawful listing. Some type of compensation should be available for the economic, and even emotional, losses suffered by such parties as a result of their listing.<sup>21</sup>

The difficulties of delisting are best illustrated by the case of the People's Mujahedin Organization of Iran (PMOI). This Iranian opposition movement has repeatedly yet unsuccessfully sought to be removed from the EU's list, despite favourable rulings by the Court of First Instance of the European Communities in 2006, which stressed defects in the listing procedures, and the UK-based Proscribed Organisations Appeal Commission in 2007, which, in addition to procedural concerns, provided evidence that the group had ceased military action since 2001 and called the group's listing "perverse".<sup>22</sup>

These discrepancies among listing procedures have resulted in lists of organizations and individuals that are different in size and content. Lists end up including a wide range of NSAGs, from groups clearly using terror tactics, such as Al-Qaida, to reportedly unarmed<sup>23</sup> opposition political movements, such as the PMOI. Not only does such practice seem unfair, it is also confusing, particularly for humanitarian actors and scholars. The latter fear, for instance, that such lists will affect the principle of humanitarian impartiality. Humanitarian actors receiving funding from states maintaining such lists risk being perceived as biased by listed NSAGs. Targeted sanctions may also impede the right to engage all actors in conflict so that access and protection to civilians living in areas controlled by NSAGs are ensured,<sup>24</sup> as provided for in Common Article 3 of the Geneva Conventions, which reads: "An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict" [emphasis added].<sup>25</sup>

What the terrorist label means in practice appears to be as politically motivated as the procedures establishing lists. In some cases, the simple fact that a government refers to a NSAG appears to proscribe any contact with it, even if motivated by humanitarian or conflict resolution purposes. Governments and humanitarian organizations have faced sanctions from national authorities for operating in areas controlled by NSAGs or for holding talks with them. In July 2007, the government of Ethiopia expelled the International Committee of the Red Cross (ICRC) from the Somali Regional State on the basis that it provided support to the Ogaden National Liberation Front (ONLF), a movement the government regularly refers to as terrorist.<sup>26</sup> More recently, the Afghan government expelled two diplomats of the European Union and the United Nations who had been holding talks with the Taliban, reportedly following pressure from the United States.<sup>27</sup> In other contexts, however, international actors can more openly engage in peace and humanitarian negotiations with NSAGs despite their presence on a terrorist list. In Colombia, the President has officially appointed the Catholic Church as channel for negotiations with the Fuerzas Armadas Revolucionarias de Colombia (FARC),<sup>28</sup> despite this group's presence on lists maintained by the United States and the EU. The Swiss government's regular talks with all sides of the Israeli–Palestinian conflict, including Hamas, is another case in point.<sup>29</sup> Such double standards can only confuse attempts to engage NSAGs on humanitarian or conflict resolution grounds, as the consequences of such engagement appear largely unpredictable.

Listing NSAGs as terrorists can have a number of counterproductive effects on conflict resolution efforts. Sanctions such as travel bans represent logistical hurdles in NSAGs' preparation of negotiations. More worrying is that in some instances labelling as a terrorist has antagonized negotiating parties and served as an excuse for the use of force by states. For instance, the European Union's decision to include the Liberation Tigers of Tamil Eelam (LTTE) on its list in May 2006 was widely reported to have negatively impacted the Sri Lanka peace process. Following the group's listing, the LTTE demanded the departure of the international monitors of the Sri Lanka Monitoring Mission (an international mission established to monitor the ceasefire agreement of 2002)

*In some instances labelling as a terrorist has antagonized negotiating parties.*

that originated from EU countries. Observers also argue that the listing gave "carte blanche" for the Sri Lankan government to seek a military solution to the conflict.<sup>30</sup> Similarly, the Communist Party of the Philippines–New People's Army–National Democratic Front (CPP-NPA-NDF) withdrew from peace talks in the Philippines after the United States placed the group on its terrorist list in August 2004 and demanded that the Philippine government work toward its removal from the list.<sup>31</sup> Such isolation of NSAGs can weaken moderates and strengthen hardliners within the groups; the group may then feel less compelled to respect international humanitarian law (IHL) and human rights norms and more prepared to risk embarking on escalating cycles of violence.<sup>32</sup>

### *Implications for arms control*

Arms control has traditionally been considered a matter of national security to be discussed primarily—if not exclusively—by states. It is only in recent years that non-governmental organizations (NGOs)—a category of non-state actor—have had an important voice in negotiations on the AP mine ban or small arms control processes. It therefore appears understandable that the concept of engaging NSAGs on arms control norms has gathered only limited attention and support thus far. Academic and policy-relevant thinking on how NSAGs fit into pressing arms control challenges has been equally limited.<sup>33</sup>

The experience of the global civil society movement supporting the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (hereafter referred to as the Mine Ban Treaty)—both an arms control and a humanitarian instrument—may provide useful direction on the engagement of NSAGs within broader international arms control efforts. NSAGs are significant AP mine users,<sup>34</sup> therefore the eradication of this type of weapon entailed their adherence to the mine ban. NGOs, led by Geneva Call and supported by states party to the Mine Ban Treaty as well as international organizations,<sup>35</sup> developed innovative strategies to promote the mine ban among all users of AP mines. NSAGs are encouraged to sign Geneva Call's Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action (hereafter Deed of Commitment).<sup>36</sup> In signing, NSAGs commit to the same norms as contained in the Mine Ban Treaty, starting with the total prohibition of use, transfer and production, as well as cooperation in mine action activities—such as ensuring specialized NGOs' access to victims requiring assistance as well as to mine-affected areas that need demining, or mine risk education projects—and external monitoring of compliance by Geneva Call and its partners. This inclusive approach has met with significant success: 35 NSAGs have signed the Deed of Commitment as of January 2008. Several additional groups have made unilateral declarations in support of the mine ban.

Such engagement with NSAGs may be possible on other specific weapon types that clearly contradict the principles of IHL. Cluster munitions are currently under international scrutiny as part of the Oslo Process, and efforts to control this type of weapon could perhaps benefit from the model used in the mine ban.

However, terrorist labelling is likely to pose an obstacle to arms control efforts. Geneva Call's initiatives have usually benefited from the excellent spirit of collaboration and transparency between states and NGOs that characterizes much of the Mine Ban Treaty process. But even with regard to the mine ban one state in particular has consistently opposed any engagement of a group listed as a terrorist organization, even if such engagement is made on purely humanitarian grounds and outside the territory of the concerned state.<sup>37</sup> Progress is likely to be similarly hampered with efforts to control NSAGs' use of cluster munitions. Several users of cluster munitions, including Hizbullah and the Taliban, are listed.<sup>38</sup>

### *Any relevance to small arms?*

Applying the Geneva Call model to a total ban on small arms and light weapons (hereafter small arms)—a type of weapon of great international concern since the mid-1990s and the main weapon used by NSAGs—would be unrealistic, as it would basically require NSAGs to lay down their arms altogether. While this is a legitimate conflict resolution and peace-making objective, it is unfortunately beyond the scope of the arms control and humanitarian communities. Perhaps with the exception of decaying ammunition and weapon stocks, NSAGs will not surrender small arms before peace has been achieved and consolidated. Moreover, engagement of NSAGs with regard to banning certain categories of small arms is far from straightforward, as such weapons do not contradict IHL by design but rather through their use. There is no international convention prohibiting the use of any specific type of small arms. Engaging NSAGs on small arms is therefore particularly difficult, as establishing weapons bans with NSAGs would amount to norm-building by NSAGs, a very challenging and controversial undertaking.

The small arms control community has primarily sought to deal with NSAGs through improved controls on the supply of small arms. But even this has had only limited success to date. Early attempts to prohibit arms transfers to NSAGs in the late 1990s—which, ironically, included drawing up a list of NSAGs to which arms transfers *would* be authorized—met with failure, mainly because some states valued support to NSAGs as a foreign policy instrument, and some NGOs feared that a prohibition would contradict the inherent right for people to fight oppressive regimes.<sup>39</sup> Progress on a comprehensive, international and legally binding instrument is therefore slow and attempts to find multilateral solutions to individual aspects of the problem—e.g. brokering, marking and tracing—have generated only politically binding documents. Only six states called for a ban on transfers to non-state groups in the negotiation of a future arms trade treaty.<sup>40</sup>

In any case, evidence suggests that even an effective supply-based approach would meet with only partial success in reducing NSAGs' access to small arms. A growing body of field research is showing that many NSAGs operate with few weapons, which in many cases they obtain from domestic—often state—stockpiles through seizure, theft or corruption.<sup>41</sup> Provided political objections were overcome, curbing international small arms transfers, even if based on the human rights and IHL records of the authorized recipients, would therefore only touch on part of the problem. Complementary measures are necessary to reduce the misuse of these weapons by all actors involved in conflict.

There is a (largely unexplored) opportunity to engage NSAGs in the prevention of small arms misuse, defined as use that violates IHL or human rights law.<sup>42</sup> Currently, the dissemination of IHL among non-state armed groups by the ICRC and other NGOs indirectly serves this purpose, although such dissemination usually refers to the Geneva Conventions as a whole and is generally not weapon-specific. Some international principles do exist to regulate the use of small arms by state security forces and could theoretically also be advocated for among NSAGs. They include the United Nations' Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,<sup>43</sup> as well as the Human Rights Council Sub-Commission on the Promotion and Protection of Human Rights' Principles on the Prevention of Human Rights Violations Committed with Small Arms.<sup>44</sup> These standards are only politically binding for states, however, and therefore may be seen by NSAGs as lacking gravitas. They also provide guidance primarily to internal policing and to stockpile management procedures. Engaging NSAGs on internal policing would be relevant only to those groups policing areas under their control: providing any sort of training in this would be extremely controversial for affected states.

Strict internal stockpile management procedures may yield positive humanitarian benefits; they could contribute to lowering the risk that NSAG combatants lose or make indiscriminate use of their ammunition and weapons because of fear of punishment by their superiors, for instance.<sup>45</sup> But the

possibility of undertaking such an initiative with NSAGs that are listed as terrorists is obviously highly unlikely. Helping NSAGs improve their stockpile management procedures could be seen as providing military training.

It is interesting to note, however, that in some particular settings projects aimed at promoting responsible stockpile management by comparatively non-controversial NSAGs appear to be more appropriate than weapon collection initiatives. This is the case in the unrecognized Republic of Somaliland, where an international NGO's assessment of possible community-based weapons control initiatives recommended providing individual household gun cabinets and community armouries to local clans and communities. Given communities and clans' reluctance to turn in weapons in exchange for development or other incentives, the assessment recommended such an approach to help enhance the control of small arms as well as to reduce the risks of irresponsible use and accidental explosions.<sup>46</sup> Such efforts have the potential not only to prevent misuse, diversion and accidents, but can also help improve the efficiency of any subsequent disarmament programme, as weapons will be better accounted for and thus easier to retrieve and collect.

Successful post-conflict disarmament is also affected by the constraints on access to NSAGs during conflict. Information on NSAGs' structures, motivations and weapon holdings is crucial to enhancing the effectiveness of disarmament, demobilization and reintegration programmes as well as other post-conflict small arms control initiatives. Studies on the impact of small arms on local populations living in areas controlled by NSAGs—especially if they can provide evidence of NSAGs' violations of IHL—is also an underutilized way of promoting responsible weapon use by NSAGs. All such research requires some sort of NSAG engagement, which is difficult with groups that are labelled as "terrorist".

## Conclusion

As decision makers continue to strive to reduce the suffering caused by cluster munitions and small arms, they must carefully consider how they choose to refer to NSAGs. This article has argued that the value-added of terrorist lists is doubtful. Blacklists in their current form have proved extremely problematic in conflict resolution and humanitarian actors' attempts to mediate conflict and provide humanitarian assistance to populations living in areas under NSAG control. Such concerns add to the basic human rights issues associated with the opaque listing and delisting procedures that current international lists rest upon. At the very least, the procedures for listing and delisting NSAGs, as well as the implications and obligations pertaining to these lists, must be rapidly clarified and subjected to the rule of law.

*The arms control community's recent embrace of NSAG engagement on the AP mine issue may serve as a useful example of the value of the inclusive approach.*

The arms control community's recent embrace of NSAG engagement on the AP mine issue by Geneva Call and its partners may serve as a useful example of the value of the inclusive approach within the field of arms control. This inclusive approach could theoretically also be pursued with other weapon types that contradict IHL by design, such as, arguably, cluster munitions. While small arms do not fit this category, this paper has identified several ways in which NSAGs could be engaged on the prevention of small arms misuse—notably through IHL and human rights law dissemination, promotion of safe stockpile management and policy-relevant research. The potential impact of such activities, however, will undoubtedly suffer from the current confusion surrounding terrorist lists and labels.

## Notes

1. I.F.W. Beckett, 2001, *Modern Insurgencies and Counter-Insurgencies: Guerrillas and Their Opponents since 1750*, New York and London, Routledge, p. 1.
2. Common Article 3 of the Geneva Conventions states that "In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions" [emphasis added]. See Article 3 common to all four of the Geneva Conventions of 12 August 1949, at <[www.icrc.org/Web/Eng/siteeng0.nsf/html/genevaconventions](http://www.icrc.org/Web/Eng/siteeng0.nsf/html/genevaconventions)>. Also, as noted by Policzer, discussions led by the human rights and humanitarian communities in the 1970s led to the amendment of the Geneva Conventions (through Protocol II) in 1977 so that they apply to all parties in an armed conflict as well as to "non-international armed conflicts". In the 1980s and 1990s, rights groups such as Amnesty International and Human Rights Watch included acts committed by NSAGs in their definition of what constitutes a human rights violation. See Pablo Policzer, 2005, *Neither Terrorists nor Freedom Fighters*, paper presented at the International Studies Association Conference, Honolulu, 3–5 March, p. 2 at <[www.armedgroups.org/images/stories/pdfs/policzer\\_neither\\_terrorist\\_nor\\_freedom\\_fighters.pdf](http://www.armedgroups.org/images/stories/pdfs/policzer_neither_terrorist_nor_freedom_fighters.pdf)>.
3. See, for instance, United Nations Mine Action Service, no date, *Mine Action Guidelines for Ceasefire and Peace Agreements*, at <[www.mineaction.org/docs/1461\\_.asp](http://www.mineaction.org/docs/1461_.asp)>, paragraph 11; and European Parliament resolution of 13 December 2007 on the 10th anniversary of the 1997 Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, at <[www.europarl.europa.eu/sides/getDoc.do?Type=TA&Reference=P6-TA-2007-0621&language=EN](http://www.europarl.europa.eu/sides/getDoc.do?Type=TA&Reference=P6-TA-2007-0621&language=EN)>, Articles J, K, and 4.
4. See Pascal Bongard, 2007, *Engaging Armed Non-State Actors in a Landmine Ban: The Geneva Call Progress Report (2000–2007)*, Geneva, Geneva Call, at <[www.genevacall.org/resources/testi-publications/gc-progress-report-07.pdf](http://www.genevacall.org/resources/testi-publications/gc-progress-report-07.pdf)>; and Robert Ricigliano (ed.), 2005, *Accord, Choosing to Engage: Armed Groups and Peace Processes*, no. 16, London, Conciliation Resources.
5. See, for instance, Kristina Thorne, 2007, "Terrorist Lists and Humanitarian Assistance", *Humanitarian Exchange Magazine*, no. 37, March, Humanitarian Practice Network, at <[www.odihpn.org/report.asp?id=2874](http://www.odihpn.org/report.asp?id=2874)>; Max P. Glaser, "Engaging with Armed Non-state Groups in Times of the 'Global War on Terror'—Observations from Gaza and Lebanon", *Humanitarian Exchange Magazine*, no. 37, March, Humanitarian Practice Network, at <[www.odihpn.org/report.asp?id=2875](http://www.odihpn.org/report.asp?id=2875)>.
6. See Mohammad-Mahmoud Ould Mohamedou, 2005, *Non-Linearity of Engagement: Transnational Armed Groups, International Law, and the Conflict between Al Qaeda and the United States*, Policy Brief, Program on Humanitarian Policy and Conflict Research, Harvard University, at <[www.hpcr.org/pdfs/Non-Linearity\\_of\\_Engagement.pdf](http://www.hpcr.org/pdfs/Non-Linearity_of_Engagement.pdf)>.
7. Geneva Call, for instance, refers to NSAGs as "armed non-state actors" or "any armed actor operating outside state control that uses force to achieve its political/quasi-political objectives. Such actors include armed groups, rebel groups, liberation movements and de facto governments." See <[www.genevacall.org/about/about.htm](http://www.genevacall.org/about/about.htm)>.
8. Policzer, op. cit., p. 8.
9. See, for instance, the Geneva Declaration on Armed Violence and Development, first signed 7 June 2006, at <[www.genevadeclaration.org/geneva-declaration.html](http://www.genevadeclaration.org/geneva-declaration.html)>.
10. For the full list, see <[untreaty.un.org/English/Terrorism.asp](http://untreaty.un.org/English/Terrorism.asp)>.
11. Roland Marchal, 2007, "Warlordism and Terrorism: How to Obscure an Already Confusing Crisis? The Case of Somalia", *International Affairs*, vol. 83, no. 6.
12. Kristina Thorne, 2006, "Terrorist" Lists—A Brief Overview of Lists and Their Sanctions in the US, UN, and Europe, Working Paper, Centre for Humanitarian Dialogue, June, p. 1.
13. See European Union Council Common Position 2007/448/CFSP of 28 June 2007, *Official Journal of the European Union* L 169/69–74, at <[eur-lex.europa.eu/LexUriServ/site/en/oj/2007/l\\_169/l\\_16920070629en00690074.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/l_169/l_16920070629en00690074.pdf)>.
14. For the consolidated list of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and Associated Individuals and Entities, see the Committee's web site at <[www.un.org/sc/committees/1267/index.shtml](http://www.un.org/sc/committees/1267/index.shtml)>.
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18. United States Department of the Treasury, *Terrorism: What You Need to Know about US Sanctions*, 10 January 2008, at <[www.treasury.gov/offices/enforcement/ofac/programs/terror/terror.pdf](http://www.treasury.gov/offices/enforcement/ofac/programs/terror/terror.pdf)>.
19. For an overview, see Thorne, 2006, op. cit.

20. See Council of Europe, Committee on Legal Affairs and Human Rights (rapporteur Dick Marty), *United Nations Security Council and European Union Blacklists: Report*, 16 November 2007, doc. 11454, at <[www.assembly.coe.int/Mainf.asp?link=/Documents/WorkingDocs/Doc07/eDOC11454.htm](http://www.assembly.coe.int/Mainf.asp?link=/Documents/WorkingDocs/Doc07/eDOC11454.htm)>; Council of Europe, Committee on Legal Affairs and Human Rights (rapporteur Dick Marty), *UN Security Council Black Lists*, 19 March 2007, AS/Jur (2007) 14\*, at <[assembly.coe.int/CommitteeDocs/2007/20070319\\_ajdoc14.pdf](http://assembly.coe.int/CommitteeDocs/2007/20070319_ajdoc14.pdf)>.
21. Council of Europe, Committee on Legal Affairs and Human Rights, *UN Security Council and European Union Blacklists*, op. cit., paragraphs 86–88.
22. Ibid., Addendum, paragraph 9.
23. Ibid., Addendum, paragraph 10.
24. See, for instance, Marco Sassoli with Lindy Rouillard, 2007, "La définition du terrorisme et le droit international humanitaire", *Revue québécoise du droit international* (Hors-série), pp. 29–48; Thorne, 2007, op. cit.; Glaser, op. cit.
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26. International Institute for Strategic Studies, *Armed Conflict Database*, Ethiopia (ONLF/ONLA and OLF/OLA latest update); Human Rights Watch, 2007, *Ethiopia and the State of Democracy: Effects on Human Rights and Humanitarian Conditions in the Ogaden and Somalia*, 2 October, at <[hrw.org/english/docs/2007/10/03/ethiop17010.htm](http://hrw.org/english/docs/2007/10/03/ethiop17010.htm)>; "Red Cross Rejects Ethiopian Charges after Expulsion", *Reuters AlertNet*, 26 July 2007; ICRC, "Ethiopia: ICRC Deplores Expulsion from Somali Regional State", News Release 07/87, 26 July 2007; ONLF, "ONLF Statement on Expulsion of ICRC and Media Ban in Ogaden", Press Release, 25 July 2007, at <[www.ethiopianreview.com/articles/672](http://www.ethiopianreview.com/articles/672)>; "Ethiopia Holds 'Many Westerners'", *BBC News*, 18 January 2008, at <[news.bbc.co.uk/2/hi/africa/7196417.stm](http://news.bbc.co.uk/2/hi/africa/7196417.stm)>.
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32. Ricigliano, op. cit., p. 7.
33. Exceptions include Anki Sjöberg, 2007, *Armed Non-State Actors and Landmines, Volume III: Towards a Holistic Approach to Armed Non-State Actors?* Geneva, Programme for the Study of International Organizations and Geneva Call, pp. 32–37; and David Capie, 2004, *Armed Groups, Weapons Availability and Misuse: An Overview of the Issues and Options for Action*, Background Paper for the Centre for Humanitarian Dialogue meeting, Bamako, Mali, 25 May 2004, p. 10, at <[www.armedgroups.org/images/stories/pdfs/capiebamakopaper061004.pdf](http://www.armedgroups.org/images/stories/pdfs/capiebamakopaper061004.pdf)>.
34. Anki Sjöberg, 2005, *Armed Non-State Actors and Landmines, Volume I: A Global Report Profiling NSAGs and the Use, Acquisition, Production, Transfer and Stockpiling of Landmines*, Geneva, Programme for the Study of International Organizations and Geneva Call.
35. In 2006, nine states supported the activities of Geneva Call financially, in addition to the political support many other states have been providing to the organization in international forums and as part of its field activities. Geneva Call, *Geneva Call Annual Report 2006*, at <[www.genevacall.org/resources/testi-publications/gc-annual-report-06.pdf](http://www.genevacall.org/resources/testi-publications/gc-annual-report-06.pdf)>. With respect to support from international organizations, see, for instance, United Nations Mine Action Service, op. cit., paragraph 11; and the European Parliament resolution of 13 December 2007 on the 10th anniversary of the 1997 Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, Articles J, K, and 4.
36. The Deed of Commitment can be accessed at <[www.genevacall.org/about/testi-mission/gc-deed-of-commitment.pdf](http://www.genevacall.org/about/testi-mission/gc-deed-of-commitment.pdf)>.
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39. David Capie, op. cit., p. 10.
40. Sarah Parker, 2008, *Implications of States' Views on an Arms Trade Treaty*, Geneva, UNIDIR, p. 29.
41. See, for instance, James Bevan and Pablo Dreyfus, 2007, "Enemy Within: Ammunition Diversion in Uganda and Brazil", in *Small Arms Survey, 2007, Small Arms Survey 2007: Guns and the City*, Cambridge, Cambridge University Press; Anna Khakee with Nicolas Florquin, 2005, "Sourcing the Tools of War: Small Arms Supplies to Conflict Zones", in *Small Arms Survey, 2005, Small Arms Survey 2005: Weapons at War*, Oxford, Oxford University Press. It is interesting to note that state stockpiles are also an important source of AP mines for NSAGs, see Anki Sjöberg, 2005, op. cit.

42. For a discussion, see Barbara A. Frey, 2004, "Small Arms and Light Weapons: the Tools Used to Violate Human Rights", *Disarmament Forum*, no. 3, pp. 38–39.
43. United Nations' Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, at <[www.unhcr.ch/html/menu3/b/h\\_comp43.htm](http://www.unhcr.ch/html/menu3/b/h_comp43.htm)>.
44. Reproduced in Human Rights Council, Adoption of the Report on the Fifty-Eighth Session to the Human Rights Council, UN document A/HRC/Sub.1/58/L.11/Add.1, 24 August 2006, Annex, at <[ap.ohchr.org/documents/alldocs.aspx?doc\\_id=12320](http://ap.ohchr.org/documents/alldocs.aspx?doc_id=12320)>.
45. Equipped with relatively few weapons, in the early 1990s Malian rebels applied strict accounting of their weapons and ammunition stockpiles, a form of responsible stockpile management that may have contributed to the relatively low number of civilian casualties in the early phases of the conflict. Practical measures taken to limit waste of ammunition and loss of weapons included placing assault rifles on single shot mode, thereby limiting the risk of stray bullets hitting civilians, and tough sanctions for group members who lost weaponry. See Nicolas Florquin and Stéphanie Pézard, 2005, "Insurgency, Disarmament, and Insecurity in Northern Mali, 1990–2004", in Nicolas Florquin and Eric G. Berman (eds), *Armed and Aimless: Armed Groups, Guns and Human Security in the ECOWAS Region*, Geneva, Small Arms Survey.
46. Danish Demining Group and Danish Refugee Council, 2007, *A Baseline Survey of Community Attitudes Toward Small Arms & Light Weapons (SALW) in North West Somalia (Somaliland)*, October, p. 21.



## Engaging non-state armed groups in disarmament

Julian Thomas HOTTINGER

The connection between disarmament and peace negotiations is dynamic, complex and constantly shaping and reshaping the course of both peace and war. No peace agreement is complete, viable or "applicable" without dealing with disarmament. But how? When? And where do you deal with disarmament? How should it be introduced, addressed, and ultimately achieved?

Unfortunately, our understanding of the peace negotiation–disarmament relationship is fragmentary, chiefly because three different schools of thought—military specialists, disarmament, demobilization and reintegration (DDR) specialists and conflict resolution specialists—offer three different and sometimes antagonistic perspectives on the relationship. Military experts tend to focus on the technical aspects of peace negotiations, while mediators will look mainly at political aspects. Some DDR experts may believe that mediators' focus on achieving peace can pose an obstacle to disarmament. Mediators in turn may criticize military approaches as short-sighted, and defend their approach as more pragmatic—mediators look to the person behind the gun, and ensure that the reason for taking up arms is addressed. But the different perspectives do not have to be contradictory; with improved communication, specialists in each field should be able to allow each other the space to enable everyone to fulfil their tasks, and ultimately create a more stable peace.

The aim of this paper is not to downplay the importance of the *content* of a total ceasefire or DDR programme; it is rather to explain how disarmament is dealt with in the different phases of negotiation with non-state armed groups (NSAGs). Why NSAGs? Because today they are the main feature of violent conflicts, both within states and at a regional level. Their prominence in violent conflict has introduced a whole new universe to conflict resolution—a universe demanding an in-depth knowledge of mediation skills.

Often, it is hard to find a sponsor (either a state or an organization) to back a mediation initiative. Sometimes the diaspora, through lobbying and activity within a host country, can create the interest required for a state to want to help address the issue. It is critical to establish contact, build confidence and discuss issues with NSAGs before beginning even to discuss negotiations. Contact is crucial because if NSAGs become isolated they become more difficult to deal with. This is, without exception, the one common denominator shared by all NSAGs, be they in Africa, America, Asia or Europe.

The mediator's main objective is to try and ameliorate the situation on the ground, even if the fighting cannot be stopped. This is a slow and time-consuming process. Conventional mediation techniques do not always help at this early stage of trying to start a process or trying to convince

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Julian Hottinger is a mediation and facilitation specialist within the expert pool of the Swiss Federal Department of Foreign Affairs. He has recently been involved in the peace talks between the Government of Uganda and the Lord's Resistance Army taking place under the auspices of the Government of Sudan. Previously, he has worked as a mediator in Aceh, Burundi, Liberia, Somalia and Sudan.

adversary parties to negotiate. The need to establish contact, exchange thoughts, explain positions, and try to close gaps that may exist between a NSAG and the outside world is more a task of pre-mediation, or preparatory work for future negotiations, and it requires much patience, understanding and a will to listen—which may not be reciprocated. A mediator cannot force events, but he or she must be able to understand the group's cause and measure changes in the content of discussions, or in guerilla tactics, as they come about.

Conventional mediation will come later. The world of mediation has become so complex and specialized that mediators are now called in to fulfil certain tasks, sometimes just one precise mission within one phase of negotiation. Then they must drop out. Those that began the process, establishing contact and working with the NSAG for years, must step out once the pre-negotiations terminate, as they will not be seen as neutral by the adversary.

What do mediators have to be careful about when negotiating with NSAGs? Which can be delicate issues? And how can the parties be made to respect their engagements? With reflections based on personal experience, this paper also tries very briefly to explain why it is so difficult to deal with disarmament within the preparatory stage of peace negotiations with NSAGs.

Acknowledging the difficulties of dealing with disarmament in no way means that disarmament is a secondary topic. It is of very first importance. But its very importance make it all the more crucial to get the approach right, to introduce disarmament in a way that will do more good than harm, and especially in a way that makes sure it can be implemented.

### *The universe of non-state armed groups*

NSAGs have existed for a long time, but today most conflicts deal with NSAGs. More and more groups are tending to take up arms and fight the state if they cannot otherwise obtain change. States retaliate by first attempting to delegitimize the NSAG—and today this will most likely involve trying to get the group onto a terrorist list. Once on a list, the state's fight is legitimated and all means can be used to destroy the group; the group also becomes the object of the international community's hostility and in some cases can feel condemned without having been heard. This can entrench the group and make it more violent. It also makes the mediator's job much harder.

Over time, different organizations have developed different strategies to engage armed groups on questions related to disarmament. Major debates have been taking place on how to engage with NSAGs, what to expect from them and how to go about negotiating with them. How can facilitators and mediators, at a multi-track level,<sup>1</sup> best address these groups and help neutralize their negative effects (such as the murder of civilians, rape, torture, plunder)? Much research has been carried out, mainly by non-governmental organizations, on the way NSAGs are to be dealt with and how particular issues should be addressed *before* NSAGs decide to come to the negotiating table, while conflict is still ongoing.<sup>2</sup> However, very little research has been done on how to convince NSAGs to come to the negotiating table or how to begin negotiating to ascertain peace.

What is clear is that NSAGs are a specific type of actor, and this has implications for those confronted with them in attempting negotiation. Many NSAGs involved in conflict have spent years in the bush. They have become accustomed to a military life and in some cases do not realize the range of issues—normal to civilian life—that they will have to address in negotiations. Life in the bush has not allowed group members to develop the skills required to negotiate, either. Perhaps most significantly, NSAGs live in the short term. It is very difficult for them to accept a middle-term or long-term perspective, which is crucial for peace negotiations—no group will be able to gain everything immediately.

Of course, just as damaging as not fully recognizing that NSAGs represent a distinct type of actor has been the discussion on making a distinction between NSAGs and terrorist groups. Not to mention the new school of thought among some mediators, who believe that you do not negotiate with or for the "bad, bad boys" (they just don't deserve it). The refusal to address certain groups or deal with them once they have been labelled as terrorist is not helpful. Negotiations are not a premium; they are a means to achieve an end to a conflict so that people can get on with their lives, and so that those who have committed major crimes will have to answer for their acts.<sup>3</sup>

*Negotiations are not a premium; they are a means to achieve an end to a conflict so that people can get on with their lives.*

#### THE EVOLUTION OF NON-STATE ARMED GROUPS

NSAGs have changed significantly since research on them first began. Within the last 40 years, they have doubled their life expectancy. In the 1960s and 1970s, an average rebel force in Africa could either obtain its objectives or decide to negotiate within a life span of roughly six years. Today, most NSAGs on the African continent have either existed or fought for 12–16 years.<sup>4</sup>

The fact that the struggle lasts longer means that known commanders or leaders are more likely to get killed either in combat or because of internal struggles. Relations and trust that mediators may have spent years building can be destroyed, meaning the work must begin again, even as far as renegotiating principles that had already been agreed.

These longer-lived armed groups have also spread geographically, and their combatants have become more diverse. Groups have more interests, which can extend beyond a state's borders, therefore involving numerous governments and regional actors. This diversity also means that the group can end up simply fighting for survival; in many cases, combat becomes a way of life and there is little for fighters to go home to.

#### *What does disarmament mean when dealing with NSAGs?*

Disarmament means reducing or depriving combatants of weaponry. When negotiating, disarmament refers to a systematic schedule and plan for reducing weapon systems and preparations for war. It can be contrasted with arms control, which essentially refers to the act of controlling rather than eliminating or reducing arms.

Disarmament and arms control negotiations pursue a common objective and usually share a common aim within any negotiation process: to define how arms can be neutralized through negotiation, with the hope of bringing about some form of peace. But it is primordial, though not easy, to try and sequence disarmament and arms control. In some cases arms control negotiations can precede disarmament while in other cases it is the other way around. The idea is for arms control negotiations to be held in good faith on effective measures relating to the cessation of an arms escalation, so that a general and complete disarmament under strict and effective (possibility international) control can then be agreed. At first, certain types of arms (heavy weaponry) can be withdrawn from certain areas, while light weaponry stays in the possession of adversaries. The prevention of escalation measures are being combined with partial disarmament to show goodwill.

To say that disarmament is very distinct from arms control would therefore be untrue. Especially in a setting where the title or the global aspect of a topic is rarely referred to, but where it is instead more common to address the key issues without naming them. Indeed, disarmament is rarely, if ever, negotiated specifically, or as a distinct topic.

This is in part because disarmament is a particularly sensitive topic for NSAGs, as giving up their arms amounts to giving up everything. These groups need their arms to subsist, and they are often unsure that promises made in return for disarmament will be fulfilled. So disarmament is approached with great care. It is often addressed through other topics, and in parts, to avoid drawing attention to the fact that disarmament is under discussion. This approach can also be partly explained because of the overwhelming urgencies of a conflict. Those that can be tackled immediately are taken up first, with the hope of obtaining a drop in violence, while the more thorny, core issues are left until later. When engaging with NSAGs, disarmament does not mean immediate and complete destruction of all weapons. It comes in stages, and the degree and speed at which it comes may vary.

### *Ensuring disarmament is negotiated*

Initially at least, disarmament can appear to cover a vast area and it can mean either just about everything, or very little. Some people will go into long details about what a disarmament process should look like: what the disarmament agreement should contain, what it cannot and how it should be implemented. In my experience, there is no "one size fits all" solution to negotiating disarmament. Nonetheless, there are three factors that must be dealt with for a disarmament process to be viable.

The most important factor is to draw up a process that covers all the issues involved. A mediator must understand the conflict—the cause the NSAGs are fighting for, the logic of the struggle. A mediator is not supposed to get caught in the debate on whether a conflict is religious, ethnic or political, but the way a conflict is described is already a form of engagement. Conflicts often have more causes than the fighting parties admit: including not just religious, ethnic or political issues, but also linguistic, regional, colonial or economic elements. So mediators must consider what the parties are insisting are the key issues, as well as what they are less vocal about (either because they cannot or do not want these issues resolved). It may even be that once the issues are fully understood, the process will call for different forms of attempt to solve the conflict or stop the violence, such as bringing other actors on board, who are not directly involved in the conflict.

Second, disarmament negotiations call for a range of other questions to be dealt with. About fifteen years ago, a mediator could be called upon to negotiate a ceasefire and there was hope that, if the violence could be stopped, a disarmament process could then be put in place and society could be brought out of its conflict. Today, such a strategy is simply a no go. Conflicting parties want a "total vision" of their future before they are willing to drop their arms. Not only will the fighting forces be looking for a military agreement, with some DDR for ex-combatants, they will also want to see power-sharing mechanisms and economic redistribution spelled out. One could say that the parties need an idea of what their future together—with each side's survival guaranteed—will look like.

***Conflicting parties want a "total vision" of their future before they are willing to drop their arms.***

A third aspect is less well understood. Peace agreements represent the areas of agreement among the parties that negotiated them. In effect, a peace agreement is an initial understanding between conflicting parties on how and what has to be done to be able to *start* living together. They are therefore rarely perfect documents. They will contain some elements on disarmament, probably some basic rights and obligations, and some basic principles on security. But in no case is a peace agreement complete, detailed on every aspect, and always to the point.

Lack of trust, and the fact that parties are testing how far they can trust each other, means that primordial elements can either be deferred to later in the peace process, or not referred to as an outsider would expect them to be. Disarmament will often fall into this category, perhaps because it is such a sensitive topic, and can cause divisions between the commanders of a movement and the rank

and file. The latter can feel sold out as they watch their commanders buying into the deal and gaining something, while they themselves do not see a gain, rather they begin to fear for their future. It is the mediator's task to prevent such important issues from being neglected in negotiation; to ensure that all actors are reassured, but that disarmament is nonetheless addressed.

### *Phases of a peace agreement negotiation*

To understand how to deal with disarmament within peace agreements, it is necessary to grasp, at least schematically, how the peace process works. It is not enough simply to ask people to come to the venue, sit down and talk. There is a series of phases to follow. The conventional three-phase approach consists of the pre-negotiations (talks about the talks), followed by the substantive negotiations or framework, and finally the implementation phase. (Although, in reality, these phases are less distinct and might overlap.) However, when dealing with NSAGs, a supplementary phase, which quite often precedes the pre-negotiations, is particularly apparent. We can call this the "pre-pre-negotiations".

#### DISARMAMENT IN THE PRE-PRE-NEGOTIATION PHASE

No group will negotiate properly until the time is right, when adversaries conclude that the cost of conflict is unbearable and a solution has to be found. But when this moment does occur, parties must be able to reach out and knock on the right door, so that the negotiations can start as early as possible.

This is particularly important to NSAGs as, living and fighting in the bush, they have little contact with the outside world. Groups tend to imagine that the society they left behind is unchanging, and interpret events according to the hostile environment in which they find themselves. They then feed on their own logic; NSAGs do not allow for much debate or discussion, and they rarely encounter contradictory interpretations, so their positions are hardened.

When it comes to negotiating, then, NSAGs are particularly distrustful of others. They feel at a disadvantage, fearing that they do not have the political skills necessary for negotiations, and suspicious of other parties (even neutral or perhaps sympathetic parties) because they live in such a different world. By establishing contact with a group at a very early stage, long before it is even ready to consider negotiation, the mediator can present the members of the group with a more objective viewpoint. The mediator can also begin to understand the group and in turn explain what could be expected from it if it decides to negotiate, so that it begins to understand the process and feels more confident when the time for negotiation arrives.

The mediator first makes contact with various circles that gravitate around the armed group, be they members of the diaspora, intellectuals known to be close to the group, or family members. The aim is to gradually gain confidence and be introduced into the combatant circles. This can take years and is not always successful.

On the other hand, a peace process can begin. Or if not a peace process, gaining the confidence of the NSAG can allow mediators to bring up the topic of disarmament and perhaps obtain some input on a disarmament plan. A NSAG may agree to apply some initial disarmament or humanitarian principles.

The aim is to try and convince NSAGs to use restrained force and to respect the civilian population. By beginning to deal with disarmament early on, while the conflict is still ongoing, violence can be reduced more rapidly, improving the situation on the ground. Dealing with disarmament during the conflict also encourages NSAGs to begin to think differently. Instead of a confrontational logic, they

move toward an argumentative logic, and this is vital for negotiations. Discussing issues with mediators at this early stage helps NSAGs to feel more at ease with debate and exchange. Disarmament can be the perfect topic for initial discussions because it affects them directly, it deals with their daily life, and it has a concrete impact on the ground. One issue that can often be addressed at this stage is the use of landmines. Humanitarian questions are another "entry point" for discussions, such as respect of civilians, humanitarian corridors, respect of prisoners, no summary executions and a total refusal of torture and rape.

Equally, it is within this pre-pre-negotiation phase that a general debate about disarmament is important. At this stage, mediators are looking for the right moment and the best persons to talk to about disarmament; they must try to introduce discussion of what disarmament means and attempt to ensure that some form of thought is put into implementation, even at this early stage. How the topic is raised is as important as how the concepts are dealt with. These concepts can then be taken out of a global framework and discussed according to the specificities of the conflict and the kinds of violations perpetrated.

These initial principles take a long time to discuss and are rarely accepted by all. There is a range of excuses: the adversary does not behave much better, or the change in attitude will be seen as a weakness and the combatants will no longer be feared. There are also those who argue that such principles are not universal, that they come from a Western world and should not (or cannot) be imposed on others. Discussions will be strongly influenced by the confidence the mediator has acquired with the NSAG and by the group's belief that there is something to gain by starting to think about giving up its weapons.

One is never sure of what to expect when it comes to discussing disarmament in the midst of a conflict with desperate combatants. In some cases NSAGs might desperately need a way out of the conflict, but they are not sure that they can go back to normal life. They do not know if they will be accepted, or if they will be held accountable for past crimes. A NSAG may decide to "behave" and at the same time to start to think about looking for a solution to the conflict, but it may also be looking for retribution. Or a group may agree upon some initial principles, but may then violate them. They are then likely to try to hide the violation for fear of sanctions. If ever there is a possibility of wanting to negotiate the end to a conflict, parties will be haunted by the idea that they could be indicted for violations. So a mediator must tread very carefully, working slowly and gradually.

Introducing the subject of the international community, and of the NSAG's need to gain its respect and understanding, can be useful at this stage. It can encourage the NSAG to apply some humanitarian or disarmament principles. Again, it is a very sensitive topic. NSAGs are often very distrustful of the international community, as it is a world of which they are usually ignorant, and groups often assume that it will act on the behalf of those of its member states that are the NSAG's enemies. Mediators must build confidence to avoid misunderstandings. They need to explain the ways of the international community to NSAGs and encourage the NSAGs to explain their case and their viewpoint. Ultimately, NSAGs need to accept that monitoring of any peace agreement may involve the international community, and perhaps not themselves.

#### DISARMAMENT WITHIN THE PRE-NEGOTIATION PHASE

In the pre-negotiation phase the mediator or facilitator is getting to know the NSAGs under a new aspect: that of a negotiating partner. Schematically, the facilitator or mediator tries to limit discussions to very practical aspects. Where to meet? What to discuss? How to discuss the content? What is the intent of the negotiations? And who will sit at the negotiating table? The idea is to try to create an inclusive process. Inclusive not referring just to participation (by all parties), but also to content.

The parties will always have prerequisites. These are specific demands that parties put forward, which condition the possibility of whether they will or will not accept to negotiate. There are always human rights and disarmament elements among the prerequisites. In some cases, a party will want guarantees that it will obtain a blanket amnesty for coming to the table. Another party will want guarantees of better conditions for, or the liberation of, some of its imprisoned colleagues. A third group will probably want to make sure that the past is not addressed. While yet another party might try to limit the role of non-governmental organizations or civil society—parties with an interest in defending disarmament—in the process. Sometimes, one party will demand that the other parties' disarmament starts before its own. Their aim is to obtain a form of victory that will justify their coming to the table. There is also hope that this will strengthen their bargaining position.

Parties are likely to try to bargain throughout the process, around any form of disarmament: "we are willing to help implement some form of disarmament under the condition that you get this or that for us". And this is more likely if parties perceive that the mediator is desperate for some sort of success in arms control. Getting caught in such a dynamic, where every issue must be bargained over, creates a negative process that leads to more harm than good. Why does this happen? Because negotiation is not the only reason for coming to the table. The primary aim can be "to test the water", to see what the universe of negotiations is made of. Parties also hope to test their enemies: can they be trusted? Are they willing to make concessions? In some cases, parties wish to be seen to be engaging, or want to use the recess in combat to build up their forces or prepare for the next stage of fighting. It is up to the facilitation or mediation team to try to keep the parties talking.

Among mediators, prerequisites are an eternal topic of debate. Some refuse to discuss them, calling them preconditions. Others will discuss prerequisites, but not in this initial phase. Mediators may be tempted to use creative ambiguity to get over these hurdles, but they must be careful not to jeopardize the whole process just for an initial victory, which could tie their hands and handicap them in the substantive phase. If the prerequisites seem to have been accepted but are then left unfulfilled, trust will be broken. Parties will have an excuse neither to engage nor to leave the table.

To avoid discussing such prerequisites within the pre-negotiations, the parties must be convinced to place them on the future agenda of the talks. It is necessary to insist that only the party itself can convince an adversary of the need of making concessions, so it is best to discuss these issues when the parties are at the table together. For example, the liberation of prisoners is a standard prerequisite. However, this issue often proves far more complex than the parties think—fighters missing in action may in fact have been executed—and can only be dealt with directly, at the actual negotiations.

So should disarmament be discussed at this stage? I would probably say "no"; disarmament can prove an obstacle to the peace process here. During my training to become a mediator about fifteen years ago, the students were told to be very careful regarding the way in which any debate on disarmament was initiated. We were told that by discussing disarmament too soon, or at the wrong moment, when parties have no confidence in each other, and perhaps even less in the mediators, the topic could become a deal breaker. I have certainly participated in one or two negotiations where trying to tackle disarmament at the wrong moment prompted some parties to walk out.

*By discussing disarmament too soon, or at the wrong moment, when parties have no confidence in each other, and perhaps even less in the mediators, the topic could become a deal breaker.*

It is nonetheless important to recognize that at every initial stage of disarmament agreements will be violated. The parties, nervous of the peace process and seeking an excuse to leave the table, use the violations as just such an excuse. This stage could be called "appeals for ditching disarmament". While the violations cannot be ignored, the mediator's primary objective is to set the process in motion. Therefore, the mediator must strive to keep the parties at the table, while ensuring that

violations will be taken into account later. Disarmament should not be swept under the carpet, but, like all other areas that must be negotiated within a process, it does have to be introduced gradually and at the right time. Some mediators would say that the right time is when the negotiations have reached a point of no return, when the parties have invested enough in the process that they will think twice before walking away.

#### DISARMAMENT WITHIN THE SUBSTANTIVE PHASE

It is at the substantive phase that work often begins on the disarmament plan, without necessarily labelling it as such. Disarmament activities could be called reconciliation mechanisms, coalition techniques or standard peace procedures. What is crucial is that the parties understand their importance. What is hoped is that the more the parties discuss disarmament measures, the better they are accepted and the less they will be perceived as a threat.

The best method for dealing with disarmament is to embed disarmament measures within the total content of the process without necessarily addressing them as military issues. Ingredients of disarmament can be gradually introduced while discussing various topics. Parties should not see disarmament as an individual discipline, standing alone and open to separate negotiation, but consider it as it is, as part of a larger picture.

#### DISARMAMENT WITHIN THE IMPLEMENTATION PHASE

Disarmament takes a special place within the implementation phase, because it is not enough simply to state disarmament measures in an agreement, they must be introduced and applied. Disarmament is not only in the interest of the government. It must therefore play an important role within civil society and be one of the entry points for the involvement of civil society in implementation. The topic of civil society's role in disarmament, however, is beyond the scope of this paper.

### *The unclassifiable world of peace negotiations*

Peace agreements are vague, incomplete, contradictory documents. They are all unique, and cannot be grouped into a common framework. Nevertheless, there is a tacit agreement that certain principles cannot be violated or ignored. No mediator in the field today can afford or would accept to ignore disarmament. If a peace agreement were signed today and did not contain measures to disarm the parties involved, most countries would refuse to witness the agreement, civil society would be furious and victims, or victims' families, would be looking for revenge. In short, peace would be unlikely.

Disarmament must, however, be addressed with great care. It is not an easy topic to deal with, as disarming fighters, especially in countries where bearing a personal arm is a tradition, demands time, patience and creativity. Trying to prepare by working with NSAGs in the shadow of conflict is vital. In contrast to governments, who have been to seminars, learned about negotiation, know the international community, and are at ease sitting at a table, NSAGs may have been in isolation for years, feeding on their own perceptions and rarely in contact with the communities they are fighting. This means their positions are hardened and they are not willing to consider compromise. Building a peace with a NSAG requires a slow uphill struggle of building trust, familiarizing the group with discussion, acquainting it with the skills involved in negotiations, and very slowly accustoming it to the idea that negotiations might provide the way out.

Even with this extra support, does a society emerging from a deeply embedded conflict have the tools or the will to handle disarmament? If the state cannot be counted on to protect its citizens,

is there a need first to create a moratorium under which institutional stability is consolidated before certain action is taken? This is, without doubt, the question Somalia will soon have to deal with, if the resolutions discussed within the Reconciliation Conference can be put on track. If a group's wellbeing depends on what it can deprive the other of, disarmament can mean death. This is why successfully negotiating disarmament with NSAGs is one of the major challenges for peace in the twenty-first century.

#### Notes

1. Multi-track refers to the technique of shaping negotiations according to the participants. Government members are not dealt with in the same way as rebel groups, and each kind of actor (and type of negotiation) is considered a different track. See Louise Diamond and John McDonald, 1996, *Multi-Track Diplomacy: A Systems Approach to Peace*, Bloomfield, CT, Kumarian Press.
2. See, for example, the work of International Crisis Group ([www.crisisgroup.org](http://www.crisisgroup.org)), Conciliation Resources ([www.c-r.org](http://www.c-r.org)) or Concordis International ([www.concordis-international.org](http://www.concordis-international.org)).
3. For more on defining and labelling non-state armed groups, see the article by Nicolas Florquin and Elisabeth Decrey Warner in this issue of *Disarmament Forum*.
4. Christopher Clapham (ed.), 1998, *African Guerrillas*, Oxford, James Currey.



## Dealing with the threat posed by non-state armed groups aspiring to weapons of mass destruction

Mustafa KIBAROGLU

The international system has been destabilized since the Cold War by the proliferation of weapons of mass destruction (WMD); there are a number of non-state armed groups (NSAGs), as well as states, that are determined to acquire WMD and their delivery vehicles.<sup>1</sup> Non-state armed groups include a wide range of actors with different objectives, extending from those that uphold extremist religious principles to racist militia groups and freedom fighters, revolutionaries, armed opposition groups, etc. Most NSAGs are unlikely to attempt to access WMD because the effects of chemical, biological or nuclear weapons cannot be controlled and may go far beyond their expectations or intentions; they may even seriously harm their supporters. Should this happen, the organization may lose political and other forms of support.

But there is a small subset of NSAGs—terrorists—to whom a WMD attack is appealing. This is because such organizations may not be at all concerned with the horrible damage that a WMD attack can cause. Members of such organizations may even believe that their WMD attacks will mean that more people will become "martyrs" (rather than victims) and will go to paradise along with them. The concern of this paper, therefore, is with this small subset. The article attempts to assess the very particular threat that is posed by NSAGs who aspire to WMD, as well as to consider the appropriate and feasible responses.

After the September 2001 attacks on the World Trade Center in New York and the Pentagon in Washington, DC, the international community became aware that a non-state entity, namely Al-Qaida, had established a worldwide network—reportedly in more than 70 countries—with the involvement of thousands of people from almost all strata of the population and with diverse professional backgrounds. Al-Qaida aims, among other things, to install a new global order according to its radical interpretation of the Koran. Having seen what Al-Qaida is capable of without WMD at its disposal, it is not difficult to imagine what it would do if and when it possessed WMD capabilities.

To date, NSAGs have not been successful in staging a major WMD attack, with the exception of the Sarin gas attack on the Tokyo subway in March 1995 by Aum Shinrikyo, which caused a dozen fatalities and thousands of injuries.<sup>2</sup> But there is no guarantee that a devastating attack by a terrorist NSAG may not or will not occur any time soon. A number of non-state entities are known to be in search of ways to acquire or develop WMD, and the end of the Cold War witnessed the abolition of strict Soviet control over military installations, be they weapons production facilities or research laboratories. There are very few parameters or indicators according to which one could base an analysis of the likelihood of future attacks by terrorist NSAGs.

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Mustafa Kibaroglu is the Coordinator of the Eurasian and Atlantic Security Studies Program in the Department of International Relations at Bilkent University in Ankara, Turkey.

### *Traditional threat assessment*

Threat is a combination of military capabilities and malevolent intentions. In the absence of these intentions, the presence of military capabilities may be considered only as posing a potential threat. Likewise, if intentions do not match capabilities, threat may not be seen as imminent. Therefore, a sound threat assessment should take into consideration both the military capabilities and the intentions of a given adversary at a given time.

That said, one must also bear in mind the fact that the development of military capabilities takes time, usually in the order of years if not decades, whereas a change in intentions may occur much more rapidly, depending on changes in the international environment, or in socio-political, economic, scientific or technological conditions. Moreover, unlike military capabilities, whose magnitude may be visible or detectable by way of intelligence, intentions may be extremely hard to determine (they may very well be deliberately concealed).

It is possible to make some assessment of the threat posed by states, whose territories, cadres of leadership, industrial and military installations and other strategic assets are known with relative certainty. In addition to these visible and detectable capabilities, there are sophisticated methods and means to make a good assessment of the intentions of individuals who are known to be involved in the decision-making mechanisms of the states of concern through, for example, analysing their psychological profiles or their reactions to developments in the past. States are assumed to be administered by leadership cadres that are composed of rational individuals who make cost-benefit analyses of their behaviour and the likely consequences. This is one reason that deterrence theory proved successful and the threats posed to national security and international stability by the acquisition of WMD were neutralized during the Cold War period.<sup>3</sup> The threat of mutual annihilation by nuclear weapons left no room for miscalculation about the magnitude of the adversary's military capabilities and their possible effects and consequences.

Deterrence is effective if several conditions are met. First, there must be an aggressor planning to use force against a defender. Second, there must be a defender planning to offset the potential act of the aggressor by exploiting threat methods.<sup>4</sup> Lastly, for deterrence to be successful, the aggressor must choose not to attack because of the threat posed by the defender.<sup>5</sup> Deterrence therefore requires clarity concerning both what the aggressor must not do and the potential consequences of persisting, since the success of deterrence depends on the aggressor's decision of whether to go ahead. The defender must be sure that the aggressor receives the message properly; even if the defender's threat is sincere, deterrence might still fail if the aggressor is ignorant of the threat.<sup>6</sup> Public statements and other methods are used to communicate the cost and risk of an action to an aggressor. However, the aggressor may fail to interpret the threat message correctly for numerous reasons—cultural barriers, internal concerns or emotional strain.<sup>7</sup>

For deterrence to be successful, it must be credible, based on capability, cost and intentions. That is, the aggressor should understand that the defender is capable of taking action.<sup>8</sup> If the defender's statements seem hesitant or are expressed in vague terms then the threat in particular, and deterrence in general, will not prove persuasive.

It is clear that deterrence brings into relief the psychological relationship among opposing sides. Hence, the emotions, perceptions and calculations of decision makers are at the centre of deterrence policy.<sup>9</sup> For this reason, a deterrence policy is based not only on the actual capability and the willpower of the defender to carry out commitments, but also on the defender's skill to convey this capability and determination to the aggressor. Unfortunately, the cautiously coded intentions of defenders frequently fail to make the expected impact on the aggressor because the aggressor is oblivious to the deterrent threat, or finds it incredible.<sup>10</sup>

### *The challenges of confronting non-state armed groups' WMD threat*

The strategic context that had long rested on a delicate nuclear balance has come to an end.<sup>11</sup> Terrorist NSAGs, which have developed state-like hierarchical command structures, have started to become influential actors at the political and military arena. The appearance of these political and quasi-military entities in the centre stage of international politics has disturbed the long-running stability and predictability of the international system, and threatened international peace and security.

Our toolbox of responses is outdated or ineffective when it comes to the terrorist NSAG threat. Unlike the majority of the decision-making bodies of states in the international arena, terrorist NSAGs and their members do not necessarily undertake classical, rational cost-benefit analyses.<sup>12</sup> For most rational actors, the greatest cost might be to lose one's life—for an irrational one, this may not be considered a cost. Nor are material gains necessarily regarded as benefits. The terrorist NSAGs with which we are concerned here are not interested in classical separatist or ideological struggles, either.

*Our toolbox of responses is outdated or ineffective when it comes to the terrorist NSAG threat.*

Again, contrary to states, whose capabilities are to a great extent visible and who disseminate some intelligence, accidentally or on purpose, about their intentions to resort to force within a foreseeable time frame (for instance, by conducting unusually large-scale military manoeuvres), many terrorist NSAGs are almost invisible, which makes it hard to track their capabilities, let alone to detect their intentions about when and where they plan to stage an assault. Under these circumstances, deterrence is unlikely to succeed.

When a physical base can be located, NSAGs will be operating from within the physical territory of a state or multiple states—either with or without the support of a state. The difficulty of militarily engaging a NSAG includes that of launching an attack on a sovereign state's territory. In some cases, the only politically and militarily viable option seems to be to hold states responsible for giving logistical support to such entities and to threaten them with retaliation in kind. This was the case in the immediate aftermath of the terrorist attacks on the US embassies in Kenya and Tanzania. The United States held Afghanistan and Sudan responsible for providing support to the NSAG that staged the attacks and retaliated via a cruise missile strike. Some US authorities claimed that, had the attacks on their embassies been chemical or biological in nature, the response to Afghanistan and Sudan could have been with nuclear weapons.<sup>13</sup>

In the past, terrorist groups needed state sponsorship for shelter as well as logistical and financial support. Today, developments in technology and science may soon render such support unnecessary, (if such is not already the case). NSAGs have become very sophisticated in their operations. They may not always have specific headquarters, military bases, or standing armies against which an attacked country can launch retaliatory strikes.

Efforts to convey a message of determination or to display the capability to strike back will therefore have no significant impact on covert and irrational groups. Traditional responses, like deterrence, are highly likely to fail. There is currently no confidence interval within the margins of which one may feel relatively safe against actual or potential adversaries in the form of NSAGs.

### *A need for new approaches*

Although US President George W. Bush's statement in the immediate aftermath of 11 September 2001—appealing to the peoples of the world by saying that "you are either with us or against us" in the fight against terror—attracted many harsh criticisms, it is not totally unfounded to argue that the world is indeed diametrically divided between those who fight, or at least acknowledge the necessity

to fight, against terrorist organizations or the non-state armed groups that are categorized as such, and those who sympathize with them.<sup>14</sup> This division among states and the absence of unity—or even similarity—on a definition of terrorism or terrorists, make the fight against such NSAGs very difficult. Terrorism has become a global problem and should therefore be dealt with by means of cooperation and collaboration at the global level.

New approaches are clearly needed to prevent terrorist NSAGs from fulfilling their objectives. When classical deterrence is likely to fail, taking measures to be able to pre-empt terrorists as well as to prevent possible attacks gains importance. But these measures must be employed only against the NSAG targeted, not against the state from whose territory the group operates. Pre-emptive action against states can be an option only when there is undeniable evidence of collaboration between a state and a NSAG to stage an imminent attack. Pre-emption will be problematic and will have serious political implications, especially if a state is attacked, no matter the underlying reason.

### SHARING INTELLIGENCE

One of the most significant and possibly most effective instruments in the fight against terrorist NSAGs is intelligence. However, there are particular challenges to gathering intelligence about terrorist NSAGs. In this age of advanced information technologies available to all, members of a terrorist network do not need to know other members of the network or to meet them in person in order to plan and carry out attacks effectively. In the absence of a specific location where terrorists meet, and bearing in mind the difficulty of tracking their online interactions among the trillions carried out around the globe every day, even the most sophisticated intelligence services with their cutting-edge technological gadgets face unprecedented challenges in attempting to gauge the threat.

This is where human intelligence—in the form of infiltration—comes into play. Because understanding the minds of terrorists is crucial. Since decisions about where to attack and how are taken within small groups, which are getting even smaller, in the forms of cells spread around the world, intelligence from within these groups is vital to enable timely preventive measures. Admittedly, even this is getting more difficult; the probability of recruiting agents or buying off informants may well be diminishing because of the low value placed on material benefits (the usual method of recruitment) by such people, particularly members of extreme religious groups.

Terrorist networks are global, therefore intelligence must be shared globally. States should do their utmost to cooperate. Nevertheless, one must acknowledge the deeply rooted difficulties of sharing intelligence among states—it is very difficult even to share intelligence among a state's national institutions. Yet there are some examples, both at the national and international levels, which may prove to be sources of inspiration.

At the state level, for instance, the United States has embarked upon a large-scale restructuring process of its entire chain of intelligence gathering and sharing. The Central Intelligence Agency (CIA), which is responsible for collecting intelligence concerning the capabilities and intentions of other states, and the Federal Bureau of Investigation, which is responsible for nationwide intelligence gathering, have combined their efforts under the umbrella of a larger institution, the Directorate of National Intelligence (DNI).<sup>15</sup> It is hoped that the flow of intelligence will be faster and more credible, and that the relevant US authorities will be better informed about the possible dangers associated with terrorist attacks. It is believed that thanks to the DNI, the chances of preventing future attacks will be higher. However, many elements of these reforms have yet to take effect.

There are inherent difficulties in sharing intelligence due to the very nature of the business. Some believe information should remain secret and sacred for the sake of longer-term uses of the sources. Another obstacle arises from different perspectives regarding the definition of terrorism and

terrorists. States may fear losing control over the effects of information they will supply to their allies, which may result in developments that they do not want to be associated with. (This has been the case with information supplied by allied states, which has been used, and abused, by the CIA with regard to the capture and interrogation of Al-Qaida suspects—strong popular reactions have caused serious political problems for these allies.) But these difficulties must be overcome. Some means of cooperation must be found at the international level before it is too late.

The North Atlantic Treaty Organization (NATO) may be an appropriate venue to gather and share intelligence collectively. NATO already has a very sophisticated infrastructure, and it is currently expanding both in terms of membership, and also in terms of the scope of its mission. No longer is NATO an organization concerned with territorial defence against a clearly defined enemy. Since the end of the Cold War, NATO has been undergoing a comprehensive transformation to meet emerging challenges. Its command and control structure, as well as its planning capabilities, are being steadily upgraded.<sup>16</sup> Its technological supremacy is being supplemented with elements that, it is hoped, will enable the alliance to expand its human intelligence capability.

NATO membership is changing just as dramatically. In addition to enlargement to 26 full members (all of which are from the transatlantic area), NATO's zone of operation has been expanding by virtue of cooperative schemes established between the alliance and like-minded states in other parts of the world, such as the former Soviet republics of Central Asia and the Caucasus, as well as the Balkan states, within the framework of the Partnership for Peace, or countries from North Africa and the Levant under the Mediterranean Dialogue. NATO's Centres of Excellence also allow for ad hoc special arrangements with countries for the exchange of expertise and intelligence as well as training.<sup>17</sup>

The NATO Summit that took place in Istanbul in late June 2004 hinted at the possibility of exchange of information between existing members and other states that have both the capability and the will to collect and share intelligence. For instance, NATO's Istanbul Cooperation Initiative (ICI), launched at the summit, aims to contribute to long-term global and regional security by offering countries of the broader Middle East region practical bilateral security cooperation with NATO. It focuses on practical cooperation in areas where NATO can add value, notably in the security field, starting with the individual members of the Gulf Cooperation Council: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates. The ICI is based on joint ownership and the mutual interests of NATO and the countries of the region, taking into account their diversity and specific needs. The process is distinct, yet it takes into account and complements other international initiatives including by the Group of Eight and international organizations such as the European Union and the Organization for Security and Co-operation in Europe. The ICI offers a "menu" of bilateral activities that countries can choose from, including cooperation in the fight against terrorism, through intelligence-sharing and cooperation in the alliance's work on the proliferation of WMD and their means of delivery.<sup>18</sup> Unfortunately, it is difficult to argue that much has been achieved thus far.

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Nonetheless, it remains that the existing NATO platform has a built-in credibility earned over many years, and should be exploited to the most. Its capabilities should be made commensurate with the challenges. Additional countries should be invited to collaborate with NATO countries, either by way of becoming full or associate members or partners.

## PREVENTING TRAFFICKING OF WMD

NATO is not the only mechanism whereby effective cooperation may be achieved in the fight against terrorism. The Proliferation Security Initiative (PSI) is one tool that has been put in operation by the United States with the cooperation of friendly countries.

PSI is a global initiative aimed at stopping shipments of WMD, their delivery systems, and related materials worldwide. Announced by US President George W. Bush on 31 May 2003, it originates in the US National Strategy to Combat Weapons of Mass Destruction, issued in December 2002, which recognizes the need for more robust tools to defeat the proliferation of WMD around the world. The goal of PSI is to create a more dynamic, creative and proactive approach to preventing proliferation to or from states and non-state actors of proliferation concern. The PSI seeks to use existing legal authorities—national and international—to defeat proliferation.<sup>19</sup>

United Nations Security Council (UNSC) Resolution 1540, adopted unanimously by the Security Council on 28 April 2004, calls on all states to take cooperative action to prevent trafficking in WMD. It:

8. *Calls upon* all States:

(a) To promote the universal adoption and full implementation, and, where necessary, strengthening of multilateral treaties to which they are parties, whose aim is to prevent the proliferation of nuclear, biological or chemical weapons;

(b) To adopt national rules and regulations, where it has not yet been done, to ensure compliance with their commitments under the key multilateral non-proliferation treaties;

(c) To renew and fulfill their commitment to multilateral cooperation, in particular within the framework of the International Atomic Energy Agency, the Organization for the Prohibition of Chemical Weapons and the Biological and Toxin Weapons Convention, as important means of pursuing and achieving their common objectives in the area of non-proliferation and of promoting international cooperation for peaceful purposes;

(d) To develop appropriate ways to work with and inform industry and the public regarding their obligations under such laws;

9. *Calls upon* all States to promote dialogue and cooperation on non-proliferation so as to address the threat posed by proliferation of nuclear, chemical, or biological weapons, and their means of delivery;

10. Further to counter that threat, *calls upon* all States, in accordance with their national legal authorities and legislation and consistent with international law, to take cooperative action to prevent illicit trafficking in nuclear, chemical or biological weapons, their means of delivery, and related materials.<sup>20</sup>

For Resolution 1540 to be effective, states must fully and effectively implement the binding decisions of the Security Council. To what extent Member States will respond to the calls of the Security Council remains to be seen.

## Conclusion

Those NSAGs that aspire to obtain and use WMD are difficult to locate and difficult to assess. The threat they pose cannot be deterred by conventional deterrence, and new approaches must be found. Controlling the actual means of attack—WMD and their related materials—may prove one of the more effective means of addressing the threat. Resolution 1540 and the PSI are a good start, although cooperation on both these initiatives must be much more widespread for them to have a positive impact.

Nonetheless, the NSAGs themselves cannot be neglected. It is crucial to gain intelligence about these groups—both their capabilities and their intentions. As the membership of these groups is spread globally, intelligence will only be useful if states cooperate and pool their resources. This

concept of sharing poses a significant challenge to age-old traditions of secrecy and years of suspicion among states. On the other hand, the consequences of not working collectively could be devastating. Effective measures must be put in place—and soon—in order to prevent the transfer of WMD, and the materials as well as technology and scientific knowledge required in their manufacture, into the hands of NSAGs.

#### Notes

1. See Mustafa Kibaroglu, 2004, "Turkey's Sweet & Sour Policy against NBC Weapons", *Turkish Policy Quarterly*, vol. 3, no. 2, summer, p. 101.
2. The cult, whose name means "the ultimate truth", is believed to be composed of a worldwide network including scientists and experts in many fields, extending from medicine to engineering, and from archaeology to natural sciences. Cult members were arrested during an attempt to buy uranium mines in Australia; they are also known to have travelled to Central Africa to learn about the deadly Ebola virus (S. Day, J. Parachini, and W. Rosenau, 2005, *Aum Shinrikyo, Al Qaeda and the Kinshasa Reactor: Implications of Three Case Studies for Combating Nuclear Terrorism*, Santa Monica, CA, RAND Corporation, p. 18; Kyle B. Olson, 1999, "Aum Shinrikyo: Once and Future Threat?" *Emerging Infectious Diseases*, vol. 5, no. 4, at <[www.cdc.gov/ncidod/EID/vol5no4/olson.htm](http://www.cdc.gov/ncidod/EID/vol5no4/olson.htm)>).
3. There are two key notions of deterrence in political or military context, namely deterrence by punishment and deterrence by denial. The former includes a threat to inflict destruction upon the civilian population and industry of the opponent in the form of a punitive action. The latter calls for the persuasion of the opponents that they will fail to accomplish their mission if they go ahead. While deterrence by punishment is generally linked with nuclear deterrence, deterrence by denial is usually associated with conventional deterrence. See William W. Kaufmann, 1989, "The Requirements of Deterrence", in Philip Bobbitt, Lawrence D. Freedman and Gregory F. Treverton (eds), *US Nuclear Strategy: A Reader*, London, The Macmillan Press, pp. 168–173. Also see T.V. Paul, 1998, "Power, Influence, and Nuclear Weapons: A Reassessment", in T.V. Paul, Richard J. Harknett, and James J. Wirtz (eds), *The Absolute Weapon Revisited: Nuclear Arms and the Emerging International Order*, Michigan, IL, The University of Michigan Press, p. 26.
4. See Janice Gross Stein, 1991, "Calculation, Miscalculation, and Conventional Deterrence I: The View from Cairo", in Robert Jervis, Richard Ned Lebow and Janice Gross Stein (eds), *Psychology and Deterrence*, Baltimore, MD, The Johns Hopkins University Press, p. 36.
5. See Patrick M. Morgan, 1983, *Deterrence: A Conceptual Analysis*, second edition, Beverly Hills, CA, Sage, p. 38.
6. See Lawrence D. Freedman, 1998, "Strategic Coercion", in Lawrence D. Freedman (ed.), *Strategic Coercion: Concepts and Cases*, Oxford, Oxford University Press, pp. 15–19.
7. See Edward Rhodes, 2000, "Conventional Deterrence," *Comparative Strategy*, vol. 19, no. 3, July–September, pp. 221–233.
8. See Kaufmann, op. cit., pp.171–173.
9. Robert Jervis, 1991, "Introduction: Approaches and Assumptions", in Jervis, Lebow and Gross Stein, op. cit., pp. 1–2.
10. See Richard Ned Lebow, 1991, "Conclusions", in Jervis, Lebow and Gross Stein, op. cit., pp. 203–210.
11. It may be more appropriate to use the terminology of the age (the 1960s), where stability in superpower rivalry was believed to owe much to the existence of a "delicate balance of terror", so labelled after the work of Albert Wohlstetter, a leading strategist with the RAND Corporation. See Albert Wohlstetter, 1989 (first published 1958), "The Delicate Balance of Terror", in Philip Bobbitt, Lawrence D. Freedman and Gregory F. Treverton (eds), *US Nuclear Strategy: A Reader*, London, Macmillan Press, pp. 143–167.
12. The exception is, of course, so-called "rogue states". However, even if rogue states are a cause for serious concern because of their WMD ambitions, the threat that they pose is still considered as one that can be handled. In such cases, the major premises of the classical theory of deterrence are likely to prove successful. For instance, it is widely agreed among security experts that one reason why the Iraqi leader Saddam Hussein did not attack Israel with chemical or biological weapons during the Gulf War in 1991, despite being believed to have such a capability, was that he was deterred by the clear threat from the United States that he would be attacked with nuclear weapons in return.
13. Such views were expressed by high-ranking military and diplomatic officials during informal conversations at the sidelines of the annual conference on disarmament matters organized by the (then) Defense Special Weapons Agency of the Pentagon in June 1998, Norfolk, VA.
14. President George W. Bush, "President Welcomes President Chirac to the White House", 6 November 2001, at <[www.whitehouse.gov/news/releases/2001/11/20011106-4.html](http://www.whitehouse.gov/news/releases/2001/11/20011106-4.html)>.

15. For details see *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks upon the United States*, Washington, DC, US Government Printing Office, at <[www.gpoaccess.gov/911](http://www.gpoaccess.gov/911)>.
16. For further details see NATO's web site at <[www.nato.int](http://www.nato.int)>.
17. The NATO Centre of Excellence – Defence Against Terrorism (COE-DAT), which was established in Ankara, Turkey in June 2005 under the auspices of the Turkish General Staff, convenes courses, panels, workshops and symposiums that are also attended by middle- and high-ranking civil and military officials from countries including Indonesia, Malaysia and Singapore. See <[www.coedat.nato.int](http://www.coedat.nato.int)>.
18. For more information, see NATO's Istanbul Cooperation Initiative web site at <[www.nato.int/ici/home.htm](http://www.nato.int/ici/home.htm)>.
19. In September 2003, 11 countries agreed to and published the PSI Statement of Interdiction Principles, which identify specific steps for effectively interdicting WMD shipments and preventing proliferation facilitators from engaging in this deadly trade. The PSI is part of an overall counter-proliferation effort intended to apply intelligence, diplomatic, law enforcement and other tools to prevent transfers of WMD-related items to countries of concern. See <[www.proliferationsecurity.info](http://www.proliferationsecurity.info)>
20. United Nations Security Council resolution 1540 (2004), 28 April 2004, UN document S/RES/1540 (2004), paragraphs 8–10.

## Weapon transfers to non-state armed groups

Chris SMITH

The process of nation-building is continuous. However strong, secure and homogeneous some of the more fortunate individual states may be, the process of recalibration, adjustment and reform proceeds apace. For the more fortunate nation states, pluralistic processes and reasonably rational discourse deal with the required changes quietly, efficiently and fairly. The state rarely has to exercise its monopoly of force and violence either to prevent or initiate change. Changes are accepted, adjustments are made and protest channelled through the media, interest groups and, eventually, the ballot box.

As such, in these states, non-state actors are rarely security problems. In many other cases, however, such political processes become less genial and professional affairs. A call for change may be beyond what is considered to be politically acceptable by the state, which may in any case barely exist within a nation state where legitimacy and strength are both lacking. In many such cases both state and non-state actors (NSAs) resort to force and violence to pursue their aims, which are usually extremely difficult to achieve without access to arms, ammunition, explosives and, of course, financial resources. The key concern, for both the nation state and the analyst, comes at this stage, when the NSA acquires the means of violent conflict, which pushes opposition to another level. Confrontation in the form of violent opposition elevates the NSA as a threat to the state and the interests of those who run it—from president to apparatchik.

The post-Second World War surge in nation-building that followed the dismantling of colonial empires was in most cases a fraught and violent affair. Few states have managed to avoid the violence associated with nation-building since the birth of the Westphalian system itself and the commensurate primacy of sovereignty. In this sense, the end of the Second World War and the end of the Cold War were important benchmarks—even precursors—but hardly massive changes in the history of the nation state.

Yet, over the past decade, there has been growing interest and concern over the role of modern NSAs—groups who effectively challenge the power and legitimacy of the state to exist in its current form and often resort to violence and armed conflict to achieve their ends. These come in many guises, from the standard rebel (no longer revolutionary) opposition group to the private, "for profit", security firms (no longer mercenaries) that offer military and security services for states (and, in some cases, NSAs) that, for whatever reason, cannot (or will not) do it for themselves. In this article, however, it is the former type of organization that is under consideration.

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Chris Smith is an Associate Fellow at Chatham House and a Visiting Fellow at the Universities of Brighton and Bristol. He was formerly at King's College, London where he established the Conflict, Security and Development research programme. He has written extensively on South Asian security issues and is currently writing a book on Sri Lanka.

The issue of arms supplies to non-state actors is now on the international agenda and moving forward. The elevation of recent global concerns over the illegal proliferation of small arms and light weapons (SALW) has raised the complex problem of how to address the significance of the illegal weapons that inevitably come into the possession of NSAs to further their challenge to the state.

### *State supply of arms to NSAs*

Prior to the end of the Cold War, it was generally the case that NSAs could indulge in some basic ideological posturing to secure supplies of weapons from one or other of the major powers. This extended beyond the two superpowers to other major powers such as China and France, for example. The covert shipment of weapons to non-state actors was often used as a foreign policy tool.

The end of the Cold War led to a major reconfiguration of the global security landscape. The impact upon the North–South axis was considerable as many major powers re-evaluated their positions on support for a range of actors and causes across developing countries. Both leaders and challengers suddenly found themselves unable to exploit former Cold War tensions.

The collapse of the Soviet Union also created a new market for illegal weapons. Corrupt and disgruntled custodians of armouries quietly released massive amounts of weapons onto the global black market, which soon found their way into the armouries of those who could afford to buy them. Africa in particular became flooded with cheap SALW, the increased availability of which most certainly facilitated the rise in "new wars", although it did not cause them. The shadowy role of brokers and entrepreneurs also played a part and no doubt fortunes were made on the black market during the 1990s. The consequences of these developments were not just that non-state armed groups (NSAGs) became better armed and more capable of challenging the state and its monopoly of violence. They also empowered criminals (criminals and NSAGs were sometimes one and the same), from cattle-rustlers to narcotics traffickers. SALW became no less difficult to control and certainly had a significant impact upon the regional security landscape, especially in relation to human security.

### *The importance of globalization*

The redrawing of the new security landscape also took place against the backdrop of fast-moving globalization. The removal of obstacles and barriers to the movement of goods and capital benefited illegal as well as legal trade. It became much easier to move weapons, and those responsible for their movement were attracted by their characteristics as commodities as well as the benign trading environment. Criminal networks tend to prefer dealing in commodities that are high value and low density, such as drugs. SALW fall into this category to a certain extent. They can be moved from place to place far more easily than other types of weaponry. Equally important, when they reach the places where they are deployed and used, their relatively uncomplicated technology means that infrastructural needs are minimal. Furthermore, SALW can be used quite easily by unskilled individuals and little or no technical training is required.

The financing of SALW sales was also made much easier. The era of globalization introduced a new era for finance. Never before had it been so easy to transfer money from one person to another or from one country to another. However much states may try to track the movement of money, in reality the sheer scale and speed of disbursements now provides new opportunities for those who choose to work outside of the law.

The forces of globalization in several ways defined the post-Cold War security landscape. Non-state actors benefited enormously from these forces. Donations to support their activities could be safely made from almost anywhere in the world; hiding both the original source and the final

destination of the finance required to fuel conflicts involving NSAGs proved easier than ever before. The involvement of diasporas in most such conflicts meant that the sources of funding multiplied. The increasing interface between organized crime and conflict has made analysis much more complex, not least in relation to how the international community should address these issues. For example, the extent to which arms traffickers would use criminal networks and the facilities on offer by organized crime to move their arms supplies from one place to another was never obvious to the international community. Obversely, organized crime groups were quick to capitalize upon the opportunities availed by weak and failed states. In the late 1990s heroin from Asia was shipped into Europe via the Balkans. A decade later, cocaine from South America is being shipped into Europe via West Africa.

### *NSAs and weapons of mass destruction*

The implications of weapons of mass destruction (WMD) falling into the hands of NSAs cannot be underestimated. The way in which the former Soviet Union fell apart and the revelations regarding the A.Q. Khan network in Pakistan combine to sketch a potentially cataclysmic scenario and an additional reason to fear the use of nuclear weapons.

Despite concerns about dirty bombs and nuclear state inventories falling into the hands of NSAGs bent on destruction, the record thus far would seem to paint a different picture. For all that has happened since the end of the Cold War, there would seem to be a significant measure of supply of WMD, but there has been little indication that there is a significant demand for WMD from NSAGs. Given that WMD are a reasonably safe mechanism to disrupt—if not destroy—much of what the state requires and uses to gain legitimacy within the polity, it is surprising that the demand has not been greater, especially amongst NSAGs that have scant regard for human rights.

For groups interested in creating such mayhem, the lack of demand for WMD can perhaps be explained by the problems associated with handling and deployment of WMD. But for most groups, it is far from clear how and where they would choose to use such weapons. The political, tactical and strategic aims of using WMD are difficult to discern. Such an act would be a sheer and almost ultimate act of terror and would certainly succeed in the type of destruction and mayhem that "spectacular" acts of terror are designed to trigger. As with the attacks of 11 September 2001, a successful detonation of a dirty bomb would doubtless create widespread and long-lasting fear and terror. And the economic and political cost would not be anything less than substantial. If any NSAG were actually to use WMD, its credibility would be destroyed and all further attempts to gain acceptance by and legitimacy from the international community and possibly its own supporters would be fruitless. Any such act would be one of political suicide. Most NSAGs possess some kind of political agenda and wish not just to gain power but also to win—over time—the respect and recognition of the international community. Perhaps it is the position adopted on these types of issues that distinguishes a NSAG from a terrorist organization.

There are therefore a number of serious political and technical barriers to the lure of WMD for NSAs. But assuming that their possession is within reach, this does not mean that acts of extreme irrationality will not prevail, somewhere and at some time. However, as a means to achieving any of the varied ends identified by NSAGs—apart from raw and extreme terror—WMD would seem, thankfully, to have little to offer.

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### *NSAs and conventional weapons systems*

Non-state armed groups tend to acquire conventional weapons from the opposition, rather than from external actors. The supply of conventional weapons to rebel or revolutionary forces was a Cold

War phenomenon and no longer happens. The internal transfer of weapons can be a significant part of the international arms "trade" in its own right. However, it is a difficult area of the problematique to monitor and research. Weapons producers may not necessarily be the suppliers (as weapons can change hands more than once), or indeed those responsible for keeping the weapons operational.

There have been several examples of conventional weapons falling into the hands of NSAGs over the course of military campaigns and general upheavals. Rebels in Chad managed to capture extremely significant amounts of Libyan weapons in 1987. So much so that Libya was forced to attempt to bomb its own abandoned equipment to prevent it from falling into the hands of the Habre forces.<sup>1</sup> The 1997 meltdown of the state in Albania resulted in the state losing control of many weapons systems, such as tanks and armoured personnel carriers.<sup>2</sup> In the end, after driving these vehicles around somewhat aimlessly, they were abandoned when they either broke down or ran out of fuel. In April 2000, the Liberation Tigers of Tamil Eelam (LTTE) overran the Elephant Pass, which links the Jaffna Peninsular to the rest of the island.<sup>3</sup> In so doing, a significant amount of military materiel, including long-range artillery, was captured, which the LTTE continues to use and maintain to effect.

Overall, weapons systems are generally of little use to NSAGs. However, the closer these groups get to becoming non-NSAGs, the more useful such weapons might become, if they have access to infrastructure, for example. The symbolism of assimilating such systems should not be overlooked. It is one thing to be committed enough to challenge the state's monopoly of force, but to emulate it suggests very strongly that the challenge has been a success. Military technology played an important role in nation-building after the Second World War and there is every possibility that it could do so in the future, in terms of being indicative of an NSA becoming a legitimate political entity.

### *Illegal small arms and light weapons*

Head and shoulders above the threat of WMD and of conventional weapons systems in the hands of NSAGs stands the combination of NSAGs and SALW. Assault rifles, mortars and rocket-propelled grenades are the weapons of choice for the NSAG. (Man-portable air defence systems, or MANPADS, might also be included in this category but will be discussed in a separate section.) Firepower is less important than mobility and simplicity to NSAGs, as they rarely join battle in a conventional manner. Guerrilla warfare strategy and insurgency tactics tend to be the favoured approaches and consequently the weapons of choice tend to be light and mobile rather than powerful and cumbersome.

SALW transfers are not only practical and convenient for NSAs but also for states. SALW on occasion provide an opportunity to pursue a foreign policy aim without necessarily being open or transparent in terms of revealing the source of the weapon (rather than the original producer). The United States in the 1980s sold arms to Iran and used the proceeds to fund the Contra militants in Nicaragua.<sup>4</sup> Later on that decade, following the Soviet invasion of Afghanistan, the United States bought arms from China and several other countries and set up a major pipeline to arm the mujahideen in their fight against the Soviet invaders.<sup>5</sup> In both cases, controversial foreign policy aims were realized without the support or assent of Congress. Two decades later, the impact of these weapons in Afghanistan and Pakistan is still apparent.

The Reagan Administration was caught out in the Iran-Contra affair and in the case of Afghanistan the pipeline eventually became too big and significant for deniability. However, other, smaller operations were less conspicuous. The United Kingdom, on the request of the US government, provided Blowpipe surface-to-air missiles into the Afghan pipeline well before the advent of the Stinger. However, few now recall the importance of the decision taken by the UK government, primarily on behalf of the United States. Armed and violent conflict always attracts its share of crooks and deviants, attracted by the lure of fast profits. Governments have used these brokers to ensure that weapons move from one point to another with a minimum paper trail and minimal transparency.

## MANPADS

MANPADS would appear to fit the criteria for weapons favoured by NSAGs. They are freestanding, easy to use, portable and relatively cheap. They have been identified as a major source of threat, to aviation especially. Often unknown to passengers crossing continents on civilian aircraft, there is frequently concern on the part of airlines over whether or not to risk overflights of failed and weak states. The reason is the ease with which MANPADS could be used to attack civilian aircraft—on 3 July 1988, a US guided-missile destroyer shot down an Iranian Airbus on a routine flight across the Persian Gulf, killing all crew and passengers, allegedly having mistaken the civilian aircraft for a hostile military aircraft.<sup>7</sup> On 3 September 1983 a Soviet fighter shot down a Korean Airlines Boeing 747.<sup>8</sup> Though neither involved MANPADS, these systems are capable of similar levels of destruction—an Israeli commercial aircraft narrowly escaped being hit by a missile while overflying Mombasa, Kenya in November 2002.

For all the recent concerns, however, the evidence points to a relatively diminished threat. Although MANPADS have been in service for almost half a century, since the late 1950s, estimates of deaths resulting from MANPADS attacks on civilian aircraft range from 500 to 1,000.<sup>9</sup> Though regrettable and tragic, this does not represent a major crisis, past or present, and perhaps not future.

It is not wholly clear as to why MANPADS have not developed into a significant threat. One possibility is because MANPADS are more technically sophisticated than other SALW. Power packs or batteries, for example, tend to be tailor-made and, once expended, can be difficult to replace. It is thought that one of the ways in which Stingers were sold on in Pakistan and Afghanistan was for vendors to turn on the power to satisfy curious would-be buyers. But this can only be done a few times until the power is expended, thereby disabling the weapons and rendering them valueless, and effectively useless.

The concern over MANPADS has increased since the onset of the global war on terror. This is understandable, given the patchy knowledge of threat and capability. If MANPADS are out there—which they certainly are (in the aftermath of the Soviet retreat from Afghanistan, the United States lost track of several hundred Stinger surface-to-air missiles)—are they serviceable, where are they and who has them? Where might they be used, when and against who, or what? Overall, MANPADS may not constitute a major threat, in the same way as the cumulative effect of SALW. However, a single MANPADS in the wrong hands can have a devastating impact. Therefore, it remains important to monitor and track their movements, especially when they fall into the wrong hands. Those capable of supplying technical fixes have been quick to react to these security concerns. Susceptibility and vulnerability reduction have now become key areas of concern for future civilian aviation planners and, unsurprisingly, industry has been keen to offer technical solutions.

### *Arms transfers to non-state actors—the international community takes notice*

In a sense, the immediate post-Cold War concern over the possible proliferation of nuclear weapons and capabilities to non-state actors laid the ground for action on arms transfers to NSAs. The threat of nuclear and nefarious activities deep in what Anatol Lieven has called the "dark side of the global village"<sup>10</sup> prompted a requirement for lateral thinking and innovative policy-making, concerning in particular the ways in which responsible and corrective actions could be taken in a globalized world, in which smaller and less significant states could bear equal responsibility to larger powers.<sup>11</sup>

The massive response by non-governmental organizations to the post-Cold War security landscape was a remarkable global political phenomenon of which most countries, especially the liberal like-minded, and the United Nations could not fail to take notice. The result was a UN special

conference and a Programme of Action on SALW that, despite limited yet forceful opposition, has led to discernible movement.<sup>12</sup> Successful though this programme has been thus far, however, the link between NSAGs and SALW was not specifically made. This may be rectified to some extent, as the issue may soon be on the Conference on Disarmament's agenda.

One outstanding question concerns whether or not the issue of weapons transfers to NSAs will become an agenda item in the discussions among the recently established Group of Governmental Experts on a possible Arms Trade Treaty (ATT). In essence, the proposed ATT is a classic arms control initiative insofar as it is conceptualized as a way to regulate rather than end the international arms trade. The proposed ATT is resolutely focused upon the trade in conventional weapons, which would appear to include SALW. But then conventional weapons are (admittedly loosely) understood at this stage to be the weapons that might legitimately be found in modern warfare and employed by modern armed forces, which implies that NSA possession of SALW lies outside the current remit of the ATT.<sup>13</sup> If the ATT debate does begin to take root, and there is every indication that this will be the case, the NSA issue must be included sooner rather than later. However, given that the key issue in the further development of the ATT lies in persuading the United States to participate, the NSA may be excluded. Moreover, a recent analysis of Member States' responses to the Secretary-General's request for views on an ATT found that only 6 states out of nearly 100 respondents specifically mentioned that an ATT transfer criteria should cover transfers to NSA.<sup>14</sup> Potentially, this is a wasted opportunity of considerable importance. In the past, many states have argued against signing the Ottawa Convention because it excludes NSAs, who also use anti-personnel landmines and often with less regard for civilians than the state. This is a difficult argument to counter and a significant weakness in the potential ATT process.

### *Issues of control—practical and political*

The essential characteristics of SALW encourage high levels of demand and pose intractable problems for those who wish for control in the real and tangible sense of watertight management of extant and future stocks. Even if subsequent revisions and steps forward in the global effort to control flows of illegal weapons emerge in the coming years, a comprehensive and verifiable regime will still be out of reach, and by a very long way.

However, this is not to dismiss or undermine the efforts being made by the international community, which must be supported. One major issue to be confronted in future negotiations is the responsibility of suppliers. Attempts to understand the architecture required to control the international arms trade have raised and disputed the question as to whether or not the prime responsibility should rest

*One major issue to be confronted in future negotiations is the responsibility of suppliers.*

with producers. This problem is complex and contentious with standard conventional weapons, but much more so with SALW. Fundamentally, given the slow rate of obsolescence and the continued circulation and recirculation of such weapons, where does responsibility start and finish?

Can the original producers of SALW, politically or legally, be made to take responsibility for weapons that have passed through many pairs of hands and several countries? To what extent and for how long should a producer be held responsible for the uses to which a weapon is put? If responsibility is to be transferred, how would this work in practice? Illegal weapons are by definition unlicensed.

Some final observations with regard to the need for control concerns the occasions when control may not necessarily be the best way forward. There are times, for example, when the state cannot maintain its monopoly on force and violence. In southern Albania in the late 1990s, the police were quietly licensing or just turning a blind eye to certain people acquiring weapons.<sup>15</sup> As law and order broke down, individuals were procuring illegal weapons as the only way to protect their family, property and business. Is this the route to anarchy or, with some imaginative thinking, a means toward control?

If illegal weapons are licensed under such circumstances, could not the licences be revoked as and when the state regains the monopoly of force? Equally, is it always a mistake for NSAs to acquire illegal weapons? The monopoly of force is not always used by the state to protect the interest and safety of its citizens regardless of ethnic origin or religious persuasion. Frequently overlooked in the arms control milieu is that the state often abuses its monopoly of force against, by definition, defenceless individuals and communities. A strong state, one that has legitimacy and is based upon plurality, will seldom need to exploit the monopoly of force to its own end. Weak states are very different. If there is a justification in taking up arms against a repressive state, is there also a case for supplying to facilitate? Is supplying SALW on occasion a good thing if NSAs are fighting for a just cause?

The SALW debate will continue for many years. It will remain a prominent area of international politics and rightly so. Practical gains may well be few and far between but this is the crux of the problem—this is a unique area of arms control. NSAGs will continue to appear on the security landscape. It is to be hoped that NGO-based initiatives such as the work of Geneva Call can progress in the field of SALW as it has done with anti-personnel landmines. However, SALW pose a more complex matrix of problems, which will take years to unravel, politically as well as intellectually.

### Notes

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### NEW PUBLICATION

#### *The Humanitarian Impact of Cluster Munitions*

The current international debate surrounding cluster munitions and the discussion of a ban or tightened restrictions on their use has focused attention on the humanitarian impact of these weapons. In addition to killing and injuring civilians and damaging infrastructure at the time of use, they invariably leave behind unexploded submunitions that continue to pose a threat to human life, restrict access to natural resources and impede post-war recovery and development processes for many years. Unexploded submunitions have the potential to cause death or physical and psychological trauma, and disrupt economic activities and daily life. The fear of such dangers, and the resulting influence on behaviour, can have real effects on the well-being of individuals and communities.

This report examines the immediate and long-term humanitarian and socio-economic impact of cluster munition contamination on civilian populations. It draws on a wide range of sources, including case studies from Cambodia and Lebanon, information gathered from practitioners, and documentation from contaminated countries, to present an overview of the ways in which such contamination affects the daily lives, opportunities and prospects of ordinary people.

The impact is discussed thematically to show the effects on different sectors of the civilian population; the economic impact at community, regional and national level; and how relief, post-war recovery and development processes are affected. The case studies show in more detail how contamination affects the lives and livelihoods of ordinary people. Cambodia has been contaminated for several decades, since air-delivered cluster bombs were dropped on the country during the Viet Nam War in the 1960s and 1970s. The Lebanese case study, which focuses on southern Lebanon and the results of cluster munition use during the conflict with Israel in mid-2006, provides the opportunity to look at the impact of cluster munitions during conflict as well as the immediate post-war impact.

This report shows how the impact of cluster munitions depends, among other things, on the level of contamination, the terrain, land use, population density, common economic activities and resources, and the level of development. Impact also varies over time as these factors change. Yet in all cases the effects of cluster munition use are immediate, and contamination makes them long lasting and deep.

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In each issue of *Disarmament Forum*, UNIDIR Focus highlights one activity of the Institute, outlining the project's methodology, recent research developments or its outcomes. UNIDIR Focus also describes a new UNIDIR publication. You can find summaries and contact information for all of the Institute's present and past activities, as well as sample chapters of publications and ordering information, online at <[www.unidir.org](http://www.unidir.org)>.

We are grateful to the Governments of Canada, New Zealand and Norway for their support of this project, and to all those who have assisted UNIDIR in compiling this overview of the humanitarian impact of these weapons.

### ***The Humanitarian Impact of Cluster Munitions***

UNIDIR, 2008

80 pages

UNIDIR/2008/1

Free of charge

## **ACTIVITY**

### ***International Assistance for Implementing the UN Programme of Action on the Illicit Trade in Small Arms and Light Weapons***

In January 2006 UNIDIR launched a multi-phase research project on international assistance for implementing the UN Programme of Action on the Illicit Trade in Small Arms and Light Weapons (PoA).

The first phase of the project surveyed the types of assistance that states would like to receive to support implementation of the PoA and identified certain challenges related to submitting and receiving assistance requests. The research culminated in the publication of a global overview of international assistance allocated between 2001 and 2005, *International Assistance for Implementing the PoA to Prevent, Combat and Eradicate the Illicit Trade in SALW in All Its Aspects: Findings of a Global Survey*. This report offers recommendations for both short- and long-term measures to improve the coordination of assistance requests. Over 130 UN Member States and regional and international organizations participated in the first phase of research and many more were reached through discussions and awareness-raising.

In response to the positive reception of Phase I and its findings, UNIDIR implemented Phase II of the project during 2006–2007. UNIDIR conducted a case study in East Africa to explore the challenges associated with the allocation, coordination and implementation of international assistance. The study also identified the subregion's assistance priorities. Phase II also saw the early drafting of a mechanism matching needs to resources—a practical tool for states and practitioners to identify and communicate the types of national and international assistance necessary to implement the PoA.

Phase III of the project is now under way. UNIDIR is refining the structure and substance of the needs-to-resources mechanism. The activities entail finalizing a checklist to help states identify their priority requirements for implementing the PoA; testing the checklist and universal applicability of the needs-to-resources mechanism in a case study in the Pacific region; and finalizing the design of the mechanism. The case study in the Pacific will also explore the issue of small arms and light weapons in relation to development assistance.

For more information, please contact:

#### ***Kerry Maze***

Tel.: +41 (0)22 917 1759

Fax: +41 (0)22 917 0176

E-mail: [kmaze@unog.ch](mailto:kmaze@unog.ch)