

wie operativen Bereich notwendig. Ansonsten riskiert die AU im Extremfall, Spielball der Interessen externer Akteure und einiger afrikanischer Eliten zu werden.

Es gibt aber beim Kapazitätsaufbau einige Fallstricke. Einerseits wird dieser immer noch in sehr begrenztem Ausmaß betrieben. Die EU beispielsweise stellt über die Afrikanische Friedensfazilität bislang 100 Millionen Euro bereit, gegenüber den erwähnten 600 Millionen Euro für die afrikanischen Friedensmissionen, die in erster Linie der Kostendeckung dienen. Ein Bericht von 2011 stellte für den Zehnjahresplan zum Kapazitätsaufbau im Rahmen der VN-AU-Kooperation fest, dass oftmals die Linie zwischen dem Aufbau von AU-Kapazitäten durch die VN und der Bereitstellung von Kapazitäten durch die VN ausgesprochen unscharf ist. Außerdem konzentrierten sich VN-Experten mehr auf die Abwicklung von Projekten als auf einen Aufbau von AU-Kapazitäten.²⁰ Es ist also fragwürdig, ob „Kapazitätsaufbau drin ist, wo Kapazitätsaufbau draufsteht“.

Andererseits führen auch erfolgreich durchgeführte Maßnahmen nicht automatisch zu „African ownership“ im Bereich Frieden und Sicherheit. Denn die Zukunft der APSA ist nicht nur eine Frage des Geldes und eigener Institutionen, so wenig wie bestehende Defizite einfach nur als Umsetzungsprobleme

abgetan werden sollten. Letztlich ist bislang weiterhin unklar, was „African ownership“ jenseits eigener Strukturen und Aktivitäten im Rahmen der APSA politisch und konzeptionell wirklich meint. Dies führt dazu, dass der institutionelle und operative Bereich auf Annahmen aufbaut, die nicht immer gegeben sind, so die Existenz effektiver regionaler Pfeiler unterhalb der AU und die Verinnerlichung oder jedenfalls Akzeptanz des liberalen *Peacebuilding*-Ansatzes in den Mitgliedstaaten. Das Engagement von Mitgliedstaaten darf auch nicht einfach auf ihre finanziellen Beiträge oder die Bereitstellung von Truppen reduziert werden, sondern erfordert eine konstruktive Rolle der Länder für Frieden und Sicherheit in ihrem direkten Einflussbereich. Denn davon hängt die Effektivität der regionalen Pfeiler der APSA wie auch der direkten AU-Aktivitäten in den Regionen letztlich ab. Zudem bedarf es einer stärkeren Einbeziehung zivilgesellschaftlicher Akteure aus den Mitgliedstaaten, um neue Ideen und Anstöße in den AU-Prozess einfließen zu lassen und das Projekt der APSA nicht zu einem elitengesteuerten Prozess zu machen. Denn, wie die neue AU-Kommissionsvorsitzende Dlamini-Zuma in ihrer Antrittsrede betonte, die Auswirkung der Politik des Staatenbundes muss daran gemessen werden, wie sie die Bürger Afrikas konkret berührt.²¹

20 Security Council Report. 2011. Working Together for Peace and Security in Africa: The Security Council and the AU Peace and Security Council. New York: Security Council Report. Special Research Report: 2011/No. 2, S. 10.

21 Address by the African Union Commission Chairperson Dr. Nkosazana Dlamini Zuma, African Union Headquarters, Addis Ababa, Ethiopia, Monday 15 October 2012, <http://ccpau.org/wp-content/uploads/2012/10/Chairperson-Dlamini-Zuma-Handover-Speech-Final-15.10.12.pdf> [31. Oktober 2012].

Testing the Paradigms of Humanitarian Dialogue with Non-State Armed Groups: The Unique Challenges of Ending the Use of Child Soldiers

Janel B. Galvanek and Yvonne Kemper*

Abstract: This article examines the factors and conditions that explain why engagement with NSAGs on child soldiers is particularly challenging. The article identifies the key factors that determine the successful outcome of humanitarian dialogue with NSAGs in general, and then applies this framework to the issue of child soldiers to highlight some of its distinct features. Looking beyond the theoretical analysis, with the help of two specific cases, we will highlight how these unique challenges in ending the use and recruitment of child soldiers can also help explain impasses in dialogue with some of the groups implicated in this offense.

Keywords: Child soldiers, children in armed conflict, humanitarian dialogue, non-state armed groups
Kindersoldaten, Kinder in bewaffneten Konflikten, humanitärer Dialog, nichtstaatliche bewaffnete Gruppen

1. Introduction

After seven years in office, Ms. Radhika Coomaraswamy, the outgoing UN Special Representative on Children and Armed Conflict, already had a goal in mind for her successor, namely to end the use of children by *state*

armed forces by 2016.¹ In contrast, her hopes for successfully engaging with *non-state* actors on this issue seemed far less ambitious, consisting of “accelerating” the adoption of UN Action Plans, by which these groups would voluntarily commit to end grave violations against children. While engagement with state actors follows well-known rules, Ms. Coomaraswamy’s statement acknowledges the complexity of

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1 “Radhika Coomaraswamy Speaks at IPI”: <http://reliefweb.int/report/world/radhika-coomaraswamy-speaks-ipi-video>, accessed on 24 October 2012.

engaging with non-state armed groups and the often uncertain outcomes, particularly when it comes to eliminating their use of child soldiers.

The UN's record over the past seven years confirms this assessment. Although the majority of the 32 parties classified by the UN as "persistent perpetrators"² are non-state actors, proportionally more state forces have adopted Action Plans to end the recruitment and use of children.³ The government of the Democratic Republic of Congo signed an Action Plan in October 2012, which contained steps to identify children present in the armed forces (FARDC) and reintegrate them into their communities. With the signature of the DRC, all state armed forces that are labeled "persistent perpetrators" have now entered into Action Plans with the UN.⁴ Meanwhile, little progress has been achieved in reducing the much higher number of persistent perpetrators on the list that are non-state armed groups.

This raises a number of important questions: Why is it so difficult to engage with non-state armed groups on the issue of child soldiers? Can lessons be drawn from dialogue with armed groups on other humanitarian concerns, such as allowing access for humanitarian assistance or banning landmines? Or are there rather some unique factors which need to be taken into account when engaging with non-state actors on the issue of child recruitment and use?

This article explores some of the factors and conditions that explain why engagement with non-state armed groups is particularly challenging when it comes to child soldiers. For this purpose, we will first identify the key factors that determine the successful outcome and approach of humanitarian dialogue with non-state armed groups in general, such as the structure and motivations of the armed groups. We will then apply this framework to the issue of child soldiers to highlight some of its distinct features that need to be taken into account to effectively address the problem. Looking beyond the theoretical analysis, with the help of two specific cases – the Lord's Resistance Army in Central Africa, and the Karen National Liberation Army in Myanmar – we will highlight how these unique challenges in ending the use and recruitment of child soldiers can also help explain impasses in dialogue with some of the groups implicated in this offense.

2. Engaging Non-State Armed Groups on Humanitarian Issues

In the last few decades, as the instances of interstate war have become ever more seldom, the role and influence of non-state armed actors have become increasingly recognized by the global community. In the period from 2001-2010, there were a total of 221 non-state armed conflicts, while only

69 state-based armed conflicts took place.⁵ These numbers demonstrate the widespread occurrence of conflicts that take place between state armed forces and non-state armed groups, or conflicts amongst non-state armed groups. But although the influence of non-state armed groups is growing, the international community is still struggling to find effective ways of engaging them on humanitarian issues, especially when it comes to releasing child soldiers.

According to International Humanitarian Law (IHL), non-state armed groups can be defined as "dissident armed forces or other organized armed groups", which have a clear command structure and exercise power over a given territory.⁶ Commonly referred to in the fields of security policy and conflict resolution as non-state armed groups (NSAG), it is presumed that such groups will have three general characteristics: a basic command structure, the willingness to use violence to achieve their political goals, and independence from state control.⁷ Glaser further recommends a fourth attribute for NSAGs, which corresponds with the Geneva Conventions, namely the "exercise of effective control over a territory or population."⁸

However, such descriptions may at times be problematic when applied to some NSAGs. For instance, are pro-government paramilitary forces truly independent of state control? And can the aims of certain groups really be classified as political? Such a narrow definition of NSAGs risks excluding some of the worst perpetrators of child soldier recruitment and use. For the purposes of this article then, we use an alternative, broader definition for NSAGs, which defines them as "challengers to the state's monopoly of legitimate coercive force"⁹ which would include groups and individuals such as clan chiefs, warlords or mercenaries.¹⁰ This broader definition allows us to consider "whether such groups matter for the kinds of political ends we envision",¹¹ such as the promotion of human rights standards and peacemaking, and in this particular case, the protection of children and the release of child soldiers.

2.1 Deciding to Engage

The decision of whether or not to engage with a NSAG should only be made after careful consideration of the advantages and disadvantages of engaging. If engagement increases the risk for civilians or mediators, such actions should be reconsidered. In a discussion of the factors to consider when engaging *politically* with NSAGs (for instance in order to achieve a peace agreement), Dudouet mentions the policy preferences

5 See the *SPIRI Yearbook 2011*, "Resources and Armed Conflict".

6 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.

7 Claude Bruderlein, *The role of non-state actors in building human security: The case of armed groups in intra-state wars* (Geneva: Centre for Humanitarian Dialogue, 2000), 8-9.

8 Max P. Glaser, *Humanitarian engagement with non-state armed actors: The parameters of negotiated access* (Humanitarian Practice Network, 2005), 7.

9 Pablo Policzer, *Neither Terrorists nor Freedom Fighters*, paper presented at the International Studies Association Conference, Honolulu, Hawaii, 3-5 March 2005, 7-8.

10 See, for example, Ulrich Schneckener, *Spoilers or Governance Actors? Engaging Armed Non-State Groups in Areas of Limited Statehood* (DFG Research Center (SFB) 700 Governance in Areas of Limited Statehood, 2009).

11 Policzer, 11.

2 Persistent perpetrators are those parties which have been listed in the annexes of the Annual Report for at least five years.

3 United Nations, *Annual Report of the Special Representative of the Secretary-General for Children and Armed Conflict, Radhika Coomaraswamy*, 28 June 2012, 19-22. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/145/97/PDF/G1214597.pdf?OpenElement>, accessed on 24 October 2012.

4 Watchlist on Children and Armed Conflict: *Watchlist Newsletter*, November 2012, www.watchlist.org, accessed on 24 October 2012.

of the parties intervening, the interests of the victims of the conflict, and the armed groups' interest in and consent to the engagement.¹² If an armed group is not interested in engagement, but is using the negotiations in order to buy time, regroup or rearm, the engagement is doomed to fail. In terms of *humanitarian* access, an important factor in deciding to engage may be the relationship that the armed group has with the civilian population under its control. If civilians are treated as resources for the conflict, or even targets, rather than as a population to protect, negotiating such access may be difficult and fraught with risks.¹³ Conversely, if an armed group considers itself the protector and liberator of a certain group of people and plays a similar role to the state in terms of providing services to the civilian population, it should be much more open to humanitarian dialogue.

2.2 Understanding the Armed Group

In order to better understand armed groups themselves and their behavior in terms of humanitarian engagement, it is essential to consider variations between NSAGs that can make a profound difference to the success or failure of intervention or engagement. For instance, some NSAGs have a tight and cohesive structure with a clear hierarchy and chain of command. Such groups and their combatants are therefore reliant on the leadership of one person or on a small group of top commanders, such as the members of a warlord's militia. Other groups have a much looser and/or decentralized power structure. Often this is exemplified simply by a loose network of individual groups that are working together for a common cause, but which do not answer to a common leader.

Another important factor in understanding the behavior of armed groups is their specific motivations and objectives. With regard to a group's attitude towards and dependence on civilians, Glaser has developed two categorizations based on economic and political terms. Politically, a group can be classified as protective (plays an active role in the protection of civilians), competitive (competes with other state or non-state actors), antagonistic (hostile towards any person or group not belonging to its identity group), or sectarian (compelled by extreme or radical ideology).¹⁴ In economic terms, a group's relations with civilians can be classified as symbiotic (mutual support between group and civilians), parasitic (group offers protection in exchange for collaboration), independent (group has other sources of income besides the civilian population) and predatory (group preys on civilians and uses intimidation).¹⁵ It is extremely important to remember, however, that groups never fall neatly into one category or typology. It may therefore be far more advantageous for our purposes to think in terms of a continuum – with each armed group having its unique place on this continuum – rather than in dichotomies.¹⁶

12 Véronique Dudouet, *Mediating Peace with Proscribed Armed Groups* (United States Institute of Peace, 2010), 5.

13 Glaser, 6.

14 Glaser, 11.

15 *Ibid.*, 9.

16 Policzer, 9.

The structure and motivations of an armed group have serious consequences for the potential success of humanitarian engagement. If an armed group has a centralized structure, it is more likely that promises of protection can be trusted and that conditions for monitoring agreements will be met. Similarly, analyzing the typology of a group's economic and political motivations is essential, when assessing its attitude towards humanitarianism and its willingness to negotiate.

2.3 Defining the Approach

Once the decision to engage has been taken, and the characteristics of the armed group have been analyzed, the choice of who should *do* the engaging still remains. There are essentially three different options of potential mediators – national sovereign states, the United Nations or regional organizations, and non-governmental organizations (NGOs), such as humanitarian organizations and conflict resolution organizations. Each actor has different tools and methods at their disposal to mediate with NSAGs, but NGOs have much more freedom to deal with NSAGs than states or the UN, and there is more opportunity for creativity within such engagement.¹⁷ Not only do NGOs often have less restricted access to NSAGs and the territories they control,¹⁸ they also – contrary to states – have the capacity to negotiate with armed groups without bestowing international legitimacy on their struggles. Furthermore, because the issues addressed by such NGOs are generally apolitical in character and are more concerned with humanitarian and conflict resolution matters, the armed groups in question may be more likely to enter into dialogue.

In attempting to limit the violence in its member countries, the United Nations uses the tools of Security Council resolutions and has over the years increasingly referred to *all parties to the conflict*, rather than just states.¹⁹ However, the UN is an organization made up of sovereign nation states, and is thus an inherently political organization. Furthermore, although in some conflicts the UN is regarded as a neutral actor (Liberia), in others it is considered by some actors as a direct party to the conflict (Afghanistan), while in yet others it is not trusted to be impartial and therefore denied a role to play (India). These factors clearly limit the advantages of using the UN as a mediator in cases of engaging with NSAGs. Regional organizations such as the African Union or the European Union can also take on more responsibility for mediation with NSAGs, although they, too, are limited in their engagement for similar reasons. Finally, states occasionally have the power and authority to influence non-state armed actors, but they are nevertheless often quite limited in their negotiations with such actors simply due to conventions of diplomacy. Moreover, some states would be loath to allow other states to interfere in their internal conflicts with NSAGs.

The particular approach used in engaging with NSAGs on humanitarian issues must be chosen based upon the features of

17 Claudia Hofmann, "Engaging Non-State Armed Groups in Humanitarian Action" (*International Peacekeeping*, 2006), 397.

18 *Ibid.*, 403.

19 *Ibid.*, 400.

the armed group, the mediator who is chosen to carry out the engagement, and the ultimate goal of engaging. If the main reason behind an armed group's violations of humanitarian law is a result of the armed group's "lack of capacity to ensure respect for international standards", which could perhaps be improved by "buttressing"²⁰ this capacity, it may be best to attempt to use approaches which Dudouet categorizes as "soft-power engagement", which includes dialogue, mediation, facilitation of negotiations, and capacity building.²¹ Such approaches to mediate with an armed group and build their capacity to respect IHL require long-term commitment and trust between the parties. Again here, the role of NGOs may be much more promising, as they are generally able to work with a lower profile than states, can devote the needed time to the engagement, and are often regarded as neutral third-party actors.

If, instead, a group's violations are an expression of a sheer unwillingness to abide by humanitarian principles, an approach that exerts pressure on the armed group may be the better option. Such methods of "hard-power interaction" include proscription, sanctions and criminal prosecution.²² This 'naming and shaming' tool has been used by the UN and various NGOs, particularly human rights organizations, in order to bring international attention to the group's violations in an effort to decrease their support and encourage the international community to act.

3. The Unique Challenges of Ending the Use of Child Soldiers

Ending the use of child soldiers is only one of the many concerns to be discussed in humanitarian dialogue with NSAGs. However, few topics have generated so much popular outrage and resulting global support for its termination as that of child soldiers. The Security Council has explicitly mandated the United Nations to engage with conflict parties on Action Plans to end this practice. Yet, progress on this issue remains remarkably slow, particularly if compared to other, seemingly equally complex issues, such as the ban on landmines or human trafficking.

3.1 The Prohibition of Child Recruitment and Use

The strong legal framework on the prohibition of child recruitment and use backed by its ethical imperative makes it virtually impossible to decide against engaging with NSAGs on this topic. A series of international legal instruments outlaw the use of child soldiers: the Additional Protocols to the Geneva Conventions of 1977; the United Nations Convention on the Rights of the Child (CRC) of 1989 and the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict of 1999; and the International Labour Organization (ILO) Convention 182 of 1999, which labels the recruitment

and use of children as soldiers as one of the worst forms of child labor. The Rome Statute of 1999 declared the use of child soldiers under 15 years of age a war crime.

Though consistent in its denunciation of child soldiers, international law is contradictory on the minimum age of recruitment, ranging from 15 to 18. What makes this particularly relevant for the question of engagement with NSAGs is that there appears to be an intrinsic bias against NSAGs when applying this minimum age. The Optional Protocol demands that "armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years."²³ In contrast, state forces are only obligated to desist from "compulsory recruitment" of those under the age of 18 and are required to "raise the minimum age for the voluntary recruitment of persons into their national armed forces" from 15.²⁴

The Optional Protocol therefore imposes more severe restrictions on NSAGs than on state forces in terms of recruitment age, which runs counter to the IHL principle of equal treatment of belligerents. Such preferential treatment of states makes it more difficult to convince NSAGs to "accept standards that do not necessarily apply to their adversaries".²⁵ As the UN legal framework was developed by member nation states, it is conceivable why some NSAGs view the system as inherently political and geared to fit states' interests, and why these armed groups are hesitant to follow the international rules that are proscribed to them.

3.2 Why Non-State Armed Groups Use Child Soldiers

There are many economic and military reasons for NSAGs to use children as soldiers. Children can be easily manipulated – particularly when subjected to physical and psychological abuse – and once ideologically conditioned, they are less likely to question orders than adults. For this reason, children can make excellent soldiers – they can be programmed to feel no fear during battle and little remorse for the atrocities they commit. Furthermore, using children as soldiers is much cheaper for an armed group than using adults,

since children rarely demand payment for their services and are easily replaced.

For those NSAGs who do not forcibly recruit children, their ranks are nevertheless full of children who have 'volunteered'. Such 'voluntary' enlisting, however, must be seen in the context of the economic and social circumstances. Abuse at home or a lack of education and job opportunities leads many children to take their chances for a better life with the armed group. Many children also join in order to avenge their families or friends who may have been killed by another

²³ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2000, Article 4. Available at: <http://www2.ohchr.org/english/law/pdf/crc-conflict.pdf>, accessed on 24 October 2012.

²⁴ Ibid., Article 3.

²⁵ International Peace Institute, *Engaging Nonstate Armed Groups on the Protection of Children: Towards Strategic Complementarity*, April 2012, 2.

²⁰ Bruderlein, 15.

²¹ Dudouet, 2010, 3.

²² Ibid., 3.

faction. Furthermore, many children volunteer simply because the society in which they grow up is so highly militarized that joining an armed group seems the natural thing to do.

In terms of the above-mentioned typologies, NSAGs that are considered sectarian or predatory often use child soldiers as part of their overall military and survival strategy. Indeed, forcibly recruiting children and using them in combat has helped small, insignificant groups, who otherwise would have not had the capacity to mobilize fighters, become more powerful.²⁶ With regard to protective or symbiotic armed groups, such actors rarely recruit children violently. Instead, it is often an accepted fact that children will fight for the group when they reach a certain age or is it understood that families will provide one of their sons to the armed group. Nevertheless, even in the absence of physical violence of force, the agency of the child in deciding his future is disregarded and the choice is imposed upon him in light of the political, economic or familial context. It is important to keep in mind that a great many NSAGs fall somewhere in the middle of these two extremes and use a combination of forcible recruitment and acceptance of ‘volunteers’ in order to fill their ranks.

The benefits for NSAGs of using children far outweigh the risks, which only recently, with the induction of the ICC and special courts, include the possibility of prosecution. However, many armed groups are willing to listen to the arguments against using and recruiting children, but may not have had the opportunity to do so in the past, due to their lack of information about international law. In this sense, it may be a matter of convincing the armed group that not adhering to IHL may be “disadvantageous in the long run, in damage to an actor’s reputation, a loss of support, or ostracism by the population.”²⁷

3.3 The Security Council’s Involvement in the Protection of Children

In 1999, the Security Council for the first time formally recognized “children and armed conflict” as a matter of international peace and security and included it as a thematic issue on its agenda. In Resolution 1261, the Council expressed its “grave concern at the harmful and widespread impact of armed conflict on children and the long-term consequences this has for durable peace, security and development.”²⁸ Since then, the Security Council has re-confirmed its commitment to children in war zones through a series of resolutions on children and armed conflict.

Most notably, the Council established the Monitoring and Reporting Mechanism (MRM) under Resolution 1612 in 2005, a global system to monitor and report grave violations against children in armed conflict in order to hold perpetrators accountable. Country-based task forces, which are co-led by

the highest UN representative in the country and UNICEF, gather information on six grave violations, including child recruitment and use.²⁹ The information is directly channeled to the Security Council through the Secretary-General’s annual and country-specific reports on children and armed conflict, allowing the Council to take high-level political actions, including sanctions, against perpetrators. By identifying the perpetrators and exposing the crimes, the UN system seeks to increase political and public pressure on armed forces and groups to end violations.

The Security Council has also promoted the UN’s engagement with all parties to a conflict (including NSAGs), in order to develop and implement Actions Plans within the framework of the MRM to end child soldier recruitment and use, as well as other grave violations. Parties to a conflict can only vindicate themselves and be removed from the annexes of the Secretary General’s annual report (the ‘list of shame’) if they adopt and implement such an Action Plan.

However, the system has built in an additional hurdle for NSAGs: the UN is not permitted to engage with non-state actors unless given prior consent by the concerned states. In the case of Myanmar or Colombia, this restriction has obstructed the UN from interacting with (ethnic) armed groups that oppose the government. Many of these Member States who deny the UN access to NSAGs are also critical of the Security Council’s attention to their situation, as they either negate the presence of an armed conflict or view the NSAGs active on their territory as terrorists or criminals. Overall, putting children on the peace and security agenda at the UN has raised the political profile of this issue, which is a welcome development. At the same time, it has also raised the stakes for the states concerned, because they are being asked to permit the UN to engage in humanitarian dialogue with NSAGs on their territory, which risks giving the NSAGs greater legitimacy.

3.4 Choosing between Approaches: Carrots rather than Sticks?

The UN Security Council has favored a ‘naming and shaming’ approach when dealing with conflict parties on the issue of child soldier use through the MRM. This means that parties to a conflict are listed, and if they refuse to work with the UN on Action Plans, they are threatened with targeted measures, which include travel bans, asset freezes, and possible prosecution via the International Criminal Court (ICC).³⁰ This approach places primary responsibility for dealing with NSAGs with the UN, whereas NGOs or other civil society actors act mainly in supporting roles. Some NGOs have opted against any association with the MRM, fearing that its inherently political nature may compromise their impartiality and thus their ability to provide life-saving services in contested areas.

26 Singer, P.W., *Children at War* (University of California Press, 2006), 54, 56.

27 Claudia Hofmann and Ulrich Schneckener, *NGOs and Nonstate Armed Actors: Improving Compliance with International Norms* (United States Institute of Peace, 2011), 6.

28 United Nations Security Council Resolution 1261 (1999). Available at: <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/CAC%20SRES%201261.pdf>, accessed on 24 October 2012.

29 Other violations include killing and maiming, abduction, rape and sexual violence, attacks against schools and hospitals and denial of humanitarian access.

30 Indeed, Thomas Lubanga was sentenced in March 2012 to 14 years in prison for conscripting and enlisting children under the age of 15 in the Democratic Republic of Congo, the first conviction by the ICC and the world’s first conviction for child soldier use.

By prioritizing a punitive approach with the UN as the primary mediator, the international community has tended to negate alternative approaches that may be more effective, depending on the armed actor and situation. Only since 2011 has Geneva Call, an NGO that has engaged extensively with NSAGs on the issues of landmines, begun to engage with select armed groups in developing a “Deed of Commitment”, by which an armed group commits to abiding by humanitarian law and standards with regard to child recruitment and use, as well as other child protection concerns.

Compared to the UN’s largely punitive approach, Geneva Call’s approach can be described as capacity-strengthening: The involvement of NSAGs in the process and the resulting sense of ownership are considered to be critical for a successful and sustainable outcome as part of a constructive dialogue. NSAGs “should not just be considered part of the humanitarian problem, but also part of the solution,” argues the coordinator of the program.³¹

The “Deed of Commitment” is envisioned as a complimentary approach to the UN-led Action Plans, as it would only apply to situations that are a) unlikely to be included in the Security Council’s children and armed conflict agenda due to political reasons; b) stalled, as parties to the conflict are either unable or unwilling to engage with the UN; or c) particularly sensitive, such as when UNICEF, the lead UN agency dealing with children, fear that they may risk their granted access to vulnerable populations if they directly interact with NSAGs.

The added value of having these two approaches available, enabling the actors to adapt to both the situation and to the NSAG, is undeniable. However, in practice, there are still remaining concerns that need to be addressed in order to ensure that the two approaches can co-exist and truly benefit children: What happens if a NSAG can only be accessed by Geneva Call, not the UN, but wants to be removed from the Secretary General’s list and has carried out actions that merit its de-listing? How can Geneva Call engage with NSAGs meaningfully if travel restrictions and other targeted measures imposed by the Security Council undermine these efforts? Should the UN intervene if Geneva Call’s efforts are misused by NSAGs to portray themselves in a more positive light, while continuing to commit horrific violations? Better coordination between the UN and NGOs is needed to address these issues. Moreover, it is essential for the UN and states to recognize the positive role that NGOs and other third parties can play in engaging NSAGs on child protection concerns.³²

3.5 Recognizing Children’s Agency

One of the greatest challenges to ending the use of child soldiers – and possibly its biggest distinction to other humanitarian

issues – is that the majority of children outwardly “choose” to join armed forces or groups. Furthermore, many of these children have also committed grave human rights violations during their time in the fighting forces. While children lack the maturity to make an informed decision of whether or not to join fighting forces and are thus never fully liable, recognizing *children’s agency in their recruitment* and their *role as perpetrators* is critical in order to prevent their re-recruitment and exposure to other harmful behavior. Every child holds a set of fundamental rights, including the right to participate in decisions that affect their lives, depending on their age and level of maturity, according to the UN Convention on the Rights of the Child. Treating them as “objects” or mere victims in negotiations that will determine their future would be disempowering and would also neglect their potential to be positive agents in building a more peaceful and prosperous society.

With this in mind, how can mediators account for children’s agency without putting children in (further) danger or laying responsibility on them for actions carried out as children? Involving children in the negotiation process itself is unlikely to help bring about the children’s release and may even put them at risk if the negotiations are seen to incriminate their commanders. However, children’s meaningful participation in the reintegration process is essential to ensure that personal factors which led to the child’s recruitment can be addressed. For instance, an older boy who joined an armed group seeking adventure may not find cattle farming an attractive enough option to change his way of life. Asking children about their aspirations and experiences and matching these interests and skills with labor market needs is essential for sustainable reintegration. Unfortunately, such meaningful participation requires time and resources that are rarely available in the reintegration process.

Actors who facilitate humanitarian dialogue – beyond focusing on convincing NSAGs to release children in their ranks – also have a role to play in ensuring a smooth transition between the children’s release and their reintegration. Time laps between a child’s release and the readiness of child protection actors to assist them can leave children without any protection or care. Some armed groups would not be willing to let the children in the ranks leave without assurances that they will be well taken care of. Moreover, successful reintegration provides one of the most powerful arguments to convince other armed groups to release their own children and puts increased public pressure on them. Reintegration actors, such as child protection agencies and donors, should therefore be part of the humanitarian dialogue from the beginning and be prepared to act once the time arrives.

4. Case studies

4.1 The Lord’s Resistance Army in Central Africa

The Lord’s Resistance Army (LRA), an armed group that has been active in Central Africa for close to 20 years, is notorious for its brutal recruitment and use of child soldiers. Although the armed group enjoys little support and legitimacy among

31 Jonathan Somer, “Engaging Armed Non-State Actors to Protect Children from the Effects of Armed Conflict: When the Stick Doesn’t Cut the Mustard,” in: *Journal of Human Rights Practice* Vol. 4, No. 1 (2012), 106–127.

32 Besides these two approaches, other humanitarian actors, such as the International Committee of the Red Cross (ICRC), regularly engage with non-state armed groups to convince them to adhere to humanitarian laws and principles.

the population of Northern Uganda where it originated, its use of tens of thousands of children over the years to swell its ranks has allowed the group to continue its armed insurgency.³³ The most common form of recruitment used by the LRA is simple abduction, taking children from their villages and schools, and these children are often forced in the process of recruitment to kill friends or members of their own family.³⁴ Once part of the group, the abducted children are not only used as porters and spies, but are often forced to fight at the front lines with little or no training.³⁵ The fate of girls in the LRA is very often one of sexual slavery, as they become the “wives” of the combatants, a practice which has led to large numbers of small children living with the armed group.³⁶

From the standpoint of the typologies for armed groups introduced above, the LRA can be classified as a predatory group due to its gross violations against the civilian populations of Central Africa, combined with its lack of legitimacy among the population. It uses intimidation and fear as key elements in its military strategy and preys on the civilian population in order to support its war cause. Furthermore, the group can also be classified as sectarian due to its radical ideology (the leader of the LRA, Joseph Kony, claims to be fighting for the re-establishment of the biblical 10 commandments) and the fact that the group does not seek international legitimacy.

Clearly, this makes international engagement with the LRA on the topic of child soldier recruitment and use extremely complicated. Although the structure of the group is generally considered to be cohesive, with Kony making the ultimate decisions, prior negotiations have shown that it is very difficult to ensure that the individuals negotiating on the part of the LRA are truly representing the group's interests.³⁷ Furthermore, considering the LRA's disregard for the principles of IHL, it is highly questionable whether the group would be open and perceptive to engaging on such a topic. Moreover, if the LRA were to halt all recruitment of children into their ranks, the overall numbers of the LRA fighters would most likely be reduced dramatically, which could potentially lead to a quick military defeat. Considering the ICC indictment that awaits Kony, it is highly improbable that he would agree to his own demise by halting the group's use of children as soldiers.

In the *Annual Report of the Special Representative of the Secretary-General for Children and Armed Conflict*, the LRA is labeled a “persistent perpetrator” of violations against children.³⁸ In the most recent reporting period, from July 2009 to February 2012, the LRA was held responsible for committing six grave violations against children, including recruitment and use

of children.³⁹ According to the UN Office of the Special Representative of the Secretary-General for Children and Armed Conflict, a letter from the Security Council Working Group on children and armed conflict was transmitted to the LRA in 2007, but “due to the nature of the group” there has been very little contact with the LRA.⁴⁰ It is known, however, that the LRA is abducting a reduced number of children, and using them for shorter periods of time, for example as porters or for the pillaging of food and medicine. This may, however, have more to do with the specific needs of the LRA rather than the official listing process.⁴¹

No attempt has been made so far by Geneva Call to negotiate with the LRA. However, according to Jonathan Somers at Geneva Call, this is mainly due to the fact that the organization has chosen to first engage with those NSAGs on child protection issues with which it already had contact on the topic of landmines.⁴² Because landmines have not been a serious issue with the LRA, a prior relationship with the group and Geneva Call did not exist. Somers emphasizes that the child protection program of Geneva Call is only a few years old and is now expanding to include more of Africa. If the LRA were to show a “genuine interest in engagement”, it would be worthwhile for Geneva Call to pursue.⁴³

4.2 The Karen National Liberation Army in Myanmar

The Karen National Liberation Army (KNLA), an ethnic armed group which claims to protect the Karen people in Southern Myanmar from the government's abuses against civilians, has an official policy of not recruiting or using children under 18 years of age. In 2003 the Karen National Union (the political organization of the KNLA) issued instructions to the KNLA to refuse any underage recruits. Although the implementation of these instructions has experienced some difficulties, particularly in remote areas, and children have periodically been seen in camps and manning checkpoints, the order does seem to have had a significant effect on recruiting practices.⁴⁴ Since 2003, the numbers of children in the KNLA's ranks have declined dramatically.⁴⁵ Human Rights Watch even speaks of the “extensive measures” that the KNLA has taken “to bring their practices into line with international standards.”⁴⁶

In spite of these extensive measures, however, the KNLA remains listed as a persistent perpetrator of violations against children in the *Annual Report of the Special Representative of*

33 Singer, 54, 98, 101.

34 Briggs, Jimmie, *Innocents Lost: When Child Soldiers Go To War* (Basic Books, 2005), 108.

35 Ibid., 122. See also Singer, 107.

36 Briggs, 117 and Singer, 33-34. See also Alcinda Honwana, *Child Soldiers in Africa*, 90.

37 See Dylan Hendrickson with Kennedy Tumutegeyereize, *Dealing with complexity in peace negotiations: Reflections on the Lord's Resistance Army and the Juba talks* (Conciliation Resources 2012).

38 United Nations Human Rights Council, *Annual Report of the Special Representative of the Secretary-General for Children and Armed Conflict*, Radhika Coomaraswamy, 28 June 2012, 19. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/145/97/PDF/G1214597.pdf?OpenElement>, accessed on 24 October 2012.

39 United Nations Security Council, Report of the Secretary-General on the situation of children and armed conflict affected by the Lord's Resistance Army, 25 May 2012, 2. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/348/12/PDF/N1234812.pdf?OpenElement>, accessed on 24 October 2012.

40 Interview with staff member of the UN Office of the Special Representative of the Secretary-General for Children and Armed Conflict, November 5, 2012.

41 Ibid.

42 Interview with Jonathan Somers at Geneva Call, November 6, 2012.

43 Ibid.

44 Human Rights Watch, *Sold to be Soldiers: the Recruitment and Use of Child Soldiers in Burma* (October 2007), 102-104.

45 *Child Soldiers Global Report 2008*, Coalition to Stop the Use of Child Soldiers, 242.

46 Human Rights Watch, 96.

the Secretary-General for Children and Armed Conflict.⁴⁷ Because the government of Myanmar has continuously imposed restrictions on UN access to armed groups within the country, thereby obstructing engagement with the KNLA,⁴⁸ the UN has been unable to conclude an Action Plan with the armed group. This is despite the group's willingness and interest to do so. The leaders of the Karen National Union (KNU) have challenged the international community on this point, requesting that the UN come to verify the fact that they do not use child soldiers, and questioning the UN policy of working with the government of Myanmar – which openly restricts humanitarian access – while refusing to work with the KNU/KNLA.⁴⁹ The *Annual Report* notes in its annex that the KNLA has sought to conclude an Action Plan with the UN, but it is nevertheless hindered from removing the armed group from its list of shame.

Unfortunately, the options for solving such a dilemma are limited. According to Alec Wargo at the UN Office of the Special Representative of the Secretary-General for Children and Armed Conflict, it is not possible to “exonerate the actor” and remove the NSAG from the list unless monitoring and verification of the situation is possible.⁵⁰ The only way groups can be delisted in such cases is if the group disappears. In the specific case of the KNLA, however, contact has been made with the UN. Furthermore, an Action Plan has recently been concluded with the Government of Myanmar, which specifically allows the UN access to NSAGs in Myanmar “in a phased way”.⁵¹ Of course, one could assume this promising development is directly related to the broader opening-up of Myanmar's government, but it can also be seen as the culmination of five years of dedicated work on the part of the UN Office of the Special Representative.

Geneva Call, for its part, has had “positive engagement” with the KNLA, which is currently at an “advanced stage”.⁵² This engagement has so far not been hindered by the Government of Myanmar, but the organization has in the past met with representatives of the KNLA outside of the country. Although Geneva Call is unaware of the exact position of the government concerning the organization's engagement

on this issue, Geneva Call has recently been invited to a conference in Myanmar to discuss these issues.⁵³

5. Conclusions – A Way Forward

When engaging with non-state armed groups on the issue of child soldier recruitment and use, using the humanitarian framework for engagement can be instructive as long as the unique challenges of the issue of child soldiers are recognized and addressed. As a first step, the intrinsic bias against NSAGs in the UN legal framework needs to be addressed. This means that the Optional Protocol should be ratified by all member states, which would raise the age of voluntary recruitment to a minimum of 18 years. This would eliminate the differences in the law between state and non-state armed actors when it comes to child recruitment and use. Furthermore, there should be active engagement with NSAGs on this issue by informally asking for their participation in identifying and addressing the challenges of child recruitment and use. This would also include training them on the relevant legal framework.

Secondly, there needs to be a better understanding of the politics within the Council and the UN's individual member states, making it potentially more difficult for third parties to engage with NSAGs. Therefore, the political nature of this forum must be recognized for what it is, and space must be made for alternative approaches and third party interventions. The MRM is potentially a very strong tool in ending child recruitment and use. However, it may not always be the best approach for each situation or actor, given its political nature. Thus, it should be ensured that there are more options to choose from – indeed, a variety of approaches may be more effective in ending the practice of using children as soldiers. In order to address this issue, the UN and NGOs need to coordinate more closely to ensure that their roles and approaches are best suited to engage with specific NSAGs at a certain point in time.

Lastly, recognizing the agency of children is critical to ending this practice. Just as we need to ask why NSAGs are recruiting and using children, we must also consider the factors that lead so many children to join armed groups, apparently “voluntarily”. Both the demand and the supply of child soldiers need to be properly addressed. Therefore, it is essential that children become much more involved in their reintegration process – a process that affects them directly. Furthermore, more resources need to be invested in meaningful and long-term reintegration.

⁵³ Ibid.

⁴⁷ UN Human Rights Council, *Annual Report of the Special Representative*, 20.

⁴⁸ *Myanmar: Report to the Committee on the Rights of the Child in advance of the examination of Myanmar's report on the Convention on the Rights of the Child*, Coalition to Stop the Use of Child Soldiers, May 2011, 12.

⁴⁹ Karen National Union, “KNU Welcomes Watch List Report on Armed Children and Conflict in Burma”, 15 May 2009. Available at: <http://karennationalunion.net/index.php/burma/news-and-reports/news-stories/children-in-armed-conflict-in-burma-resonse-to-watch-list-on-children-in-ar>, accessed on 24 October 2012

⁵⁰ Interview with Alec Wargo at the UN Office of the Special Representative of the Secretary-General for Children and Armed Conflict, November 7, 2012.

⁵¹ Ibid.

⁵² Interview with Jonathan Somers at Geneva Call, November 6, 2012.