COALTION TO STOP THE USE OF CHILD SOLDIERS

International Forum on armed groups and the Involvement of children in armed conflict

Summary of themes and discussions

Château de Bossey, Switzerland, 4-7 July 2006

August 2007

Coalition to Stop the Use
of Child Soldiers
2-12 Pentonville Road
London N1 9HF
United Kingdom

Tel: +44 (0) 20 7713 2761
Fax: +44 (0) 20 7713 2794

info@child-soldiers.org
Director: Victoria Forbes Adam

Front cover photograph: Mural workshop at "Kids in touch" Conference and Workshops, Kundasale, Kandy, Sri Lanka. © Liba Taylor, 2003 .

The Coalition to Stop the Use of Child Soldiers unites national, regional and international organizations and Coalitions in Africa, Asia, Europe, Latin America and the Middle East. Its Steering Committee members are Amnesty International, Defence for Children International, Human Rights Watch, International Federation Terre des Hommes, International Save the Children Alliance, Jesuit Refugee Service, and the Quaker United Nations Office-Geneva.

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Acknowledgements

This report contains an overview of the thematic discussions, working groups and other reflections which occurred during the forum on children's involvement in armed groups held in Château de Bossey, Céligny, Switzerland in July 2006 by the Coalition to Stop the Use of Child Soldiers (the Coalition). The forum brought together a unique group of more than 50 invited participants, from 22 countries, including virtually all those where armed conflict continues or has recently ended. The participants brought a wealth of knowledge and experience in the fields of child protection, human rights, peace mediation, community activism and humanitarian assistance. The forum's purpose was to engage participants in a constructive dialogue on addressing children's involvement in armed groups and to discuss strategies to influence their policy and practice in relation to child soldiering. This brief report cannot do justice to the richness of the discussions held, or to the commitment and energy of the participants. We hope that it will nevertheless serve as a useful resource for Coalition members and partners working on these issues across the world.

During preparations for the forum, the Coalition published a document which reviewed the various ways in which armed groups have been approached – for human rights purposes, to facilitate humanitarian assistance or in the context of peace negotiations. In addition, a series of case studies explored the history of six armed conflicts, paying attention to the involvement of children and the impact of initiatives to address this.[1] We gratefully acknowledge the expertise and dedication of Maggie Maloney who wrote and edited the *Background document: Approaching armed groups* and edited the case studies. We thank consultants Dima Yared and Alexandra Boivin for initial research and drafting of the *Background document*, and consultants Alison Dilworth, Catherine Hunter, Charu Lata Hogg, Enrique Restoy and Claudia Ricca, who wrote the case studies.

Coalition staff member Nicola East was involved in every aspect of forum thinking and planning, as well as organizing the practicalities. All Coalition staff worked well beyond their remits in preparing for the event and making sure it ran smoothly. We thank Chris Thornton and Isabel McConnan for their patience and skill in assisting with the agenda and facilitating the event itself. The Quakers Office at the UN in Geneva assisted the process of obtaining visas for our participants. Many thanks are also due to Mervat Rishmawi who acted as rapporteur for the forum and wrote the first draft of this document. Coalition staff member Lucia Withers contributed substantially to the drafting process and consultant Laura Fine edited the final document.

On behalf of the Coalition I gratefully acknowledge the support of all those who provided invaluable advice, technical assistance, logistical and financial support. I would in particular like to thank the Foreign Affairs Ministries of Canada, Finland, Luxembourg, Netherlands, Norway and Switzerland. We also wish to our express our appreciation of the Allan & Nesta Ferguson Charitable Trust; the Austin & Hope Pilkington Trust; the Joffe Charitable Trust; the Tinsley Foundation; and the Westcroft Trust for their generosity in funding the forum.

Victoria Forbes Adam
Director

For more information on the armed groups' project please contact Enrique Restoy, project coordinator, on erestoy@child-soldiers.org or visit www.child-soldiers.org and click on armed groups on the home page.

[1] The document and case studies can be found on the Coalition's website at http://www.child-soldiers.org/childsoldiers/armedgroups.

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1. Introduction

From 4 to 7 July 2006, 56 participants from 22 countries[2] met in Switzerland, to attend a four-day forum on Armed Groups[3] and the Involvement of Children in Armed Conflict (the forum) organized by the Coalition to Stop the Use of Child Soldiers (the Coalition).

The forum was held in response to a growing recognition of the need to broaden the constituencies involved in the dialogue around the recruitment and use of children by armed groups and to develop more effective and coordinated approaches to armed groups on the issue of child soldiers. As such, the forum provided a platform for a broad range of international, national and local actors to exchange views and experiences and to consider the development of collaborative, multi-sector approaches to addressing the use of child soldiers by armed groups. In particular, it drew on the expertise of participants in implementing different approaches to influence the policy and practice of armed groups and examined how these can best be applied to the protection of children in conflict situations.

Particular effort was made to ensure representation from grass root or local actors who confront, on a daily basis, the impact of conflict on children, often their own, whose experiences and views are not widely heard and therefore do not always inform approaches to armed groups.

Participants included representatives from: Coalition partners from civil society groups and local non-governmental organizations (NGOs) working in situations of armed conflict in Asia, West Africa, the Great Lakes region, the Middle East and Europe; other civil society groups, community and religious leaders; international human rights, humanitarian, peace building and conflict resolution, and child protection NGOs; UN agencies including the UNICEF and UN Office for the Coordination of Humanitarian Affairs (OCHA); governments; senior military officials with experience of international peacekeeping operations; mediators in peace processes; academics; former child soldiers; and representatives of armed groups.[4]

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[2] The participants came from Belgium, Burma/Myanmar, Burundi, Canada, Democratic Republic of Congo, Indonesia, Lebanon, Liberia, Nepal, Northern Ireland, Norway, Palestine, the Philippines, Senegal, Sierra Leone, Sudan, Switzerland, Syria, Thailand, Uganda, the United Kingdom, and the United States.

[3] The term "armed groups" is used throughout this document. This refers to non-state armed groups, in most instances who are engaged in conflict. There is no universally agreed generic term to describe such groups. The precise term used to describe such groups (non-state actors, non-state armed groups, armed political groups, armed opposition groups, insurgent groups, rebel groups, guerrillas, and so on) may vary depending on the exact nature of the group and/or the context and/or the practice of the writer.

[4] In order to encourage open discussion and a sharing of information, the meeting took place under the Chatham House Rule which guarantees anonymity to participants. As such, no comments in this report are attributed to those who attended the forum. In the interests of the security of some of the individuals who took part, it was also decided that the list of participants would not be made public.

The forum was organized as part of an ongoing project by the Coalition to help increase knowledge, improve collaboration and develop effective strategies for ending the use of children by armed groups. In support of these aims, the forum focused on three main issues: different approaches used to influence the behaviour and decision-making of armed groups; approaches that have been effective in altering the policy or practice of armed groups, why they have been effective and the limitations of specific approaches; and the relevance of these approaches to preventing child soldier use, securing their release and ensuring their successful reintegration.

Four key themes emerged from the forum: the legal framework that applies to armed groups and accountability; the challenges of engaging with armed groups; community engagement and mobilization; and international advocacy. This report provides an overview of these themes, reflecting on some of the key points raised by speakers and participants and the ways in which this has informed the Coalition's own thinking on approaches to armed groups. It includes selected examples of specific initiatives that participants have taken to approach armed groups on the issue of child soldiers. The report also contains proposals for future projects to support and strengthen approaches to armed groups that were suggested at the forum. Selected papers presented by experts to introduce various themes and a list of all the Coalition's resources on armed groups are contained in Appendix I.

In addition to these thematic issues, participants agreed that a more coordinated approach to addressing armed groups was necessary. At a minimum, a greater degree of information sharing between different actors is needed both about the general situation and the armed group itself, but also about the mandates, objectives and working methods of organizations, institutions or other actors engaging with the armed groups. Locally-based groups, in particular, appealed for international actors to consult more closely with them when designing and implementing strategies in the field. Ideally these relationships should extend beyond consultation to coordination and, where appropriate, partnership.

Rationale for the forum

A global movement to end the use of child soldiers has gained considerable momentum over the last ten years. Significant achievements of the campaign have included near-universal condemnation of the practice at the governmental level; a high-level of UN attention dedicated to the issue including a series of UN Security Council resolutions; and the establishment of a legal and policy framework to protect children from involvement in armed conflict.

These measures have resulted in a reduction in the number of child soldiers being recruited into government forces. Tens of thousands of child soldiers have been demobilized following peace agreements in conflicts across Africa. However, tens of thousands of children continue to be recruited and used by some governments, government-backed militias and a range of armed political groups in most regions of the world.

The challenges of preventing the recruitment and use of children by armed groups are particularly complex. Despite the existence of a relatively comprehensive framework of international law relating to child soldiers which is applicable to armed groups as well as governments, enforcing the standards has proven difficult. It is clear that traditional techniques of pressure and persuasion only go so far in persuading armed groups to alter their behaviour and adhere to the standards, and that alternative or supplementary actions must be sought.

The work of the Coalition on armed groups builds upon the substantial body of work undertaken in recent years by NGOs, international governmental organizations, governments, universities and other institutions to engage with and influence armed opposition groups involved in armed conflict. It is hoped that this report from the forum will contribute to these ongoing efforts.

There is no single definition of a "**child soldier**". The Coalition considers a child soldier to be any person under the age of 18 who is a member of or attached to government armed forces or any other regular or irregular armed force or armed political group, whether or not an armed conflict exists. Child soldiers perform a range of tasks including: participation in combat; laying mines and explosives; scouting, spying, acting as decoys, couriers or guards; training, drill or other preparations; logistics and support functions, portering, cooking and domestic labour. Child soldiers may also be subjected to sexual slavery or other forms of sexual exploitation and abuse.

2. International law and impunity

An overview of international law applicable to armed groups was presented at the forum. It addressed: international humanitarian law, particularly the law applicable to situations of internal armed conflict (Article 3 Common to the four Geneva Conventions and Additional Protocols I and II to the Geneva Conventions); international human rights law (specifically, the Optional Protocol on the Convention on the Rights of the Child on the involvement of children in armed conflicts); and international criminal law (in particular the Rome Statute of the International Criminal Court, ICC).

The presentation noted, and the point was reinforced by the experience of participants, that while in principle, international humanitarian, human rights and criminal law, both as treaty and as customary law, should afford a measure of protection to children trapped in situations of armed conflict, in reality systematic violation of these protective norms is common. In relation to armed groups, the implementation of legal instruments is particularly challenging. [5]

While recognizing that the law is only part of the array of tools that practitioners may need, forum participants considered the role of the international legal framework in the protection of children from conflict an important topic for discussion. Discussions centred on the ways in which international humanitarian and human rights law might be more effectively used as a tool for influencing the behaviour of armed groups. At the same time, the limits of the international legal framework in protecting children from recruitment and use by armed groups were confronted.

A starting point, and one on which there was consensus at the meeting, was that all approaches to armed groups should be informed by the norms of international humanitarian law and human rights law relating to child soldiers, and to child's rights more generally. However, an approach whose sole focus is based on the requirement that armed groups recognize and adhere to the legal texts was thought likely to meet with limited success. Rather, it was argued that approaches, whatever form they take, should be informed by and be consistent with the content of the international legal framework, but not be restricted to discussions of the treaties. This nevertheless requires those involved in engagement to be familiar with the legal framework.

Wherever possible, others engaging with armed groups for non-child soldier-related purposes (peace negotiations, humanitarian access and so on), should also be made aware of international humanitarian, human rights and criminal law regarding child soldiers. Forum participants therefore recommended that a knowledge and understanding of the issues around child soldiers should be

[5] For a detailed overview of international humanitarian and human rights law applicable to armed groups see: Wilder Tayler: *A note on some challenges presented by international law*, in Appendix I; and the Coalition's: *Forum on armed groups and the involvement of children in armed conflict, Background document, Approaching armed groups*, available at: http://www.child-soldiers.org.

extended beyond the human rights and child protection community. This would encourage other actors to take up the issue in the course of their engagement with armed groups. Equally importantly, it would help to ensure that their strategies and activities are not in contradiction with international legal standards on child soldiers.

PROPOSAL: Protecting children from involvement in hostilities – building knowledge of the legal framework

A project to produce training modules for those engaging with armed groups, including members of humanitarian organizations, conflict resolution specialists, peace negotiators and others, to encourage them to pay attention to and address children's involvement in armed conflict. The training modules would provide information on international standards relating to the protection of children from recruitment and use by armed forces or groups, as well as standards regarding their treatment when captured, detained or brought to justice. Additional information on standards and principles relating to the release and reintegration of child soldiers into civilian life could also be provided.

At the same time, participants emphasized the oft-repeated point that international standards are contested in many of the environments in which they operate. In particular, the definition of a child as any person under the age of 18 is itself often controversial. By extension, local views on the age at which it is considered acceptable for a youth to take up arms may differ from the international standards. Such debates are frequently rehearsed around "rites of passage" such as marriage and voting age, which in many countries are set below 18. Similarly, in impoverished communities, or in communities under threat from an armed force or group, it may be argued that children need to assume adult responsibilities in order for them and their families to survive.

In designing strategies for intervention, it is also important to understand how the armed group defines a child; their attitude to the rights of children; and their knowledge and opinion of the prohibition of the recruitment and use of under-18s. For example, one participant pointed out that in Sudan a male child who has been through an initiation ceremony is considered an adult and is, thereafter, considered eligible for recruitment in a situation of conflict or, indeed, may willingly volunteer. In such a situation, the recruitment and use of children by an armed group may reflect broader community values which must also be addressed if interventions are to lead to the fundamental changes necessary for long-term protection of children from recruitment and use.

Participants noted that armed groups may also be unwilling to recognize the concept of child soldiers as defined in legal texts and standards. Rather, groups that do not deny outright the presence of children within their ranks may favour language such as "separated children" or "children under the care of the group." In such situations, practitioners can be pragmatic, using the legal framework to inform the internal strategies and objectives, but working with the preferred language and definitions of the armed group to maximise the chances of securing the release and protection of children. The overarching priority of the protection of the child, including securing their release from the armed group, requires a level of flexibility and an ability to use the law as a tool however and wherever it can contribute to that protection.

Legal standards, codes of conduct and commitments

Although the law itself often fails to protect children from recruitment and use, it can be a useful tool in approaches to armed groups. The potential benefits of unilateral declarations to abide by international humanitarian and human rights norms, or the incorporation of legal standards into

codes of conduct, were discussed as two ways in which the legal standards can be used in advocacy and engagement strategies.

It is a fact that many armed groups attach little value to or are little inclined to respect international law, not least because they have no part in the process of drafting the laws and cannot become parties to them. Nevertheless, arguments can be made to show that adherence to the standards can be beneficial to the groups' image and standing. For example, international recognition or political legitimacy is more likely to be conferred on a group that observes humanitarian standards during the conflict. Armed groups that require their members to refrain from committing abuses also place their members in a better position to confront the post- conflict period and make national and international acceptance of amnesties for their participation in the conflict more likely.

It is clear that in many situations, such arguments will carry little weight or are superseded by the groups' immediate military imperatives. However, in certain contexts, the law can be used as a point of reference for armed groups to set up rules to protect the rights of children.

Unilateral declarations or commitments by armed groups to abide by international humanitarian and human rights norms provide one example, and have, in some situations, led to changes in behaviour. This approach has been innovatively used in relation to land mines. Commitments have also been sought from armed groups regarding the recruitment and use of child soldiers, but in this case the record on implementation has been poorer. Nevertheless, the potential for such commitments to be used as a tool in efforts to end the use of child soldiers by armed groups was considered to merit further exploration.

Perhaps the most important aspect of securing commitments by armed groups, and one which has often been lacking in the past, is the need to think beyond rhetorical commitments to adhere to the standards, to a sustained engagement to ensure their successful implementation. Part of any approach to elicit commitments from armed groups on the issue of child soldiers must include technical assistance for implementation. A monitoring system must also be in place together with effective mechanisms to respond to non-compliance.

The nature and extent of the assistance required by armed groups to implement commitments on child soldiers will differ significantly from the assistance required to implement commitments made on the use of landmines (where the focus is on supporting the destruction of stockpiles, clearance operations and assisting landmine victims). The task as regards child soldiers is much more complex involving the establishment of effective child protection mechanisms and support for their release and reintegration. To support this process will require a range of different actors from communities, relevant government departments and agencies and national and international organizations working with children. Seeking commitments should therefore be considered within a broader, well-coordinated policy and program framework.

Engaging all levels of an armed group in adhering to unilateral commitments is also necessary. The political or military leadership of armed groups have frequently made commitments to abide by legal norms on child soldiers, but the policy has not been implemented whether deliberately or inadvertently. In the Occupied Palestinian Territory for example, the leaders of Hamas, Islamic Jihad and Fatah, have all issued statements at various times against the use of under-18s. However, all three groups have continued the practice albeit not on a large scale.
Some participants identified the existence of internal codes of conduct by armed groups regulating the behaviour of their members and relations with civilians as another potential opportunity for engagement or advocacy. While there is little research on the issue, available information suggests that some armed groups have developed policies and codes of conduct and that some contain provisions against the recruitment and use of children. Little is known about the details of such codes, whether they are enforced or what sanctions are imposed if they are not respected.

However, there may be potential in some cases for codes to be an element of dialogue with an armed group to encourage the incorporation of commitments to prohibit the recruitment and use of under-18s and to include appropriate sanctions for contraventions of such codes.

PROPOSAL: Researching policies and codes of conduct on child recruitment

A research project would gather information on existing policy and codes of conduct and look at whether or how these are implemented by the armed groups. These policy materials would also be assessed for consistency with international standards relating to child soldiers. The research findings would be used to inform future initiatives to secure the release of children or to establish dialogue to prevent future recruitment.

Criminal justice and child protection

The importance of holding human rights violators accountable for their actions has emerged as a major them over the last decade. This in turn has increased the likelihood of child recruiters facing prosecution by international or national courts.

One major development was the establishment of the ICC in 2002 with jurisdiction *inter alia* over the war crime of "conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities." The first two indictments issued by the ICC, those against leaders of armed groups in northern Uganda and the DRC, include this crime. One of the suspects, Thomas Lubanga Dyilo, the former leader of an armed group active in the Ituri in the DRC, the Union of Congolese Patriots (Union des Patriots Congolais, UPC), is already in the custody of the Court and his trial will be the first to be heard by the ICC.

The ICC's indictment of five senior members of the Lords Resistance Army (LRA), including its leader Joseph Kony, is proving more contentious and has highlighted once again the tensions between the imperatives of justice and child protection. Representatives from NGOs in northern Uganda, repeated concerns about the potentially negative impact of ICC indictments on the protection of children within the ranks of the LRA; that the justice process may jeopardize prospects for peace; and the imbalance in focusing the indictments only on the LRA when the government forces, the Ugandan People's Defence Force, is also responsible for recruiting and using children, including children who have escaped or been captured from the LRA.

The links between justice and peace and justice and child protection are complex and were beyond the remit of the forum. Nevertheless, the limited discussion on these issues reinforced the necessity of deepening the understanding of the impact of justice processes, international or national, on other initiatives, including the demobilization and reintegration of children and peace processes.

Among the points made at the forum were that justice and peace should not be regarded as mutually exclusive. The involvement of the ICC will inevitably introduce new dynamics and parameters which have to be taken account of in any negotiations or dialogue with, in the case of Uganda, the LRA. But the existence of the indictments should not preclude engagement from taking place and other efforts to secure the release and/or protection of children. However, there was recognition of the possibility that the vulnerability of children associated with armed forces may in some situations be heightened when prosecutions are threatened. In particular, armed groups might conceal children or refuse to negotiate while the threat remains. There are no easy answers to such dilemmas. While greater coordination between the different actors involved will

hold a part of the answer, far greater understanding of the relationships between different types of initiatives is also necessary.

PROPOSAL: The impact of justice and reconciliation processes in Central and West Africa

International or hybrid (mixed national and international) courts have been established in various countries to try individuals accused of war crimes and crimes against humanity. Some, such as the Special Court for Sierra Leone and the ICC, have included child recruitment among the charges against adult commanders. The courts have been seen as a major step forward in holding child recruiters (and those responsible for other crimes against international law) responsible for their actions. An array of non-judicial processes, such as truth commissions and traditional reconciliation rituals have also been used to address violence in the context of armed conflict, including violence committed by child soldiers.

However, little is known about how these processes are perceived by armed groups and local communities, their actual impact on child soldier use and whether they facilitate the complex long-term process of reintegration. The proposed research would document the impact of judicial and reconciliation processes within the Great Lakes region and in West Africa.

3. Engaging with armed groups

The forum discussed a range of different approaches, both direct and indirect, that can be used to influence armed groups. These included dialogue and negotiations; human rights training; mobilization of communities; and advocacy.

The diverse experience of participants underscored the importance of context in selecting the approach or approaches most likely to be effective. A whole range of variables will influence which approaches are chosen, from the reasons children join or how and why they are recruited by armed groups, to the character of the armed group and of the conflict itself. A combination of different approaches may be necessary and as the dynamics of a situation change, strategies will also have to be adapted and new strategies may be required. At the same time, there are generic similarities in the types of approaches used for peace or conflict resolution or for humanitarian or human rights purposes, thus reinforcing the value of exchanging experience and establishing coordination between practitioners from the different fields.

Direct engagement

One of the first and most difficult questions faced by those attempting to effect a change in the policy or practice of armed groups was whether to engage at all. The general question applies to all forms of engagement – whether for political, humanitarian or human rights purposes. Humanitarian necessity, it was argued at the forum, should be the determining factor. Most participants felt that in the case of children and child protection, renouncing all forms of engagement is not an option. When child soldiers are being recruited and used in hostilities, this question becomes acutely important, since tactics of isolation or public denunciation may easily result in increased risks to the security, even the lives, of the children (and in some cases to the children of child soldiers).

However, some participants noted that even if there is agreement that there should be at least minimal communication with armed groups, broader political and security dynamics may bring its own difficulties and risks for those involved. The dilemma emerges particularly where a group has

been classified as a "terrorist organization" by the national government, second governments or bodies such as the UN and where those engaging with them risk finding themselves accused of association with or support of "terrorists". On a slightly different note, participants from the Middle East observed that in the Arab world criticism of Palestinian armed groups may be construed as undermining the Palestinian struggle against Israeli occupation and this may lead to rejection by key stakeholders, including their national governments, political parties, or communities.

PROPOSAL: International meeting of armed group representatives

An international meeting for armed group representatives is proposed to examine their views and analysis of the circumstances underlying child recruitment and use; measures taken to prevent such practices; and what technical and practical assistance might be needed to get children released and end child soldier use. The proposed meeting would emulate initiatives developed by Geneva Call on ending the use of landmines.

In such situations, the choice can be quite stark. Not to engage brings greater isolation of the group and the risk that they become increasingly difficult to reason with or to understand. Moreover, not engaging prolongs the risk to children. One speaker, with extensive experience in mediation with armed groups, argued that the best way of preventing armed groups from falling into an isolated limbo and limiting the number of victims of abuse, is to meet with the fighters or their commanders on a regular basis. Over a period of time, confidence may be built and influence developed that can contribute towards discouraging practices such as the recruitment and use of children.

Risks may also come from the armed group itself. Many are ill-disciplined and unpredictable and are likely to mistrust outsiders. They may be unfamiliar with human rights and humanitarian standards or actively resist them. Most importantly, commanders are likely to prioritize military objectives over respect for human rights and international law. In short, care must be taken when approaching armed groups on child protection issues. Principles that have been developed for political and humanitarian interventions are relevant.[6]

Forum participants highlighted the importance of maintaining balance and objectivity. They noted that engagement with governments is generally regarded as an acceptable *modus operandi* even where the government or its security forces are responsible for serious human rights violations. Engagement with armed groups on the basis of their poor human rights record should, therefore, not be precluded either. Similarly, those addressing human rights abuses by armed groups must also pay attention to violations committed by the government and address the responsibility of governments to protect children against recruitment and use by armed groups.

[6] OCHA, Gerard McHugh and Manuel Bessler, *Humanitarian Negotiations with Armed Groups: A manual for practitioners*, January 2006. For other sources see: Coalition to Stop the Use of Child Soldiers *Bibliography on Approaching Armed Groups*, November 2006. Available at: www.child-soldiers.org.

PROPOSAL: Create a core group of military delegates to advocate against the use of child soldiers

Participants noted that the military component and dynamics of child soldier use are not widely understood or incorporated into approaches to armed groups to end the practice. Former members of government forces and armed groups (including possibly former child soldiers) would be well placed to develop this analysis and to directly advocate against child soldier use, drawing on military expertise and doctrine. The project would aim to identify a pool of delegates who would be available to meet armed groups' representatives for this purpose.

Who should engage?

Forum participants agreed that where the decision is taken to engage, choosing the right interlocutor is critical. The diversity of experience showed that there are no firm rules on who should become involved in making approaches to armed groups: who will have influence or feels sufficiently secure to act will vary. However, the approach is likely to be more effective if that person or persons is known and trusted by relevant members of the armed group, understands local values, and possesses knowledge of the politics and the dynamic of the conflict. As one participant noted, "*a stranger arriving from the West waving an international treaty won't work*."

Within the varied experience of approaches to armed groups by forum participants, community involvement was a consistent factor. Community leaders who know or have influence with local commanders were generally agreed to be the most effective mediators in many situations, but this role should not be only filled by men occupying leadership roles in the community. Respected professionals such as teachers, healthcare workers, religious leaders and business people may be useful mediators as well as political leaders. Involvement by women, both as community representatives and as mothers (who in this role can in some situations be regarded as more closely representing the interests of children) has been important to successful mediation efforts in some situations. The inclusion of a woman as co-chair to inter-faith delegations involved in approaching the Revolutionary United Front (RUF) in Sierra Leone was given as an example of where women's voices were considered to have had particular influence with some commanders.

The involvement of "outsiders" can also have benefits. In Aceh province, Indonesia, local Islamic scholars collaborated with non-Acehnese NGO representatives in their approaches to the Free Aceh Movement (Gerakan Aceh Merdeka, GAM). This insider/outsider formula was considered to have contributed to the objectivity of the mediators and GAM's perception of their neutrality.

In situations such as Sri Lanka, where high levels of fear and mistrust may make it impossible for communities and families to organize, the role of "outsiders" can be crucial. In the case of Sri Lanka, international agencies, notably the International Committee of the Red Cross (ICRC) and UNICEF, lead approaches to the Liberation Tigers of Tamil Eelam (LTTE) and, more recently, the Karuna Group. International organizations can take the lead or provide protective cover for communities, local or national groups where communities cannot safely engage directly with armed groups. They may also have more authority with, or be regarded as more impartial by, some armed groups and can therefore be better placed to initiate engagement.

Families of child soldiers are also natural and often active advocates for their release, although the degree to which they organize differs. In northern Uganda, for example, parents and siblings of child soldiers have actively campaigned for the release and reintegration of children forcibly recruited by the LRA. Elsewhere, for example in Myanmar, conditions do not permit families to

cooperate and organize in advocating for the release of their children from government armed forces.

In other situations, such as Northern Ireland and eastern DRC, former combatants or members of armed groups who have been imprisoned have played an important role in engaging armed groups on the issue of child soldiers. In some cases they have become active champions for human rights. In such situations, their understanding of and influence with armed groups is considered to have made a significant contribution to mediation efforts. Forum participants also suggested the potential value of involving carefully selected former members of armed forces or groups who can speak from a position of professional experience and as peers to members of armed groups.

Human rights education

Human rights education and awareness has proved to be an effective form of engagement with armed groups in an increasing number of situations and had been used quite extensively by some participants. Human rights education can provide an entry into dialogues and negotiations with armed groups, but also has an intrinsic value in its own right. A long-term objective of offering training to armed groups must be to institutionalize an understanding of children's rights and human rights within the group with the ultimate aim of changing policy and encouraging their cooperation in the protection of children. Shorter-term objectives might include gaining their confidence; opening up a dialogue on issues around child protection and child soldiers; and gaining insight into what motivates the group to recruit children. This knowledge can be used to help inform other initiatives such as negotiations.

In situations where the subject of child soldiers is too sensitive to broach directly or where an armed group deny that they recruit or use children, training on international humanitarian and human rights law has been a useful entry point. For example, in Mindanao in the Philippines, NGOs have engaged commanders in the Moro Islamic Liberation Front (MILF) through training on child rights and child protection during which discussions about the role of children by armed groups and forces has emerged

The Philippines – human rights education as an entry point

Efforts by child rights organizations to engage with the MILF, an Islamic liberation movement that has been fighting for an independent Bangsamoro (literally "Moro People") state in southern Philippines since the 1970s, have proved difficult, in part because the MILF denies the existence of child soldiers within its ranks. An entry point was found through workshops on international humanitarian and human rights law, including protection of children in armed conflict.

The first workshop in late 2005 was organized by Geneva Call, the Swiss-based anti-landmine NGO, with the participation of a number of other organizations including the Southeast Asia Coalition to Stop the Use of Child Soldiers and its Philippines-based counterpart, the Philippines Coalition to Stop the Use of Child Soldiers. Sixty-five MILF military and political officers participated; each was selected on the basis of rank and their ability to pass on what they had learned. The general training succeeded in opening up a debate on children's rights with commanders of the MILF. The general workshop has resulted in further workshops involving women and youth among the Bangsamoro. Support among the Bangsamoro for the MILF, which in some cases extends to supporting Bangsamoro youth to volunteer for the group, makes this entry point to the community particularly significant.

Getting children released

The ultimate aim of engagement in most cases is to secure the release of children. Participants noted that, as with other human rights abuses, the level of child soldier recruitment and use has often reached a critical level before it comes to the attention of the international community and international interventions therefore come too late for many.

Sierra Leone – Negotiating the release of children

In Sierra Leone, religious or inter-confessional groups had some success in engaging the Revolutionary United Front (RUF) on child soldiers where others, including local chiefs and elders, had previously failed. Although the forcible recruitment and use of children by the RUF continued throughout the conflict (1991-2002), both the Inter-Religious Council of Sierra Leone[7] and the Makeni branch of the Catholic relief agency, Caritas, succeeded in obtaining the release of some children through negotiations.

The involvement of the Inter-Religious Council began in 1997 following the capture of RUF leader, Foday Sanko. In 1999, representatives of the Council met with Sanko in detention. These communications are regarded as having contributed to the eventual ceasefire and, in the meantime, resulted in the release of some children from the RUF. In April 1999, for example, 32 children were handed over to members of the Council as a sign of goodwill at a meeting with the RUF.

The access that religious leaders had to Foday Sanko and other RUF leaders, albeit limited, was attributed to the fact that RUF followers were of various faiths and showed a degree of trust and respect towards religious institutions that it did not exhibit towards others. However, the moral authority and neutrality of religious representatives cannot always be assumed. In Côte d'Ivoire, for example, which the Sierra Leone Inter-Religious Council visited to try and assist in setting up a similar model for approaching armed groups there, local religious leaders were unable to fulfil the same impartial mediation role because they had taken sides during the conflict.

Sierra Leone is, however, also an example of where locally reached agreements which do not conform to international legal norms may be overturned at a later date. The Lomé Peace Agreement of July 1999 between the government and the RUF included an amnesty for "anything done [by the parties to the conflict] in pursuit of their objectives". The Special Court for Sierra Leone, created afterwards, did not recognise the applicability of the amnesty provision contained within the peace agreement and its establishment thereby represented an affirmation of the supremacy of international law. However, the implication of the overruling of an amnesty provision for peace processes elsewhere remains to be seen.[8]

4. Community engagement and mobilization

Participants at the forum from local NGOs and grassroots organizations repeatedly emphasised the importance of consulting with and involving communities in any strategies designed to influence armed groups on the issue of child soldiers. As one participant stated "*in our own backyard we understand the problems better*."

[7] The Inter-religious Council was formed in 1996 by Christian and Muslim spiritual leaders in Sierra Leone. It was arguably the most important community actor in the Lomé peace process.
[8] For more information on the RUF, please refer to the Coalition's case study: *The Revolutionary United Front (RUF): Trying to influence an army of children*, on www.child-soldiers.org.

Armed groups do not operate in a vacuum. It is only in rare cases that they do not have their roots in local communities or seek some level of acceptance or support from them. It goes without saying that children also originate in communities which, in some cases, may countenance their recruitment by armed groups and in others oppose it. Either way, communities are essential to understanding why children are recruited and how they can be protected. Communities can be interpreted broadly to include families, local authorities, traditional and religious leaders, civil society groups and non-governmental organizations (NGOs), diasporas and children themselves.

PROPOSAL: Exploring and documenting community-based child protection strategies

A meeting was proposed to explore the ways in which local communities have mobilized to protect children from involvement with armed groups. The meeting would examine community values relating to child protection; community-based mechanisms, structures and initiatives to prevent children from being used in hostilities; and the role of communities in the successful reintegration of former child soldiers. This could include reflection on the role of traditional healing and reconciliation ceremonies, and other ways communities have assisted child soldiers to return to civilian life.

A document describing the different strategies devised by communities to protect children and young people from participation in hostilities in different countries and regions could be produced and made available to community-based NGOs and other practitioners working in conflict and post-conflict situations.

In some cases, communities may be in a position to directly influence attitudes within an armed group. For example, in Myanmar, the Occupied Palestinian Territory and the Philippines, armed groups are deeply rooted in communities and enjoy their support. The attitudes of the community towards the recruitment and use of children by armed groups in such situations can directly influence policy and practice of the groups.

In situations where direct contact with an armed group is not possible, building or reinforcing community awareness of child rights and supporting community-based structures can contribute to protecting children from recruitment. In conflict situations, where there is often little or no protection of children by government authorities, involving communities is likely to be essential to the development of effective and sustainable strategies against child recruitment and use and their reintegration following release. In many cases, communities have recognized this and acted on their own initiative.

Working with communities to prevent recruitment from occurring was considered a priority. Although not always easy to anticipate where conflict will break out or to convince donors to support preventative work, participants repeatedly returned to the importance of prioritizing prevention over cure. In particular, participants emphasized the importance of working with communities in regions where there is a history of conflict and with children who are considered particularly vulnerable to recruitment.

Successful prevention strategies must, however, involve a wide range of actors. While communities play an important role, the protection that they can offer will need to be supported by national and, in some cases international, education, social welfare, poverty alleviation and other programs. It is also important to recognize the challenges to community involvement. In situations of profound under-development or prolonged conflict, community structures may be severely degraded or may have collapsed entirely. High levels of violence, and the resulting fear and

insecurity, can inhibit or even prevent community organization around an issue as sensitive as child soldiers.

Ultimately, community involvement is desirable and should be encouraged. However, it cannot always be assumed. Nevertheless, where community-based activities do exist, national and international actors should ensure that they are aware of them and coordinate with those involved, both in support of their work, but also to avoid situations where local initiatives are undermined by the introduction of programs from outside.

Awareness-raising among communities

Developing greater awareness among communities about the rights of children, including the prohibitions on their use as soldiers had, in the experience of participants, represented an important first step in helping to build community resistance to child recruitment. It may also act as a catalyst for community initiatives to protect or rescue children from armed groups. In situations where there is strong community support for the armed group, changing the community attitudes towards children as soldiers has been critical to changing attitudes within the group itself.

Forum participants with experience of working in the field emphasized the importance of linking human rights and child protection messages to local or traditional values. Humanitarian and human rights principles must be seen as relevant to local values and beliefs. Although approaches should be informed by the international legal framework, they should also be sensitive to local religious and cultural values and be presented in a language that resonates with the community in question.

Experience indicates that in most cases, traditional values around the protection of children in conflict will often closely reflect those contained in international humanitarian and human rights law and standards. For example, children need special safeguards and care to ensure their physical security, well-being and development; should be protected from violence; shielded from the impact of conflict and so on. These values, or the ability to apply them, may have broken down in the context of conflict, but can be reclaimed and used to further the protection of children.

Involving children in human rights education and other initiatives was considered to be important. Informing children of their rights can help them to resist recruitment and allows them an active role in their own protection. Asking former child soldiers to act as facilitators or trainers has also been found to be beneficial in some situations. An NGO working with communities in refugee camps on the Thai/Myanmar border which has involved former child soldiers as trainers in their program, reported finding that this active involvement helps the children to see themselves in a more positive role and to counter the often negative experience of being a child soldier. For participants, particularly children, the real experience of former child soldiers was found to be more meaningful than more abstract discussions around standards, rights and protection. Elsewhere, in the DRC, the experience of the DRC Coalition to Stop the Use of Child Soldiers (DRC Coalition) illustrates how human rights awareness-raising amongst communities can stimulate grass roots action and how, through good coordination by local NGOs and international agencies, change can be achieved.

Myanmar: Human rights awareness education - preparing the ground for commitments to end the recruitment and use of children

Local NGOs have been providing human rights education and awareness training in the refugee camps on the Thai/Myanmar border to which Karen and Karenni peoples have fled to escape hostilities between armed groups and government troops in Myanmar. This work with members of the refugee communities is regarded as contributing to changing community attitudes towards the

association of children with armed groups and to encouraging two armed groups to sign commitments to end the recruitment and use of children.

The possibility for action on child soldiers inside Myanmar itself is limited because of the closed nature of the state. The refugee camps on the Thai side of the border therefore represent one of the few opportunities for engaging with communities on the issue. A program of training of trainers and workshops on child rights and child soldiers was initiated in 2002 by an NGO activist from Myanmar. Participants include community and camp-based organizations, women's groups and child care providers and school teachers. Former child soldiers have also been involved as trainers.

Some encouraging results have been reported. These include greater grassroots involvement in initiatives to stop the use of child soldiers such as awareness raising activities in schools and religious centres within the refugee camps, and the provision of informal education programs for former child soldiers. The number of parents who are reporting cases of forced recruitment or abduction of children is also said to have increased. Furthermore, this engagement has helped prepare the way for UNICEF to negotiate commitments by the Karen National Union (KNU) and the Karenni National Progressive Party (KNPP) to implement measures to ensure that children are neither recruited nor used by their armed wings.

Democratic Republic of the Congo (DRC) – combining local and national initiatives

The DRC Coalition brought together local child protection NGOs with the objective of encouraging the families of children recruited by armed forces to engage other local networks such as community and religious leaders, teachers, and social workers, to advocate for the protection of children from recruitment into the armed forces and armed groups and to support their demobilisation and reintegration. Initially, discussions focused on the impact of involvement of children in armed conflict on the children, families and communities and, more broadly, on the future of the country. Concepts of child rights and child protection during armed conflict were then introduced. Emphasis was placed on local traditional roles of families in child protection to encourage reflection on why and how children should be protected.

Community networks involving a range of different actors from priests, Muslim leaders, traders, local associations, and school directors grew out of these discussions. Delegations from these networks undertook visits to commanders of armed groups in eastern DRC to press for the release of children and an end to recruitment. After 2003, the strategy was extended to engage with groups in western DRC. Although initially the delegations were not always well received, over time the engagement resulted in some change in attitudes and a noticeable reduction of forced recruitment and military training of under-18s.

Working with different armed groups created particular challenges. Strategies have been adapted and modified to suit the differing needs and strict neutrality has been maintained to counter the suspicions of some armed groups that the community networks are engaging with groups from the opposing side.

However, serious challenges remain. While many child soldiers were recruited from rural areas, some of which are remote and inaccessible, community mobilization has mostly occurred in cities and urban areas. More needs to be done to involve rural communities. Moreover, in the context of a weak state and impoverished, dysfunctional judicial system, those recruiting and using children do so with near-total impunity.[9]

[9] Recruitment and use of child soldiers has persisted, and in mid-2007 an estimated 6,000 children remained in the armed forces and armed groups. Three to five hundred children, some as young as 13, were currently serving in newly-formed brigades of the armed forces. Armed groups operating in North Kivu were known

PROPOSAL: Guidelines to support community action to protect children from involvement in armed conflict

The guidelines would assist NGOs and others to: identify partners within communities (for example teachers, religious leaders, community activists and so on); to work with them to build on existing protection strategies; raise awareness of international and national laws on child protection; develop human and child rights education materials; and carry out awareness raising workshops and training seminars. The goal would be to increase knowledge of child rights and child protection at the community level, to train trainers on child protection and armed conflict issues, and to strengthen existing child protection values and strategies.

5. International advocacy

The forum looked at two main issues relating to advocacy. The role of the UN Security Council in influencing armed groups and the impact of the advocacy technique of publicly "naming and shaming" armed forces and groups which recruit and use children.

The role of the UN Security Council

In recent years, the UN Security Council has devoted considerable attention to the problem of children involved in armed conflict. Since 1999, it has held annual debates and adopted six resolutions on children affected by armed conflict generally and child soldiers specifically. The Security Council has instructed the UN Secretary-General to submit annual reports on children and armed conflict to it, including lists of parties to armed conflict (both government forces and armed groups), who recruit and use children in hostilities. The parties named in the report are required to prepare time-bound action plans to end child recruitment, with the assistance of UN peacekeeping forces or the UN country team.

In 2005, the Security Council requested the implementation of a mechanism to monitor and report on the situation of child recruitment and other violations against children in country situations discussed in the Secretary-General's reports. The same year, the Council established a Working Group to review the reports submitted by UN country task forces and to make recommendations for action by national governments and relevant UN bodies.[10] Country-level task forces (composed of relevant UN entities and limited representation of NGOs) were subsequently established and by mid-2007, the Working Group had considered country reports on Burundi, Cote d'Ivoire, Nepal, Sri Lanka, Somalia, Sudan, Uganda, Chad and the DRC.

Continued lobbying is, however, necessary to ensure that the recommendations made by the Security Council adequately address the needs of a specific situation. While international NGOs perform this role, participants at the forum stressed the need to ensure that the analysis and views of local NGOs and others working at the grass roots level inform advocacy messages. It is, therefore, beholden on international NGOs to solicit these local views and ensure that they are represented either directly or indirectly at an international level. It will be equally important to

to be recruiting and using children. See the Coalition's: *Democratic Republic of Congo: Priorities for children associated with armed forces and groups*, July 2007, http://www.child-soldiers.org.

[10] For a more detailed exposition of recent Security Council initiatives on children and armed conflict, see *Children and armed conflict*, Report of the Secretary General, UN doc A/59/695-S/2005/72, 9 February 2005, www.un.org; Security Council Resolution 1612, UN doc S/RES/1612, 26 July 2005; and Jo Becker, *Security Council Action on Child Recruitment*, Appendix I.

monitor the implementation of any recommendations made by the Security Council and to assess their impact on armed groups.

Sustained advocacy is also required to ensure attention is given to situations that are not addressed by the Security Council, but where children are nevertheless recruited and used by armed groups and government forces. Some participants did, however, question whether inclusion in the UN Secretary-General's list and ensuing Security Council attention that results, would be the most strategic campaigning objective in all cases. In some situations, it was argued, the very lack of international attention has enabled local actors to build trust with and develop approaches to armed groups which have been more effective in protecting children both in and from armed groups than Security Council measures would be.

"Naming and shaming"

Naming and shaming is often used to describe the technique whereby reports on human rights violations are published along with high profile denunciations of those responsible for committing them. Naming and shaming generates publicity which can be used to enlist influential governments, institutions and others to exert political, diplomatic and economic pressure for action on the part of those responsible for human rights protection., Such denunciations have been included in the UN Secretary-General's annual report on children and armed conflict since 2001.

Forum participants gave several examples where naming and shaming has contributed to persuading armed groups to change their recruiting practices. For example, the inclusion on the UN Secretary-General's annual list of the KNU and KNPP, two ethnic minority armed groups fighting government forces in Myanmar, is considered to have contributed to efforts to gain their commitment to implement policies to end the recruitment and use of children. The willingness of the *Forces Nouvelles* in Côte d'Ivoire to cooperate with the UN in the drafting and implementation of an action plan to end its use of children, is also reported to have resulted, at least in part, from a concern to have its name removed from the Secretary-General's list.

However, participants questioned the impact of public and international condemnation of armed groups in other situations. Grassroots actors working directly with armed groups on child protection argued that public denunciations should only be used as a last resort. Concerns were raised that denunciations risked creating a backlash that could undermine efforts to engage. The very success of this work often relies on discreet, long-term confidence-building away from the public gaze. Carefully built relationships can be jeopardized by poorly-judged or badly-timed public denouncements of the groups' policies or practice. It was apparent that a deeper understanding of the circumstances under which public criticism or similar tactics might be effective is necessary to ensure strategic use of the technique and its relationship with other initiatives.

PROPOSAL: Research project: When is "naming and shaming" effective?

Further empirical research and analysis are needed to establish what factors (military, political, and economic among others) may affect whether naming and shaming is effective. The research would investigate the dynamics of a selected group of armed conflicts and look at the impact of reports and denunciations (particularly those emanating from the international community) on the policy and practice of armed groups.

Appendix I - Selected presentations

A number of presentations were made at the forum both by experts on thematic issues and by local practitioners working on child soldiers in situations of armed conflict. Four of the thematic presentations - on the definition of child soldiers; the legal framework applicable to armed groups; negotiating with armed groups; and UN Security Council action on child recruitment - are published in this appendix.

These presentations introduce the key themes discussed at the forum and provide background information that is not published in the report of the forum. The presentations on country situations in Liberia, Nepal, Sudan and Myanmar, made by actors from the field, have not been published for reasons of confidentiality, although many of the points made in them have been incorporated into the report.

CHILD SOLDIER DEFINITION

Rachel Brett, Representative for Human Rights and Refugees, Quaker UN Office, Geneva

There is no single definition of 'child soldier'. In fact, the various legal texts do not define the term at all, but refer to specific actions: recruitment, conscription, forced recruitment, compulsory recruitment, voluntary recruitment, enlistment, and also to 'participation in hostilities', sometimes, 'direct' or 'active' participation in hostilities.

The most commonly-used definition is the 'Cape Town' one (adopted at a conference on principles and best practice, in Cape Town, South Africa, in 1997):

> 'Child soldier' in this document is any person under 18 years of age who is part of any kind of regular or irregular armed force or armed group in any capacity, including but not limited to cooks, porters, messengers and anyone accompanying such groups, other than purely as family members. The definition includes girls recruited for sexual purposes and for forced marriage. It does not, therefore, only refer to a child who is carrying or has carried arms.[11]

This has been much used and has proved valuable, but is not problem free. Not least because the reference to girls recruited for sexual purposes confuses two things. It has tended to mean that girls are assumed to only serve in this capacity, whereas in fact most girls, even if recruited initially or primarily for these purposes, actually fight – either regularly or as a last resort. Secondly, it confuses the concept of 'child soldiers' with the tasks which children often perform.

The Coalition to Stop the Use of Child Soldiers therefore adapted this to read:

> While there is no precise definition, the Coalition considers a child soldier any person under the age of 18 who is a member of or attached to government armed forces or any other regular or irregular armed force or armed political group, whether or not an armed conflict exists. Child soldiers perform a range of tasks including: participation in combat, laying mines and explosives; scouting, spying, acting as decoys, couriers or guards; training, drill or other preparations; logistics and support functions, portering, cooking and domestic labour. Child soldiers may also be subjected to sexual slavery or other sexual exploitation.

However, rather than trying to produce a definition, it is actually easier to state the objective, and the principles that therefore derive from it in this context.

The common objective of all the definitions is to protect children.

By starting from this, it is easy to define **common principles**:

1. No child should be used in combat
2. No child should be exposed to danger by being on a battlefield

[11] The Cape Town Principles have been updated since the presentation was given. The definition used in the Paris Principles and guidelines on children associated with armed forces or armed groups, endorsed by 59 governments in February 2007, is "**A child associated with an armed force or armed group"** refers to any person below 18 years of age who is or who has been recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys and girls, used as fighters, cooks, porters, messengers, spies or for sexual purposes. It does not only refer to a child who is taking or has taken a direct part in hostilities."

3. No child should be part of or associated with an armed group or armed forces in a way which could identify them as a 'combatant' and therefore a lawful object of attack under international humanitarian law
4. A "child" is any person under the age of 18 years

By identifying the principles, it is easier to avoid debates about the possible distinctions between 'direct' and 'indirect' participation in armed conflict.

Age
Much time and energy has been devoted to debates about the age at which a person ceases to be a child. However, international and regional law establishes that a 'child' is any person under the age of 18. Because of debates on the definition of 'child', the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict simply refers to 'persons under the age of 18 years'.

The Optional Protocol, Convention No. 182 of the ILO on the Worst Forms of Child Labour, the African Charter on the Rights and Welfare of the Child, all use this 18 year age limit of "childhood"

International law clearly establishes that any recruitment or use in hostilities of under-15s is prohibited in all circumstances both by treaty and customary international law and is a war crime.

Who
The standards apply to both government armed forces and all armed groups not part of the armed forces of the State – so apply to government-aligned groups as well as armed opposition groups.

When
They apply in all armed conflicts – both international and non-international (whether between government armed forces and others, or between different armed groups).

It covers peacetime recruitment as well as war time recruitment and participation in hostilities.

The Optional Protocol is clear that the prohibition on recruitment by both government armed forces and armed groups is not limited to times of armed conflict. (The earlier drafting which limited the reference to armed groups to times of armed conflict was deleted).

Tasks
As indicated under the 'Principles' section, trying to define the tasks/recruitment purposes is probably less helpful than it initially seemed. In part, this is because the tasks assigned to a child change – whether over time as part of a progression (the child initially recruited to cook or run errands, "graduates" to carrying a gun) - or in changed circumstances or emergencies (when attacked, all those in the camp or group may be expected to take up whatever arms are available and participate).

A note on challenges presented by international law

Wilder Tayler, Legal and Policy Director, Human Rights Watch[12]

Introduction

1. Identifying norms of international law applicable to armed groups, should not, in principle, pose major problems. International humanitarian law (IHL), particularly the law applicable to situations of internal armed conflict, and international criminal law, are the applicable legal regimes.

2. There is more debate over whether international human rights law – originally conceived to regulate relations between those who rule and those who are ruled – is relevant to armed groups. An emerging trend – reflected in academic writings, judicial decisions and some pronouncements made by international bodies – affirms that human rights law should also be applicable to armed groups. The debate is in flux. From a pragmatic point of view, some of the arguments cited below may also work in reference to human rights law. If that is the case, and there is chance that they can make a difference on the ground, they should certainly be used.

3. While identifying the applicable law may not seem complicated in principle, convincing armed groups to respect those laws in practice poses enormous challenges to the human rights advocate. In fact, this is an exercise that has tested the limits of the traditional human rights techniques of persuasion and pressure.

4. This note identifies some of the reasons why armed groups are reluctant to comply with IHL and other applicable legal standards – and summarizes arguments that may help to persuade them otherwise. The purpose of this note is to initiate a discussion; it does not cover all of the legal dimensions of the issue, nor does it deal with accountability mechanisms.

The applicable law

5. Some states still prefer to deal with armed groups exclusively through national criminal legislation, or in the context of counter-terrorism operations. However, the fact that IHL norms apply to armed groups in the context of armed conflict is not generally disputed and the principle has been reaffirmed by numerous United Nations resolutions insisting that these norms (and Common Article 3 in particular) should be observed. Today, it is generally accepted that armed groups are bound by IHL once the existence of an armed conflict has been identified. I refer you to the excellent background paper distributed before the conference, which summarizes the various pronouncements of the international community in this respect.

6. The most important treaty provision relevant to armed groups is Article 3 Common to the four Geneva Conventions. This article, often described as a "miniature treaty", is the only provision of the Geneva Conventions applicable to internal armed conflicts, unless the warring parties reach a special agreement to apply other provisions. It stipulates that "*[i]n the case of armed conflict not of an international character…, each Party to the conflict shall be bound to apply, as a minimum*" a number of fundamental protections for those who do not take part in hostilities, such as civilians, as well as those who are no longer taking part in hostilities, such as captured combatants and those who have surrendered or are

[12] Wilder Tayler is now with the International Commission of Jurists (ICJ)

unable to fight because of wounds or illness. The article prohibits violence against these protected persons – particularly murder, cruel treatment and torture – as well as outrages against their personal dignity and degrading or humiliating treatment. It also prohibits the taking of hostages *"the passing of sentences and the carrying out of executions"* if basic judicial guarantees have not been observed. The article does not afford any special protection to children, although children not participating in hostilities would obviously be covered by the article.

7. Article 3 applies to a wide range of internal armed conflicts, whether these conflicts take place between an armed group and the State of the territory or between several armed groups. Article 3 also reflects international customary law. Twenty years ago, the International Court of Justice, in a famous case on *Military and Paramilitary Activities In and Against Nicaragua*, affirmed that the article constitutes the minimum yardstick by which to evaluate compliance with the law by the parties to a non international armed conflict.

8. Another important treaty is Additional Protocol II to the Geneva Conventions, adopted in 1977. It expands and reinforces the guarantees of Article 3. It also specifies additional protections, including the prohibition of collective punishment, rape, indecent assault, forced prostitution and slavery. The Protocol sets some rules for the general protection of the civilian population – it forbids making civilians the object of attack, starving civilians as a method of combat and forcibly displacing civilians unless their own security is at stake or such movement is required for imperative military reasons.

9. More relevant to our discussion today, Protocol II includes specific protection for children under the heading of "fundamental guarantees". After establishing that children shall be "provided with the care and aid they require", the Protocol sets out specific standards in relation to education, family reunification, temporary removal of children from areas where hostilities are taking place, and a prohibition on the recruitment or participation in hostilities of children under the age of 15. Even if children younger than 15 do take part in hostilities and are captured, they would benefit from these specific protections. Protocol II also bans the imposition of the death penalty on individuals who were under the age of 18 at the time of the offence, and the execution of pregnant women and mothers of young children.

10. Unfortunately, Protocol II applies to a narrower array of situations than Common Article 3. It requires that the armed conflict take place between the armed forces of a state party to the Protocol and "*dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement [the] Protocol*". Most of today's internal conflicts are situated below the threshold required by Protocol II.

11. Protocol I Additional to the Geneva Conventions applies to particular armed groups and contains some provisions affording special protection to children. However, it only binds armed groups representing peoples "*fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination*" – ie. national liberation movements – provided they issue a declaration to that effect. There are no current situations in which this provision applies.

12. The Convention on the Rights of the Child has an Optional Protocol on the involvement of children in armed conflict. Article 4 is directly applicable to the issue of children and armed groups, and states that these groups are not allowed to recruit children or to use them in hostilities under any circumstances.

13. Other international law treaties contain provisions applicable to armed groups in internal armed conflict, including the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954) (Art 19) and its Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, 26 March 1999 (Art 22). There have also been important initiatives to expand humanitarian and (even) human rights norms so as to cover the activities of armed groups. These have frequently taken the form of non-treaty instruments (also called "soft law"). They play a crucial role in reflecting the actual state of the law or helping to clarify it, indicating the emergence of a new rule of law, or simply summarizing best practices. A prime example is the 1990 Turku Declaration on Minimum Humanitarian Standards. It identifies norms that should be applicable to all situations, including those falling short of armed conflict, such as internal violence, disturbances, tensions, and public emergencies.

14. International criminal law is applicable to individual members of armed groups. Since the early 90s the international community has set in motion very significant developments in this area. The creation by the UN Security Council of the international criminal tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR), and the agreement between the Sierra Leonean Government and the United Nations setting up a court to try those who bear the greatest responsibility for crimes committed during the civil war in that country, are examples of these developments.

15. The Rome Statute of the International Criminal Court (ICC) also applies to members of armed groups. The Statute criminalizes serious violations of common article 3 (art 8.2.c) and other "*serious violations of the laws and customs applicable in armed conflicts not of an international character*" provided that the latter are "*protracted armed conflict between governmental authorities and organized armed groups or between such groups*". Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities constitutes a crime.

16. In spite of all these legal references, one can say that there are relatively few treaty provisions of IHL (or even criminal law) that apply to armed groups or their individual members, much less many that apply specifically to children. There are indeed significant gaps in the regulation of the actions of these groups.

17. For this reason, the rules and principles of customary international law applicable to armed groups play a crucial role in filling the many gaps. Customary law exists when there is widespread and consistent practice followed by States out of a sense of legal obligation, that is, they accept that such practice is legally binding. The process for a rule of customary law to emerge tends to be long. The rules are unwritten and their precise meaning may be subject to different judicial and scholarly interpretations. And yet, in IHL rules of customary law play a fundamental role in binding states and groups – that is, in imposing obligations on them – even if the relevant states have not become a party to a treaty containing a similar or identical rule. What defines the mandatory character of the rule is that members of the international community have accepted it as law and comply (or claim that they comply) with it.

18. The ICRC has recently published a comprehensive survey of customary international humanitarian law, which identifies 161 rules of customary law. It is a fundamental tool for clarifying IHL. For example, the study identifies three fundamental rules for the protection of children in armed conflict which are equally applicable to states and armed groups. Rule 135 states that children affected by armed conflict are entitled to special respect and protection. This includes other specific rules of customary law, including safeguards against sexual violence; the separation of children from adults in custody; access to

education, food and health care; evacuation from conflict zones; and reunification of unaccompanied children with their families. Rule 136, applicable both to international and non international armed conflicts, states that children must not be recruited into armed forces or armed groups. Rule 137 prohibits the participation of children in hostilities. The Rules also deal with the situation of pregnant women or mothers of young children.

19. In principle then, international humanitarian and criminal law, both as treaty and as customary law (and in spite of significant lacunae) should afford a measure of protection to children trapped in situations of internal armed conflict.

Some challenges to international law

20. And yet we frequently hear testimonies from the field about the systematic and relentless violation of those protective norms, so scepticism about their effectiveness is inevitable. And it is often in relation to armed groups that legal instruments appear, sometimes, to be hopeless. Why is it that armed groups are not inclined to respect international law or to attach political value to it? To begin to answer this question, I have looked at the cumulative experience of Human Rights Watch and other organizations. One caveat to the ideas that follow is that they reflect only experiences about those groups who bothered to share their views, privately or publicly.

21. Some arguments against the use of the law pertain to the actions that those groups consider essential in order to prevail in the conflict. For example, armed groups frequently argue that governmental (or occupation) forces are very well equipped and financed, and that they can resort to superior technological means. In order to counterbalance this asymmetry, the argument goes, armed groups need to carry out actions that violate humanitarian provisions because attacking civilians and other "soft targets" gives them a sort of tactical advantage. In other situations, insurgents argue that the governmental side brazenly disregards the laws of war, so why should they be expected to observe legal humanitarian standards.

22. Other arguments relate to the status of the law itself. Representatives of some armed groups, in spite of a body of legal opinion to the contrary, argue that international humanitarian law does not apply to them. They claim not to be bound by the laws of war because they are not parties, in a technical sense, to the Geneva Conventions or other treaties mentioned above and did not otherwise undertake commitments to abide by international law. They argue that insurgent groups should not be bound by international norms they did not help to draft or commit to uphold.

23. There is a delicate point here. Humanitarian law treaties are indeed drafted and ratified by States. Even if an armed group were to declare that they wanted to join a treaty, this would probably not be recognized. A commonly quoted legal theory is that armed groups are bound by the provisions of those treaties by virtue of being subject to the laws of the State in which operate. This doctrine is explained in the ICRC Commentary to Protocol II, but it dates back to the drafting of the Geneva Conventions themselves. The Commentary explains "*the commitment made by a State not only applies to the government but also to any established authorities and private individuals within the national territory of that State and certain obligations are therefore imposed upon them".* Of course the reverse of this approach is that if the relevant state is not a party to the treaty, the rebel groups would not be bound by it either. While this doesn't pose practical problems in relation to Art 3 Common – to the extent that it contains rules of customary law – , it could reveal the existence of a significant gaps in relation to Protocol II.

24. The theory makes good legal sense, and resonates in other areas of international law. But in practice it means that armed groups are not only bound by a treaty to which they have not given their consent, but that they are legally obligated to respect it because the government they are trying to overthrow has ratified it. It is easy to see why, from the perspective of an armed group, this theory adds insult to injury. While the international jurist sits back – having found a technical rationale to solve a legal dilemma – the human rights practitioner is left at a loss, as the legal explanation will not only fail to persuade the target audience, but may well irritate them, and even increase their unwillingness to abide by the law.

25. Some suggest that the involvement of armed groups in the elaboration of legal standards would help to allay their feeling of disenfranchisement in relation to international law. However, this is unlikely to happen any time in the near future, and there is no guarantee that the participation of some armed groups would render the outcome of the drafting exercise authoritative enough in the eyes of other groups of different regions or persuasions. Middle Eastern and African national liberation movements were indeed present at the Diplomatic Conference leading to the conclusion of Protocol I and II in the mid 1970s. But it is not at all clear that this influenced the thinking of Latin American armed groups on the provisions of the Protocol.

26. This distance from standard-setting processes may help to explain why sometimes, when an armed group does decide to implement humanitarian law provisions, it does not do so out of any sense of legal obligation, but as a matter of policy. Of course these can be valuable initiatives. But policies do not carry the same weight as the law, and they do not guarantee uniformity. Policies sometimes give way to "Creole" versions of humanitarian law, where some provisions are accepted and others rejected for reasons of expedience, which are in turn consistent with policy decisions. This has sometimes been the case in relation to the use of landmines or the recruitment of children.

27. A similar problem arises in relation to customary international law. Customary law should, in principle, fill the gaps in the regulation of the activities of armed groups. Its rules embody standards widely accepted by the international community. However, the rules of customary law reflect the consistent practice of states only. Unfortunately the practices of armed groups are irrelevant to its formation, except if they become the new governmental authority in a state. Still, the case for the respect of humanitarian rules may be stronger for armed groups whose struggle is driven by a "governmental" persuasion. They may be more likely to observe the most basic rules, in order to project more authority and gather wider consensus in the international community they wish to join.

28. Maybe as a reflection of the above, the terms of the debate change somewhat when an armed group effectively holds territory and has population under its control. In these situations, the armed group may operate as a quasi governmental authority. Its' acts can be assimilated to – and sometimes even recognized as – governmental functions. International human rights organizations, such as Amnesty International and Human Rights Watch have addressed groups vested with (at least some) governmental attributes for years, and have held them accountable to basic principles enshrined in IHL. These organizations have not shied away from referring also to human rights law principles in some of these situations. UN organs have done the same. When such groups have reacted to criticism by international NGOs, it has generally not been on the basis that the law as such did not apply to them, but on other grounds. Again, this may be because these groups feel they have arrived at a significant turning point in their quest for international legitimacy, and regard themselves as closer to being a government. However, such situations are not common, and the majority of armed groups do not hold territory or exercise regular authority over significant segments of the population.

29. Armed groups may also point to the significant imbalance with which international law treats fighters from the governmental side to those from the insurgent group in the context of non international armed conflicts. Insurgents are generally considered criminals under national laws. If captured, they can be prosecuted for the mere fact of having joined the rebellion. This is very different from the prisoner-of-war status enjoyed by combatants in international armed conflicts under IHL. Government forces tend to be recognized as law enforcers and as such, are protected by the law in their use of force, even lethal force.

30. Another example of a norm that armed groups may find suspect is art. 4 of the Optional Protocol on the involvement of children in armed conflict. This provision states that armed groups "*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".* The most obvious advantage of this article is that it covers the actors that most frequently disregard the ban on the recruitment of children. At the same time, the obligation (if that is what it is given the tentative language used) addressed to armed groups is wider than the one attached to the State parties to the protocol. The charge of state bias or double standards becomes quite likely. Independently of whether this provision can be ultimately considered to be a human rights or humanitarian law norm, it is very likely to be seen as departing from the principle that IHL should impose obligations of the same character on all parties to the conflict.

31. Lawyers frequently say that international law continues to be primarily state-centered, and that IHL has yet to catch up with some of the realities of non international armed conflict. As a result, one cannot clearly identify a framework for the legal obligations of armed groups that makes legal sense to states and jurists and political common sense to the armed groups. Its codification is not open to armed groups in a way that may lead them to believe that their concerns are being addressed, or to claim ownership over its results. The treaties themselves stress that legal provisions imposing obligations on armed groups would not, in any form, alter the legal status of the parties to the conflict – thus pre-empting any kind of formal recognition as a result of the observance of the treaty. And in relation to the individual members of armed groups, the law imposes obligations but offers few privileges, in particular when compared to the legal status of the combatants from the governmental side.

32. *Prima facie*, armed groups may not find incentives to respect humanitarian law in the text of the treaties themselves. Of course, there is an expectation that respect for humanitarian rules will encourage the enemy (i.e. the government forces) to reciprocate. At the same time reciprocity does not constitute a pre-condition for compliance with humanitarian norms; these must be observed by one party to the conflict even if the other party violates them.

33. There are situations in which the aims of a group, or its religious or ideological inspiration, directly contradict the contents or the standing of international law. This would be the case, for example, if an armed group engaged in an ethnic cleansing campaign as a central objective of their insurrection. Admittedly, it may be extremely difficult to persuade such groups to abide by the rules. But even in these cases, one may wonder whether international norms – to the extent that do not originate directly from the enemy government – aren't likely to stand a better chance than national legislation.

34. To complicate things further, governments are frequently reluctant to apply IHL to a conflict going on in their territory. Although the application of IHL explicitly does not affect the status of the parties to the conflict, governments fear that any measure of political recognition that might derive from the observance of humanitarian rules by the armed group, could, sooner or later, erode their own legitimacy and enhance that of the armed group.

35. Another factor likely to undermine prospects for the observance of the law by armed groups is the dynamic currently developing in the context of the so-called "war on terror". On the one side, we see the rise of trans-national armed groups deploying forms of extreme violence – as a crucial part of their message – against civilians, including in Western societies. We may try to understand some of the root causes of this violence but we also struggle to make sense of the moral universe that allows for that kind of violence to be promoted.

36. On the other hand, in those same Western societies we have seen the emergence of a doctrine of security at all costs, which allows the "war against terror" to be waged without the constraints developed by human rights and humanitarian law. The rhetoric of the "war on terror" is also being used by governments with a particular interest in stigmatizing as "terrorists" any armed group operating in their territories. One can explain why some governments do this, as part of their counter-insurgency campaign. But the international community, and in particular NGOs who hope to be able to influence those groups, should be aware of the risk of further alienating them.

Ways in which international law may be used

37. Confronted with these difficulties, many may ask why work with the law in relation to armed groups, since it so often appears destined to be ignored. And yet, while there are situations in which the law itself seems to be powerless to protect victims of armed conflict, international humanitarian law has frequently proven to be helpful. I would like to suggest a few ways to argue that observing norms of international law may be not only the right thing to do, but could also be useful to some armed groups.

38. When armed groups are interested in gaining international recognition or political legitimacy, they are more likely to look at the law. It may be apparent to them – and if not, it is the role of the activist to make the point – that if a group attacks only military personnel, does not recruit children or use human shields, and refrains from carrying out acts of terror against civilians, they will be closer to obtaining a degree of the recognition they seek. They also place themselves in a better position to demand reciprocity from the adversary.

39. Apart from being able to gain a degree of international respectability, armed groups observing humanitarian standards place their individual members in a better position to confront the post-conflict period. At the end of the struggle, those who took part in it may benefit from clemency measures intended to foster reconciliation. Protocol II favours the granting of amnesties to persons "*who have participated in the armed conflict*|" at the end of the hostilities. Of course amnesties and other measures can be granted at any time or in any conflict. The fact that individual combatants have refrained from committing war crimes helps pave the way for greater acceptance of such measures by the national and international community.

40. As mentioned above, armed groups may find it difficult to accept the formalities of the law, its processes of elaboration, or some of its priorities. Nonetheless, the law itself may be used as a point of reference for armed groups to set up rules intended to respect human life and dignity, and to minimize suffering during the conflict. These measures should be encouraged.

41. For example, at some point in their development armed groups may draft internal regulations or a code of conduct, including some that may establish disciplinary norms, and regulate the behaviour of their fighters and their relations with civilians. They may represent

an opportunity for the leadership of a group to commit themselves to respecting the principles of IHL. Even if they are internal documents, the fact that they contain humanitarian law provisions can be publicized. However imperfect they may be, they may also constitute one of few tools capable of curbing abuse in some situations.

42. IHL also has importance for armed groups that wish to issue a unilateral declaration expressing their intention to respect all or some humanitarian law provisions. In this case, the armed group should recognize that they are bound by the applicable IHL provisions, and develop them so as to better apply to the conditions on the ground. The possibility of such declarations even exists in law; Protocol I conceived it as a means for national liberation movements to undertake to apply the Protocol and the Geneva Conventions. Unfortunately the process of such a declaration has never been perfected.

43. The work of Geneva Call constitutes today one of the most innovative forms of persuading armed groups to make unilateral declarations to abide by IHL norms. Geneva Call, starting with the land mines issue, has moved beyond a strict focus on humanitarian law. Their Deed of Commitment is rooted in both IHL and human rights law, and encourages awareness on the part of the signing armed group as an actor in the development of legal standards for the regulation of armed conflicts. It is definitely an example to emulate. And of course, the vast experience of the ICRC in this area makes it an unavoidable referent.

44. Unilateral declarations and codes of conduct, while inspired by IHL principles or texts, present the advantage of not depending on the State of the territory where the groups operate being party to a treaty. Their resolve to abide by international law can be formulated and publicized independently from their adversary. These tools permit the development of protections that may better conform to particular conditions on the ground, and also offer flexibility as to the number of provisions they commit to respect; of course a "minimalist" approach should never fall short of the fundamental principles reflected in Article 3.

45. Beyond unilateral declarations and codes of conduct, the Geneva Conventions – in Article 3 – encourage the parties to an internal conflict to enter into special agreements to "*bring into force … all or part of the other provisions*" of the Conventions , thus allowing for significant expansion of the rules applicable to internal conflicts. This device goes some way to addressing the concerns of armed groups about theories that affirm the applicability of IHL to them even if they have not participated in the making of the law. Of course it also means that not only armed groups, but governments too, need to be lobbied and persuaded of the benefits of expanding the application of IHL.

46. Other agreements, such as ceasefire agreements, between parties to a conflict may incorporate IHL norms without being based on the Geneva Conventions. If the framework of the Geneva Conventions is removed in the elaboration of a bilateral agreement, it is important that the agreement still respects certain parameters. For example, it should extend its protection to as many rights as possible but without losing specificity for the situation it will regulate. It may well go beyond international law (and ban, for example, certain forms of incommunicado detention), but it should not fall below the protections already afforded by IHL and human rights law for the relevant context. Given that these agreements tend to be partial, and generally part of a longer process of negotiation, they should not preclude future progress on human rights issues. For example, they should not include provisions granting impunity for the most serious crimes. It is accepted as possible and also desirable in these cases to include commitments to respect norms of human rights law. In this latter respect, it should be said that the unilateral tools mentioned above can also make reference to human rights provisions.

47. In this respect, an intense debate continues on whether the monitoring mechanisms conceived to assess State compliance with human rights norms are suited or competent to look at the behaviour of armed groups. The prevailing – but not only – wisdom argues against such an idea. However, armed groups constitute expressions of organized power. This power is frequently exercised in a way that puts human rights in jeopardy. From a human rights rationale, this simple fact is enough to trigger the need for protective regulation. There is no reason why an armed group should not be actively encouraged to committing to respect not only the right to life and security of the person, but also other human rights that are traditionally considered to be "derogable" (that is, that in times of emergency and for a limited period of time States may impose extraordinary limitations to their exercise) or outside the IHL realm, such as freedom of expression or association.

48. To be meaningful, the commitment of an armed group to respect international law norms should allow for verification. Otherwise there is a risk that their commitments remain at the level of a simple PR operation. But even if a monitoring mechanism is not readily available, it may be worth having a group's statement to the effect that they want to observe basic principles. Just as happens with governments that voluntarily ratify human rights treaties and then fail to comply with them, a measure of accountability can be brought to bear for the mere fact of having undertaken a public commitment.

Conclusion

49. In spite of some assertiveness in the wording of the law relevant to armed groups, international enforcement mechanisms are few and untested. IHL and human rights law are an imperfect system; particularly in relation to armed groups. And even if the system is reinforced – as has happened over the last decade with the development of mechanisms of international justice – there will always be recalcitrant groups – just as there are recalcitrant states – that refuse to comply with its provisions. Still, the law should be cultivated as a tool and its value reaffirmed as a matter of principle, not just as a matter of convenience. Even with all its deficiencies and *lacunae*, it has proven to be useful to the victims of armed conflict in many situations.

50. At the same time, it is important to stress that legal tools are only part of the array of mechanisms that practitioners may need. Equally important, is the work on campaigning, discrete approaches and confidential dialogue, training initiatives, naming and shaming techniques, and a strong stance against impunity both of state and non-state actors. By combining these tools with the law, the relief, humanity and civilizing effects that the legal norm is intended to bring to the devastation caused by an armed conflict, have a better chance to materialize.

Negotiating with armed groups: in what way does the style or content differ?

Julian Thomas Hottinger, Expert in Mediation and Facilitation, Switzerland

Throughout my life, I have quite often been asked in what way is negotiating with armed groups different? And in fact the hardest aspect is to get them to negotiate, or get them to the table as this can take for ever. But probably what complicates the task most is the belief that armed groups are highly disciplined, and that all one really has to do is sit them down at a negotiating table, and they will do as they are told.

This fictitious image is completely distorted. Negotiating with armed groups is tough. Levels of confidence are usually at their lowest; fighters mistrust words and feel disadvantaged at the negotiation table; they are usually – though not always – disadvantaged when it comes to knowledge; and depending on the cause they support, they are in difficulties imagining alternative solutions, or grasping beyond their short term interests. Finally, one has to make maximum efforts to convince fighters to accept a compromise, as they believe in obtaining all gains, like when fighting, while we all know that such a resolution is not necessarily going to bring about peace, but only exacerbate cleavages.

1. There is a need to know "your" armed groups years before they start to negotiate

When working on armed groups, a mediator does not establish contact only once the armed groups decide to negotiate. No! This is just another myth. Sometimes for years you meet and follow a circle of people close to an armed group and gain their confidence, before being introduced to the armed group or its commanders. The issue is not necessarily to get the armed groups to come straight to the table. It is of no use if they are not thinking seriously about discussing peace or thinking about a possible resolution to the conflict. You have to let them decide when they will come to the table, though such a thought will only start maturing when all sides realize that a military victory will not be obtained in the short run. But then why get in contact with these fighting groups?

Quite simple, the aim of such a strategy is twofold: a) To acquire an inside knowledge of what they are living, fighting for and aiming at and b) If they have no contact with the exterior world and they start building and living within their own logic, they become dangerous and are harder to deal with later on as their reality becomes fiction and their fiction distances them even more from [our] "reality". Once this happens, it is just about impossible to reason with the fighters or understand their demands. And these are the cases where the messenger can get killed.

So the best way to prevent armed groups from falling into some kind of isolated limbo is to meet the fighters, or their commanders, on a regular basis. You exchange information on issues such as how things are going, what has changed since you last met them, and if required, carry a message to the opposing side. It is important that the combatants know that their cause is not forgotten and that there is an outside world willing to help them if ever required. It is also a period of time during which confidence can be built and you have some influence in trying to talk the fighters out of certain misdeeds or unacceptable behaviour, such as the violation of fundamental rights, killing of civilians, or attacking humanitarian workers.

This stage is known in professional jargon as "putting one's foot in the door". And in some cases it can go on for years, not to say eternally, before an armed group even seriously thinks of negotiating with its adversaries.

Nevertheless, once they do decide to sit down to negotiate, or start thinking of doing so, at least there is a contact with some professional circles that are ready to help them and in whom there is enough trust so as to go forward. This initial stage – of thinking about possible negotiations - is amongst the most dangerous. It usually causes tension within the armed groups as some are willing to come to the table while others are not. And one has to be very careful as there is a tendency within armed groups to want to defend their cause, and the fighters will try to sweep all acts that could darken the movement's image under the carpet. At this stage, tortured prisoners can disappear, enemy combatants are captured in larger numbers to be exchanged in case of need, and finally the armed groups try to hide woman combatants or child soldiers as they know that such images would reflect negatively on world opinion.

Nearly all pre-talks or talks about talks with armed groups [I am living with it in Southern Sudan at the moment] start with the same stories. Movements refuse to admit they use or have used child soldiers in the past, and state that the only children around are from the families of their combatants. They also refuse to admit the crimes they have committed, and prefer to hide the truth about the violation of the integrity of captured enemies or prisoners.

Such statements don't come alone. They are usually accompanied with pre-requisites or a series of demands which have to be fulfilled before the armed group is willing to negotiate. The idea is to distract public opinion from the deeds of the past and have mediators focus on issues that worry them, while hoping to gain one last victory. Why? Well, usually armed groups – with some exceptions – at this phase are still reacting within a "fighting logic". They are looking for gains, not worried about compromise or what the other side might think, and they want a maximum of guarantees without having to negotiate them themselves: "so they let the mediators do the work".

So what is particular in the pre-talks with armed groups is that pre-talks become a phase of explaining and explaining again that the venue, agenda, method of work, is to be established, and that the mediators are there to help, but that mediators or facilitators are only setting the table and that the content or issues will have to be negotiated later by them and with their enemies. Quite often, a lot of time is wasted on prerequisites which will have to be tabled later on and included in the negotiation agenda, so that they can be discussed. But in no way can prerequisites be seen as conditions left for others to handle as you can automatically lose all credibility.

Nonetheless, if prerequisites are handled properly, they will not necessarily become a backbreaker. Prerequisites are troublesome, they do slow down the preparation for future negotiations, but rarely do parties leave the table because their prerequisites are not fulfilled. What scares fighters most and tends to worry them is the critical eye of public opinion [media], especially when their past behaviour is criticised. This destabilizes them most. An old Somali Commander used to say *"(…) the hardest is that you come out of the bush where you have spent years fighting for what you believed to be a just cause, and you are immediately attacked and criticised for having killed civilians, violated human rights and trained child soldiers, not to mention the abuse of women. When the truth is that for years you have struggled to survive the best you could in the worst of conditions and survival has its price. You come out expecting to be a hero and you find out that you are just as alienated as when you were in the bush. Or worse, you can be persecuted for what you are accused of having done, without any knowledge on how to defend yourself, expect shoot and run back into the bush".*

This probably partially explains why fighters always initially request a blanket amnesty from the mediators before coming to the negotiation table; an amnesty which today is just impossible to accept or give. But we have to be clear on one thing; it is not the mediators who can give an amnesty to the parties, in any case not within the prerequisites to come to negotiations. That is for sure. What might happen later is that the parties give themselves an amnesty, but then it is up to

the international community to decide if they will accept it, or just ignore the amnesty clause, and prosecute those held responsible for past crimes.

Subsequently, armed groups differ little from political parties, governments or interest groups when preparing to come to the negotiation table. Mistrust and a desire for revenge is probably stronger amongst fighters, as they have often seen and lived the worst, while also [sometimes] committing the worst. But the only aspect that differs in this phase is the extra mile that has to be covered to reassure the fighters that negotiations can work and are in their interest even though they quite often feel they are popping out into a hostile and uncomprehending environment.

2. What does one negotiate with armed groups?

Content-wise though, how do negotiations with armed groups differ from other negotiations?

Years ago when I was being trained as a mediator, when it came to handling armed groups, we would automatically focus on a cessation of hostilities or a cease-fire, and build up from there. The main aim for the mediators was to stop the violence, and once this was done, we were trained to look into different coalition mechanisms in the power sharing so that yesterday's fighters wouldn't feel marginalized. In some cases it worked and in others it didn't. But the causes and reasons why it worked or not vary substantially in each case. However, failure was quite often elsewhere; more then three out of four peace agreements failed due to lack of implementation. Either the fighting parties didn't know how or didn't want to implement agreements. Or worse, the peace agreement made no reference to how decisions should be implemented, and each negotiating party just hoped the other side would fulfil its obligations first, while the other side never rushed to fulfil its own.

In today's negotiations with armed groups, you are required to establish a vision of society. It is just about impossible to only envisage a cease-fire without the political and economic agreements which would follow. In a lot of cases, you even deal with the cease-fire only after the other aspects of the agreement have been established. Why? Well the armed groups consider their fire power as vital to their survival. So, you are initially forced to have to go into nearly every detail of a vision of the future, establishing a political vision, an economic vision and finally building a security arrangement where everything is included and where rebels see what role they will fulfil. Practically speaking, this means that within negotiations all parties have to be brought up to the same level – the playing field has to be levelled – and a common language created. Once this has been done, the debates about the content, and establishing this vision of society can start, the idea being to obtain a future projection of what country "x" or "y" could look like and from there, working backwards to where we stand today, while at the same time building transitional bridges which are required to get there.

In other words, negotiations today with armed groups go well beyond security issues and these groups are obliged to look through different lenses when negotiating. And this, of course, is often hard on fighters who have a good "guerrilla" or "military" experience, but much less of a political vision or knowledge on how to govern. This means that such skills have to be learnt, if there is any hope of obtaining a peace agreement that can be implemented later in order to bring peace.

3. Weakness and difficulties in negotiating with armed groups

Within a wider strategy that has to include many other aspects in the search for peace, security issues, together with Disarmament, Demobilisation and Reintegration [DDR] of ex-combatants, remains one of the hardest issues to deal with. Why?

Well you are simply telling fighters that they will have to stop. Not only will they be left with no trade, but they will probably have to answer for their crimes, while integrating into civilian life, that, depending on their age, they probably know little about. In addition though, what makes this phase hard to negotiate, is that rare are the commanders who want to confront their men and sell them a hostile idea. So armed groups tend to just mention DDR and put it aside for later. Very rarely is a total and detailed DDR process properly designed in a peace agreement.

And this is troublesome as DDR has to take place alongside other security consolidation measures to be successful. These must address: human rights violations; the restructuring and reform of the security forces; the enhancement of public security by building the capacity and accountability of the civil police; address the needs of vulnerable populations, such as IDPs, returnees and other direct victims of the conflict; while promoting peace and reconciliation initiatives at both the national and local level, trying to promote good governance through greater accountability of public institutions and the strengthening of civil society; and developing economic security through transparent access to land, credit and trade. And I must admit that rarely are these objectives fulfilled within peace agreements, due to the lack of time or the complexity of the task, or quite simply because armed group commanders refuse to discuss them.

So to recap, DDR plans are mentioned, but rarely detailed. They are simply left to be designed later with the risk that months after signing a peace agreement, there is still no clear mapping and planning of activities to be undertaken by the DDR Committees when established.

The main victims of such a weakness within peace agreements are women and child fighters. To start with, they are rarely mentioned in the negotiations. In other cases, armed groups spend days trying to deny their existence. And quite often it is only months after the peace agreement is signed, and a DDR plan established, that children associated with the fighting forces start to appear. This is the case in Southern Sudan, where only last week, 181 children [ranging from 10 to 18 years] were finally demobilised by the SPLM/A in Julud, within the Nuba Mountains [in Southern Kordofan]. Could they have been demobilized earlier? The answer would be "yes", but for this to happen, peace agreements would have to be negotiated differently.

To start with, there is an imperative need for peace agreements and negotiated settlements to recognize the rights of child soldiers to particular benefits and entitlements. Instead of only taking the word of the armed groups, surveys of child soldiers should be undertaken at the start of the building of the demobilization process and specially targeted programmes which would help the child soldiers to reintegrate into civilian life, should be created.

However other practical ideas could also be included in the peace agreement when having to deal with child soldiers:

Prevent from the start recruitment wherever possible, and ensure the earliest possible demobilisation of children, even before the peace agreement is concluded, and well before the DDR for adult combatants is defined. If this can't be done, everything must be done to obtain an agreement from the armed groups that children's encampment during demobilization will be as short a possible and that above all, the children will be kept separate from other groups at all times. This is the best way of ensuring the children's protection during the demobilisation phase.

Another step that could be taken is to promote and ensure [whenever possible] sustainable reintegration within a family context and facilitate children's return to civilian life as soon as

possible, be it through access to school or other learning opportunities. In a lot of cases, one will have to ensure that programmes take into account psycho-social counselling and the different cultural contexts regarding children, while paying special attention to the specific needs of children who are the victims of sexual/gender-based violence.

Child DDR programmes should take into account the specific needs of girls who might prefer more informal DDR processes to avoid the stigma of being labelled as a child soldier. Parallel to this, there is a need to promote the physical and economic security of child heads of household and underage mothers.

The proposals mentioned here, are, without doubt, just a partial illustration of some ideas of what can be done when working with child soldiers. I am sure there are other needs and elements that would have to be looked into. However, this would be a start, and a step in the right direction, which goes well beyond the declaration of principle found in nearly every peace agreement drafted in the last ten years, which usually goes along the following lines:

"Aware of the fact that, Disarmament, Demobilization and Reintegration [DDR] of ex-combatants are crucial components for a secure and peaceful [country], the parties commit themselves to credible, transparent and effective DDR process which will support the ex-combatants' transition to a productive civilian life:"

There is no uncertainty that the intention is there, but how, who, when, and what … will be done is still lacking. And maybe when it comes to negotiating peace agreements with armed groups, mediators can't afford to continue being so vague in treating such a complex process as DDR, just because of the uneasiness of armed groups.

Security Council Action on Child Recruitment

Jo Becker, Advocacy Director, Children's Rights Division, Human Rights Watch

In recent years, the UN Security Council (SC) has given increasing attention to issues of children and armed conflict. Since 1999, the Council has held annual debates and adopted six SC resolutions that apply to all parties to armed conflict, including both states and non-state armed groups.

These resolutions, and the measures initiated by the SC, provide very useful tools to influence the behaviour of armed groups.

The most significant aspects of the process:

Resolution 1379, November 2001:

- urges governments to consider "legal, political, diplomatic, financial and material measures" to ensure parties to armed conflict respect international norms regarding children;
- requests the Secretary General to submit a report, attaching a list of parties to armed conflict that recruit or use children in violation of international norms – list restricted to situations on the SC's agenda, or that "may threaten international peace and security."

November 2002: Secretary General submits report listing 23 parties in five countries:
Afghanistan, Burundi, DRC, Liberia, Somalia.

Resolution 1460, January 2003:

- SC commits to enter into dialogue with parties recruiting or using child soldiers to develop clear and time-bound action plans to end the practice;
- Calls on parties listed in the Secretary General's report to provide information on what steps have been taken;
- Will consider appropriate steps in cases with "insufficient progress";
- Requests the Secretary General give a progress report on parties listed previously, "taking into account" other parties mentioned in his report.

November 2003:
Secretary General submits report with 2 annexes:
Annex I (situations on the SC's agenda) includes 32 parties in six situations:
Afghanistan, Burundi, Cote d'Ivoire, DRC, Liberia, Somalia;
Annex II (other situations of concern) includes 22 parties in nine situations:
Burma, Chechnya, Colombia, Nepal, N. Ireland, Philippines, Sri Lanka, Sudan, Uganda.

Resolution 1539, April 2004:

- Requests the Secretary General to devise within three months an action plan for systematic and comprehensive monitoring and reporting on children in armed conflict;
- Calls on parties in Annex I to prepare concrete, time-bound action plans within three months to end child recruitment;
- Requests the Secretary General to appoint focal point in each country to engage in dialogue and report back by July 31.
- Expresses intention to impose targeted and graduated measures, such as a ban on the export or supply of small arms, military equipment and military assistance, against parties that fail to enter into a dialogue, fail to develop an action plan, or fail to meet their action plan commitments.

February 2005
Secretary-General submits report with two annexes:
Annex I: 5 situations: *Burundi, Cote d'Ivoire, DRC, Somalia, Sudan;*
Annex II: 6 situations: *Burma, Colombia, Nepal, Philippines, Sri Lanka, Uganda.*

Of 42 parties listed, 30 have been listed at least one previously; 21 have been listed in each of his three reports.

Resolution 1612, July 2005:

- Requests implementation of the Monitoring and Reporting System;
- Establishes a working group of the SC to review reports from the Monitoring and Reporting mechanism, review the development and implementation of action plans, and make recommendations to the SC regarding further measures;
- Reaffirms intention to consider targeted and graduated measures on violators, including bans on weapons.

Monitoring and Reporting Mechanism:

The SC requested a systematic monitoring and reporting mechanism to ensure that the information they receive on violations is credible, objective and reliable. The mechanism has several stages/levels:

1) **Country-level Task Force:** Information on violations against children (including not only the recruitment and use of child soldiers, but also other abuses, including killing and maiming, abduction, attacks against schools, gender-based violence, etc.) is collected at country level through a task force lead by UN agencies and involving key NGOs.

2) **UN Headquarters Task Force:** The report is then transmitted to a UN Task Force at headquarters level in New York, where it is reviewed and submitted to the Secretary-General.

3) **Security Council Working Group:** The report is then submitted by the Secretary-General, with his recommendations for action, to the SC working group for their consideration.

4) **Full Security Council:** On the basis of the report, the SC working group then makes recommendations for action to the full SC.

The Monitoring and Reporting Mechanism is being established in two phases. During Phase I, reporting networks are being established in the following countries: *Burundi, DRC, Cote d'Ivoire, Somalia, Sudan, Nepal, Sri Lanka.*

The first country report – on DRC – was considered by the SC working group on June 26, 2006.

Next Steps:

- July 24 Open Debate on Children and Armed Conflict with presidential statement;
- August 2006: Working Group will make recommendations on first country report (DRC), and consider new reports on Sudan and Sri Lanka;
- October 2006: Working Group will make recommendations on Sudan and Sri Lanka; consider first reports on Cote d'Ivoire and Burundi;
- November 2006: next Secretary General's report on children in armed conflict (Submissions of information from NGOs are due August 1);
- Working Group will continue to meet every two months to consider new reports and to adopt recommendations on reports already considered.

Security Council "Toolkit"
The SC working group has identified a range of "tools" that the SC can use in responding to violations against children. These include:

- Technical assistance via UN agencies;
- Appeals to donors;
- Demarches, public statements;
- SC meetings with parties concerned regarding allegations;
- SC field trips to engage with parties;
- Strengthen mandates (e.g. peacekeeping);
- Targeted measures, e.g. travel bans, arms embargoes, freezing assets, exclusion from governance bodies, etc;
- Encourage existing sanctions committees to impose measures;
- Bring information to attention of ICC and other justice mechanisms.

Analysis:

Limits of Security Council approach:

- Initially, action is not communicated to parties (e.g. it took a while to get UN country teams engaged; many parties were never notified that they were on the Secretary General's list, or of possible consequences of inclusion);
- Weak initial follow-up from UN: failure to appoint focal points, dialogue not always pursued;
- Lack of resources, e.g. UN teams were asked to establish the Monitoring and Reporting mechanism without any additional resources being provided for the task;
- Focus on SC's agenda has limited attention to other conflicts (e.g. Colombia, Uganda, Sri Lanka, etc);
- Unclear whether SC will follow through on sanctions; concrete consequences of repeat violations not clear.

Impact:

- Monitoring and Reporting networks set up in seven countries;
- Deployment of child protection advisors within some peacekeeping missions;
- Dialogue established through UN with various parties, in some cases leading to limited demobilization of children;
- Action plans under 1612:
  - submitted by Forces Nouvelles (Côte d'Ivoire) to prevent child recruitment, release children;
  - agreed in principle by Government of Uganda regarding non-recruitment into Local Defense Units and UPDF;
- Other reaction from listed parties:
  - Liberation Tigers of Tamil Eelam (LTTE) requested dialogue with the Special Representative of the Secretary General (SRSG);
  - Government of Burma established high-level Committee to Prevent Recruitment of Child Soldiers.
- First sanctions linked to child recruitment: Feb 7, 2006 SC Sanctions Committee for Côte d'Ivoire approved travel ban and attachment of financial assets for Martin Kouakou Fofie for Forces Nouvelles, for recruitment of child soldiers, abduction, sexual violence.
- Sudan expert panel has recommended Sudan Sanctions Committee to consider sanctions against individuals for child recruitment reported under SC Resolution 1612.

Conclusion:

- SC action only now really translating into action on the ground through UN country teams;
- Continued lobbying needed to ensure attention to situations not on SC agenda;
- Working Group recommendations will be key;
- Follow-through with specific targeted measures necessary for process to maintain legitimacy.

Appendix II – List of the Coalition's resources on armed groups

The following documents are available at the "armed groups" page of the website of the Coalition to Stop the Use of Child Soldiers:[13]

- Forum on armed groups and the involvement of children in armed conflict, Château de Bossey, Switzerland, 4 to 7 July 2006, *Background document, Approaching armed groups*.
- *El Salvador: Children in the Farabundo Martí National Liberation Front (FMLN) and the Armed Forces of El Salvador (FAES)*, by Claudia Ricca.
- *Occupied Palestinian Territories: Palestinian children and Hamas*, by Catherine Hunter.
- *Lebanon: The South Lebanon Army (SLA) and child recruitment, Putting the pressure on whom?* By Catherine Hunter.
- *Burundi: The CNDD - FDD (Nkurunziza) and the use of child soldiers*, by Alison Dilworth.
- S*ierra Leone: The Revolutionary United Front (RUF), Trying to influence an army of children*, by Enrique Restoy.
- *Sri Lanka: The Liberation Tigers of Tamil Eelam (LTTE) and child recruitment*, by Charu Lata Hogg.
- Southeast Asia Coalition to Stop the Use of Child Soldiers, *Regional Workshop on Enhancing Civil Society's Engagement with Non-State Armed Groups, in child soldiers advocacy***,** November 9 to 11, 2005, Quezon City, Philippines.
- *Bibliography on Approaching Armed Groups*, compiled by the Coalition to Stop the Use of Child Soldiers, November 2006.

[13] http://www.child-soldiers.org/childsoldiers/armedgroups.

The Coalition to Stop the Use of Child Soldiers

The Coalition to Stop the Use of Child Soldiers was formed in 1998 by leading non-governmental organizations. It seeks to end the military recruitment and participation in hostilities of all children below 18 years of age. Its Steering Committee members are Amnesty International, Defence for Children International, Human Rights Watch, International Federation Terre des Hommes, International Save the Children Alliance, Jesuit Refugee Service, and the Quaker United Nations Office Geneva. The Coalition has regional representatives in the Great Lakes, West Africa and Southeast Asia, and national networks and partners in some 30 countries. The Coalition unites local, national and international organizations, as well as experts, academics and concerned individuals from every region of the world. The International Committee of the Red Cross, the International Labour Organization and UNICEF have observer status on the Coalition's Steering Committee.

The Coalition works to end the use of child soldiers – both girls and boys – to prevent their recruitment and use, to secure their release and to promote their rehabilitation and reintegration. It works to achieve this through advocacy and public education; research and monitoring; and network development and capacity building.