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Network Paper

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In brief

•This paper addresses the question of humanitarian engagement with the non-state armed groups that increasingly populate the zones in which humanitarian action takes place. In particular, it seeks to understand why some combatants react positively and consistently to humanitarian demands to meet access preconditions, while others respond erratically, decline to respond or are hostile.

•The paper looks less at how to negotiate with such groups, and more at the various types of non-state armed group with which negotiations are likely to be conducted.

•The ultimate objective of this paper is to determine the *parameters* of responsible humanitarian engagement – that is, to investigate the scope of successful engagement, one which maintains minimal operational preconditions, such as security for aid workers, and to explore the available *modalities* of engagement.

Humanitarian engagement with non-state armed actors
The parameters of negotiated access

Commissioned and published by the Humanitarian Practice Network at ODI

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Chapter 1
Introduction

Over the last several decades, non-state armed groups have become a common feature of civil conflicts and internal wars. These Armed Non-State Actors (ANSAs) go by many names, including liberation movements, rebel groups, paramilitaries, insurgents and warlords, mercenaries and private military and security companies. The category could now also include transnational terrorist organisations such as Al-Qaeda. The proliferation of armed non-state groups mirrors the proliferation of internal conflicts across the globe. International wars such as the US-led invasions of Afghanistan and Iraq are now very much the exception: virtually all of today's conflicts are internal to states, not international.

A former *Janjaweed* fighter guards a humanitarian NGO vehicle, West Darfur, August 2004

The proliferation of ANSAs has complicated humanitarian access because it has contributed to a deterioration in the security conditions for aid workers in conflict zones. These armed groups may also compromise the impartiality of aid and the status of civilians by co-opting them for logistical or political support, blurring the distinction between combatant and non-combatant. Civilians may be recruited as fighters, whether voluntarily or through coercion, and civilian environments may be used to provide tactical cover. Humanitarian assistance may be blocked if its delivery is deemed not in the armed group's interest. The provisions of International Humanitarian Law (IHL) may be breached, and humanitarian access challenged, as a deliberate strategy of war.

The difficulties ANSAs raise for humanitarian agencies mean that negotiating with them for access to vulnerable populations has become an inevitable – and very complex – part of the humanitarian experience in many contexts. The overall objective of humanitarian aid is to provide life-saving assistance and alleviate suffering. In achieving this objective, safe access to vulnerable and needy people in war zones is essential. Hence, the direct aim of humanitarian engagement with ANSAs is to secure two preconditions as minimal operational criteria. The first is ensuring security guarantees for aid workers. The second is to secure the ANSA's respect for the rules of IHL. With respect to the latter, recognising the special status of civilians and their right of access to impartial humanitarian assistance is crucial. Over the past decade, a third, more contentious, aspect of engagement has emerged, namely the need to protect civilians as such.[1] Negotiating access

with ANSAs suspected of breaching human rights or committing crimes against humanity has raised questions as to whether access agreements with such groups serve or undermine the protection of civilians, as agreements may accord undue legitimacy to these ANSAs. They may also jeopardise any 'common front' intended to isolate abusive ANSAs, as these groups may play one humanitarian actor off against another. Here, the issue of 'responsible engagement' comes into focus, meaning access negotiations promoting 'humanitarian space' (a general respect for IHL principles), as opposed to access negotiations that create 'agency space', meaning agreements that pertain only to some humanitarian actors but not others, or which fail to establish general security guarantees, or to prevent continued breaches of IHL.

To be sure, ANSAs are not the only forces abusing civilians or breaching IHL; 'regular' armies violate these rules as well. However, this paper concentrates on ANSAs because of their prevalence, their tremendous variety, the very different conflict contexts in which they operate and the diverse access difficulties they present. The paper also focuses on a specific subset of the humanitarian enterprise, namely non-governmental humanitarian agencies, referred to here as NGHAs, meaning those non-governmental agencies involved in the provision of emergency life-saving assistance in the context of conflict and war.[2] This focus reflects the fact that, as the international community has progressively withdrawn from so-called non-strategic states (Rwanda, Somalia or the Democratic Republic of Congo, for instance),

NGHAs are, more than ever before, being forced to engage with ANSAs to negotiate access conditions on their own. At the other extreme, mainly as a result of the 'War on Terror', conflicts such as those in Afghanistan and Iraq are saturated with third states' strategic interests, politicising the context and compromising humanitarian access conditions. This dual international response has meant that the negotiation of access progressively takes place between non-state actors: NGHAs on the one hand, and ANSAs on the other. Although other agencies involved in humanitarian action, such as UN bodies and the ICRC, also engage with ANSAs, these organisations are more formally configured within the framework of international conventions and diplomacy. This does not, in itself, alter the challenge of humanitarian engagement that these agencies face. For NGHAs, however, it underlines the importance of enhancing knowledge of the intricacies of humanitarian engagement and access negotiation with ANSAs, as they increasingly deal with these groups bilaterally.

Aims and scope

Aid workers in conflict zones encounter armed men on a daily basis, at roadblocks for example. While dealing with armed actors certainly calls for negotiation skills, this paper seeks to address some of the broader aspects of humanitarian engagement with non-state groups. In particular, it seeks to understand why some combatants react positively and consistently in response to humanitarian demands to meet access preconditions, while others respond erratically, decline to respond or are hostile. This problem in turn raises other immediate questions. What level of interlocutor – the leadership, a mid-level commander, or a field combatant – is likely to produce the most effective result? Should one seek direct contact, or work through a civilian go-between? Is it better to conduct negotiations openly, or should they be confidential?

Questions like these underscore the importance of a systematic approach to assessing the likelihood that a particular armed non-state group will respect the terms of a negotiated access agreement. In other words, how *reliable* is the access agreement likely to be? To address these questions, this paper looks less at how to negotiate, and more at the various types of non-state armed group with which this negotiation is likely to be conducted, with the proviso that the former is a prerequisite to the latter. The ultimate objective of this paper is to determine the *parameters* of responsible humanitarian engagement with ANSAs – that is, to investigate the scope of successful engagement, one which maintains minimal operational preconditions, such as security for aid workers, and to explore the available *modalities* of engagement with ANSAs.

The objective of humanitarian engagement with ANSAs is to 'negotiate' the minimal preconditions necessary for access. These are security of aid workers, and respect for the principles and rules of IHL. The term 'negotiate' is deliberately placed in quotation marks here, since what is negotiated, and with whom, is as unclear as how to negotiate. Arguably, even the term 'negotiation' is inadequate, since the principles of IHL as conceived in the Geneva Conventions are by definition non-negotiable. Agreements on access between ANSAs and humanitarian agencies do not express compromise on a contested issue, but rather the balancing of pragmatic interests. Agreement on access expresses the coincidence of each side's internal goals; it does not necessarily reflect agreement on shared principles of IHL. In this sense, negotiation is not so much principle-driven, but rather a dynamic bartering process formed and fed by its participants: ANSAs and NGHAs. In practical operational terms, negotiation can be deemed successful if it changes the behaviour of the non-state armed actor in its treatment of civilians and its respect for aid workers. Thus, rather than judging humanitarian engagement and access negotiations on legal, moral or ethical grounds, this paper analyses these issues pragmatically, in terms of the underlying interests of the humanitarian organisation and the non-state actor.

In order to understand the dynamics of negotiated access, three dimensions are important:

- the specific relationship between the ANSA and civilians;
- the ANSA's internal organisation and command structure; and
- the ANSA's external relations and supporting actors.

Of these three aspects, the first is of primary importance, since civilians serve as the link between the humanitarian NGO and the ANSA: access to civilians is the motive for seeking engagement with an armed non-state group. Civilians are not simply inactive 'bystanders' in conflict: they can fulfil diverse, crucial roles, as fighters, political supporters, labourers, messengers or proxy targets. Often, these roles are not picked by choice, but rather are a consequence of the manner in which civilians are implicated and configured in conflict by warring parties, be they ANSAs, their opponents, competing non-state groups or a state's military forces. Civilians may actively side with an ANSA to extract advantage, or they may be coerced into doing so. The precise outcome of access negotiations (the balance of interests that is reached) depends mainly on the attitude of the ANSA towards civilians (supportive or indifferent?); the degree to which the ANSA is dependent on civilians (supportive constituency or opposed community?); and the ANSA's mode of control over civilians (protective or oppressive?). These relationships appear to have a strong influence on ANSA attitudes towards humanitarian access and presence, depending on how this presence dovetails with their interests.

One of the first steps in assessing the reliability of a particular armed group is understanding the context of

Box 1

Negotiated access: principled process or accommodation of interests?

The principles of IHL as stated in the Geneva Conventions are non-negotiable. What then is 'negotiated' when engaging with an ANSA for humanitarian access? What can be bartered or traded with a non-state armed group in exchange for its granting access to a humanitarian agency?

OLS: the original model of 'negotiated access'

Operation Lifeline Sudan was initiated in 1989 as a tripartite agreement between the UN, the Sudanese government and the Southern opposition rebel group the Sudan People's Liberation Army (SPLA). It is seen as the prototype model of 'negotiated access'. By signing the agreement, the Sudanese government temporarily ceded sovereignty of Southern Sudan to the UN, leaving the latter with the problem of administering aid. The agreement was supported by so-called 'ground rules' intended to provide security guarantees to aid workers, as well as protection to civilians. In practice, however, the ground rules were used more as a tool to provide safe access than as a means of holding rebel authorities accountable.[3] One of the major reasons for this was the contested legitimacy of the Southern rebels in the eyes of the government in Khartoum. Neither the UN nor the NGHAs in Southern Sudan had any choice but to work with the rebel authorities, even if they were not recognised. The OLS agreement could not 'solve' the issue of legitimacy, and was in fact designed in such a way that it circumvented it to facilitate humanitarian access and aid. This had the effect of leaving a gap in accountability mechanisms, in particular in respect of the Southern rebels.

negotiation, and the distinctive characteristics of the group or groups in question, their underlying interests and the nature of their relationship with the civilians under their control. To that end, this paper offers two typologies by which ANSAs can be grouped. The first, based on a socio-economic model of ANSA–civilian relations, distinguishes four types of relationship: symbiotic, parasitic, independent and predatory.[4] This typology describes specific 'terms of exchange' between ANSAs and civilians, in particular as they relate to so-called war economies, in which, for example, civilians receive protection from an armed group in exchange for services or support, or are compelled to provide these services under threat of abuse. The second model uses a political, rather than economic, classification. It identifies four categories of ANSA–civilian relations: protective, competitive, antagonistic and sectarian. Both typologies can be used to identify and determine the risks and benefits of humanitarian engagement with ANSAs in more objective terms.

The approach outlined in this paper is of course open to debate. It is hoped that it will be seen and used as a way to gauge and assess how NGHAs approach non-state armed groups in the service of their humanitarian work. Perhaps the best point of departure is to understand that not all ANSAs are the same: different groups pose different challenges and operate in different ways. This counsels caution in regarding ANSAs as somehow monolithic. The methodology offered here should therefore not be seen as a 'magic bullet', solving all the problems, but rather it should provide NGHAs with the flexibility they need to approach different situations and different groups. Ultimately, the methodology should encourage analysis of the civil relations that underlie the process of negotiating access, and a move away from the view that the problem of non-state armed groups is solely a military or security matter.

Figure 1

The function of civilians in conflict

For NGHA
- Victims of war and conflict
- Beneficiaries/recipients of aid

CIVILIANS

For ANSA
- Fighters (combatants)
- (Political) support basis
- Target (support basis of opponents)
- Logistics, labour force, safe harbour
- 'Enemy' (genocidal and ethnic conflict)
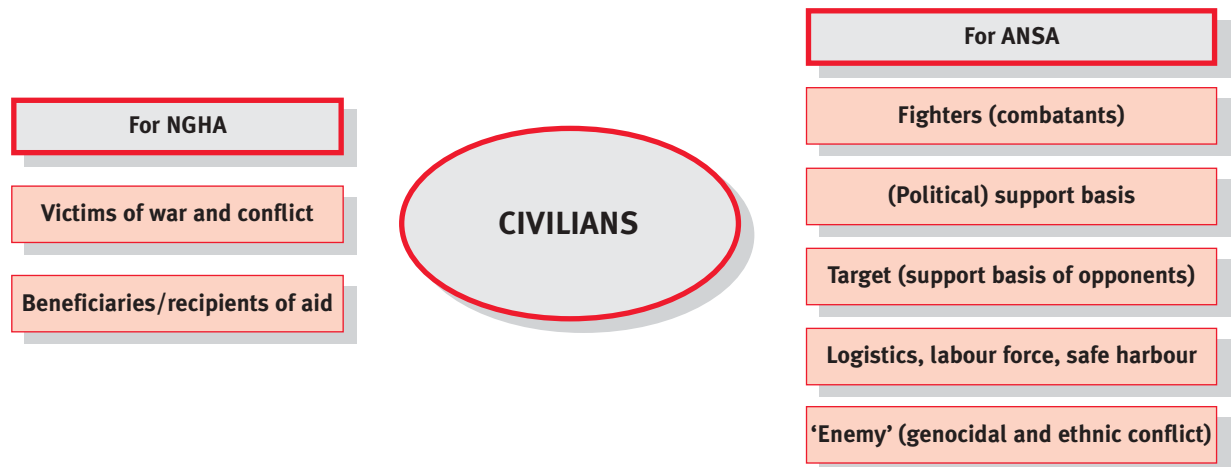
Chapter 2
The changing conflict context and the rise of new non-state armed groups

Over the last decade and a half, the nature of conflict has changed dramatically. The Cold War was driven largely by the ideological conflict between the superpowers, played out in proxy conflicts in the developing world. In countries such as Ethiopia, Angola or Mozambique, ANSAs involved in these conflicts portrayed themselves as 'liberation movements', fighting a political fight for national liberation. Since the end of the Cold War, these ideological conflicts have given way to wars fought more explicitly over resources. In countries such as Angola and Sierra Leone, conflict became less a means to an end than an end in itself; 'exploiting the fruits of insecurity and chaos to the benefit of armed factions and militia'.[5] In these conflicts, non-state armed groups like Charles Taylor's National Patriotic Front of Liberia (NPFL) or the Revolutionary United Front (RUF) in Sierra Leone have abused relief aid through looting and manipulation, and utilised it as a conflict resource.

Meanwhile, ethnically-driven conflicts in Rwanda and the Balkans, and the ongoing war in Ituri, DRC, have created a fresh set of problems for the humanitarian enterprise: how to avoid partisan aid in a conflict where (mainly) one side is being victimised. The standard humanitarian response of 'proportional assistance to both sides' does not work, as by default it tends to serve the interests of the most powerful (and ruthless) party to the conflict.[6] Finally, the post-9/11 'War on Terror' has seen the emergence of new strains of transnational non-state actor, exemplified by Al-Qaeda and its affiliates, with their strong anti-Western philosophy and nihilistic methods. More recently, international conflict under the 'War on Terror' rubric has spawned new non-state groups seeking to exploit instability and oppose Western occupation. These groups demonstrate little concern for civilians or aid workers, as both are considered proxy targets in the achievement of their goals.

Spoilers

The concept of 'spoiler forces' has emerged to describe groups that profit from instability or lawlessness, and which accordingly seek to prevent or 'spoil' the establishment of peace. The concept distinguishes between 'limited spoilers', 'greedy spoilers' and 'total spoilers'.[7] As the label suggests, limited spoilers may be relatively easy to contain as their demands are parochial, and limited to local concerns. Greedy spoilers may be appeased once specific grievances, usually economic, are addressed. Total spoilers, however, pose severe challenges to peace. Al-Qaeda is perhaps the extreme example of a group that could also include the Islamic insurgents fighting Western occupying forces and their local allies in Iraq. Such groups

also pose serious challenges to humanitarian access in conflict zones; to illustrate a point already powerfully made by the bomb attacks against the UN and the ICRC in Baghdad in 2003, one Iraqi insurgent group adopted the name Mujahideen Sans Frontières in a chillingly clear reference to the humanitarian agency Médecins Sans Frontières. In Afghanistan, so-called 'neo-Taliban' forces have attacked Afghans perceived as supporting the new, Western-backed regime, as well as foreign construction and aid workers. In the most notorious incidents, an ICRC delegate was killed in late 2003, and five MSF aid workers were murdered in May 2004.

The 'learning belligerent' and the civilian connection

Through their engagement with aid agencies, ANSAs have progressively gained experience of, and insights into, the dynamics of humanitarian engagement in conflict, and have adapted their approaches and tactics accordingly. For example, in October 1996, at the height of the Congolese rebel offensive in Kivu, the Rwandan military prevented humanitarian agencies from reaching the refugee camps in Goma. The Rwandan leadership maintained that their own experience in 'bush war' taught them that NGOs' logistics and means of communication could be used to the advantage of their opponents; denial of access was predicated on a desire to deny that advantage to the *Interahamwe* and the former Rwandan army.[8]

The 'learning belligerent' makes choices on the basis of rational considerations and pragmatic interests. It is important that NGHAs recognise that this adaptive process is taking place, and apply their own reciprocal, adaptive learning, in particular for operational staff responsible for initiating engagement with ANSAs. For NGHAs, this learning includes acknowledging the difference between negotiation seen as the establishment of 'humanitarian space', and negotiation to achieve 'agency space'. Where the latter may result in the acceptance of one or more (specific) NGHAs by an ANSA to provide humanitarian assistance, the former is much broader, and aims at generating blanket respect for IHL by ANSAs, including the security of aid workers and the protected status of civilian *hors de combat*. The eagerness of some NGHAs to gain access to civilians can easily be exploited by ANSA leaders to play one agency off against another, as the RUF did in Sierra Leone, for instance.[9] This issue will be taken up again in the following chapters.

'Control over civilians' is a central aspect in the process of negotiating access with ANSAs. The nature of the ANSA–civilian relationship is of crucial importance, since it influences the degree to which the ANSA will be willing to

respect access preconditions, and the likelihood that the access agreement will hold. In internal conflicts, control and access to civilians (or the denial of these things to opponents) is decisive for an ANSA's functions and objectives, regardless of whether they are aiming at a winning strategy, or obstructing the victory of their opponents. Civilian populations are caught in conflict, as surrogate political agents, as (part-time) fighters, as providers of resources and logistics, as proxy targets ('human shields'), or, in the worst case, as the object of war itself. NGHA interests in accessing these populations can easily clash with ANSAs, as civilians are regarded as beneficiaries by the former, but as decisive resources by the latter. Hence, agreement on humanitarian access will depend mainly on the significance of the role civilians play in the interests of the ANSA with whom access is negotiated.

Trinitarian and non-trinitarian warfare

To understand this shift in the position of civilians in warfare, the idea of a transformation from 'trinitarian warfare' to 'non-trinitarian warfare' is useful (see Box 2).[10] This clarifies that targeting of civilians in war is not a new phenomenon; however, the manner in which civilians are configured in a belligerent's war strategies has changed the character of this targeting. Rather than being tactical targets, civilians have moved to the forefront of warfare as objective targets in a deliberate strategy of control. ANSA commanders, as new belligerents, have concomitantly adapted their strategies both with regard to civilians and with regard to NGHAs and other humanitarian agents coming to the assistance of civilians.

Box 2

Trinitarian and non-trinitarian warfare

Carl Von Clausewitz, the classic nineteenth-century theorist of conflict, described warfare as comprising a trinity of elements: a government, its army and the civilian population from which that army was drawn. In 'non-trinitarian' warfare, this relationship between government, army and civilian population is distorted. The 'government' may or may not exist, or at least not in the sense in which Clausewitz understood it. In internal conflict, the government is challenged by other armed groups, or its control over territory and population may be incomplete; in some cases, there may be no central authority at all. These 'non-trinitarian' wars tend to be about controlling a population (or denying that control to an opponent), rather than controlling a specified territory (the territory of an opponent state, for example). Here, the relationship between the non-state group, the government and the civilian population is of crucial importance.

Figure 2
Trinitarian warfare
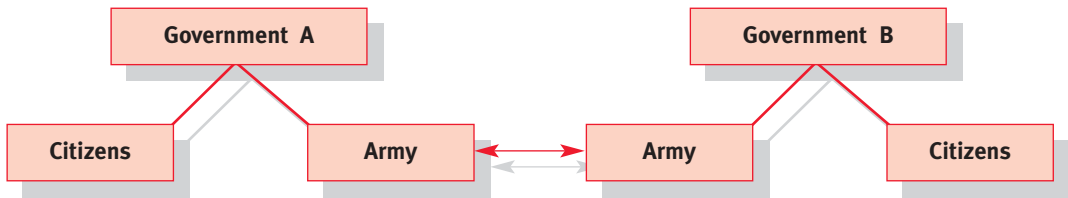
Figure 3
Non-trinitarian warfare
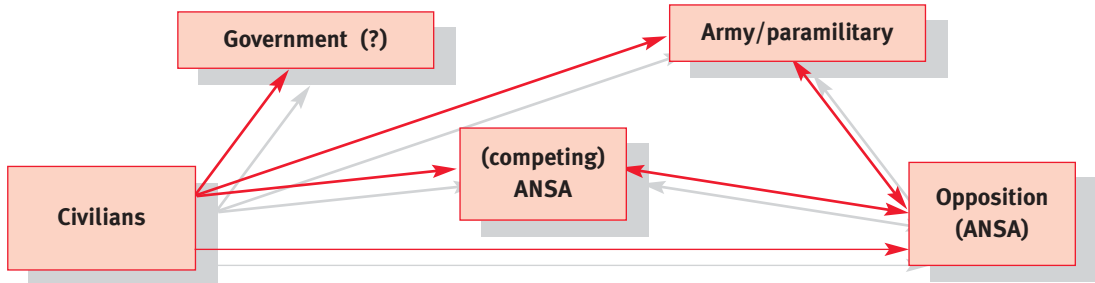
Chapter 3
Characteristics and classifications of ANSAs

The most general definition of an armed non-state actor is as follows: 'Groups that are armed and use force to achieve their objectives and are not under state control'.[11] This definition is useful in evaluating engagement with armed groups, as it avoids politically-charged terms like 'terrorist' and 'freedom fighter', and is not specific with regard to the conflict dynamics (whether armed groups are involved in a battle against a state, for example, or between each other). At the same time, however, such a broad definition does not fully take into account the wide variety of non-state armed groups that exist, the diverse conflicts in which they operate and the wide range of possible relationships between the armed group and the civilian population, all of which are important in assessing the reliability of humanitarian access agreements.

For the purposes of access negotiations, several features of an ANSA have been suggested as being important. These include a basic command structure; independence from state control; and the use of violence for political purposes (as opposed to, for instance, criminal objectives).[12] Ideally, these are the minimum criteria that an ANSA should meet if humanitarian engagement is to result in effective change in the ANSA's attitude towards civilians. A fourth criterion, suggested by this author, is the exercise of effective control over a territory and a population. These criteria should not be interpreted too rigidly; rather, they are guidelines by which to judge the motivation and ability of a particular ANSA to respond to humanitarian engagement, and the reliability of the agreements eventually reached.

Command structure

An armed non-state actor must demonstrate some degree of basic command structure, though this may not necessarily be unified. Command can be centralised, expressing a higher degree of organisation, or decent-ralised, as is often the case with groups operating in guerrilla warfare. The efficiency of the control and command structures is expressed in a higher or lower degree of discipline among the combatants. This is a crucial deter-minant in the ability of the group to fulfil security guarantees to an aid agency, and in its ability to abide by IHL. (This qualification obviously also applies to 'regular' armed forces; undisciplined troops or an unstructured command may make these formations unreliable.)

Related, though distinct, ANSAs may sometimes collaborate and coordinate their actions, thus forming a common front. Once the reasons for such a collaboration disappear and rivalry develops, the front disintegrates, often taking access agreements with it. In Afghanistan during the 1990s, for example, once the common enemy disappeared with the withdrawal of Soviet forces in 1989, the *mujahideen* reverted to internecine fighting. Although the various factions possessed independent command structures, their rivalry increased the insecurity facing NGHAs in Afghanistan, which had formerly depended on various factions for cross-border access, but were now suspected of being in alliance with rival groups.[13] Similarly, once the South Sudan rebel movement effectively split in 1992, the parameters of negotiated access shifted dramatically, as the Sudanese government played one faction off against another. The factions themselves then followed suit, playing humanitarian actors off against each other.

Independence from state control

The level of independence from state control is crucial. Some ANSAs operate as a form of extension or proxy force for governments. Examples of such groups include the Autodefensas Unidades de Colombia (AUC) paramilitaries in Colombia and the *Janjaweed* fighters in Darfur, Sudan, as well as death squads like Arkan's infamous paramilitaries in the Balkans or the *Interahamwe* in Rwanda. Since these groups exist precisely to circumvent state or government accountability and operate outside the law, state involvement is often clear but officially denied. Such groups

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Abandoned Soviet armour outside Mazar e Sharif, Afghanistan, February 2004. Once Soviet forces withdrew in 1989, the *mujahideen* reverted to internecine fighting

frequently do not possess the independent authority to decide their actions, and so engagement for the purpose of protection or access will be ineffective. This does not mean that contacts should never be contemplated with groups operating in collusion with the state, but rather that it may be difficult to identify appropriate levels of effective leadership which will assume responsibility, and are *willing* and *able* to instruct subordinate troops.

The use of violence for political purposes

This is the hardest characteristic to pin down because of the opacity that surrounds the political agendas of many armed non-state actors. Many have no clearly defined political aims; others claim to struggle for 'social justice', but may not put this into practice through ensuring the protection of civilians. ANSAs may not necessarily aim at regime change or the total takeover of the state. Instead, they may operate in a way that denies control to the adversary, for example the government, the official authorities or intervening forces, by generating or perpetuating insecurity and instability. Some observers identify these tactics as attempts to 'redefine the social and political context by violent means'.[14] The fact that a group represents a non-state entity does not in itself make it necessarily illegitimate, nor does it mean that every action taken by state actors (for example the military or the police) is legitimate.

There is also an issue here to do with the scale or nature of the violence deployed. When massacres, systematic violence, mutilation, abduction or rape take place, perpetrated either by state or non-state actors, engagement for the purpose of access becomes questionable. The results of engagement with ANSAs that gravely violate human rights may have detrimental effects on civilians. In the Balkans, for example, the preconditions attached to access played into the hands of those actors engaged in ethnic cleansing. While it can be argued that violence inflicted by extremist groups in Iraq and Afghanistan is politically motivated, the deliberate targeting of humanitarian staff negates any potential positive outcome from engaging with this type of ANSA.

Excluded categories

The characteristics of ANSAs described above exclude three categories of actors: criminal groups, terrorist organisations and private commercial actors. These groups do not fit the category of ANSA as defined here, and as a consequence engaging with these actors will not yield any positive results, or will expose the NGHA to extreme danger.

Criminal groups are excluded not so much due to their unlawfulness but rather because they do not aspire to control territories or populations (with the possible exception of extortion rackets run at local levels), and because they use violence mainly for financial, rather than political, gain. Engaging with such groups may not deliver effective results in terms of protecting civilians, while exposing staff to risks such as abduction and/or extortion.

Likewise, ANSAs which are involved in parallel criminal activities (for example cross-border drug and arms trading, human trafficking, abduction or extortion) raise the stakes of engagement for access purposes and for the protection of civilians, as the NPFL in Liberia, the RUF in Sierra Leone or UNITA in Angola have all demonstrated.

The terms 'terror' or 'terrorist' are much more ambiguous. Terror is generally seen as a tactic of warfare aimed at undermining morale. Government armies as well as ANSAs may use this tactic; the US military did so with its 'Shock and Awe' campaign in Iraq. The terms 'terrorist' or 'terror group' mainly serve the political purpose of de-legitimising specific groups. This is, of course, not to deny that some ANSAs deploy terror tactics. However, groups which apply terror exclusively or excessively do not generally appear to be responsive to humanitarian arguments. One exception to this may be the Liberation Tigers of Tamil Eelam (LTTE) in Sri Lanka, a group which has applied terror tactics extensively in large-scale suicide bombings, but which has also been relatively reliable in its dealings with humanitarian agencies.

The last exclusion concerns private companies, usually operating on behalf of contracting states. Private military and security companies are increasingly providing commercial security services and military and tactical support in conflict zones. Firms such as Executive Outcomes and Sandline have been active in Sierra Leone and Angola, and in Iraq and Afghanistan private companies have been contracted by the occupying powers to secure roads and civil and military facilities, and for de-mining. Some of these activities will by default also facilitate access for humanitarian agencies.[15] There is an ongoing debate as to when private actors operating on a commercial basis qualify as mercenaries. Some criteria to define this status have been developed, though the distinction is not clear-cut.[16] Nonetheless, this mix of civil and military affairs constitutes a growing concern for humanitarian agencies. *If* humanitarian access is contingent on the activities of these companies, it would appear more effective to address the contracting state or the contracting military forces over issues of humanitarian access, since accountability remains with the contracting parties.

Effective control over population and territory

In addition to the three characteristics outlined above, ANSAs should exercise effective control over territory and population. The question of control is decisive in determining the ANSA's *ability* and *willingness* to stick to access agreements; it is highly dependent on the extent to which the ANSA exercises control over civilians, the manner in which it does so and the degree to which it depends on civilian support. This is not, however, as clear-cut as it sounds. 'Effective control over territory' is not synonymous with clearly-defined frontlines or borders; rather, the ANSA dominates a given territory by virtue of its operations and tactics. Such dominance is not necessarily achieved by

permanent occupation, as it can be exerted through intermittent, hidden or remote presence, such as through combatants or agents embedded within the civilian population. By the same token, 'effective control over population' should not be interpreted as, or confused with, 'good treatment', nor does it necessarily imply active support or the identification of civilians with the ANSA's aims. Control can be obtained through abuse, terror and intimidation, through repression, propaganda or intermittent hostile actions in specific areas, designed to deny control to ANSA's opponents. There is clearly little use in engaging with an ANSA for the purposes of humanitarian access if it does not exercise any control over territory or population. But more important than merely establishing the fact of control is understanding the *quality* and the *manner* by which control is achieved: through actions sympathetic to, and supported by, civilians, or through abuse.

The support of a population for a particular armed group is far from given, and notions such as 'popular support' for armed struggle are not as straightforward as claims for it by various ANSAs may suggest. Civilian support or opposition can be invisible, latent or inaccurately expressed. Equally, lack of civilian support, criticism or opposition may remain invisible, unexpressed or unnoticed. In Colombia and Sri Lanka, the public expression of opinions about armed non-state groups is stifled by the fear of being identified as a supporter or opponent of the insurgents.[17] This may result in political stigmatisation, the loss of economic assets, legal prosecution or, in extreme cases, physical abuse, expulsion or even execution. Considerations like these are particularly important when choosing civilian interlocutors to participate in access negotiations with armed groups (this idea is developed later in this paper).

Classifying ANSAs in economic terms

The analysis of civilians and armed groups in war economies has produced a general classification of civil–militia relations expressed in economic terms.[18] In a war economy, civilians can be of utilitarian importance to an ANSA's income, and civilians can profit from cooperating with the ANSA.[19] The benefits for civilians can be economic, in the form of income or employment, either by joining the ranks of an armed group as combatants, or by supplying logistic support. Civilians can also benefit from the protection of an ANSA in exchange for their collaboration.

The classification outlined here defines ANSA–civilian relations according to the following categories:

- *Symbiotic economic relations:* militia aim at restructuring some social order in exchange for support and revenues, resembling and emulating the function of the state.
- *Parasitic economic relations:* militia offer protection to civilians in exchange for collaboration, resembling mafia protection rackets in their extortive character.
- *Independent sources of revenue:* militia are not dependent on the population for income (civilians may participate in cross-border trade or the extraction of precious mineral resources).
- *Predatory economic relations:* militia are careless of the fate of the population, rule through fear and intimidation and prey on the population to increase their power.

These typologies suggest different opportunities for humanitarian negotiation: in other words, the possibility of influencing an ANSA's treatment of civilians. Clearly, influencing an ANSA's behaviour towards civilians will be most difficult in a context of predatory economic relations, where the group has no apparent interest in improving the fate of civilians. It will be easiest where symbiotic economic relations exist, when such an interest is assumed. However, the question remains as to what drives an ANSA to engage with humanitarian actors to negotiate access. In other words, what are the advantages or rewards for an ANSA in engaging with a humanitarian agency? Conversely, what are the disadvantages or penalties of non-engagement? To answer this question requires investigation of the potential of aid or aid agencies to sustain, enhance or impair the capabilities of the ANSA.

The need for fighters

The need for fighters should be regarded as a key issue in an ANSA's survival. Combat capacity may serve the interests of civilians in their search for protection and security, as well as in terms of income opportunities. A prerequisite to civilian support for an ANSA is that the latter truly represents civilians' concerns, and acts accordingly. This is evidently more likely when ANSAs are dependent on support from civilians (a symbiotic relationship, according to the typology above), as opposed to ANSAs that act independently of civilian support. Access to food and income are strong incentives to recruitment. Parasitic or opportunistic groups can utilise these factors to entice and attract fighters to their ranks. Hence, in conditions where incomes are low, and where there is political instability and a lack of economic opportunities, it is relatively easy for ANSAs to attract unemployed men. Consequently, being a fighter has increasingly become a vocation in itself. Fighters easily switch from one 'employer' to the other, as demonstrated by defeated *Interahamwe* forces during the late 1990s, who dispersed and joined various ANSAs as far afield as Angola and Congo-Brazzaville. In West Africa, fighters of various factions continuously cross over to competing groups.[20] Loyalty is no longer expressed in terms of tribal or ethnic lineage, as patronage-financing takes over as a recruitment mechanism.[21] In such conditions, personal needs and the prevailing market forces of recruitment become more important than other identity definitions, such as race, ethnicity, political affiliation or geographic origin. The decisive role aid can play in raising fighters among refugee communities has been addressed extensively,[22] but should not be overlooked in the context of internal conflicts, where employment conditions offered by an ANSA to prospective combatants may include the benefits accruing from humanitarian services, such as medical aid, food and shelter.

External relations: recognition and legitimacy

The presence of humanitarian agencies can itself be important to an ANSA in terms of recognition. Not all ANSAs may be sensitive to this – total spoiler forces in particular are unlikely to be – but others may be responsive to issues of legitimacy and recognition. Alternatively, an ANSA may seek to delegitimise an adversary, either by demonstrating its misbehaviour (in terms of abuse) or by showing the 'rightness' of its own policies and attitudes towards NGHAs. Permitting or preventing humanitarian action can be used for propaganda purposes, as the RUF has shown in Sierra Leone by allowing certain agencies to operate, while rejecting the UN. At a time when human rights violations are increasingly being addressed via international tribunals, sanctions and international indictments, ANSA leaders are more sensitive than in the past to exposure to criminal charges, and show more concern about this risk. To mitigate it, ANSA leaders may try to 'play the humanitarian card' by allowing humanitarian aid in, thereby showing their respect for international conventions and discrediting charges of misbehaviour. The degree to which this sensitivity will play a role obviously hinges on the intentions of ANSA leaders, their personality, the tactical position in the conflict and the amount of (credible) pressure exerted upon them. Obviously, this sensitivity to 'humanitarian concerns' can be symbolic only, and lacking in true commitment: granting access to humanitarian aid may thus serve a false function. These factors need to be taken into account, especially when dealing with particularly abusive ANSAs, which are guilty or suspected of human rights violations and crimes against humanity.

The civilian position: in- and out-group membership

In order to assess the various difficulties and (unintended) harm to civilians that may result from an NGHA negotiating access with an ANSA, the concept of 'in-group' and 'out-group' membership can be a useful tool.[23] 'In-group' members are those civilians that form the ANSA's constituency; 'out-groups' are those civilians outside that constituency. In-groups are treated better than out-groups, as they enjoy the protective capacities of ANSAs. Out-groups are at best ignored, and at worst deliberately targeted, as for example in ethnic wars. In-/out-group membership can be decided by ideology, politics, ethnicity, nationality, tribal or clan delineation, by shared economic objectives or by common economic grievances.[24] The underlying assumption in this approach is that the larger the in-group constituency, the more responsive the ANSA will be to attempts to persuade it to improve the lot of civilians. Consequently, civilians may possess more leverage over the ANSA to negotiate better treatment and access opportunities for NGHAs. The larger the in-group constituency, the less likely it is that humanitarian access will be challenged: by organising assistance for its own constituency, an armed group that is dependent on civilian support is likely to find that support increased. However, it is also likely that the members of the out-group will view this aid as partisan. More importantly, in many situations it is precisely the out-group that is likely to be most in need of aid and protection.

Utilising in-/out-group analysis to estimate the challenge to humanitarian access can also be a dangerous exercise, as it tends to overlook the political dynamics of conflict. It is precisely when access is least challenged – when an ANSA has a broad constituency – that aid is most likely to be considered as partial (by the ANSA's opponents), or that it will fuel the conflict by enhancing the ANSA's capabilities. Adversaries may perceive assistance as partisan, and may launch attacks on civilians, or even on the agencies aiding them. To guard against a partial response, even-handedness is commonly advised, so that assistance is provided to both sides in the conflict proportional to prevailing needs. However, in conflicts that generate asymmetric needs – that is, where one side objectively has more humanitarian needs than the other or, worse, where only one side is in need – such an approach draws aid into the politics of conflict by default. The potential risks involved in such an even-handed approach were demonstrated in Bosnia, where Serb militia insisted on the equal distribution of aid on a fifty-fifty basis, whereas an independent needs assessment would have favoured non-Serb Bosnians.[25] Accepting these demands enhanced support for the Serb leadership among the in-group constituency, and the Serbs sustained their capacity to cleanse the out-group. In Ituri district in the DRC, the Hema leadership stated that it would respect humanitarian aid so long as its adversaries, the Lendu, were not aided, whereas the humanitarian needs of the Lendu objectively were larger. This negative attitude among the Hema leadership led to the assassination of five ICRC staff in 2001. MSF had suspended its activities in 2000 after a series of incidents and threats.[26]

These examples demonstrate that the treatment of the 'out-group' is particularly important, as this may be precisely the group that is targeted by the ANSA, and hence is most in need of aid and protection. Out-group civilians can represent the 'adversary', but this is not necessarily synonymous with 'enemy': civilians can be targeted by ANSAs just for being suspected of providing support to opponents. This is the case in Colombia, Liberia, Sierra Leone, Sri Lanka and the DRC, where massacres frequently occur in retaliation for alleged support to opponents, or as a deterrent to such support. The treatment of the out-group therefore does not follow the same rationale as that of in-groups. Whereas the latter may in the worst case simply be neglected by an ANSA, the former will be treated much more harshly. This is especially the case when ANSAs are not just excluding out-group civilians, but are particularly negative and hostile. At the extreme, this hostility takes the form of ethnic cleansing and genocide. In-/out-group membership analysis is thus a useful tool in determining an ANSA's dependence on in-groups, but it can be misleading as a way of establishing the terms of access to out-groups. The analysis of in-/out-group dynamics must therefore be carefully evaluated in the light of the prevailing political context and conflict dynamics, in order to avoid unintended negative and controversial consequences.

Classifying ANSAs in political terms

The issues explored above introduce a political dynamic into the classification of ANSAs. A classification in political terms expresses both the attitude of the ANSA towards civilians (those targeted by NGHAs), and the quality of the ANSA's dependence on civilians. Such a classification allows us to identify the potential compatibility or incompatibility between the interests of the NGHA and the interests of the ANSA. A classification in political terms also expresses the various combinations of civilian roles in conflict as presented in Figure 1 (page 3). This classification should not be seen necessarily as an alternative to the economic typology described above – rather, it attempts to include the various categories as set out there. The categories are defined as follows, with the corresponding categorisation of ANSA–civilian economic relations given in brackets:

- *Protective (symbiotic):* the ANSA plays an active role in the protection of civilians and the promotion of civil organisation. The ANSA and civilians share common values and interests. Civilians are not defined by in- and out-group divisions. Civilians support ANSA aims and fight on a volunteer basis. The ANSA actively seeks recognition and is sensitive about human rights concerns. *Example: liberation movements*.
- *Competitive (predatory or parasitic):* the ANSA acts in

competition with state or non-state actors, rallying the support of civilians, or denying that support to opponents. Civilians may be implicated with the ANSA through labour relations and (illicit) trade, or contracted as fighters, but they do not necessarily share the ANSA's interests. *Example: factions within a war economy*.

- *Antagonistic (independent or predatory):* the ANSA is driven by a self-centred identity based on ethnicity or religion. It is supported by, and raises fighters solely from, the in-group, and acts on that group's behalf. It is highly antagonistic towards the out-group, and insensitive to its human rights concerns. It seeks recognition for its function of defending the in-group rights. *Examples: groups engaged in genocidal war, ethnic cleansing*.
- *Sectarian (independent):* the ANSA is driven by extremist ideology or nationalism. Civilians and fighters are mobilised through the promotion of extreme views towards out-groups or opponents (for example, 'the West'). The ANSA does not seek legitimacy or recognition, but emphasises its credibility through hostile actions, and is insensitive to human rights concerns. *Example: Islamic extremist groups*.

Table 1 summarises this four-fold classification. It describes the type of relationship between the ANSA and civilians that would correspond to each category, and the nature of the in-out group dynamics.

Table 1: ANSA classification

	Dependency on civilians	In-out group dynamics
Protective	The ANSA is highly dependent on civilian support, and is likely to protect civilians and be open to engagement with NGHAs.	Strong in-group dynamics. The broader this constituency, the more responsive the ASNA will be to humanitarian engagement.
Competitive	The ANSA vies for control over, or support of, civilians. Depending on its tactical and political position, the ANSA may be responsive to humanitarian engagement, but can equally become negative if competing ANSAs are deemed to profit from aid, or where civilians are not supportive of an ANSA, or of no use to it economically or as fighters.	The ANSA is sensitive to in- and out-group dynamics, responds positively to engagement for access purposes, but likely to abuse this for political or war- economy goals.
Antagonistic	ANSA depends on support of the in-group against the out-group, and in-group support will be very strong. Humanitarian needs are likely to be very high in the out-groups, and assistance to these out-groups is likely to be strongly opposed by the ANSA.	Extremely strong in-out group dynamics. The out-group is the major target in conflict, often defined in political, ethnic or religious terms. A positive response to engagement is vulnerable to abuse for purposes of propaganda or legitimacy.
Sectarian	Independent from broad popular support. Recruits from extreme political groups.	Extremely limited in-group dynamics, if at all. Out-group can be defined as 'the other' in very broad terms. Highly insensitive, engagement unlikely to have an effect.

Chapter 4
Engaging ANSAs: effectiveness and reliability

Key to the question of humanitarian engagement with ANSAs is the *reliability* of the agreements reached. Will these agreements effectively meet the two basic operational preconditions of humanitarian action: security for aid workers, and respect for the principles of IHL? The reliability of agreements depends on the willingness of the ANSA to comply with the terms, and its capability to do so. This can be formulated as follows:

- *Willingness:* why is the group receptive to humanitarian demands?
- *Capability:* how will/can the group adhere to the agreement?

The model followed in this paper is based on a set of implicit assumptions. The first is that the responsiveness of a non-state armed group to demands for humanitarian access is directly related to the degree to which the ANSA is dependent on civilians. The greater the degree of dependence, the more likely it is that the ANSA will respect humanitarian access agreements. A second assumption is that an ANSA's behaviour towards civilians, and its responsiveness to humanitarian demands, is strongly influenced by its dependence on external relations, and the degree to which the group seeks legitimacy, recognition or credibility. Thus, the more an ANSA seeks recognition, legitimacy or credibility, the more responsive it is likely to be to humanitarian access demands. But it is also important to understand the distinctive characteristics of the non-state group in question. In particular, how does its command structure and objectives influence its capability and willingness to comply with access conditions?

The evaluation of the humanitarian response in the Great Lakes used the following model (Table 2) to highlight issues of willingness and capability as they related to questions of access. The recommended approach in this context was called 'strategic coordination', involving the UN, the local military and political actors, and rebel authorities. It aimed to secure the acceptance of warring parties to a framework of consent for IHL and humanitarian principles.[27]

Table 2: Willingness and capability

Willing and able (Pure consent)	**Unwilling but able** (Pressured consent)
Willing but unable (Capacity-building required)	**Unwilling and unable** (Enforced consent)

A similar matrix (see Table 3) can be produced in line with the analysis of ANSA–civil relations in Chapter 3. This correlates an ANSA's *structure* with its *objectives*, to assess how challenging humanitarian engagement with that group might be.[28] Narrow objectives signify a high degree of self-interest (for example, gains from the war economy); broad objectives indicate that the group seeks benefits for the population at large (for example, land reforms), or at least for a wider group than just ANSA combatants. Clearly, an ANSA that fits in the Broad Objectives box in this table would have greater interest in complying with humanitarian demands for access, since doing so benefits the constituency that the ANSA claims to represent. The categorisation 'clear' or 'loose' in reference to the ANSA's structure is an elaboration of the minimal qualifying characteristic discussed in Chapter 3: the need for a basic command structure. Obviously, the clearer the command structures the better organised the command, generating a higher degree of internal discipline, and making it more likely that combatants will abide by the leadership's instructions. Hence, adherence to access stipulations will be more reliable. In a disorganised, chaotic or loosely organised group, there is less likelihood that members will comply, and consequently access agreements with such groups will be unreliable.

Table 3: Objectives and structure

	Loose structure	Clear structure
Narrow objectives	**Most challenging**	Moderately challenging
Broad objectives	Moderately challenging	**Least Challenging**

This model complements the willingness/capability framework of consent, indicating the most challenging circumstances for access. Unsurprisingly, these occur when an ANSA is both incapable and unwilling to comply with the preconditions for access. However, this model allows us to show how the ANSA's objectives and organisational structure determine that capability and willingness. The former (structure and objectives), in other words, can be used as indicators for the latter (capability and willingness). The task now is to identify the apparent or stated objectives of the ANSA, and ascertain its organisational structure.

Objectives and tactical position

As the foregoing analysis has shown, ANSAs have widely divergent objectives. A sectarian ANSA, with no clear

motive to win a war and thus no clear objective vis-à-vis civilians, will mostly be insensitive to humanitarian arguments, and will act quite predictably: engagement for access purposes is likely to elicit a negative response. A protective ANSA, on the other hand, is clearer in its political goals, and may be likely to be more sensitive to arguments in favour of the well-being of the civilians on which it depends. In between, one finds the difficult cases: opportunistic and competitive ANSAs, engaged in war for their own benefit or in competition with each other, while at the same time making virtuous claims for the social or political objectives of their struggle (for example, Colombian guerrilla groups). An ANSA that is strongly antagonistic towards a particular group (the out-group) will obviously align its objectives with the interests of the in-group on whose behalf it claims to operate, and on which it depends.

The tactical position of the ANSA has a major influence on the stance it is likely to take towards humanitarian engagement. ANSAs which are highly dependent on civilian support but in a weak tactical position may be interested in a humanitarian presence, but unable to provide security guarantees because their military capabilities are overstretched, or because their communications and command lines are malfunctioning. In contrast, an antagonistic ANSA which finds itself in a weak tactical position may be inclined to provide assurances for access in an attempt to establish a stronger position for the in-group civilians that form its constituency. In summary, responding positively to engagement in itself may not mean that an ANSA is actually in a position to provide security guarantees, either because it is unwilling to do so, or because it is unable to do so.

Organisational structure and internal discipline

Obviously, the ability of a non-state armed group to adhere to access agreements is highly dependent on its internal organisation. As described above, command structures can vary from a dispersed (loose) structure, where the group operates in independent units, to a centralised and hierarchical (tight) structure. The degree of discipline is not necessarily directly related to these two extremes, though it is safe to assume that, once a centralised ANSA demonstrates a high degree of discipline, the combatants' behaviour will be consistent. The degree of discipline in a loosely organised group is primarily dependent on the quality of the group's commanders, and on the instructions (if any) given from the centre. Payment of combatants may also play a crucial role in internal discipline. More loosely organised groups are more likely to pay combatants in loot or booty, thereby increasing the risk of misconduct. In both tight and loosely organised ANSAs, internal discipline may be disrupted if disputes break out between commanders, perhaps over political direction or strategy, though this risk is higher in loosely-organised ANSAs, and in coalitions of independent ANSAs. The position the ANSA takes on a

ceasefire or peace negotiations may also trigger serious clashes and disputes, as has repeatedly happened in Somalia and, more recently, in Darfur. The case of Afghanistan has already been noted. Once the anti-Soviet common front melted away, rivalries and inter-factional fighting broke out, and the security environment for aid workers deteriorated.

Analysing the risks and benefits of humanitarian engagement

Once one has investigated the particular manner in which ANSAs are configured – both internally, in terms of organisational structure and objectives, and externally, in terms of the specific ways in which civilians relate to their interests (in-/out-group analysis) – it is possible to perform a risk–benefit analysis of the intended engagement with the ANSA for the purpose of humanitarian access. The risks and benefits are diverse, and depend on the tactical position of the ANSA, the nature of the conflict and the specific conflict dynamics (is it internal conflict, as in Colombia, or a conflict stemming from an external intervention, as for example in Iraq?). Hence, a specific risk–benefit of humanitarian engagement in particular cases cannot be defined here, since each conflict arena is unique. Rather, some general risks and benefits can be identified, to be applied in each and every situation, and reassessed as time passes and humanitarian access is achieved. In other words, it is not sufficient to perform such analysis once: it must be done prior to engaging with the ANSA, but it is also extremely important to reassess the analysis, in particular when there are fundamental changes, such as the introduction of a new ANSA, a split in the ANSA, the arrival of peacekeeping or enforcement forces, or the achievement of a ceasefire or peace agreement.

Table 4 describes the potential risks NGHAs and civilians face in dealing with ANSAs in each of the four categories set out in Chapter 3.

It is also possible to explore the positive and negative aspects of an access agreement for each of the parties concerned – the NGHA, civilians and the ANSA – in a more general way. These are set out in Table 5; they are not specified for each category of ANSA as defined above.[29]

As stated above, it is beyond the scope of this paper to comprehensively explore all the combinations of risks and benefits possible in the wide variety of conflict situations and different ANSA typologies. The precise outcome of such a risk–benefit analysis depends on many factors, such as the number of ANSAs involved, their attitudes towards each other, their relations with civilians, the eventual presence of (international) intervention forces and the position of the incumbent government and its military forces. Some examples illustrate the wide variety of possibilities.

- In Liberia, humanitarian access in rebel-held territories in the 1990s was opposed by ECOMOG, the West

Table 4: Risk–benefit analysis according to the classification of ANSAs

	Threats generated by type of ANSA–civil relations	Risks generated by humanitarian engagement
Protective	Accusations against NGHA by incumbent regimes	Loss of neutrality and/or impartiality of NGHA Undue legitimacy of ANSA
Competitive	Accusations against NGHA by competing ANSA	Retaliation on civilians Threats against NGHA Undue recognition of ANSA
Antagonistic	The (political) abuse of aid Abuse of aid to war efforts	Loss of neutrality /impartiality Unintended consequences (e.g. aiding ethnic cleansing)
Sectarian	Accusations against NGHA by international bodies or governments	Insecurity of aid workers and attacks on NGHA Attacks on civilians

Table 5: General risks and benefits from humanitarian engagement

	Positive effects (benefits)	Negative effects (risks)
To civilians	• Access to humanitarian aid • Increased protection	• Perceived as sympathetic to ANSA • Retaliatory attacks by rivals of ANSA (other ANSAs)
To NHGA	• Fulfil mandate • Meet needs • Staff security	• External accusations • Internal NGHA divisions • Attacks by competing ANSAs
To ANSA	• Access to dialogue • Influence behaviour	• Acquire undue legitimacy • Increased conflict

African peacekeeping force that deployed to the country in 1990. In an extreme response, ECOMOG aircraft bombed a convoy of humanitarian vehicles en route to rebel areas.

• In Colombia, NGHAs trying to reach civilians in contested areas faced accusations that they had been infiltrated by informants. These accusations came variously from guerrilla groups, paramilitaries and government forces.

• The authorities in Sudan have made it very difficult for NGHAs to gain access to areas controlled by rebels in Darfur. At the same time, NGHAs operating in rebel-held areas with northern Sudanese staff have faced mistrust from rebels.

The variety of possible responses to attempts at securing humanitarian access demonstrates the need to properly analyse the relationship between all the actors, including relations between armed groups and civilians, to identify which actors may feel threatened by access or may oppose it, and which have an interest in encouraging access and so may accept it, and why.

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Sudanese government attack helicopters at Nyala airport, Darfur, December 2004. The Sudanese authorities have made it very difficult for humanitarian agencies to gain access to areas of Darfur controlled by rebels

Mitigating contextual factors: security strategies and promoting IHL

As stated at the start of this paper, the objective of humanitarian engagement with ANSAs is to fulfil two fundamental preconditions – the security of aid workers and respect for IHL. Two approaches have been applied by various humanitarian actors to mitigate the consequences of ANSAs' disrespect for IHL and prevailing insecurity. These are the adoption of an 'acceptance strategy' for security, and the promotion of IHL.

Acceptance strategies

The 'acceptance strategy' aims to reduce agencies' vulnerability to insecurity by enhancing acceptance for the humanitarian presence in the surrounding environment.[30] In this way, the civilian population, which is sympathetic to the humanitarian presence, may act as an early-warning network, thereby increasing the security parameters in hostile environments. Inherent in this approach is the assumption that a viable positive connection exists between the civilian population and the ANSA. As discussed above, such a connection is not always evident, as the ANSA may also be in a negative and hostile position with regard to the civilians concerned. An acceptance strategy will thus only work in specific types of conflict; it is most suited to contexts where the ANSA is protective, but in these environments such a strategy is probably redundant. Conversely, it will definitely not work with sectarian ANSAs. The real challenge is in cases of antagonistic or competitive ANSAs. In these cases, the specific conflict dynamic and the position of civilians vis-à-vis the armed group must be established first, in order to assess the effectiveness of the acceptance strategy. If an ANSA has a particularly negative attitude towards the civilians the humanitarian agency is aiding, the acceptance strategy may at best act as an early-warning mechanism, but it will not necessarily provide a security guarantee to aid workers.

Promoting IHL

Promoting IHL principles among ANSAs to enhance humanitarian space is a traditional activity of the ICRC, and several NGHAs have followed its example. However, this strategy has produced only limited results. ANSAs often act in breach of IHL and abuse civilians as a deliberate strategy or as a survival mechanism. It appears that the willingness of a particular group to accept IHL rules depends on whether doing so coincides with its tactics and interests. The experiences with promoting IHL described in Box 3 demonstrate that ANSA commanders can learn to use IHL terminology and language, which is perhaps at least a good starting-point. However, in the application of IHL rules, other tactical and pragmatic interests or sheer opportunism mark their behaviour. Since the principles of IHL are non-negotiable, the view that promoting IHL is more comparable to 'persuasion', rather than negotiation, seems accurate (see the section on choice of interlocutor in the next chapter).[31]

Box 3

Persuasion: promoting IHL to change combatants' behaviour

DRC: ACF's sensitisation campaign in South Kivu

During 2000–2001, various so-called Mai-Mai militia and other competing ANSAs were cause for increasing insecurity in the province of South Kivu, DRC. ACF launched a broad campaign to disseminate IHL principles and values to these groups, in order to make them more compliant with humanitarian access needs, and more respectful of the status of civilians. According to ACF, the aim was 'to help all armed groups understand the principles and life-saving importance of humanitarian aid'.[32] Although the campaign managed to reach many different commanders and groups, and as such can be seen as a success, its results were limited. It appears that the commanders' knowledge of IHL rules increased, but their behaviour did not alter significantly. Although ACF temporarily enjoyed greater secure access, one of its staff members was later briefly abducted, casting doubt on the lasting effects of such dissemination campaigns.

Colombia: ICRC's promotion of IHL amongst paramilitaries

The ICRC has worked to disseminate IHL principles to paramilitary forces in Colombia. A study of this work by the Geneva-based Center for Humanitarian Dialogue (CHD) found that it had increased knowledge of IHL among senior paramilitary commanders. It did not, however, change paramilitaries' actual behaviour towards civilians.[33] The best that could be said was that, without dissemination, the situation would have been much worse (as one paramilitary member was quoted as saying). Similarly, Human Rights Watch (HRW) found that knowledge of IHL among guerrilla leaders was relatively good, but in practical terms IHL principles meant little.

These experiences highlight the limited effect of dissemination beyond the integration of IHL language into the ANSA lexicon. This can be seen as another dimension of the 'learning belligerent' phenomenon discussed in Chapter 2. IHL promotion campaigns may lead ANSAs to tolerate an agency's presence for a time, but changes in tactical positions or the appearance of new actors will progressively undermine these effects. The immediate impact of such campaigns is therefore to temporarily increase 'agency space', as opposed to 'humanitarian space', or a general respect for IHL. Paradoxically, the promotion of IHL is most needed in situations where it is least likely to be effective. This does not mean that the dissemination of IHL is pointless, as the increased use of IHL language can have a long-term effect. But it does suggest that, in the most demanding situations, the immediate impact on access conditions and security remains limited.

The degree to which ANSA commanders may be persuaded to accept IHL is highly dependent on the degree to which an ANSA relies on the civilians NGHAs are trying to reach. The analysis of the different types of ANSA–civil relations described in Chapter 3 is indicative of a particular group's propensity to be persuaded: a protective ANSA will clearly be more responsive to persuasion than antagonistic and sectarian groups.

The question of how agencies should react in operational terms in the face of an ANSA's disrespect for the principles of IHL and human rights is a vexed one. In Sierra Leone, for example, most agencies refused to work in territories controlled by the RUF. This was in line with a UN-led policy of isolation. The exceptions were MSF and ACF, which continued to operate in RUF areas, and were consequently criticised for doing so by other agencies and the UN. The UN Secretary-General referred to this as 'breaking a common approach towards a misbehaving warring party'.[34] In their decision to engage with the RUF, MSF and ACF were placing the imperative to help at least some civilians above the highly doubtful contention that the

RUF's behaviour could somehow be 'corrected' through isolation.

This episode also shows that the acquisition of 'agency space', where certain agencies were allowed to operate thanks to limited concessions by the ANSA, is not the same as the acquisition of 'humanitarian space', where the ANSA respects the general principles of IHL. The promotion of IHL may succeed in achieving the former, but it does not necessarily promote the latter. Some agencies may be temporarily granted access and given assurances that access conditions will be respected, while it may well be the case that the same ANSA continues to breach IHL, commit human rights violations and/or deny access to other humanitarian actors. Notwithstanding some successes, 'correcting' the behaviour of an abusive ANSA is well beyond the scope, and role, of NGHAs. The protection of civilians exposed to such abuses should be sought in credible (international) responses, forcing warring parties, governments and non-state armed groups to respect the status and rights of civilians in war.

Chapter 5
Modalities, levels and interlocutors

As stated at the outset of this paper, various immediate questions emerge when considering the modes of humanitarian engagement. Should one approach ANSAs directly or indirectly? Should the ANSA be engaged at the highest level possible or the lowest, in the field? Should engagement be done openly, or confidentially?

Direct or indirect engagement?

The question of whether engagement should take place in a direct or indirect manner hinges mainly on how approachable the ANSA in question is. Contacts cannot always be made directly, as the ANSA may operate in a subversive fashion, or its leadership may be in a remote area. Indirect (or for that matter confidential) contact may also be preferred in cases where the incumbent authorities or competing ANSAs are sensitive to such engagement. There may also be legal objections to direct contact from judicial or political institutions of the state. In these cases, indirect contact may be facilitated through parallel channels by the ICRC or diplomatic envoys, but this is not always a viable option.

Direct engagement takes place either with top or field-level commanders; in the latter case, these commanders will operate more-or-less as mediators between the NGHA and the higher-level leadership. Figure 4 shows a simple model of the direct and indirect contacts between an NGHA, the civilian community and an ANSA. The most crucial relationship is that between the potential civilian interlocutor and the ANSA command.

Questions that need to be asked here include: can the civilian interlocutor 'negotiate' safely with ANSA commanders, or is there the risk that they will face persecution by the authorities or rival ANSA, or even retaliation from fellow civilians in the community? What seems to enable a civilian interlocutor to influence ANSA commanders? Does this potential influence stem from the civilian's privileged position, granted by ANSA commanders? It is also important to understand the command structure and degree of internal discipline prevailing in the ANSA, and the degree of independence of the civilian community from the ANSA and other belligerent parties, be they competing ANSAs or the state. Guiding questions in this could be: are civilian interests involved and integrated into the ANSA's goals and objectives? Are civilians of marginal interest to the ANSA or, at the extreme, are civilians in fact the object of abuse or pressure at the ANSA's hands?

External relations can play a decisive role in any approach to the ANSA leadership. These external relations may be with legitimate parties, such as diplomatic envoys, or with parties regarded by external observers as illegitimate, for example ANSA representatives living abroad. External relations may exert pressure or influence the armed actor in complying with humanitarian demands, or they may be used as a channel to convey messages. The choice of external mediator obviously depends on their availability and willingness to help. It also, of course, depends on the initial decision to use external mediation. This may not be straightforward: using external mediators extends lines of communication and can compromise confidentiality. Religious institutions and leaders are a commonly used mediating channel. Religious leaders are often in a special position within the community, well-known by civilians and often with access to ANSA leaders.

High or low?

Some analysts suggest that contact should at all times be established at the highest possible level of command.[35] This paper does not fully share this view. Notwithstanding the fact that an approach at the highest level may eventually be necessary, long lines of command or a decentralised or fragmented structure may prevent such an approach, or impair possible access opportunities. This is the case with leftist guerrilla and paramilitary groups in Colombia. Agreement (or for that matter disagreement) with one group (FARC, for instance) in a given geographic area does not apply to another area held by the same group. The umbrella structure of paramilitary groups is such that each sub-organisation has its own command, again producing contradictory results. In highly volatile environments, such as in West Africa, where armed groups exist in a state of what amounts to internal anarchy, local commanders make their own decisions and ignore instructions given by high-level commanders. In cases such as these, contacts need to be established at high, middle and low levels simultaneously.

Open or confidential?

In general, transparent engagement is always to be preferred over secret or confidential contact. Whereas the specific identity of the individuals contacted may at times need to remain confidential, in most cases it is advisable to advertise the fact that engagement with an ANSA is taking place, in order to promote recognition and respect for the agreed conditions. There are, however, some caveats to this general principle. Confidentiality in initial contacts should not be confused with secrecy over an agreement as such. In some cases giving a high profile to agreements, as MSF did in Sierra Leone by announcing it over the radio, added to public confidence and trust in the organisation's intentions in its contacts with the RUF. In contrast, in Colombia or Chechnya, contacts with the various ANSAs can be highly suspect in official eyes, and should be handled with extreme care. It should be remembered that

Figure 4
Choice of interlocutor: direct and indirect contacts
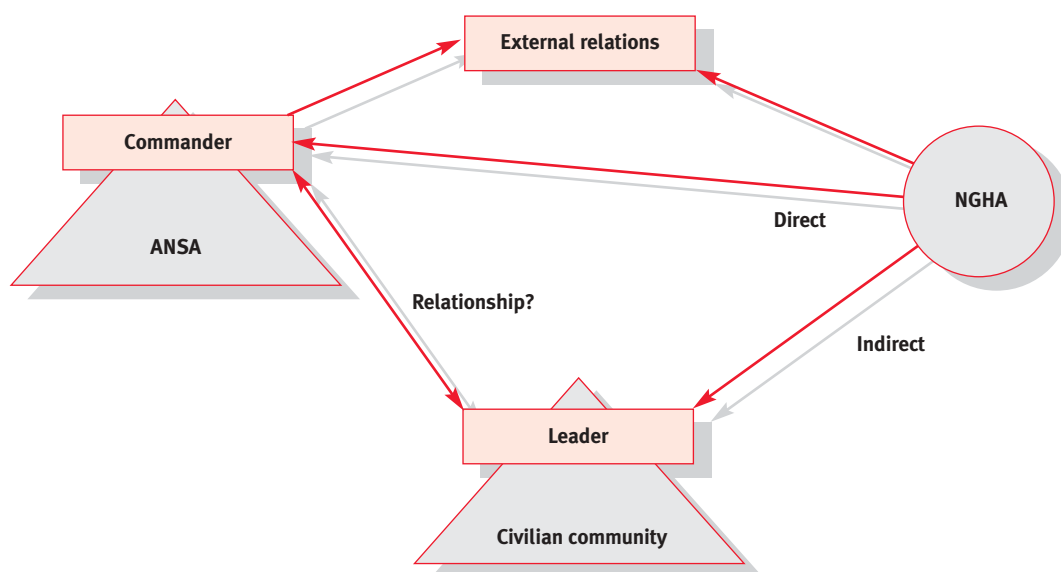
the existence of an agreement will eventually become known by virtue of the visible fact of access itself, and as indicated above, a deliberately transparent strategy will help to keep ANSAs to their commitments.

The choice of interlocutor

Whether contacts are performed directly or indirectly, it is ANSA commanders that ultimately have to accept, endorse and guarantee adherence to agreed conditions. In comparing humanitarian negotiation and marketing, Slim distinguishes between the various 'products' that NGHAs 'sell': legal obligations, humanitarian norms (IHL) and actual programmes. Crucial here is the recognition that the 'clients', namely civilians, are not the immediate counterpart to the NGHA.[36] The addressed party in negotiations over access are the ANSA commanders, considered as 'interlocutors'. They do not need the 'products' themselves, but do control the market structure: that is, they have the power to distribute. This comparison again underlines the importance of the relationship between ANSAs and the civilian population.

There are two main choices for interlocutors: the ANSA leadership itself, raising the question to what extent civilians' concerns are included in the position or interests of the ANSA leadership, or civilian representatives, raising the question to what extent civilian interlocutors can 'sell' civilian interests and needs to the ANSA leadership. Utilising civilian interlocutors to approach ANSA leaders is also vulnerable to manipulation. A successful civilian interlocutor may have a share in the interests or power of

the ANSA, or enjoy specific privileges. Civilians may also be put under pressure by influential groups in the civilian community, or by the ANSA leadership. The choice of an appropriate interlocutor is therefore crucial to ensuing engagement strategies, such as the level at which negotiations occur and whether confidentiality is required; it may have lasting effects on the quality of engagement and access. In the worst case, a wrong choice may harm the civilian interlocutor if they become entangled in the politics of ANSA rivalry or of state actors, or come under suspicion in the community. The consequences of indirect engagement through civilian representatives must therefore take into account specific in- and out-group dynamics; in competitive or antagonistic settings, engagement with an ANSA may generate suspicion from competing groups, which may result in insecurity for aid workers, or for the civilians themselves.

Phases of engagement

It is useful to distinguish between appropriate levels of contact according to the different phases of engagement. The Center for Humanitarian Dialogue (CHD) distinguishes between high-level strategic, mid-level operational and ground-level 'frontline' negotiations.[37] The first level is identified as appropriate at the point of first entry into a conflict zone, in order to set the general parameters for access; negotiations at the mid-level follow, over practical arrangements in line with the strategic agreement; and contacts at the front-line level take care of responses to sudden changes, for example roadblocks or low-level obstruction by individuals or field commanders.

The precise sequence and pitch of negotiation levels may, however, be more complex than this. In some situations, it may be more effective to have initial contacts at the lowest level, followed by a process of 'talking up' the line of command. This is the case in particular when an ANSA's command operates subversively, or is located in an inaccessible location. It may also be necessary to come back to the strategic, highest level of command when violations of agreed principles, routines or protocols for access occur. In sum, there is no blueprint for the level of engagement: it has to be adjusted according to the particular circumstances, and will depend on the organisation, structure, hierarchy and degree of discipline within the ANSA in question.

Chapter 6
Conclusions and recommendations

The parameters of humanitarian engagement with armed non-state groups in 'negotiating' the terms of safe access and respect for IHL depend fundamentally on two sets of variables. The first is the nature of the conflict itself, and in particular the specific relationships between the armed groups and the civilians NGHAs aim to reach. The various types of relations set out in this paper indicate the potential either for a clash, or a coincidence of interest between the ANSA and the NGHA, and thus the likelihood of viable access agreements, endorsed and respected by the ANSA. The second set of variables concerns the composition of the ANSA itself: its internal organisation, command structure, discipline, aims and objectives. Combined, these two sets of variables indicate the reliability of access agreements, and serve as basis for a risk–benefit analysis, in particular to gauge the potential of agreements to cause unintended harm to civilians, as well as the risk that the reputation and work of the NGHA may be damaged. The key to understanding the dynamics of humanitarian engagement with ANSAs is understanding how civilians are configured in the latter's interests, or implicated with the ANSA or its opponents.

The same issues can also be approached from the opposite end. Here, the question is the manner in which the actions and interests of the ANSA are intertwined with those of civilians. Although the immediate operational motive for engaging with an ANSA concerns the two fundamental preconditions for access – security for aid workers and ANSA's respect for IHL – the primary question in the analysis of engagement should be whether (and how) civilians benefit from the agreements that are eventually reached. The reason to suggest such an approach is given by the specific dynamics of each and every intra-state civil conflict, in which civilians fulfil a variety of roles, and similarly may hold a variety of positions with respect to the different warring parties, be they government forces, related paramilitary forces or other ANSAs.

Unwarranted humanitarian engagement

There are various situations in which engagement may be deemed unwarranted or particular risky. These include:

- Where the ANSA is in a weak and defensive position, and unable to guarantee access conditions, such as security.
- Where various ANSAs are in competition, and are abusing aid or targeting NGHAs to discredit their rivals or undermine their capacities.
- Where the ANSA is antagonistic, in ethnic conflicts characterised by ethnic cleansing or genocidal intent.
- Where sectarian/total spoiler forces are disinterested in, or oppose, the work and/ or objectives of aid, and identify the NGHA as a (proxy) target.

Recommendations

This analysis leads to some recommendations as to how an NGHA can provide for responsible humanitarian engagement with an ANSA.

- Ensure that, at an institutional level, sufficient pro-active analytical capacity is brought to bear so that the intended engagement (strategy) can be properly assessed, including the political context (conflict dynamics) and the specific structure and organisation of the group in question.
- Integrate analysis of the relationship between the ANSA and civilians into the planning and strategy-making of humanitarian operations, in particular as they concern intended engagement with the armed group and/or the civilians that the group controls or influences.
- Enhance the sensitivity and awareness of field workers in identifying potential counterparts/interlocutors, and their potential vulnerabilities, in particular as they apply to civilian interlocutors.
- Pool the capacities and competencies of different organisations (the UN, ICRC or OSCE, as well as other relevant NGHAs) to enable a common approach and clear analysis of aid dynamics across the entire humanitarian community operating in a given conflict context.

Best practice guidelines

- The initiation of contacts with an ANSA should be preceded by thorough research into the group's structure, organisation and degree of discipline.
- The underlying interests of the ANSA and its specific relations with the civilian populations that the NGHA intends to reach should be analysed prior to engagement, to ascertain its prevailing typology.
- The potential reaction to engagement from other ANSAs, state agencies or the state military should be assessed before contact is initiated.
- The choice of interlocutors among civilians must be made with care, ascertaining their neutrality in contacting ANSAs, as well as their personal safety.
- Access agreements should ideally be made with the agreement of as many other humanitarian actors as possible, preferably as part of a common approach.
- Direct and open contacts are always preferable to indirect and confidential ones, since such an approach increases the likelihood that the ANSA will respect the agreements made, and that other stakeholders, principally civilians, will tolerate engagement.
- The level of contact with the ANSA should be adapted to the latter's structure and degree of discipline. However, high-level contacts never guarantee or replace low-level contacts, whereas low-level contacts remain necessary at all times.

Annex 1
Recommended reading

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Notes

1   See UN reports by the Secretary General to the Security Council on The Protection of Civilians; S/1999/957, S/2001/331, S/2002/1300 and S/2004/431.

2   Conforming with the definitions set in the 'The Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief'; see http://www.icrc.org/Web/Eng/siteeng0.nsf/html/57JMNB?Open Document.

3   Mark Bradbury, Nicholas Leader and Kate Macintosh, *The Agreement on 'Ground Rules' in South Sudan* (London: Humanitarian Policy Group, 2000).

4   Marie-Joelle Zahar, 'Protégés, Clients, Cannon Fodder: Civil-Militia Relations in Internal Conflicts', in Chesterman, Simon (ed.), *Civilians in War* (Boulder, CO: Lynne Rienner/International Peace Academy, 2001).

5   David Keen, *The Economic Functions of Violence in Civil Wars*, Adelphi Paper 320 (London: IISS, 1998).

6   Mark Cutts, 'Negotiating with Warring Parties', *Refugee Survey Quarterly*, vol. 18, no. 3, 1999, pp. 43–46; Mark Cutts, 'The Humanitarian Operation in Bosnia 1992–1995: The Dilemmas of Negotiating Humanitarian Access', *New Issues in Refugee Research*, working paper 8, UNHCR, Geneva.

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8   From interviews – as cited by a diplomat who had talked to Paul Kagame.

9   Cited by the UN Secretary-General in his reports to the Security Council; see note 1.

10 Martin Van Creveld, *The Transformation of War* (New York: The Free Press, 1991), pp. 35–42

11 David Petrasek, *End and Means: Human Rights Approaches to Armed Groups* (Geneva: International Council on Human Rights Policy, 2001); p. 5.

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15 P. W. Singer, *Corporate Warriors* (Ithaca, NY: Cornell University Press, 2003), pp. 82–83.

16 See UN/E/CN.4/1999/11, Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of people to self determination.

17 From interviews with aid staff and civilians in Colombia and Sri Lanka.

18 Zahar, 'Protégés, Clients, Cannon Fodder'. Zahar uses the generic term 'militia' to denote the various categories of armed groups.

19 Philippe Le Billon, *The Political Economy of War: What Relief Agencies Need To Know*, Network Paper 33 (London: HPN, 2000).

20 See 'Chaos in West Africa: Unending Wars', *New York Times*, 5 May 2003; and 'Ivorian Rebels Say Allies Killed Their Leader', *International Herald Tribune*, 29 April 2003.

21 Reno, *Warlord Politics and African States*.

22 Fiona Terry, *Condemned to Repeat* (Ithaca, NY: Cornell University Press, 2002); and Jean Christophe Rufin, *Le Piège Humanitaire, suivi de humanitaire et politique depuis la chute du mur* (Paris: Jean Claudes Lattès, 1993).

23 Zahar, 'Protégés, Clients, Cannon Fodder'.

24 *Ibid*., p. 46.

25 Cutts, 'Negotiating with Warring Parties'; and Cutts, 'The Humanitarian Operation in Bosnia 1992–1995'.

26 Human Rights Watch, *Ituri Covered in Blood, Ethnically Targeted Violence in North-East Congo* (New York: HRW, 2001).

27 Adapted from an approach developed by the ICRC.

28 Zahar, 'Protégés, Clients, Cannon Fodder'.

29 Adapted from CHD, *Humanitarian Engagement with Armed Groups*, 2002, p. 33.

30 Koenraad Van Brabant, *Operational Security Management in Violent Environments*, Good Practice Review 9 (London: HPN, 2000).

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