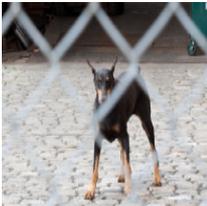


# ARMED NON-STATE ACTORS: CURRENT TRENDS & FUTURE CHALLENGES

DCAF & GENEVA CALL





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# BACKGROUND

Inevitably, there are gaps and inadequacies in the ability of states to face a range of both traditional and non-traditional security challenges.<sup>1</sup> Ad hoc security governance networks have arisen in consequence. Many of these networks exist in the legal realm and involve cooperation between governments, the private sector, non-governmental and international organisations. They enable actors to take advantage of geographical, technological, and knowledge resources they would be unable to muster alone. The other papers in this series have focused on these legitimate networks<sup>2</sup> and on many of the, as yet unanswered, questions that they pose for oversight and accountability, as well as on the ways in which they can better contribute to improved security.

This paper, however, focuses on a different kind of non-state or ‘private’ security actor: armed non-state actors (NSAs). Like their legitimate ‘cousins,’ these actors form complex security governance networks to fight threats, provide services, and guarantee their own survival, while operating largely in the illegitimate sphere. The first part of the paper analyses one type of NSAs: armed opposition groups. These groups generally operate within situations of armed conflict. The second part looks at other types of (illegal) NSAs that operate also in non-conflict situations, such as crime groups, youth gangs, and militias and vigilantes. The paper thus considers both the destructive and protective potentials of these units as security actors and suggests some ways forward.

## PART I: ARMED OPPOSITION GROUPS<sup>3</sup>

### INTRODUCTION

Most of today’s armed conflicts take place within states and are waged by at least one NSA fighting state forces and/or other NSAs. In these conflicts, frequent violations of humanitarian norms are committed by both state and non-state parties. NSAs also frequently control or heavily influence areas where civilians live. Consequently, efforts to protect civilian<sup>4</sup> populations should address not only the behaviour of states, but also that of NSAs.

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<sup>1</sup> The images used in this publication are available on a creative-commons licence from amcdaniel83, foto\_di\_signorina, fodt, and gtiboogieman.

<sup>2</sup> See <http://www.dcaf.ch/dcaf/Projects/Publications?lng=en&id=123098>

<sup>3</sup> Part I of this paper was authored by Anki Sjöberg, Senior Programme Officer, and Elisabeth Decrey Warner, President, both at Geneva Call.

<sup>4</sup> The International Committee of the Red Cross (ICRC) has defined civilians in internal armed conflict as all persons that are not members of state armed forces or the armed wing of organised armed groups where they perform continuous combat function. Interpretative Guidance on the Notion of Direct Participation in Hostilities under International Law, (Geneva: ICRC, 2009), 16 and 32-34.

The study of non-state actors does not fit into conventional paradigms of international relations based on a state-centric worldview. As for armed groups, NSAs have traditionally been considered challengers without formal responsibility, while governments are the upholders of order and security, the providers of public goods. Yet, it is increasingly recognised that NSAs are key actors in contemporary armed conflicts and that interest in studying them is well-based in both academia and policy research.

From a legal perspective, however, international law remains largely state-centric, existing treaties and their enforcement mechanisms remain primarily focused on states and NSAs cannot negotiate or become parties to relevant international treaties.<sup>5</sup> There is no consensus on whether they contribute to the formation of customary international humanitarian law (IHL).<sup>6</sup> NSAs are for the most part not consulted when it comes to efforts to improve compliance with humanitarian norms.<sup>7</sup> Yet, NSAs can respect IHL and human rights and play a role in the protection of civilians. In other words, they can also be part of the solution to protect civilians.<sup>8</sup>

This first part of the paper explores the phenomenon and concept of NSAs. It discusses the definition, characteristics of and practical approaches to these actors. It stresses the need to better understand their perspectives and actions, as well as to support the implementation of actions in favour of civilian protection. It does not pretend to exhaust the topic, but to propose some perspectives and input into the debates on the impact and role of NSAs in armed conflict, security sector governance (SSG) and security sector reform (SSR).

## DEFINITION

There is no universally accepted definition of NSAs. For the purpose of this paper, an NSA is defined as any organised group with a basic structure of command operating outside state control that uses force to achieve its political or allegedly political objectives.<sup>9</sup> Such actors include 'rebel groups' and governments of entities which are not (or not widely) recognised as states. This definition excludes paramilitaries that

<sup>5</sup> As argued by the ICRC: "Although it is clear that all parties to non-international armed conflict are legally bound by IHL, armed groups cannot ratify or formally become party to IHL treaties; only States can do so. As a result, armed groups may consider themselves technically not bound by the international obligations specified in treaty law." *Increasing Respect for International Humanitarian Law in Non-International Armed Conflict*. (ICRC, 2008), 19.

<sup>6</sup> IHL is binding to all parties to a conflict, but is generally not applicable in situations short of armed conflict. Human rights law applies at all times (with the exception of appropriate derogations), but there is debate as to what extent it directly binds NSAs.

<sup>7</sup> Still, the perspectives of NSAs are increasingly being sought in efforts to protect civilians. See *Ownership of Norms – Towards a Better Protection of Civilians in Armed Conflicts* a project by the Geneva Academy of International Humanitarian Law and Human Rights and the publication *In Their Words: Perspectives of Armed Non-State Actors on the Protection of Children from the Efforts of Armed Conflict* (Geneva: Geneva Call, 2010).

<sup>8</sup> See for example the three volumes on NSAs involvement in the landmine problem produced by Geneva Call and the Program for the Study of International Organization(s) - PSIO, available at <http://www.genevacall.org/resources/research/research.php>

<sup>9</sup> This is based on the definition used by the NGO Geneva Call. See for example Anki Sjöberg, *Armed Non-State Actors and Landmines. Volume III: Towards a Holistic Approach to Armed Non-State Actors?* (Geneva: Geneva Call and the PSIO, 2007).

are under the 'effective control' of a state,<sup>10</sup> but it does not exclude when an NSA is fighting another NSA. The criterion of a basic command structure is especially important for humanitarian practitioners, since in the absence of a chain of command the NSA is more a loose grouping of armed individuals than a defined actor.

Normally the focus of conflict scholars and humanitarian practitioners is on politically motivated groups, i.e., those who articulate a political agenda rather than private (including economic) goals, though without a requirement of elaborated political manifestos.<sup>11</sup> The concept used by many practitioners is the term 'armed group' or 'non-state armed group,' while many academics also employ terms such as 'rebel groups' and 'insurgents.' However, there are also NSAs who exercise de facto control over a territory and have reached a level of organisation similar to that of states and who are in active conflict or in situations of 'no peace, no war' with states. Hence, this paper favours employing the term of 'NSA,' since the mentioned actors would not be adequately covered by the more limited concept of 'non-state armed group.'

## CHARACTERISTICS OF NSAS

In spite of some similarities among them, NSAs represent a great deal of heterogeneity. Some may have clearly defined political objectives, while this may be less clear-cut in other cases. Some may control territory and have established administrative structures parallel to or instead of those of the state, while others have loose command structures and weak control over members. Some operate in rural areas conducting guerrilla type warfare, while others are mainly urban phenomena. Some concentrate on attacking military targets, while others attack civilians as a matter of strategy. NSAs may be composed of men, women and children. In some groups, female members comprise an important percentage of combatants and other members.<sup>12</sup> Members may be recruited forcefully or join voluntarily. Certain NSAs have set up structures to provide elaborate services that look after the needs of their members.<sup>13</sup> Three issues according to which NSAs can be understood and

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<sup>10</sup> Paramilitary groups are hence included in this definition only in the cases when they are sufficiently independent from the state apparatus. In other cases, in principle, responsibility for the actions of these groups could be attributed to the state.

<sup>11</sup> As highlighted by observers, the political objective is the hardest characteristic to define. (Max P. Glaser, *Negotiated Access: Humanitarian Engagement with Armed Non State Actors*, (Carr Center for Human Rights Policy, Kennedy School of Government, Harvard University, 2005) 22.). Others argue that, owing to the difficulty of determining political motivation, this criterion is less relevant and thus even merely criminal groups should be considered NSAs whenever they manage to entertain a sufficient level of violence to make the situation an armed conflict and the group a party to that conflict (Email from Professor Marco Sassòli, received 16 July 2007). In order to avoid the question of defining objectives, Policzer has suggested that armed groups can simply be understood as "challengers to the state's monopoly of legitimate coercive force" (Pablo Policzer, *Neither Terrorists nor Freedom Fighters* (2004) 8).

<sup>12</sup> For instance, the National Liberation Army in Colombia has stated that it has close to 50% female members (Geneva Call meeting with Commander Antonio Garcia, La Havana, December 2005.) In Nepal, it has been estimated that approximately a third of the Communist Party of Nepal-Maoists cadres were women (Ani Colekessian, *A Gendered Analysis of the Nepali Rehabilitation Process, Gender, Peace and Security Series Working Paper*, (INSTRAW, UN, Santo Domingo, 2009), 4).

<sup>13</sup> Such as social or psycho-sociological needs, as noted in Caroline Holmqvist, "Engaging Armed Non-State Actors in Post-Conflict Settings" in *Security Governance in Post-conflict Peacebuilding*, ed. Alan Bryden and Heiner Hänggi, (Geneva: DCAF, 2005) 48.

differentiated are explored in more detail below: territory, identity/resources and relationship to the wider society.

## 1. TERRITORY

Some NSAs operate openly in international fora and have representations in different countries, while others operate clandestinely. How NSAs (as non-states) can operate internationally and nationally is largely determined by the community of states, mainly by the concerned and neighbouring states. In addition to political considerations, the way NSAs are approached by external (including humanitarian) actors is also dependent on their link to territory. In fact, many NSAs control or significantly influence activities within a territory and thereby the lives of thousands of individuals. Notable current and former examples of NSAs in a position of territorial control are the Moro Islamic Liberation Front in the Philippines, the Liberation Tigers of Tamil Eelam (LTTE) in Sri Lanka, the Sudan People's Liberation Movement/Army in South Sudan and the Communist Party of Nepal-Maoists.

The level of territorial control is often a means of rating the 'success' of an NSA (assuming that territorial control is part of its strategy and/or objectives). On a higher level of territorial control you find the de facto authorities and internationally non-recognised or partially recognised states, such as the Republics of Somaliland and Abkhazia. These are NSAs that have been (partly) 'successful' by managing to 'liberate' territory. Often the situation is maintained through the military, political and economic support from state allies. Given that they can operate openly, these actors often establish administrations similar to that of many states (government, parliament, ministries, police and armed forces, and so forth). When operating on such territories, humanitarian and other actors need the authorisation of these NSAs. Yet, they may be reluctant to be treated as 'NSAs,' for example requesting to instead sign international conventions in their capacity as 'states.'

Territorial control is not the only factor that grants 'success' to an NSA: it may be enough for it to continue existing and causing disturbance to a state or another enemy. In fact, as long as the NSA is active or tries to achieve its objectives, the concerned state is de facto losing. As argued by Max Glaser, many NSAs do not necessarily aim at regime change or total power seizure, but rather employ strategies to deny control to the adversary by causing insecurity and instability.<sup>14</sup> This can be due to a lower-level objective or the recognition of relative weakness (in weapons, effectiveness, financial means, etc.). NSAs that do not control territory include for instance the Colombian National Liberation Army, the Turkish Kurdistan Workers Party (PKK) and the Lord's Resistance Army (LRA). It is interesting to note, however, that due to their lack of territorial control these types of NSAs often operate transnationally (for their bases, resource-mobilisation and the recruitment of members). This is particularly the case of the LRA, whose violent attacks affect civilians not only in its native Uganda, but

<sup>14</sup> Negotiated Access 22.

also in the Democratic Republic of the Congo, the Central African Republic and South Sudan.

## 2. IDENTITY AND RESOURCES

Another way of understanding and differentiating NSAs is the extent to which they rely on identity and resources in order to organise and mobilise their members. Even territory can be understood as one type of (expensive) resource that an NSA may have or fight for, which, in its turn, can enable access to other resources. The day-to-day material resources of NSAs are for example weapons, money, uniforms, means of transportation/communication and other types of equipment. In addition to such material goods available from NSAs there are also services, such as the provision of justice, land reforms and campaigns to improve health. Such services can be provided to members and supporters, but also to individuals under the control or influence of NSAs. For instance, in Burma's Shan state and the former Sri Lankan LTTE enclaves, NSAs made some efforts to redistribute wealth to their constituencies, providing them with both physical protection and basic social services.<sup>15</sup> Indeed, one of the most important goods provided by NSAs is security, notably the protection from government<sup>16</sup> and paramilitary forces. The provision of 'revolutionary justice' is also often used as a means of raising support for the NSA, sometimes, however, through very violent means.<sup>17</sup>

Yet, NSAs do not only possess and provide material resources: they also create and reproduce collective and individual identities. Non-material resources of NSAs include group loyalty, a sense of pertinence, status within and outside the group, skills and knowledge, among others. When individuals enter an NSA, they adopt very often an alias and/or a nom de guerre. This is not only for their protection, but it is also an initiation ritual that makes them become someone else. This is part of the process through which NSAs become the only organisational identity of the members, at the expense of other identities (family, communities, and so forth). Especially for some of the young members, the NSA and its members becomes a new 'family,' replacing the ones that might have abused or let them down (although generating the risk of new abuses). The new identity is not just military, but constitutes a lifestyle that also has positive sides, such as entertainment, a political and military formation,<sup>18</sup> friend and couple relationships and (if authorised) the foundation of a family. In support of that identity NSAs set up their own norms, values, patterns of behaviour, etc., which constitute the limits of the 'socially expected' within the armed collective.<sup>19</sup> Rules

<sup>15</sup> Karen Ballentine, "Beyond Greed and Grievance: Reconsidering the Economic Dynamics of Armed Conflict," in ed. Karen Ballentine and Jake Sherman, *The Political Economy of Armed Conflict: Beyond Greed and Grievance* (Boulder and London: Lynne Rienner, 2003) 271.

<sup>16</sup> As for example argued by Jeremy M. Weinstein, *Inside Rebellion: The Politics of Insurgent Violence* (Cambridge: Cambridge University Press, 2007) 37-39.

<sup>17</sup> As noted in Ann-Kristin (Anki) Sjöberg *Challengers without Responsibility? Exploring Reasons for Armed Non-State Actor Use and Restraint on the Use of Violence against Civilians* (Geneva: University of Geneva, Ph.D. Thesis, 2010).

<sup>18</sup> As highlighted in José Armando Cadenas Sarrias, *Los parias de la guerra: Análisis del proceso de desmovilización individual* (Bogotá: Ediciones Aurora, 2005) 162.

<sup>19</sup> See for example *Los parias de la guerra* 261.

for external and internal relations are established and transgression is often severely punished.

Jeremy Weinstein has categorised NSAs according to resources and membership, arguing that NSA strategies are not choices, but imposed on them by external circumstances. He contends that the type and quantity of resources available at the formation of an NSA will shape the individuals who choose to participate in the rebellion, the sort of organisation that will form and the strategies of violence that it will employ. Social resources (shared beliefs, expectations and norms within certain ethnic/religious/cultural/ideological groups) would lead to the recruitment of 'high-commitment' individuals, while economic resources (natural resource extraction, taxation, criminal activity or external patronage) would attract 'low-commitment' individuals who are seeking short-term personal gain. This would produce 'activist' versus 'opportunistic' NSAs.<sup>20</sup> Activist NSAs could for example be the PKK, while the Revolutionary United Front in Sierra Leone could characterise an opportunistic NSA. In reality though, NSAs are often a mix between activist and opportunistic organisations that base their power on both identity and resources. Their choices in terms of use of violence and humanitarian commitments also originate from a wider scale of factors and incentives. Moreover, while many NSAs start up as 'activist,' they often see a decrease in their 'activist' membership once they start growing more quickly, partially due to the lack of capacity to select and train new members.

### 3. RELATIONSHIP TO WIDER SOCIETY

In addition to internal dynamics, NSAs also have multiple links to and interact with other organisations and actors. Hence, a third dynamic according to which NSAs can be understood is their level of marginalisation and general relationship to the wider society, notably civilian communities. It has been argued that elements linked to security concerns and secrecy, the fact of facing a common enemy and the construction of their own cognitive processes<sup>21</sup> would all contribute to making the group solidarity of NSAs stronger, while excluding them from the larger society. This is indeed often the case for those labelled as 'terrorist groups' and some criminal gangs.<sup>22</sup> While totally marginalised groups (such as terrorist cells) largely can set their own standards for 'behavioural appropriateness,' NSA are often not totally self-excluding: they seek to control and regulate local populations, pursue outside contacts, have business cards and websites, etc.<sup>23</sup>

<sup>20</sup> Inside Rebellion 7-10, 27 and 53.

<sup>21</sup> See Donatella della Porta, *Social Movements, Political Violence, and the State: A Comparative Analysis of Italy and Germany* (Cambridge: Cambridge University Press, 1995) 177, 180 and 204.

<sup>22</sup> However, some gangs have set up policies for political and community work, trying to improve their image in their constituencies. See Sudhir Venkatesh, *Gang Leader for a Day: A Rough Sociologist Takes to the Streets* (New York: Penguin, 2008). See also the discussion on crime groups in Part II below.

<sup>23</sup> Many NSAs have set up websites that are sometimes closed down by their respective governments. In Colombia, on the one hand, the government long fought to close down the Revolutionary Armed Forces of Colombia's quite professional website. On the other hand, that of the ELN, less frequently updated and less professional, has been allowed to operate. Sometimes websites are set up and maintained not by the NSAs themselves, but members of a diaspora sympathetic with their cause. This was allegedly the case for a former LRA webpage. In terms of business cards, most NSA representatives that Geneva Call meets with do have business cards.

Although the authority of an organisation normally is applicable primarily to its members,<sup>24</sup> this is not really true for NSAs, since they may exercise authority, control and influence over civilians who cannot be considered as ‘members.’ In spite of mostly being illegal and often clandestine, NSAs generally have multiple links with different organisations and communities. Marie-Joëlle Zahar has argued that ‘civil-militia relations’<sup>25</sup> can be analysed in terms of identification or control, with the general assumption that if the NSA ‘identifies’ with a population, it will treat it well, and if not, it will seek to control it with violence. Nevertheless, identification does not automatically lead groups to refrain from attempts to control. Moreover, ‘control’ is not just a question of military control, but NSAs also create civilian dependency for different reasons, such as security, sustenance and economic relations. They are themselves dependent on the population for recruits, revenue (at least some part of it)<sup>26</sup> and support. Moreover, Teresa Koloma-Beck has highlighted that the National Union for the Total Independence of Angola (UNITA) forcefully recruited some of its members, at the same time as it made efforts to integrate its fighters into the wider society, notably by encouraging them to get married and live with their families.<sup>27</sup> Hence, NSAs will seek and achieve different levels of identification or ‘embeddedness’ in the overall society, which makes them different from totally marginalised organisations.

## CONSEQUENCES AND SOLUTIONS

### IMPACT

Whether they control territory, supply members and constituencies with services or are embedded within the wider society, NSAs are capable of endangering the lives of communities. They may do this by hindering humanitarian aid, planting landmines, recruiting and using child soldiers and by trafficking and misusing small arms and light weapons. Such violent acts, paired with an increased presence of international and transnational actors in internal armed conflicts, have made ‘humanitarian engagement’ (here understood as inclusive and non-forceful measures taken externally to an NSA, to influence its behaviour as relates to protection of the civilian non-combatant population) a topic of vital interest for humanitarian and human rights practitioners. In fact, the very presence of NSAs on its territory is proof that a state is incapable or unwilling to extend the rule of law all over its territory;<sup>28</sup> hence the need for external assistance.

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<sup>24</sup> Göran Ahrne, *Social Organizations: Interaction inside, outside and between Organizations* (London, Thousand Oaks and New Delhi: SAGE, 1994) 89.

<sup>25</sup> ‘Militia’ understood as any armed group, including those fighting on behalf of the government. Marie-Joëlle Zahar, “Protégés, Clients, Cannon Fodder: Civil-Militia Relations in Internal Conflicts,” in ed. Simon Chesterman, *Civilians in War* (Boulder and London: Lynne Rienner, 2001) 45.

<sup>26</sup> “Protégés, Clients, Cannon Fodder” 46, 48, 50-53 and 56-59.

<sup>27</sup> Teresa Koloma-Beck, “Engineering Society: The Case of the Angolan UNITA,” paper presented at *Transnational and Non-State Armed Groups: Legal and Policy Challenges* (Geneva: Graduate Institute of International Studies and the Program of Humanitarian Policy and Conflict Resolution, Harvard University, 2008).

<sup>28</sup> *Neither Terrorists nor Freedom Fighters 2*.

## APPROACHES TO IMPROVE CIVILIAN PROTECTION

The existence of NSAs, with or without defined political agendas, is not just a contemporary phenomenon, but activities by armed groups were described as early as the fifteenth century B.C.<sup>29</sup> In general, because of their importance for the initiation and continuation of armed conflict, NSAs have always, to some extent, been the topic of study. Nevertheless, even though the phenomenon of NSAs per se is not new, the perception of these groups and how they should be approached has changed. For example, with the increasing acceptance of IHL and human rights, activists have become more vocal about disrespect for these laws, sometimes on behalf of NSAs.<sup>30</sup> Some non-military approaches for making NSAs responsible are:

- Inclusive approaches: dialogue/negotiation and dissemination, training/capacity building, intermediation (between conflict parties) and direct services.
- Coercive approaches: denunciation/'naming and shaming,' sanctions, individual criminal prosecution and 'terrorist listing.'<sup>31</sup>

The different inclusive approaches focus on understanding and involving NSAs, and trying to foster a sense of ownership of humanitarian norms within them. They provide NSAs with a possibility to develop and take on different commitments, as well as sensitise, train and monitor them. The principal aim of these approaches is to provide better protection to civilians, through encouraging NSAs to take on responsibilities towards them. Secondary aims are confidence-building between conflict parties (through humanitarian negotiations or agreements) and a contribution toward the concerned state's implementation of its international obligations. Coercive approaches can be used in combination with inclusive approaches, but generally they are employed by actors other than human rights or humanitarian activists. The different approaches can either reinforce or work against each other, mainly depending on the reaction of the NSAs to the coercive approaches. In general, coercive mechanisms have not proven to be sufficient to enforce rules on NSAs.

Inclusive approaches face important challenges. First, concerned states are sometimes unwilling to facilitate such work by international and national NGOs and agencies. Indeed, states can be reluctant to acknowledge the existence of an internal armed conflict on their territories, wanting to avoid international scrutiny into what they consider internal affairs, and fearing the granting of a perceived legitimacy to opposition NSAs. Yet, Article 3 Common to the 1949 Geneva Conventions on international humanitarian law expressly precludes any effect on the legal status of non-state parties to conflict. Second, the existence of a number of different 'terrorist

<sup>29</sup> As noted by Ian F. W. Beckett, *Modern Insurgencies and Counter-Insurgencies: Guerrillas and Their Opponents since 1750* (London and New York: Routledge, 2001) 15.

<sup>30</sup> Although major human rights organisations waited until the early 1990s to change their definitions of human rights abuses to include acts committed also by NSAs. *Neither Terrorists nor Freedom Fighters 2*.

<sup>31</sup> *Armed Non-State Actors and Landmines*. Volume III10.

lists' complicates the work of humanitarian actors by placing logistical and political limits to meetings and other humanitarian activities (notably training). Finally, the objectives and strategies of some NSAs may present important hindrances in the process. For instance, NSAs may refuse to respect the applicability of humanitarian norms to them either because they are not familiar with them or do not feel bound by them or, simply, they consider that the 'ends justify the means.'

## CONCLUSION

NSAs can be understood as entities composed by individuals, just like states, companies, families, etc., which all have their own inside dynamics. This first part of the paper has looked at NSAs as types of organisations that have the following characteristics:

- The use of (political) violence as a defining aspect of their activities
- A certain relationship to territory;
- The provision of some level of material and immaterial (including identity) resources to group members, but also to surrounding communities;
- Varied levels of marginalisation and 'embeddedness' in the wider society.

The paper has discussed the importance of finding ways to better protect civilians in today's intrastate conflicts. Indeed, the need to preserve humanitarian space in conflicts remains as strong as ever since civilians continue to pay the bulk of the price of armed conflict.

Based on the unique experience of Geneva Call<sup>32</sup> and its inclusive approach, we believe that understanding and involving NSAs is important not only for reducing the humanitarian impact on civilians, but also to improve the successes of disarmament, demobilisation and reintegration processes, as well as post-conflict SSG and SSR.

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<sup>32</sup> Geneva Call is a neutral and impartial humanitarian non-governmental organisation dedicated to engaging armed NSAs in dialogue towards compliance with the norms of international humanitarian law (IHL) and international human rights law (IHRL). The organisation focuses on NSAs that operate outside effective State control and that are primarily motivated by political goals, which include armed movements, de facto authorities, and internationally non-recognised or partially recognised States. Geneva Call began in the year 2000 in response to the realisation that the landmine problem would not be eradicated unless NSAs also renounced AP mines. To address this challenge, Geneva Call developed a Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action. This innovative mechanism allows NSAs, who are not eligible to enter into the AP Mine Ban Convention, to undertake to observe its norms. The Government of the Republic and Canton of Geneva is the custodian of the Deeds. Geneva Call hence focused its initial efforts on the ban on AP mines with the objective to expand to other issues if successful. Employing an inclusive approach to promote the ownership of norms, Geneva Call encourages NSAs to be active participants in processes towards increased protection of civilians. The progress made on the AP mine ban and the trust built with NSAs throughout the world have encouraged Geneva Call to expand its activities to also promote:

- NSA respect for children in armed conflict, notably the ban on recruitment and use of children in hostilities. Geneva Call similarly has developed the Deed of Commitment for the Protection of Children from the Effects of Armed Conflict.
  - NSA respect for the prohibition of gender based violence in armed conflict and in particular for the protection of women and girls.
- Moreover, Geneva Call is increasingly responding to NSA demand to help build their capacities generally in IHL and IHRL, especially through customised training.

## PART II: ARMED NON-STATE ACTORS ON THE HORIZON<sup>33</sup>

This second part briefly looks at NSAs other than armed opposition groups and that operate also in non-conflict situations. The section does not, however, seek to be exhaustive. Rather, we seek here to look at some of the actors that stretch the definition and our traditional understanding of what constitutes an NSA but which will, nevertheless, be of growing importance in the years ahead.

### PRIVATE SECURITY<sup>34</sup>

The 1990s have been boom years in the world of private policing as actual and perceived insecurity presses citizens and firms to absorb the protection duties of the state.<sup>35</sup> In the United States, for example, private police now outnumber their public counterparts by a ratio of three to one. As is the case with the illicit forms of protection discussed below, citizens act defensively in the face of insecurity. Those who have the economic means to afford it, shut themselves within privatised urban spaces, composed of gated communities protected by razor wire, high walls, closed circuit cameras and heavily armed private security guards.<sup>36</sup>

In some examples, such as that of the Santa Fe area of Mexico City, whole areas are designed in as modern-day fortresses, with sophisticated systems for limiting the flow of people. The proliferation of cameras and private security guards in Santa Fe is being replicated in other parts of the city and in similar cities around the world.<sup>37</sup>

The rise of private security guards raises questions regarding impunity and, in particular, regarding the status of private security forces outside of regular state accountability structures.<sup>38</sup> These questions are examined in more detail in the other papers in this series. It is worth noting here, however, that private security firms often “have a narrowly defined view of the problem of public insecurity and they rarely engage government agencies or key democratic institutions. Organisations linked to business chambers of commerce and other private sector entities, moreover, care about problems like crime and police corruption because they create an environment that

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<sup>33</sup> Part II was authored by DCAF.

<sup>34</sup> The inclusion of private security here is in no way intended to equate the many professional private military and security organisations with the illicit groups described elsewhere in the section.

<sup>35</sup> Diane Davis, “Undermining the Rule of Law: Democratization and the Dark Side of Police Reform in Mexico,” *Latin American Politics & Society* 48, no.1 (Spring 2006), 76.

<sup>36</sup> Enrique Desmond Arias, “The Dynamics of Criminal Governance: Networks and Social Order in Rio de Janeiro,” *Journal of Latin American Studies* 38, (2006), 296.

<sup>37</sup> Diane E. Davis, “Insecure and Secure Cities: Towards a Reclassification of World Cities in a Global Era,” *MIT International Review*, (Spring 2008), 34-35; Dennis Rodgers, “Disembedding’ the city: crime, insecurity and spatial organization in Managua, Nicaragua,” *Environment and Urbanization* 16, (2004), 113.

<sup>38</sup> Robert C. Davis; Christopher W. Ortiz; Sarah Dadush; Jenny Irish; Arturo Alvarado; Diane Davis, “The Public Accountability of Private Police: Lessons from New York, Johannesburg, and Mexico City,” *Policing and Society* 13, no.2 (2003), 198.

puts economic gains in jeopardy, either by creating locational disincentives for private investors or by driving away potential consumers, not because of their concern for civil society. Within this framework, concerns about justice and human rights are not so central, while the techniques these organisations favour are more consistent with an authoritarian ... ethos than a commitment to democracy, due process, and the rule of law."<sup>39</sup>

Particularly relevant to the discussion here is the fact that private security firms may sometimes act in competition rather than in concert with the state over who has the right to protect citizens. Private police may, for example, withhold evidence from the state or, conversely, public officers may shun cooperation with their private colleagues in order to protect their own institutional authority.<sup>40</sup> Public and private actors may also compete over skilled personnel, leading to a drain of well-trained individuals from the public to the (often more lucrative) private sector.<sup>41</sup>

Again, as is well-covered elsewhere in this series, a robust regulatory environment, the market, self-regulation, litigation and media exposure can all bring some measure of accountability to private security. Indeed, in partial response to public pressure, private security actors commonly seek to build a sense of civic solidarity by defining their aims as protecting larger social values.<sup>42</sup> One cannot escape the fact, however, that private security in this form is available only to those who can afford it. Among those who cannot, those with social connections turn to militias and those without access to either funds or to social capital are left with patchy state provision, with organised crime, gangs, or no security at all. It is to these last categories that we now turn our attention.

## CRIME GROUPS

While organised crime is largely an economic phenomenon it has, in many states, "assumed an important institutional role, partly as a result of the gap left by absent or weak state institutions."<sup>43</sup> Drug distribution networks in Mexico, for example, have developed under the umbrellas of official protection.<sup>44</sup> The illicit trade in drugs, guns, people, requires armed force for contract enforcement and protection. This fact results in connections between organised crime and the security services, as well as the geographical isolation of their zones of operation.<sup>45</sup> As Diane Davis argues "independent fiefdoms, outside state control further drive the problems of impunity,

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<sup>39</sup> Davis, "Undermining the Rule of Law," 78

<sup>40</sup> Diane E. Davis, "Irregular armed forces, shifting patterns of commitment, and fragmented sovereignty in the developing world, *Theory and Society* 39, (2010), 408.

<sup>41</sup> Jörg Friedrichs and Cornelius Friesendorf, "The Mercenary Debate," *The American Interest*, (May-June 2009), 46-47; Ailsa Winton, "Urban Violence: A Guide to the Literature," *Environment and Urbanization* 16, no.2 (October 2004), 174.

<sup>42</sup> Davis, "Irregular armed forces," 401.

<sup>43</sup> Winton, "Urban Violence: A Guide to the Literature," 170.

<sup>44</sup> Pablo Piccato, "A Historical Perspective on Crime in Twentieth-Century Mexico City," *Center for US-Mexico Studies: Project on Reforming the Administration of Justice in Mexico* (San Diego: UC San Diego, 2003), 11-12.

<sup>45</sup> Davis, "Insecure and Secure Cities," 38.

insecurity and violence."<sup>46</sup> At the most extreme level, crime groups can come to dominate the institutional structure of entire communities, becoming so embedded in some districts as to become normal.<sup>47</sup>

These groups, however, (and in contrast with what we usually understand to be NSAs) do not constitute parallel power systems. They are not intent on destroying the state and they do not harbour political ambitions. Instead, they form what has been called a "concurrent presence" that exploits state weakness. Unlike insurgents acting against the state, such groups operate in lieu of the state.<sup>48</sup> As Davis suggests, "armed mafia forces are not struggling for political dominion, control of the state, or political inclusion so much as economic and sub-territorial dominion as well as the coercive capacity to control key local nodes and transnational networks to make their economic activities possible."<sup>49</sup>

These non-state groups are primarily economic actors, using urban space for their illicit activities. To make this space available they offer services, building legitimacy through complex and mutually beneficial relationships. These services are valuable because the state does not offer them, creating demand.<sup>50</sup> Contraband production and distribution requires armed protection but this support and protection is often extended to (or demanded by) local communities to cement relations.<sup>51</sup> Community support is crucial to the survival of crime gangs, particularly in order to prevent information from being passed to the authorities.<sup>52</sup> To take one example, in certain favelas of Rio de Janeiro and Sao Paulo citizens still prefer to support local drug lords and their private security guards because they guarantee protection better than do police or the state.<sup>53</sup> Police intervention is so rare in some areas that residents prefer to give assistance to the criminals that they see and interact with day-to-day.<sup>54</sup>

Alongside policing, justice is another area in which non-state security providers are increasingly active. For the poor citizens of many cities, judicial outcomes are uncertain, constituting a "lottery of impunity."<sup>55</sup> In many of Rio's favelas, for example, many years of state neglect has resulted in a loss of control by the state to well-organised crime groups who now enforce contracts and adjudicate in disputes.<sup>56</sup> Justice provision varies but groups have significant power to decide what is permitted

<sup>46</sup> Davis, "Insecure and Secure Cities," 38.

<sup>47</sup> Winton, "Urban Violence," 171; Enrique Desmond Arias, "Faith in Our Neighbors: Networks and Social Order in Three Brazilian Favelas," *Latin American Politics & Society* 46, no.1 (Spring 2004), 4.

<sup>48</sup> L. Dowdney, Children of the Drug Trade: A Case Study of Children in Organised Armed Violence in Rio de Janeiro, 2003 and Dennis Rodgers "Youth gangs in Colombia and Nicaragua: new forms of violence, new theoretical directions?" in A Rudqvist, ed., *Breeding Inequality - Reaping Violence, Exploring Linkages and Causality in Colombia and Beyond*, Outlook on Development Series, Collegium for Development Studies, Uppsala, (2003), 111-141 cited in Winton, "Urban Violence," 171.

<sup>49</sup> Davis, "Irregular armed forces," 407.

<sup>50</sup> Elizabeth Leeds, "Cocaine and Parallel Polities in the Brazilian Urban Periphery: Constraints on Local-Level Democratization," *Latin American Research Review* 31, no. 3 (1996), 63.

<sup>51</sup> Leeds, "Cocaine and Parallel Polities," 60.

<sup>52</sup> Leeds, "Cocaine and Parallel Polities," 61.

<sup>53</sup> Davis, "Irregular armed forces," 408; Leeds, "Cocaine and Parallel Polities," 64.

<sup>54</sup> Arias, "Faith in Our Neighbors," 3.

<sup>55</sup> Piccato, "A Historical Perspective on Crime in Twentieth-Century Mexico City," 13.

<sup>56</sup> Arias, "Faith in Our Neighbors," 1.

under informal justice systems and what punishments should be meted out to violators. These include often-harsh informal punishment for crimes such as robbery and assault. Harsh measures (including capital punishment) are supported because of the alienation communities feel from formal justice channels.<sup>57</sup>

Crime groups are also active in other areas of service provision, using principles of welfare and reciprocity to recruit members and build support.<sup>58</sup> The Zetas in Mexico, for example, have been successful in building community solidarity through employment opportunities, by building infrastructure and by providing goods and services to the community.<sup>59</sup> These services commonly include cash for medical treatment, food or funds for those in need, employment opportunities and emergency loans in case of hardship.<sup>60</sup> In some of Rio's favelas crime groups commonly run local festivals and parties, give holiday presents to children, provide for home improvements and have even been involved in infrastructure projects (to improve water quality, for example).<sup>61</sup>

In Rio, residents' associations act as mediators between favela residents and crime groups, helping them to operate within local norms of honour and reciprocity and, thus, to retain public support.<sup>62</sup> Often, crime groups do not have a large legitimacy-building apparatus of their own (at least to begin with) and, as a result, they are obliged to work through local networks of trust and reciprocity in order to build community support for their activities.<sup>63</sup>

Criminals and the state also work together at times but, unlike the cooperation with residents' associations, this interaction is largely hidden from public view because of its potential to undermine state legitimacy.<sup>64</sup> In Rio's favela communities, a form of clientelism has come to dominate, in which traffickers dole out a portion of patronage benefits on their behalf. The funds buy votes, if not allegiance. Resident's associations also play a role here, by acting as intermediaries between traffickers and businesses, the state and NGOs, all of whom subsidise the efforts of traffickers to provide services to the community. Resident's associations, in exchange for their support, attempt only to limit violence.<sup>65</sup>

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<sup>57</sup> Leeds, "Cocaine and Parallel Politics," 62.

<sup>58</sup> Davis, "Irregular armed forces," 401.

<sup>59</sup> Davis, "Irregular armed forces," 401-402.

<sup>60</sup> Winton, "Urban Violence," 171.

<sup>61</sup> Arias, "The Dynamics of Criminal Governance," 303-304; 314.

<sup>62</sup> Arias, "The Dynamics of Criminal Governance," 299.

<sup>63</sup> Arias, "The Dynamics of Criminal Governance," 321.

<sup>64</sup> Arias, "The Dynamics of Criminal Governance," 300.

<sup>65</sup> Arias, "The Dynamics of Criminal Governance," 310.

## MILITIAS, VIGILANTES AND GANGS

In contrast with criminal organisations, the provision of community security is a primary, rather than a secondary function for militia groups. Militias have been described as “a form of self-help to escape particular circumstances [that have] flourished where inaccessibility and administrative inefficiency and complication [are] the rule.”<sup>66</sup> Where state protection from violence is absent and where communities lack the resources to purchase private security, they are left with no option but to resort to justice “through rudimentary vigilance” and “legal self-help.”<sup>67</sup> Militias are a product of extreme insecurity, of situations in which insecure communities come to see no alternative to lynching and vigilante justice.<sup>68</sup>

Iraq has become an archetypal example in recent years, with the destruction and privatisation of public security leading to proliferation of tribal militias and local protection rackets,<sup>69</sup> “communal force inspired by a mix of tribalism and rent-seeking”<sup>70</sup> Similarly, in Colombia, popular militias have risen as a way of protecting the civilian population against violence. In Johannesburg, poor KwaZulu migrant workers have built fortified communities to protect themselves from the violence they face at the hands of society.<sup>71</sup> In all three places, the growth of militias is justified by the absence of state protection from violence<sup>72</sup> and is buttressed by complicit authorities and the social support of the community. In all three examples, militias have, to a greater or lesser extent, appropriated most of the security function of the state.<sup>73</sup>

Vigilante groups can operate at a low level, mobilising only in response to particular threats (with sporadic lynching, for example) or establish a constant and powerful presence within communities. In this second incarnation, they can begin to operate as a *de facto* authority, providing security, community services and promoting “community values”<sup>74</sup> or a kind of “moral revival.”<sup>75</sup> In this sense they are both competitive and mutualistic.

The presence of vigilantes may result in a short-term decline in violence but it more often results in displacement and increased violence in the long-term.<sup>76</sup> Like other sorts of private security, vigilantism creates inequality between those who can and those who cannot buy justice.<sup>77</sup>

<sup>66</sup> Eric Hobsbawm, *Bandits* (New York: Delacorte, 1969), 17 cited in Leeds, “Cocaine and Parallel Polities,” 68.

<sup>67</sup> G. Simpson, “Explaining endemic violence in South Africa,” *Weltfriedensdienst Querschnitt* 3, (1993) cited in Winton, “Urban Violence,” 172.

<sup>68</sup> Davis, “Irregular armed forces,” 404.

<sup>69</sup> Friedrichs and Friesendorf, “The Mercenary Debate,” 43.

<sup>70</sup> Friedrichs and Friesendorf “The Mercenary Debate,” 44.

<sup>71</sup> Rodgers, “Disembedding’ the city,” 114.

<sup>72</sup> Ralph Rozema, “Urban DDR-processes: paramilitaries and criminal networks in Medellín, Colombia,” *Journal of Latin American Studies* 40, (2008), 433.

<sup>73</sup> Francisco Gutiérrez Sanín and Ana María Jaramillo, “Crime, (counter-)insurgency and the privatization of security - the case of Medellín, Colombia,” *Environment and Urbanization* 16, (2004), 21.

<sup>74</sup> Rozema, “Urban DDR-processes,” 433.

<sup>75</sup> Sanin and Jaramilo, “Crime, (counter-)insurgency and the privatization of security,” 22.

<sup>76</sup> Winton, “Urban Violence,” 172.

<sup>77</sup> E. A. Gimode, “An anatomy of violent crime and insecurity in Kenya: the case of Nairobi,” *Africa Development* 26, no.1/2 (2001) cited in Winton, “Urban Violence,” 172..

Gangs are another distinct category, although one that shares (at least where self-protection is concerned) some common characteristics with militia groups. Gangs often distinguish themselves from organised crime groups in that they are far less likely to be involved in trafficking (of drugs, people, weapons and other commodities) and in the violence that is associated with such activity.<sup>78</sup> Indeed, gang formation is more often a result of violence, rather than a cause.<sup>79</sup> In common with many of the groups described above, gangs form in areas where violence pushes individuals to develop a protection agency that substitutes for a lack of government rights enforcement.<sup>80</sup> Even where a legitimate government exists, gangs can form in places where there is a power vacuum. The failure of a government to enforce rights within a specific geographic space or for a social or ethnic group results in gang formation as a substitute protection agency. Being part of a gang enables an individual to obtain protection and “law enforcement” services that are otherwise unattainable.<sup>81</sup>

In addition, gangs may offer the prospect of economic sufficiency in a situation in which there may not be many alternatives.<sup>82</sup> Gangs offer structure and economic opportunities for the young and disenfranchised,<sup>83</sup> those who have been unable to “find any resources in their immediate social setting which provide them with what their family and the economic institutional order has not been able to give them.”<sup>84</sup>

## CONSEQUENCES

Security privatisation, including the forms discussed above, “eat[s] away at the institutional edifice of the rule of law because they shift responsibility for vigilance and maintaining public order to private hands.”<sup>85</sup> Security and the rule of law are ultimately only available to those who have the means to pay, either economically (in the case of private guards) or socially (in the case of militias or gangs). This undermines the larger social contract and public guarantees of equitable legal treatment.

In turn, this can lead “small” problems of violence to spiral out of control into much larger issues of chaos and insecurity.<sup>86</sup> In reference to the South African case, G. Simpson argues that “the immediate result of [...] violence of this sort is that it further entrenches widespread feelings of insecurity and fear, which in turn often lead to forms of violence which are rationalised as being defensive in nature.”<sup>87</sup> Desmond Arias describes a feedback loop relating to security privatisation, in which “corrupt

<sup>78</sup> Russel S. Sobel and Brian J. Osoba, “Youth Gangs as Pseudo Governments: Implications for Violent Crime,” *Southern Economic Journal* 75, no.4 (2009), 999.

<sup>79</sup> Sobel and Osoba, “Youth Gangs as Pseudo Governments,” 1010.

<sup>80</sup> Sobel and Osoba, “Youth Gangs as Pseudo Governments,” 997.

<sup>81</sup> Sobel and Osoba, “Youth Gangs as Pseudo Governments,” 1001.

<sup>82</sup> Winton, “Urban Violence,” 175.

<sup>83</sup> Aaron M. Cohen, “Gangs Go Global,” *The Futurist*, (November-December 2008), 47.

<sup>84</sup> Winton, “Urban Violence,” 175.

<sup>85</sup> Davis, “Insecure and Secure Cities,” 41.

<sup>86</sup> Davis, “Insecure and Secure Cities,” 41.

<sup>87</sup> G. Simpson “Explaining Endemic Violence in South Africa” cited in Winton, “Urban Violence,” 166.

state officials work with locally empowered delinquents to enrich themselves and win votes; criminals engage in conflicts with one another; out of fear, the population calls for increasing police repression; and violence spins out of control.”<sup>88</sup>

What is perhaps most worrying is that the cycle of security privatisation and government de-legitimisation<sup>89</sup> that they may provoke, is occurring despite the fact that some of the actors described above do not seek to overthrow the state itself. Indeed, despite the apolitical nature of some groups, they may be as damaging to the state as an insurgency, particularly when criminal elements are able to infiltrate the state and gain power and influence through rent-seeking and systems of clandestine reciprocity.<sup>90</sup> “The problem is not state failure but, rather, the forms of engagement between state actors and criminals and the way these connections lead to the deployment of state power in such a way that it undermines the rule of law and establishes a separate, localised order.”<sup>91</sup>

Democratic governance depends on the ability of the state to extend the rule of law and basic protection to excluded and marginalised groups.<sup>92</sup> One consequence of the privatisation described above, however, is that it removes pressure on the government to reform state security institutions, a situation that is worsened by private actors’ narrow definition of public security and failure to engage with government or civil society.<sup>93</sup>

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<sup>88</sup> Arias, “Faith in Our Neighbors,” 4.

<sup>89</sup> Davis, “Irregular armed forces,” 399.

<sup>90</sup> Davis, “Irregular armed forces,” 404.

<sup>91</sup> Arias, “The Dynamics of Criminal Governance,” 324.

<sup>92</sup> Arias, “Faith in Our Neighbors,” 3.

<sup>93</sup> Davis, “Undermining the Rule of Law,” 55-86, 78.

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