Engaging Nonstate Armed Groups on the Protection of Children:
Towards Strategic Complementarity

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This issue brief provides a brief overview of the legal, political, and operational frameworks protecting children from the effects of armed conflict, notably from violations by nonstate armed groups. It explores some of the limitations of these frameworks and their mechanisms, and then discusses ways to maximize the comparative advantages of different actors when engaging nonstate armed groups to improve the protection of children's rights.

Introduction: Child Protection and Nonstate Armed Groups

Contemporary armed conflicts occur predominantly within states and are characterized by the presence and proliferation of nonstate armed groups. In such contexts, the effective protection of civilians depends on respect for humanitarian norms—not only by governmental authorities and their armed forces, but also by nonstate armed groups. The United Nations Secretary-General has repeatedly emphasized the need to "more consistently and effectively engage non-State armed groups in order to improve their compliance with the law,"[1] including international human rights and international humanitarian law. This is of particular importance with regard to child protection as armed conflicts have far-reaching impacts on children, who are among the most vulnerable members of society. Besides the direct and brutal effects of war on children's physical and mental well-being, conflict also deprives them of access to basic services, education, and economic opportunities, and it exposes them to the risk of being recruited into armed forces or groups, or otherwise being used in hostilities.[2]

Multiple sources in international humanitarian law and human rights law acknowledge that children affected by armed conflict require distinct protection.[3] The existing legal framework provides a broad protective regime to ensure children receive the aid and care they need. However, there are three significant challenges when it comes to compliance by nonstate armed groups. First, some norms lack consistency, notably those concerning the prohibition of the use and recruitment of children. The minimum age ranges from fifteen

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1 Ban Ki-moon, remarks to the UN Security Council on November 9, 2011, during the open debate on protection of civilians, UN Doc. SG/SM/13932, available at www.un.org/News/Press/docs/2011/sgsm13932.doc.htm .

2 United Nations, *Promotion and Protection of the Rights of Children: Impact of Armed Conflict on Children* (Machel Report), UN Doc. A/51/306, August 26, 1996, available at www.un.org/documents/ga/docs/51/plenary/a51-306.htm .

3 The requirement of special protection is notably enshrined in the following international conventions: *Fourth Geneva Convention on the Protection of Civilian Persons in Time of War*, August 12, 1949; Additional Protocol I and II to the Geneva Conventions, June 8, 1977; *Convention on the Rights of the Child*, November 20, 1989, and its Optional Protocol on the involvement of children in armed conflict, May 25, 2000. This requirement is also recognized as a norm of customary international law applicable in both international and non-international armed conflicts.

to eighteen, depending on the instrument. For example, although some instruments apply a minimum age of fifteen for recruitment, the *Optional Protocol to the Convention on the Rights of the Child* (OPAC) allows states to recruit (but not use in hostilities) children aged sixteen years and above. Second, in some cases the standards applied to nonstate armed groups are more restrictive than those applied to states. In the OPAC, nonstate armed groups are precluded not only from using but also from recruiting children under eighteen. Furthermore, while the prohibition for states is restricted to "direct participation in hostilities," the scope is expanded to "use in hostilities" for nonstate armed groups. Prejudicial treatment—which is contrary to the principle of equality of belligerents under international humanitarian law—will certainly make it more difficult to convince them to accept standards that do not necessarily apply to their adversaries. Third, to further confuse things, most legal experts agree that the OPAC—by using the word "should" instead of "shall" in reference to nonstate armed groups—does not actually create direct legal obligations on nonstate armed groups, but rather obliges states to enforce these standards.[4] As a result, for those nonstate armed groups who are willing to comply with their obligations, it is not always apparent what their obligations entail. More generally, existing treaties and their implementation mechanisms remain predominantly focused on states, and even though nonstate armed groups are bound by international humanitarian law, they are not involved in the creation of, nor can they become parties to, international treaties. Therefore, there is little opportunity for nonstate armed groups to express their willingness to abide by humanitarian norms, which may indeed limit the incentive to respect them in practice.

Nonstate armed groups are responsible for a significant number of violations committed against civilians and notably against children. Yet, as noted in the last report of the Secretary-General to the Security Council on the protection of civilians,

"while armed groups are diverse in their motivations and conduct, there are those which have shown a readiness to establish and implement commitments in conformity with their obligations under international humanitarian law and with human rights law."[5] These observations prompted the Secretary-General to identify the need to enhance compliance with international law by nonstate armed groups as one of his five core challenges for the protection of civilians. The engagement of nonstate armed groups on the protection of children in armed conflict is one of the most advanced thematic issues to date. The UN, international nongovernmental organizations (INGOs), and local NGOs all have experience in this area. The challenge is to make the best of these different experiences.

A Case for Complementarity

Undeniably, the UN-led MRM—the most prominent mechanism—represents the potential for a systematic engagement of nonstate armed groups on child protection. It has brought encouraging improvements to the fate of children affected by armed conflicts, in particular when it comes to their recruitment by armed forces and nonstate armed groups. It has also considerably increased the international profile of the "children and armed conflict" file, as it is known, by inserting this theme high up on the Security Council's agenda. Besides the dissuasive character that the likelihood of sanctions can have, the "naming and shaming" approach that the MRM champions constitutes an important reputational incentive for violators, particularly nonstate armed groups seeking political legitimacy. As a matter of fact, encouraging signs with regards to the recruitment and use of child soldiers were observed in contexts where action plans—tools central to the MRM—were signed,[6] although some voices have cast doubts on their impact.[7]

The Watchlist on Children and Armed Conflict

4   See, for example, Daniel Helle, "Optional Protocol on the Involvement of Children in Armed Conflict to the Convention on the Rights of the Child," *International Review of the Red Cross* No. 839 (September 2000), and Tiny Vandewiele, "Optional Protocol: The Involvement of Children in Armed Conflicts," in *A Commentary on the United Nations Convention on the Rights of the Child* (Leiden: Martinus Nijhoff, 2006), p. 41.

5   United Nations Secretary-General, *Report of the Secretary-General on the Protection of Civilians in Armed Conflict*, UN Doc. S/2010/579, November 11, 2010, para. 53.

6   For instance, signature of an action plan in 2009 by the Moro Islamic Liberation Front in the Philippines led the group to issue a general order stating its policy of non-recruitment of children, setting punitive sanctions for noncompliance, and providing the establishment of a child-protection unit within its ranks. See United Nations Secretary-General, *Report of the Secretary-General on Children and Armed Conflict*, UN Doc. A/65/820-S/2011/250, April 23, 2011, p. 5.

7   Geneva Academy of International Humanitarian Law and Human Rights Law, "Rules of Engagement: Protecting Civilians Through Dialogue with Armed Non-State Actors," Geneva: October 2011, p. 32, available at www.adh-geneva.ch/docs/publications/Policy%20studies/Rules%20of%20Engagement.pdf .

network recently noted that, as of June 2011, "only 15 of the more than 100 armed forces or groups listed in the annexes of the Secretary-General's reports […] have entered into action plans,"[8] of which two governments and three nonstate armed groups fully complied and were delisted as a result. As far as nonstate armed groups are concerned, there is a variety of reasons for such a low number, among them the reluctance of some governments to allow contact between UN agencies and nonstate armed groups operating on their soil, and the absolute lack of responsiveness by some nonstate armed groups to any type of intervention. Another reason is linked to the fundamentally political nature of the MRM, established by the Security Council, which might antagonize some nonstate armed groups who view it as partial and biased, particularly in contexts where UN-mandated peacekeeping operations are considered by some as

parties to the conflict. Entering and completing an action plan remains a central requirement for the delisting process—despite the fact that alternatives to action plans could technically be explored.[9] In some situations, this requirement may offer a strong incentive to affected governments to deny UN dialogue with nonstate armed groups on their territory—and a number of nonstate armed groups consequently remain under the MRM but outside of the ambit of action plans. Yet, as emphasized in a 2008 study, "monitoring and reporting activities are arguably most needed when Action Plans or demobilization programmes have broken down,"[10] not to mention when they have never been agreed. Moreover, for political reasons, it is unlikely that some conflict situations will appear in the Secretary-General's reports and are therefore not addressed by the MRM process. Finally, the MRM focuses on the six grave violations against children

The Monitoring and Reporting Mechanism (MRM)

The UN-led MRM covers six grave violations committed against children in contravention of international law, including recruitment and use of child soldiers, sexual violence against children, killing and maiming, attacks on schools and hospitals, abductions, and denial of humanitarian access. This mechanism was formalized in 2005 by UN Security Council Resolution 1612, which called for its immediate implementation in countries where there were parties listed in the annexes to the annual Secretary-General's report on children and armed conflict.

Once the MRM is activated in a given country, a country task force, chaired by the highest UN authority on the ground and composed of relevant UN agencies, is responsible for collecting information on all six grave violations. Annual country reports are prepared by the task force, reviewed and vetted by the Office of the Special Representative of the Secretary-General on Children and Armed Conflict (OSRSG-CAAC), as convener of the UN system on children and armed conflict, and submitted by the Secretary-General to the Security Council working group. The latter subsequently issues recommendations to relevant stakeholders, including the Security Council, governments concerned, UN actors, and donors.

Another crucial piece of the Children and Armed Conflict architecture involves the preparation and implementation of action plans, which are concrete time-bound commitments by a listed party to a conflict to halt recruitment and use of child soldiers, sexual violence, killing and maiming, or attacks on schools and hospitals. The completion of an action plan and the subsequent cessation of violations is the only officially defined way to be delisted from the annexes to the Secretary-General's report on children and armed conflict, although factual developments may lead to the same end result (e.g., if a party ceases to exist).

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8   Watchlist on Children and Armed Conflicts, "Next Steps to Protect Children in Armed Conflict: Briefing Note to the UN Security Council," New York, June 2011, p. 6. According to the OSRSG-CAAC, as of March 2012, a total of seventeen parties have entered an action plan, including five governments and twelve NSAGs.

9   According to the 2011 version of the *MRM Guidelines and Field Manual*, "parties can be de-listed when the UN verifies that violations for which the party was listed have ended over the previous global Secretary-General Report cycle, and action plans on those violations have been finalized. In exceptional circumstances where it may be very difficult or not possible to develop an Action Plan with a Party to conflict but where violations have ceased, the [Country Task Force] co-chairs should seek guidance from OSRSG/CAAC and UNICEF HQ on how to proceed in the given circumstances." OSRSG-CAAC, UNICEF, and DPKO, *MRM Guidelines and Field Manual*, New York: July 2011, p. 73.

10 Katy Barnett and Anna Jefferys, "Full of Promise: How the UN's Monitoring and Reporting Mechanism Can Better Protect Children," London: Humanitarian Practice Network/Overseas Development Institute, HPN Network Paper No. 62, September 2008, p. 10.

in armed conflict as defined by the Security Council while the protection regime is rooted in the wider notion of aid and care that children require.

In brief, the MRM has become a central process to ensure the better protection of children in armed conflict, and it should remain as such. However, there are limitations to its scope and effective implementation—notably when it comes to engaging nonstate armed groups—that justifies looking at complementary approaches. The more tools available to support each other, the more likely it is that the objective of improving the lives of children can be achieved. Reflecting this thought, Security Council Report—a New York-based think tank—recently suggested that the Security Council promote complementary approaches by "requesting the Secretary-General to provide alternatives to [UN] action plans for non-state [armed groups]," notably by "using a third party organization or group to negotiate directly with rebel groups/non-state actors."[11] The 2007 Paris Principles also recognize the value of comple-mentarity in protecting children from the effects of armed conflict by stating that "where feasible, governmental, inter-governmental and non-governmental organizations, should offer support and technical assistance to governments and to armed groups, to enable them to comply with their obligations under international law."[12]

The Value of Diversity: Taking Stock of Comparative Advantages

Numerous humanitarian and human rights actors were working for the better protection of children from the effects of armed conflicts well before it became an issue on the agenda of the Security Council in the last decade. These different actors are characterized by their diversity in terms of mandate, scope, and approach. While there are a few specific child-protection agencies, most humanitarian and human rights actors have a broader mandate but look at children as a particu-larly vulnerable category of the population they serve. Some organizations specifically focus on humanitarian aid but most combine development and emergency relief activities, while others specialize in advocacy and training. Another dimension of the diversity of mandates is the type of activities carried out. Some organizations use a broad set of activities to achieve their goals, combining assistance programs on health, water and sanitation, shelter, and education, with protec-tion programs and advocacy, while others specialize in one of these areas. Beyond their mandate, the diversity of actors is further illustrated by their different forms: intergovernmental organi-zations, INGOs, local NGOs, and the various components of the Red Cross Movement.[13]

These attributes shape the ability of the different actors to respond to specific humanitarian needs and give them comparative advantages that, if used in a strategic, coordinated, and complementary manner, may overcome their respective shortcom-ings and contribute to achieving a better protection for children in armed conflict, both within and beyond the MRM. Intergovernmental bodies, and particularly UN agencies such as UNICEF, benefit from strong mandates and derive their authority as well as potential leverage from their member states. They usually have substantial resources allowing them to implement programs that can benefit children living in areas where nonstate armed groups operate. At the same time, intergovern-mental agencies may be perceived as partial and biased by some nonstate armed groups due to the state-centric nature of their membership. For that matter, nonstate armed groups may feel discontent with unequal possibilities and rights within these organizations compared to their state counterparts and might be reluctant to engage in dialogue with them. This holds particularly true in contexts where, as explained in a 2008 independent report for the UN, "a significant and growing part of the public no longer perceives the UN as impartial and

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11 Security Council Report, "Children and Armed Conflict," *Cross-Cutting Report* No. 1, New York: July 2011, p. 28, available at www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/XCutting%20CAC%202011.pdf .

12 UNICEF, "The Paris Principles: Principles and Guidelines on Children Associated with Armed Forces or Armed Groups," adopted in February 2007 in Paris, para. 6.10, available at www.un.org/children/conflict/_documents/parisprinciples/ParisPrinciples_EN.pdf .

13 The Red Cross Movement is composed of three distinct entities: the International Committee of the Red Cross; the International Federation of Red Cross and Red Crescent Societies; and the various Red Cross or Red Crescent National Societies.

neutral."[14] In the same vein, a recent report by the Norwegian Refugee Council warned that "the role of the [UN] Humanitarian Coordinator and OCHA in facilitating access negotiations with armed opposition groups is increasingly questioned by parts of the NGO community as they are not seen as neutral brokers,"[15] further emphasizing this point.

Multi-mandate organizations—those engaged in development and emergency relief—have usually been present in a country for a long time, well before a crisis strikes, and consequently have good knowledge of the context and pre-existing contacts with local partners, civil society, and potentially with relevant nonstate armed groups. Intergovernmental organizations and NGOs that combine both assistance and protection activities— as opposed to those that focus exclusively on advocacy or protection—can gain acceptance vis-à-vis parties to a conflict through highly "acceptable" interventions such as vaccination campaigns, nutrition programs, construction of shelters, and the like. This gives them the leverage to tackle more sensitive issues linked to protection of civilians and respect for humanitarian and human rights law that organizations focusing on protection and advocacy do not have. However, this can also result in more reluctance to pursue humanitarian dialogue with nonstate armed groups when such action risks losing access for assistance programs, as these organizations are aware that concerned governments are often hesitant to give visibility to the conflict and legitimacy to nonstate armed groups. On the other hand, nonstate armed groups may perceive assistance activities as mere diversions in order to monitor and report on their violations, increasing the reluctance of organizations to engage in protection and advocacy.

Smaller organizations that undertake less visible actions than their UN counterparts—and thereby face different political constraints—may engage in discreet low-profile dialogue with nonstate armed groups, which might be more acceptable to governmental authorities. Indeed, while the perceived legitimacy of a UN action plan can act as a strong incentive for a nonstate armed group to sign up to the MRM process, a similar rationale may dissuade governments from allowing contact with nonstate armed groups, to deny them such legitimacy.

Local NGOs and community-based organizations, for their part, can balance their more modest financial means and their greater exposure to the dangers of the conflict with an incomparable knowledge of the local culture, network of contacts, and acceptance within grassroots communities. This deeper understanding of the grievances at the origin of a conflict can also constitute an invaluable bridge to their constituencies.

Various humanitarian and human rights actors also have different philosophies when it comes to engaging parties to a conflict on violations of international law. These approaches, which differ based on the degree of publicity given to violations committed by nonstate armed groups and the type of dialogue with the concerned actors, can all be effective, depending on the context. The "naming and shaming" approach plays on the negative image cast on armed forces or groups to provoke a change in behavior, while the opposite approach favors discreet or confidential bilateral dialogue with perpetrators to build up trust and instill an incremental behavioral change. The former end of the spectrum is best illustrated by the approach put in place within the framework of the MRM, embodied by the Office of the SRSG on Children and Armed Conflict, which consists in publicly denouncing parties responsible for grave violations, and referring to the list of violators as the "list of shame." The latter end is exemplified by the discreet constructive dialogue with nonstate armed groups favored by the International Committee of the Red Cross (ICRC). Most other humanitarian actors stand somewhere in between these two extremes. For instance, the Swiss-based humanitarian organization Geneva Call engages nonstate armed groups in discreet dialogue towards signing and complying with a formal Deed of Commitment on humanitarian norms related to the protection of children

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14 Independent Panel on Safety and Security of UN Personnel and Premises Worldwide, "Towards a Culture of Security and Accountability," June 9, 2008, para. 20, available at www.un.org/News/dh/infocus/terrorism/PanelOnSafetyReport.pdf .

15 Norwegian Refugee Council, "A Partnership at Risk? The UN-NGO Relationship in Light of UN Integration," December 2011, p. 8, available at www.nrc.no/arch/_img/9608308.pdf .

Key Comparative Advantages of Actors Engaging with Nonstate Armed Groups

This table provides a non-exhaustive list of attributes and qualities that help identify the comparative advantages of different humanitarian actors when engaging with nonstate armed groups (NSAGs). The wide range of situations and specific operational considerations involved show the need for complementarity. A strategic use of different actors and approaches can improve the protection of children in armed conflict by addressing the various challenges in a more comprehensive manner.

	Attributes/Qualities	Considerations
Political	• leverage and constraints • access to NSAGs and relevant areas • perception of neutrality and acceptance by NSAGs	• Does the actor have credibility in the eyes of the NSAG and other relevant stakeholders? • Would the initiative benefit if carried out by a high- or low- profile actor, or a combination of different actors? • Is the actor able to overcome the sensitivities of the state concerned? • Does the NSAG allow interventions by the actor in the areas it controls? • Is the actor perceived as biased by the NSAG, its constituency, or other relevant stakeholders?
Contextual	• knowledge of local context • quality of relationships with NSAG • ability to manage security risks • availability of resources and capacities	• Does the actor have the necessary understanding of the conflict situation and dynamics? • Can the actor use or establish relevant contacts within the NSAGs and the local communities to facilitate its activities? • How risk averse is the actor? - Would the activity expose the actor's staff to specific risks related to the type of organization? • Can the actor attract the necessary resources and capacities to conduct the intended activities?
Methodological	• type of actor • type of dialogue with NSAGs • publicity of compliance or noncompliance • impact on assistance	• Would the NSAG more likely engage with local, national, international, or a combination of different actors? • What type of dialogue (persuasion, denunciation, coercion, etc.) is the NSAG most likely to respond to? • Would the initiative benefit from high visibility? • Is the NSAG sensitive to negative publicity? • Could engagement by any particular actor on protection issues impact on assistance delivery?

and the anti-personnel landmine ban.[16] The Deeds of Commitment contain a transparency provision in which the signatory group agrees that Geneva Call may publicize its compliance or noncompliance. In effect, the nonstate armed group agrees to be held publically accountable for its respect of norms. Nonstate armed groups are constructively involved in all steps of the implementation of their commitment, and they allow and collaborate in the monitoring and verification process.

The flipside to opportunities offered by the multiplicity of actors working for improved protection of children in armed conflict is that a lack of cooperation and communication is fraught with risks. Beyond the risk of duplication of efforts and the potentially counterproductive effects of the action of one actor on another organization's activities, another result of an uncoordinated approach might well be the loss of opportunities to apply the highest possible standards of protection of children. Indeed, given the multiple legal frameworks protecting children in armed conflicts, as discussed above, and the contradictions therein, there is a real risk that uncoordinated action of multiple organizations might send contradictory messages to parties to conflict that would be detrimental to children.

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16 Geneva Call, "Deed of Commitment under Geneva Call for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action" and "Deed of Commitment under Geneva Call for the Protection of Children from the Effects of Armed Conflict," available at www.genevacall.org/resources/deed-of-commitment/deed-of-commitment.htm .

Conclusion: Towards "Strategic Complementarity"

Coordination is not a revolutionary concept. As a matter of fact, the MRM has attempted from the outset to coordinate different approaches by either integrating international and local NGOs in the UN-led country-specific task forces, or by associating these actors in its monitoring and reporting system.[17] Yet, comparative advantages of actors operating outside of the MRM framework should also be used to the best effect and in a spirit of complementarity, in order to ensure the comprehensive protection of children. This holds particularly true when the MRM process is not proving effective. For example, the inability of some nonstate armed groups to enter into UN action plans due to circumstances beyond their control may, in some situations, act as a disincentive for these groups to comply with their obligations. Even though completion of a UN action plan is not an absolute necessity for being delisted from the Secretary-General's report on children and armed conflict, other options have not been considered, as discussed above.

A concerted and strategic use of complementary approaches, including those outside of the MRM framework, would contribute to improved protection of children from the effects of armed conflicts. Such "strategic complementarity" would help maximize the comparative advantages of each actor for different purposes: to overcome access problems, notably when the states concerned are opposed to the UN's engagement with nonstate armed groups; to develop specific responses tailored to the characteristics and sensitivities of each nonstate armed group; and to offer alternative approaches to overcoming nonstate armed groups' perceptions of some actors' bias in particular contexts. Such alternative approaches already exist but are seemingly overlooked in the MRM framework.

Better interaction with actors operating outside the MRM would respond to the legitimate concerns of duplicating efforts and sending mixed messages on the applicable standards.

Further dialogue among the various actors involved in protecting children in armed conflicts should certainly be encouraged to achieve "strategic complementarity." Yet, broad and general recommendations for dialogue usually fail to overcome concrete difficulties and blockages. Instead, child protection actors from within and outside the MRM could consider getting together to find solutions to current pressing issues. This should include the engagement of nonstate armed groups outside the current reach of the MRM process and alternatives to UN action plans where progress is lacking—measures already encouraged by the Paris Principles. Relevant actors could further discuss "the broad range of options for increasing pressure on persistent perpetrators," as called for by the Security Council in Resolution 1998, by exploring available non-coercive alternatives that could improve the protection of children. This should involve a critical analysis of the MRM to determine in which cases, if any, the institutional limitations of the MRM process itself is a barrier to the completion and implementation of action plans.

Taking as a premise that complementary approaches can each play a valuable role in better protecting children from violations, the stakeholders concerned should also consider ways to ensure that the highest possible standards are applied. Devising a set of indicators common to all processes could be a first step towards objectively measuring their impact, increasing transparency and accountability of different actors, and thereby supporting the most efficient approaches. Strategic discussion among a variety of actors could be the cornerstone of greater complementarity, improved accountability, and new solutions.

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17 Watchlist on Children and Armed Conflict, "Getting it Done and Doing it Right: A Global Study on the UN-led Monitoring and Reporting Mechanism on Children and Armed Conflict," New York, January 2008.

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