

Dealing with non-state armed groups and displacement: a state perspective

Espen Barth Eide

Norway's experience with its integrated foreign policy of engagement makes the case that better prevention, protection and assistance should be sought by states through international law and dialogue with non-state armed groups.

The overwhelming majority of today's armed conflicts are not fought between the armies of opposing states but between the government forces of a state and one or several non-state armed groups (NSAGs). While civilians have always had to suffer from the consequences of warfare, this trend implies a number of additional challenges.

Forcible and prolonged displacement is far too often a result of armed conflicts and violence today. Behind the stark numbers of millions who find themselves on the road or in precarious living conditions, far away from home and often in a foreign country, there are stories of tremendous loss, suffering and perseverance. Civilians are affected in a myriad of ways, whether as the victims of direct attacks – including by the use of sexual violence as a method of warfare, or forcible displacement – or as indirect victims through conflict-induced increases in disease, hunger and malnutrition. Landmines, cluster munitions and other explosive remnants of war all too commonly play a vicious role in these stories, forcing people to flee and standing in the way of return, thus creating protracted displacement situations. These are some of the unacceptable humanitarian consequences for which NSAGs, as well as states, are responsible.

International law and accountability

We see too many examples today of parties to conflict conducting their military operations in disregard of fundamental rules of international humanitarian law. Lack of respect for the rules may be the result of conscious policy decisions, or due to a lack of knowledge or understanding of the rules, or even lack of capacity to enforce them. This may manifest

itself both in the conduct of NSAGs and in the conduct of states.

Another challenge we face is that a number of these conflicts do not fit neatly into the traditional categories of international or non-international armed conflict. Further complicating matters, there is often a blurred line between situations of non-international armed conflict and situations with a combination of political and criminal violence, where armed actors with mostly criminal motivations are contributing to insecurity and attacks on the population.

How are we to address these challenges? First of all, there is a need to increase the parties' knowledge of and respect for the international rules that apply. Although conventions are mainly negotiated by states, a principle of individual criminal responsibility applies in the case of those fundamental norms enshrined in international humanitarian law, which are also binding on NSAGs. Non-state armed groups can also be bound by, and be held accountable by states to, the fundamental norms enshrined in human rights law and refugee law. The respective mandates of the ICRC, UNHCR and other UN bodies as custodians of this order are crucial to uphold.

Governments are under clear treaty obligations to take appropriate steps to ensure the protection of civilians under international humanitarian law or, when they have failed to prevent violations, to investigate, punish and redress human rights abuse.

There is a need to reinforce the principle that those responsible for violations of international norms are held accountable, through the active strengthening and rebuilding of national legal

systems; through the resolutions of the UN Security Council and other international institutions; and through the International Criminal Court and special tribunals.

We have seen that NSAGs may be convinced, through dialogue and outreach, to act in conformity with international norms. One example is the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines. Through extensive use of dialogue by the organisation Geneva Call, a number of NSAGs have signed deeds of commitment explicitly binding them to the provisions of this convention. Norway has also supported Geneva Call's pilot project aimed at NSAGs and the protection of women and girls in armed conflict. At a meeting in December 2010, members of eight Asian NSAGs came together to discuss conflict-related sexual violence and committed to work towards complying with international standards on the issue

The case for dialogue

Norway has for the last two decades pursued a policy of engagement. The overriding objective is to help the parties to armed conflicts find peaceful solutions, or at least help to reduce the level of violence and move towards political solutions.

In all cases where Norway has been invited to play a role, the parties have comprised at least one armed group and a state. Engaging NSAGs through dialogue on compliance with international norms has to be done step by step depending on the dynamics and stage of the conflict. Where the parties are in dialogue with each other (often facilitated by a third party), partial agreements – sometimes linked to permanent or temporary cease-fires – can serve as important confidence-building measures in addition to easing the suffering of the civilian population.

Norway has since 2001 assisted as a facilitator in the peace process between the Government of the Philippines and the National Democratic Front of the Philippines. An agreement between the parties on respect for Human Rights and International Humanitarian Law (CARHRIL) has been reached, including on forming a mechanism for monitoring its implementation. The parties are now, alongside the resumption of formal negotiations taking place in February 2011, endeavouring to accept complaints through the established mechanism, and to investigate and report on violations of human rights and international humanitarian law allegedly committed by either party.

The visible results of our policy have varied – but measuring Norway's individual role in a given conflict may not be very meaningful. Our contribution tends to be part of a larger effort together with others, and the ingredients for success or failure are mainly found among the parties themselves.

Our main tool is contact – dialogue – based on confidence. This approach necessarily raises important questions. Will allowing an armed group the opportunity to engage in talks legitimise that group's use of violence to push for its demands? Will the parties simply take advantage of the dialogue to buy time for their armed struggles? While these are valid questions, Norway has chosen to help facilitate dialogue because it has seemed the best way to make clear to the parties what would be required to achieve a political solution.

With whom are you going to discuss a conflict and the possible end to it if not with the parties involved, including non-state armed groups? Norway's position is to talk to everyone, including organisations such as Hamas in the Palestinian Territory and Hezbollah in Lebanon.

In such dialogues, the parties' self-interest in abiding by the law of armed conflict and other legal norms may be detected and encouraged. The parties' quest for legitimacy may be a potent driver behind this. When political legitimacy is the armed group's goal, it enhances, in

relative terms, the opportunities for constructive engagement for the reduction of violence and the promotion of peace. Of course, a balance must be struck between the NSAG's interest in political legitimacy and the concerned state's reluctance to convey such implicit legitimacy through dialogue. Ideally one should work to depoliticise issues concerning fundamental international norms and to avoid states preventing dialogue on human rights issues on the grounds of wishing to limit dialogue with NSAGs.

Indeed, understanding what drives the parties, and in particular a non-state armed group, is a crucial argument in favour of dialogue. It is, alas, also an increasingly convoluted affair. Non-state actors tend not to be monolithic organisations. Indeed, fragmentation, links between groups and criminal networks, links with elements of state structures, and third-state sponsorships – these are all facets of the complex reality of today's NSAGs. Sometimes, this fragmentation is even due to a state's military success against an armed group, paradoxically creating a situation less conducive to effective dialogue. These complexities make it difficult to gauge the parties' interests and identify their main drivers.

Humanitarian disarmament

By 'policy of engagement', we mean making full use of our foreign policy apparatus, aid funding, networks and willingness to take political risk in order to bring about change at the international level – change that is in line with universal values such as protection of humanitarian principles, promoting human rights, disarmament and conflict resolution. Norway's development cooperation and humanitarian efforts are part of such a policy of engagement.

Let me illustrate this by an example that is of relevance to the topic of NSAGs and forced displacement: the 1997 Anti-Personnel Mine Ban Convention. While originally developed for warfare between states, landmines – whether industrially produced or improvised – have become a common feature of 'asymmetric' armed conflict between one or more NSAGs and

a state. Regardless of who is using such weapons, the humanitarian consequences are unacceptable, which is why Norway was among the most active proponents of the total ban embodied in the 1997 Convention. For the same reason, under the umbrella term of 'humanitarian disarmament', Norway is deeply engaged in a broad range of efforts (directly and by providing political and financial support to others) to ensure that the convention is being implemented so that mine-fields are cleared, the victims assisted, and the weapons destroyed and no longer produced.

The Mine Ban Convention would not have been possible without the intrepid efforts of humanitarian organisations such as the ICRC and a number of NGOs, and the very significant involvement of landmine survivors. Norway and other concerned states cooperated very closely with these actors which proved crucial to the process as it kept the negotiations grounded in the stark reality of the true impact of landmines. Norway later used this model of cooperation between states and civil society in the successful process leading to the 2008 Convention on Cluster Munitions.

The Mine Ban Convention, and later the Convention on Cluster Munitions, established a forceful precedent in international law and policymaking for addressing disarmament issues based on humanitarian criteria. This has had, and will continue to have, wider ramifications for the security policies of states. At the same time, the harnessing of the humanitarian argument through these conventions has also contributed to a global dialogue on the protection of civilians in which non-state actors, including armed groups, are taking part. Even in a globalised world where there are many governance gaps – particularly resulting from the actions of non-state armed groups and the inability of states to fully assert themselves – progress is still possible through a combination of international law and dialogue.

Espen Barth Eide is State Secretary, Norwegian Ministry of Foreign Affairs. For more information please email post@mfa.no