Beyond the Reach of the State?  
Human Rights Abuses by Non-State Actors

Eileen M. Doherty-Sil  
University of Pennsylvania

**DRAFT – NOT FOR CITATION**

Abstract

What can international human rights organizations do about massive human rights abuses committed by non-state armed groups, particularly those that operate out of the reach of governments? This paper will examine the relationship between humanitarian and human rights law, the application of human rights law to non-state actors, and “best practices” for international NGOs that hope to push for improving the human rights record of non-state armed groups. Looking at the cases of Geneva Call, Human Rights Watch, and Amnesty International, the paper maps out similarities and differences in NGO strategies as they attempt to persuade non-state armed groups to reduce violence against civilians. The paper ends with a tentative discussion of the particularly difficult case of Boko Haram, raising the question of whether human rights discussions must be fused with broader international agendas concerning economic development and international security.

Introduction

Until relatively recently, discussions of international human rights focused almost exclusively on the human right obligations of governmental actors. Particularly since the end of the Cold War, however, global discussions of the international human rights regime expanded to include violations by non-state actors as well. The “respect, protect, fulfill” framework that emerged to deal with these issues is still framed in the context of state duties (rather than specific legal obligations of non-state actors). According to the UN Office of the High Commission for Human Rights (OHCHR):

- The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights.

- The obligation to protect requires States to protect individuals and groups against human rights abuses.

- The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights.¹

Nonetheless, the second of these state duties in particular – the obligation to protect – creates a new set of challenges for governments who must create mechanisms that govern not only their own behavior toward individual human rights, but also that deter or punish violations from other societal actors. At the same time, there has been a vibrant debate in international legal circles about the extent to which human rights obligations extend to non-state actors, as well as the relationship between international humanitarian law and international human rights law. And on an operational level, major human rights organizations like Amnesty International, Human Rights Watch and others have broadened the scope of their activities to include abuses by non-state actors.

Of course, the concept of “non-state actors” embodies a broad diversity of actors and issues: non-state armed groups (involving issues related to the use of child soldiers, violence against women, kidnapping, torture, civilian killings and other abuses), corporations (including a whole range of business and human rights issues), gender groups (including FGM, domestic violence, honor killings) and sexual orientation/gender identity (including discrimination and violence aimed at LGBT individuals). The inclusion of new actors on the global agenda has led to a spotlight on new kinds of issues – and but has also raised questions about how best to move forward in working to stop abuses by non-state actors.

This paper will focus on one type of non-state actor, that is, non-state armed groups. These groups are a particular challenge for traditional human rights strategies. Because they are at least partly beyond the reach of the state, it difficult for governments to implement strategies that effectively meet their “duty to protect” against human rights abuses. Furthermore, at least at first glance, it appears the traditional strategies embraced by human rights groups to effect positive change may not work well. “Naming and shaming” tactics that are central to boomerang or spiral model notions of human rights change (Keck and Sikkink, 1998; Risse et al, 1999) are unlikely to work for groups whose existence is based in opposition to status quo, especially those that are fighting perceived “Western” norms (though there may be some exceptions to this, as discussed below). Cost-benefit arguments such as those directed at corporations – somehow akin to the “business case for human rights” approach - seem a poor fit at best for actors who see little legitimacy in complying with the status quo (though again, there may be exceptions). Nor do litigation strategies (Simmons 2009) make any sense in this domain, since these groups operate outside the realm of formal law, and indeed, are often seen as criminals by governmental or other authorities.

Legal Obligations of Non-State Armed Groups

In the case of non-state armed groups, two key bodies of international law apply – international humanitarian law and international human rights law (IHRL). International humanitarian law focuses on situations of armed conflict, and lays out a set of rules to stipulate the way that force may be used so that its negative effects are limited. Rooted in both customary international law and treaties (specifically the Hague Conventions respecting the Laws and Customs of War on Land, the 1949 Geneva Conventions and a number of other international treaties focusing on production and use of weapons), IHL is aimed primarily at protecting people and restrictions on the means and methods of warfare (OHCHR 2011). By contrast, international human rights law focuses on government responsibilities to individuals to uphold fundamental
rights inherent in all humans (regardless of the specific ethnic/language/religious/other group of which they are a part), both in times of peace as well as conflict. It is rooted in a range of international treaties, the foundation of which is the International Bill of Human Rights (i.e., the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights), as well as customary international law (OHCHR 2011).

In this regard, three issues are worth noting. First, the emphasis of IHL has been on broad rules of conduct (as opposed to the emphasis on individual rights in IHRL). Second, by contrast, as noted above, IHRL has traditionally focused on the human rights obligations of governments, and only in recent decades has the attention shifted to the extension of human rights law to non-state actors. Third, there has been a longstanding notion that human rights law applies in times of peace, while international humanitarian law applies in times of conflict. Over time, that notion has been eroded in favor of an understanding that while international humanitarian law focuses on conflict, international human rights law applies in times of both peace and armed conflict, since inherent rights exist regardless conflict circumstances.

These differences lead to a key question: To what extent should international human rights law apply to non-state armed groups? This is a controversial question. First is the issue of whether government-signed human rights treaties apply to nongovernmental actors (or alternatively, that these treaties lead to the emergence of customary international law that applies to nongovernmental actors). There remains disagreement on this issue. Increasingly, however, there has been movement toward holding non-state groups accountable to human rights as well as humanitarian standards. Governments themselves now use human rights language when discussing problems associated with non-state armed groups, as do UN bodies like the Security Council and Human Rights Council. Furthermore, recent human rights treaties include non-state actors within their scope; this is true, for example, of the Mine Ban Treaty, the Rome Statute establishing the International Criminal Court, and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (ICHRP 2000).

Tayler (2010) suggests that an important first step in the debate was the 1990 UN Resolution on “Consequences of Acts of Violence Committed by Armed Groups and Drug Traffickers that Affect the Enjoyment of Human Rights.” The resolution relied on compromise language referring to actions that “affect the enjoyment of human rights” rather than direct references to “human rights violations” by non-state actors. The language choice reflected the controversy over the question of whether non-state actors hold legal obligations that in fact might be violated, or whether human rights is responsibility of states under their own legal treaty obligations.

Since that time, international statements about the human rights obligations of non-state actors have become more explicit. For example, the United Nations Human Rights Committee general comments Nos 29 (2001) and 31 (2004) emphasize that the International Covenant on Civil and Political Rights applies in situations of armed conflict where rules of international humanitarian law apply. Furthermore, Human Rights Council resolution 9/9 also states that human rights law and international humanitarian law are complementary and mutually reinforcing. This recognition has raised questions, however, about the specific implementation of both sets of law as relating to specific obligations of different parties in a conflict, the extent
of the obligations, applicable standards, and the beneficiaries of the protections. (OHCHR 2011, p. 6)

Second, even if we accept that human rights laws apply to non-state armed groups, there is the pragmatic concern of governments that acknowledging international human rights obligations of non-state armed groups might lend those groups legitimacy. Clapham (2014) dismisses the objection in the following way:

[Armed] opposition groups and their members are increasingly accused of violations of international humanitarian law and even convicted of war crimes. Highlighting violations of these obligations ought to be seen as de-legitimizing rather than anything else. The problem of legitimizing armed groups evaporates if we decouple human rights from the idea that human rights supposedly emerge from an essential link between governments and their citizens. When we see human rights as rights rather than self-imposed governmental duties, and when we envisage the rights project as founded on better protection for human dignity rather than privileges granted by states, we can start to see how we might imagine human rights obligations for non-state actors. (Clapham 2014)

As a result of these developments, it is increasingly common to see international fora using international human rights law with regard to non-state actors, for example, Security Council resolutions that call for non-state armed groups to respect human rights as well as truth commission reports (such as those in Guatemala and Sierra Leone) that lay out the human rights violations perpetrated by non-state armed groups (Clapham 2014). And although the two issues discussed above (i.e., whether human rights law applies to non-state actors and whether doing so inadvertently lending legitimacy to those actors), the current understanding in international law that the two bodies of law are complementary and mutually reinforcing (OHCHR 2011).

Strategies for Addressing Abuses by Non-State Armed Groups

Once an organization decides to incorporate actions of non-state armed groups into its advocacy efforts, there is the question of what kinds of strategies might be useful in those efforts. This section examines some of the attempts to answer this question, drawing primarily on practitioner insights.

In 2000, the Switzerland-based International Council on Human Rights Policy (ICHRP) issued a broad-based report that drew on research about national efforts ten countries\(^2\), with the aim of providing a framework on how to reduce or end human rights abuses by armed groups\(^3\). It is worth noting that the report was clear in its use of *human rights* language (rather than

\(^2\) Colombia, El Salvador, Northern Ireland, the Philippines, South Africa, Somalia, Sri Lanka, Sudan, Turkey and Uganda

\(^3\) The report defines “armed groups” as groups that are armed and use force to achieve their objectives and are not under state control.
humanitarian law). And although the report explicitly refrained from focusing on specific examples or specific groups, as will be clear in the section below, the framework incorporates strategies that that embraced both by groups that traditionally self-identify as humanitarian groups (e.g., the ICRC or Geneva Call) as well as those that are embraced by groups that self-identify as human rights groups (e.g., Amnesty International and Human Rights Watch).

The report begins with a frank articulation of existing dilemmas for human rights activities:

For all these organisations, dealing with armed groups has raised difficult questions. How should armed groups be judged? Should human rights and humanitarian organisations apply the same standards that are used to judge and restrain the behaviour of states? Is such an approach appropriate or likely to be effective? Can the techniques used to encourage states to respect human rights be applied with the same effect to armed groups? Are armed groups vulnerable to international embarrassment in the same way as states? Are some armed groups so far beyond the pale that there should be no dialogue with them? Does dialogue imply recognition and therefore legitimacy? Is a national NGO able to criticise an armed group without appearing to support the government which itself may be guilty of grave abuse? If human rights organisations begin or increase work on abuses by armed groups, what effects will this have on the status of their relationships with states? Do human rights organisations risk undermining efforts to hold states accountable for human rights violations if they devote increasing attention to abuses by armed groups? (ICHRP 2000, p.2)

With this long list of existing dilemmas laid out, ICHRIP lays out a best practices framework linked explicitly to context of the situation. In other words, a range of strategies may be at the disposal of any human rights group, but the success of different strategies will be directly related to three factors in particular:

- **Character of the armed group** (aims and ideology, leadership, openness, military command/control, economy, foreign sponsors constancy)
- **Role and capacity of civil society** (motivation, capacity, making contact, lack of information, safety, taking sides, insiders and outsiders, national and international)
- **Role of the state** (legitimacy of the state, state-sponsored violations, tolerance of the state for independent action)\(^4\)

Clearly, the character of the armed group is a key starting point, since there is tremendous variation both with regard to stated goals as well as openness to existing international norms. Given the wide variety of armed groups that exist in the international community, the context-based human rights approach laid out above is useful. What works in one context may well be useless or even counterproductive in others. Some groups have ties to existing governments (or actors within governments), while others do not. There is broad diversity in ideological goals.

\(^4\)See in particular table on pp 14-15.
And there is also diversity in the amount of control that a group has over an area or population, as well as the level of support that the groups.5

It is also worth noting that some armed groups have accepted codes of conduct (ICRC 2011) while others have not. A group like the African National Congress in South Africa embraced a commitment to human rights through its Freedom Charter — in which it justified the use of force in reference to past violations of human rights and included a pledge to respect human rights once it was in power (ICHRP 2000, p. 17). On the other end of the spectrum, perhaps, are groups that reject prevailing international norms, including some radical Islamist armed groups. ICHR notes the possibility of applying religious norms even where groups who reject international norms (p. 17), but obviously the challenge is much greater for advocacy groups to do that effectively when violence itself is viewed as a necessary means to the religious goals of the group, and the human rights groups are seen as a core part of the problem against which the group is struggling.

In selecting a particular strategy, ICHR lays out a wide variety of possible actions:

- fact-finding and public reporting
- campaigning for prosecution of armed group members by international tribunals
- advocating sanctions (e.g., bans on arms sales to the group)
- shaming the group through national or international media
- working to raise awareness of the victims of abuses by armed group
- working to raise awareness of abuses by supporters of the armed group
- participating in confidential dialogue with leaders of armed group about human rights issues
- training members of the armed group in international standards
- encouraging the group to embrace a code of conduct that incorporates respect for human rights
- helping groups create “judicial” mechanisms to deal with insubordination or dissent
- work through mediation or other means to help end the conflict and secure peace (p. 39)

5 Traditionally, groups that exercise effective control over some territory may enjoy limited rights and obligations under international law. Distinctions are drawn between rebels, insurgents and belligerents, based on both the degree of control they have over territory as well as their recognition by governments as such. Traditionally, rights and obligations extended to insurgents, with regard to the states that recognized that status. Insurgents that were recognized by states as belligerents assumed the full range of rights and obligations stipulated under the laws of international armed conflict. Clapham notes that this model has largely been replaced by the rules of international humanitarian law once fighting reaches a certain threshold, not least because governments are often reluctant to admit that conditions meet insurgency status. This means that rebels (or “unrecognized insurgents”) hold obligations under international humanitarian law. (Clapham 2006, pp 491-3)
This relatively long list of possible actions can be further grouped into two broad clusters:

1. Shaming tactics
2. Engagement/assistance tactics

The choice of approach should be shaped by a consideration of whether the human rights abuse is a matter of group policy, on the one hand, or a practice that the group is not endorsing but unable to fully control, on the other. In the former case, where the practice is a matter of policy, either shaming or engagement policies might be appropriate; in the latter case, only engagement and assistance tactics would be appropriate. (p. 40).

Another proposal – this one offered by Tom Parker, Policy Director for Terrorism, Counterterrorism and Human Rights at Amnesty International USA – aims not at the armed groups themselves, but rather at their broader constituencies. Specifically, Parker builds on what Louise Richardson has called the "complicit surround" – that is, the social support in communities that armed groups claim to represent. This complicit surround is what makes the activities of that group part of a larger shared struggle toward collective objectives. Strategies aimed at weakening community support for the armed group’s struggle may create new environmental conditions and constraints for that group, and in that way may be important leverage that can ultimately create a better human rights record. However, this means winning over communities that feel already victimized by governmental and international authorities, and who therefore have been more open to the messages of the armed groups. In this situation, the traditional publicity and condemnation strategies that human rights use vis-à-vis governments may not have as much traction, though they do meet with occasional success. (p. 1141).

As an example of this logic, Parker quotes a 2005 intercepted communication from Al Qaeda second-in-command, Ayman al-Zawahiri: "The strongest weapon which the mujahedeen enjoy, after the help and granting of success by God, is popular support from the Muslim masses in Iraq, and the surrounding Muslim countries... Therefore, the mujahedeen movement must avoid any action that the masses do not understand or approve." (p. 1128).

7 Parker writes in his personal capacity, not as a spokesperson for the Amnesty movement.

8 For example, Amnesty International asked its members to write directly to ETA leaders during a 1999 ceasefire with Spain in order to urge them to stop violence against civilians. (Parker p. 1135).
Humanitarian versus Human Rights NGOs

Just as there is a distinction between humanitarian law and human rights law, so too is there a difference in the traditional strategies that humanitarian groups and human rights groups have used in campaigning for change. International humanitarian groups have focused on the provision of assistance to victims of conflict, as well as on promoting greater compliance with international humanitarian law by all parties to a conflict, whether state actors or non-state actors through a range of engagement strategies. Humanitarian activities are guided by four key principles that have been the foundation for the International Committee of the Red Cross and national Red Cross/Red Crescent societies: humanity, neutrality, impartiality, and independence. Given these principles, as well as the priority given to victim assistance, humanitarian organizations are less likely to make public statements condemning violations committed by a party to the conflict. However, is both diversity and debate about the extent to which they should make public pronouncements about abuses. Some like Medicins San Frontieres have been known to do so (Brauman 2012), while the ICRC is well known for its refusal to publicly speak out against abuses in order to ensure access to victims while also engaging discretely with relevant actors (Kellenberger 2004; Warner 2006; Forsythe 2006).

Humanitarian Engagement Strategies: The Case of Geneva Call

There is vibrant research on best practices for engagement with armed groups (MacLeod et al, 2016), including cases in which NGOs have been to engage groups designated as “terrorist,” despite the practical and legal obstacles of that designation. Examples where engagement has met with some success include the Liberation Tigers of Tamil Eelam (LTTE, or Tamil Tigers), the PKK, the Taliban, al-Shabaab or Hamas, or genocidal groups such as the Khmer Rouge (Saul 2016, p. 51).

Nongovernmental organizations may be particularly well-placed for this kind of engagement, since their lack of official diplomatic status means that can work without conferring official credibility or recognition to the armed groups, or themselves being associated with governmental actors or official positions. Hofmann (2012) suggests that humanitarian NGOs have used two core approaches in their attempts to engage armed groups. First, conflict resolution mediation strategies attempt to facilitate dialogue between states and armed groups – focusing on achieving agreements in such areas as the reduction of violence, implementation of ceasefires and the negotiation of peace agreements (p.8). Second, NGOs may use norm diffusion strategies that aim to achieve a better understanding of, and adherence to, international humanitarian norms. Norm diffusion strategies are aimed primarily at reducing violence against civilians rather than achieving peace, though Hofmann notes that the kind of engagement that occurs in norm diffusion initiatives may in fact be a first step toward a broader peace process.

Organizations that work to engage armed groups may of course be either national or international, but international groups are likely to enjoy resources as well as a broader scope of action than national groups do. Well-known examples of international NGOs that engage non-
state armed groups on humanitarian and/or human rights issues include the ICRC,9 Geneva Call,10 the Centre for Humanitarian Dialogue,11 and the Carter Center.12

Geneva Call is a Swiss NGO that works to persuade armed groups to sign a “Deed of Commitment” to respect humanitarian norms and be held publicly accountable for their commitment. Because non-state armed groups are unable to sign international treaties in the way that states can, these deeds of commitment have been developed to mirror international standards so that non-state armed groups can signal their awareness of those standards and commitment to upholding them. Once they sign a Deed, they work with Geneva Call on a plan of implementation and monitoring. To date, three Deeds of Commitment have been developed:

- Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action (launched in 2000);
- Deed of Commitment for the Protection of Children from the Effects of Armed Conflict, (launched in 2010);
- Deed of Commitment for the Prohibition of Sexual Violence in Situations of Armed Conflict and towards the Elimination of Gender Discrimination (launched in 2012).

There are different factors that may influence an armed group to make this commitment, including both a normative desire to protect the quality of life for people living under their control as well as a more pragmatic political desire to show that they are able to uphold international humanitarian law and to improve their overall reputation among current and potential constituencies.13 Since its founding in 2000, 49 non-state armed groups have signed the Deed of Commitment banning anti-personnel mines, 18 have signed the Deed of Commitment on children in armed conflict, and 16 have signed the Deed of Commitment on the prohibition of sexual violence and gender discrimination.14

Though Geneva Call’s Deeds of Commitment focus explicitly on international humanitarian standards, some codes of conduct reference human rights law as well. Rawski (2009) notes, for examples, that in 2005 the Government of Nepal and the Maoist insurgency in that country entered into a ceasefire code of conduct that referenced not just international humanitarian law, but also the Universal Declaration of Human Rights. The next year, in 2006, the Maoist insurgency released a Statement of Commitment to Humanitarian Principles and

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9 See ICRC.org. Note, though, that the ICRC is generally viewed not as a traditional NGO, but rather as a hybrid NGO/inter-governmental organization. Although it was founded as a private organization under the Swiss Civil Code, its functions and activities are discussed specifically in international law under the Geneva Conventions. This gives the ICRC an international legal personality similar to that of inter-governmental organizations, as well as privileges and immunities similar to those held by the United Nations.

10 See Genevacall.org

11 See HDCentre.org

12 See Cartercenter.org

13 See www.genevacall.org/who-we-are/faqs/

14 www.genevacall.org/success-stories/
Human Rights. This opened the door to an international monitoring process that essentially treated the Maoists as duty-bearers under international human rights law; for their part, the Maoist leadership said later that their decision process was shaped by a desire to gain the benefits that might be associated with building credibility in the international community.

Human Rights “Naming & Shaming”: Human Rights Watch and Amnesty International

As noted above, international human rights groups have traditionally focused on government abuses of human rights, and only relatively recently have begun to focus on the actions of non-state actors. Furthermore, they have tended to cite international human rights law rather than international humanitarian law (though that too has begun to change). In terms of strategies, human rights organizations are best known for “naming and shaming”\(^\text{15}\) approaches based on conceptualizations of norm diffusion models such as Keck and Sikkink’s (1998) “boomerang” model and Risse et al’s (1999) “spiral model.” Admittedly, these models emerged from analyses of government abuses and the extent to which publicity-based efforts led to positive change in government behavior (e.g., Haffner-Burton 2008). The extent to which the same strategies work for non-state actors is less well-researched, though it appears that they are most likely to be effective for non-state groups that have a stake in gaining credibility in the eyes of domestic or international audiences, for example, to demonstrate legitimacy as a contender for political authority. Alternatively, shaming techniques may be effective for groups who rely on moral or material support from abroad (Hofmann and Schneckener, 2011).\(^\text{16}\)

But even if we accept that human rights law applies to non-state actors, there is the pragmatic question for human rights organizations about how much to extend their scope of their own activities away from a purely governmental focus to that includes non-governmental entities as well. This question became particularly salient for international human rights groups during the 1990s, after the 1993 Vienna Declaration that affirmed the indivisibility of rights, and included language focusing on human rights actions by non-state actors. Those who argued in support of expanding the scope of activities felt that failure to do so raised both ethical and political issues, since a decision to focus only on governmental actions might suggest that human rights activists did not value the suffering of victims of non-governmental entities enough to take action. But disagreement existed within the international human rights arena about the extent to which campaigning should extend to violations by non-state actors; according to Wilder Tayler, groups like Amnesty International and the International Council of Jurists were reluctant to take on the issue, while Human Rights Watch was more in favor. (Tayler, 2010).

Human Rights Watch (HRW) and Amnesty International (AI) have both been called “gate-keeper” organizations, defined as institutions or individuals at the center of the global

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\(^{15}\) For an interesting discussion on the “politics of naming” (specifically with regard to the terms “insurgency/counter-insurgency” and “genocide”), see Mamdani 2007.

\(^{16}\) Certainly, human rights NGOs like Amnesty International and Human Rights Watch embrace engagement tactics as well, though primarily this is through dialogue with governments or other powerful actors (such as corporations) to change laws or practices that run counter to human rights norms. See for example, https://www.amnesty.org/en/who-we-are/
human rights movement, whose support of a claim can boost it substantially (Bob 2008). Gatekeeper organizations tend to have the largest budgets, best staffs and strongest credibility within the human rights circles. HRW and AI are two of the most commonly-cited gatekeeper organizations, bearing huge visibility in the international media, as well as global human rights movement. Both organizations embrace broadly similar research-based “naming and shaming” campaigns that research and publicize human rights abuses, in the hopes that this will induce relevant actors to change their behavior.  

Consider first Human Rights Watch. Already by the early 1980s, Human Rights Watch (then called “Americas Watch”) had become concerned about reporting only governmental abuses in cases where abuses are being committed on both sides (Roth 2010). In particular, HRW worried that one-sided reporting would lead to perceptions that the organization was biased. Yet because of the prevailing understanding at the time that human rights law is concerned solely with governmental obligations, HRW knew that relying on that international legal framework created problems for human rights campaigning. Therefore, HRW decided to use international humanitarian law in its campaigns, focusing specifically on Common Article 3, which has been called a “mini-Convention within the Conventions” since it is a condensed specification of the non-derogable core rules of the Geneva Conventions that apply to all parties in a conflict, as well as makes them applicable to conflicts not of an international character. To quote the International Committee of the Red Cross summary of the article:

- It requires humane treatment for all persons in enemy hands, without any adverse distinction. It specifically prohibits murder, mutilation, torture, cruel, humiliating and degrading treatment, the taking of hostages and unfair trial.
- It requires that the wounded, sick and shipwrecked be collected and cared for.
- It grants the ICRC the right to offer its services to the parties to the conflict.
- It calls on the parties to the conflict to bring all or parts of the Geneva Conventions into force through so-called special agreements.
- It recognizes that the application of these rules does not affect the legal status of the parties to the conflict. (ICRC website)

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17 The organizations also also bear some important differences. Key among these is the fact that AI is a membership-based organization, while HRW is not. The majority of AI’s income comes from individuals; HRW relies mainly on larger-scale foundational support for its funding base (though it accepts individual contributions). This difference translates into a key difference in strategic approach. HRW relies on a professional staff to emphasize fact-finding, reporting, effective use of media and targeted advocacy. AI also has an extensive research-based professional staff base that engages in fact-finding and reporting, but it also integrally relies on individual actions such as petitions, letters, and protests.

18 The specific context was the conflict in El Salvador (where both the El Salvador and US government expressed frustration that human rights groups were focusing only on governmental actions), but Roth notes that HRW also examined both Contra and Sandanista abuses in the conflict in Nicaragua, and that in fact, it became “the standard way we operated everywhere.” Roth (2010), p. 26.

19 In addition to Common Article 3, Additional Protocol II exists as a 1977 amendment to the Geneva Conventions. The protocol clarifies international law as it applies to victims of non-international (i.e., internal) armed conflicts.
With the decision to use international humanitarian law (particularly Common Article 3) as well as human rights law in its research and reporting activities, Human Rights Watch became freer to highlight actions committed by any party to a dispute, not just states. Consequently, it adopted a standard procedure to report on worst violations of both sides of disputes. According to Roth, this practice also permitted HRW to take a clearer position on issues such as right to life in a war context, which human rights law does not address (p.27). Furthermore, while international human rights law has traditionally focused on government actions in their own territory, IHL is explicit in applying to extraterritorial disputes, making it particularly useful to use when reporting on governments operating outside their sovereign boundaries.  

Like HRW, Amnesty International has traditionally viewed its core focus as holding governments accountable for specific violations of human rights (Wilder 2010, p. 65). Furthermore, its original mandate was centered on the protection of individuals (specifically prisoners of conscience) from governmental abuses, not broader thematic human rights issues. The turn toward incorporating non-governmental actors into its scope of activities was different than the experience of HRW, though, with a key difference being that AI did not as a rule utilize international humanitarian law in its publicity and advocacy strategies. 

Like HRW, AI began using the term “non-governmental entities” in the early 1980s, but Wilder (2010) notes that reporting on non-state actor abuses was sporadic and reactive. Amnesty took the position that it would “condemn” actions by opposition groups (such as killing or torture of prisoners) but would not address the groups directly. One argument in support of this practice was that directly addressing non-governmental groups would essentially be “crime fighting” rather than human rights abuses, since the focus was on the actions of private actors rather than governmental violations of legal obligations (Baehr 1994). Furthermore, until the 1990s, Amnesty distinguished between “non-governmental entities” and “quasi-governmental entities,” with the latter being defined as entities that hold territory or have control over the population (see Baehr 1994, p 17). This distinction is important in international humanitarian law (Clapham 2006), but is obviously conceptually difficult and holds the potential to complicate advocacy initiatives; therefore, over time AI stopped using the distinction in its decision making. 

Tayler notes three other areas of controversy for Amnesty International in its deliberations about expanding the scope of its activities. First, similar to the debates in international legal circles discussed above, some human rights activists argued that the applying international human rights law to non-state actors could weaken the argument that states are primarily responsible for holding human rights.  

Second, on a practical level, there was the

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20 Note, though, that this is not a settled issue; there are ongoing debates about the extraterritorial application of international human rights law.

21 Roth notes that this is important for human rights groups who want to address external military actions by governments. At the time HRW began using IHL, a key case was the US invasion of Panama. More recently, there have been discussions about the application of both IHL and IHRL to issues such as drone warfare.

22 Tayler suggests that important aspects about the application of international law are still to be resolved, but emphasizes that it is nonetheless possible to focus on the question of “whether and how to deal with the human rights problems associated with non-governmental groups.” (Tayler 2010, pp61-62, emphasis in original)
question of whether extending campaigns to non-state actors might create new security challenges for human rights researchers. Third, objections were raised both by governments such as Colombia and Sri Lanka (who feared the move would provide a degree of recognition to illegitimate and groups and thereby elevate their status) and by some civil society groups (who had viewed international human rights organizations as their defenders against state violations). Thus, throughout the 1980s, AI did take some specific actions targeting quasi-governmental entities, but again, did not create institutionalized mechanisms.

This changed in the early 1990s, when AI undertook a broader review of its mandate. During that review process, the distinction between NGEs and QGEs was eliminated; AI also formally expanded its scope of activities to include non-governmental groups that were political (as opposed to criminal) in nature. The move meant that Amnesty would hold these groups to the same human rights standards that states had, though would consider transgressions as “abuses” rather than “violations, since only states held legal obligations (Wilder 2010, Hopgood 2006, Thakur 1994).

Like Human Rights Watch, Amnesty does not take sides in conflict. According to the website:

_We document and campaign against human rights abuses and violations of international law, no matter who commits them, or where. And, we support the survivors to demand justice._  

Though the website references international humanitarian law, it does not discuss it specifically. Rather, it stresses that violations of international humanitarian law are war crimes that might be referred to the International Criminal Court. The specific “call” on the armed conflict is as follows:

- _An end to impunity for war crimes and crimes against humanity._
- _An understanding by state forces and armed groups that targeting civilians can never be justified._
- _An end to the recruitment and use of child soldiers - their demobilization, rehabilitation and reintegration into society._
- _The ground-breaking international Arms Trade Treaty brought to life through national law and practice._

The Hard Case of Boko Haram – Preliminary Thoughts

How do we assess these engagement and humanitarian strategies in hard cases, such as Boko Haram, a militant group in Northeast Nigeria that opposes the idea of secular government? More than 5,000 civilians have died at the hands of Boko Haram since 2013. The group kidnapped 276 schoolgirls from a secondary school in Chibok in 2014, and 300 elementary school children in Damasak; most of these children are still missing. Furthermore, HRW

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24 Ibid.
suggests that between 2009-2015, more than 910 schools have been destroyed, as well as at least 600 teachers killed. And although the government of Nigeria has launched military operations against Boko Haram, the group’s strength has not appeared to wane much.

The group has never issued a formal political manifesto, however, which means it is necessary to glean its core tenets through sermons and other statements from the movement leader Ahubak Shekau and other local imams and teachers (Campbell 2014a, 2014b). It is clear that Boko Haram is squarely opposed to the idea of universal values: the name of the group translates roughly as “Western education is forbidden.” In this view, Western secular government and education are counter to the will of Allah, and justifies the use of violence to achieve its goal of establishing the kingdom of God on earth and justice for the poor based sharia law. The group has also positioned itself against “infidel” Muslim leaders, and is seen as a threat to traditional Islamic authorities, specifically the sultan of Sokoto and the shehu of Borno, both of whom have been the target of assassination attempts by Boko Haram (Campbell 2014a, 2014b).

Given the opposition of Boko Haram to Western secularism, it is hard to imagine that any engagement strategies would be feasible, much less likely to succeed. Certainly, engagement strategies like those of Geneva Call, which rely on engaging groups with universal humanitarian standards and what Boko Haram perceives as Western secular international law, seem doomed to fail. In fact, Ben Saul’s analysis of humanitarian engagement includes Boko Haram in a list of groups which he argues would be neither safe nor productive to engage. Similarly, it is difficult to be optimistic about ICHRPs’s suggestion that religious norms might be persuasive with groups who reject international norms, since Boko Haram has been clear about its intent to use violence against Islamic authorities it perceives as infidels. According to Campbell: “For Boko Haram, violence is not a perversion of Islam; it is a justifiable means to a pure end.” (2014b, p.2)

If engagement strategies are not possible, what about shaming strategies? Again, the logic outlined above points in a pessimistic direction. For groups whose ideology are in full opposition to Western laws, culture and tradition – like Boko Haram – shaming strategies seem unlikely to work. This is to say that human rights groups have not tried such strategies. Amnesty International, Human Rights Watch, and other groups have produced extensive documentation of human rights atrocities committed at the hands of Boko Haram, as well as specific calls of action (AI, 2015, p. 78). At the same time, the official policy of highlighting abuses by both sides has provoked controversy, particularly for those who see human rights groups as both disproportionately emphasizing state actions and making demands that might not be fully feasible given current state capacity. The clearest example of this was the response to Amnesty International’s 2015/2016 Annual Report, where some critics charged that although the report mentioned the atrocities committed by Boko Haram, it overwhelmingly focused on the actions of security forces. AI was also criticized for using hyper-charged language to describe security

25 Global Centre for the Responsibility to Protect, http://www.globalr2p.org/regions/nigeria
26 This is no mention of Boko Haram on the Geneva Call website.
27 The full list of his examples is Al-Qaeda, Boko Haram, the Lord’s Resistance Army, Abu Sayyaf or ISIS (p. 51).
force actions, i.e., “Stars on their shoulders, blood on their hands – war crimes committed by the Nigerian military” (2015b).

A March 2016 Guardian editorial board opinion piece responded to the report by underscoring the importance of holding states accountable to human rights standards:

> No doubt, international law and human norms demand that Nigeria as a state and Nigerians as a people eschew every form of man’s inhumanity to man. Hence perennial cases of police brutality, high-handedness by security officials, a criminal justice system which has failed, with many innocent citizens wasting away in illegal detentions, and state-backed maltreatment of citizens, call for holistic reforms of the structures and institutions of democracy. (Guardian 2016)

But then the article went on to highlight deeper questions surrounding what it saw as a lopsided analysis, particularly in the context of Nigeria’s fight to maintain territorial integrity:

> Nigeria’s war against insurgency and the Boko Haram phenomenon is a peculiar one which Amnesty International ought to see as a battle not only to safeguard Nigeria’s territorial integrity but to save humanity from terror…Amnesty International now has a huge credibility problem resulting from its inability to find a balance between the civil liberties of people and the national security needs of sovereign independent nations as evidenced in its retreat from its guiding principle that “AI neither supports nor condemns a government policy of using military force in fighting against armed opposition movements, when an opposition group tortures or kills its captives, takes hostages, or commits deliberate and arbitrary killings.” The position of AI in Nigeria’s war against Boko-Haram now, therefore, undermines those ideals. (Guardian 2016)

> More important than whether Amnesty’s report is or is not biased, however, is an even deeper question: How should human rights issues be addressed when they are deeply intertwined with bigger questions about state capacity, security, and economic development? The Boko Haram phenomenon has involved profound human rights atrocities. Yet these events are occurring in a part of Nigeria over which the government has little capacity control, where poverty is rampant, and where conflict is likely to be the norm for the foreseeable future.

**Conclusion**

Few would disagree that security, development and human rights are interdependent. But humanitarian and human rights groups like Geneva Call, HRW and AI are not organized in a way that make it easy for them embrace issues relating to development or security, and indeed, any attempt to do so would be fraught with a range of other difficulties. But to the extent that security, development and human rights are inseparable (as Ban Ki Moon has stressed in
reference to the United Nations)²⁸, the case of Boko Haram – and non-state armed groups more generally – reinforce the need to carve out policy spaces and communities to explore those connections more fully.

Some progress has been made recent years in breaking down previously divided areas, particularly as reflected in the current understandings of international human rights law and international humanitarian law. Whereas it was previously assumed that these two sets of laws operated in essentially different domains – one in times of peace and one in times of war – this distinction is no longer seen as relevant. Humanitarian law applies to situations of conflict, but given that human rights law is seen as operating at all times – and that non-state actors are viewed as more accountable under human rights law than in past years – it is not surprising that the two bodies of law are now seen as complementary and mutually reinforcing. Less has been done to integrate areas of international development and international security, despite what appears to be an overwhelming consensus that these core pillars of international relations must be viewed holistically rather than as separate spheres of action. Carving out a path to do that effectively, without eroding the core organizational strengths of international NGOs like Geneva Call, Human Rights Watch, and Amnesty International in their particular areas of influence, will be a daunting challenge.

²⁸ “Our organization is built around three pillars: peace and security, development and human rights. In dealing with the enormous and complex challenges of each, we sometimes pay little attention to their interdependence. But, the founders of the United Nations well understood that if we ignore one pillar, we imperil the other two. We must break out of our silos and work together on all three areas simultaneously.” UN Meetings Coverage and Press Releases, “Secretary General at Security Council debate on development for peace, urges all ‘to break out of our silos, work together on all three United Nations’ pillars,” 19 January 2015, SG/SM/16470-SC/11741-DEV/3161, http://www.un.org/press/en/2015/sgsm16470.doc.htm.
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