

THE BROOKINGS INSTITUTION

ENGAGING WITH ARMED GROUPS:  
LEGAL AND OPERATIONAL CHALLENGES FOR HUMANITARIAN ACTORS

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## P R O C E E D I N G S

MS. FERRIS: Good morning, everyone, and welcome to this event that we've organized, together with the International Committee of the Red Cross on Engaging with our Armed Groups, Legal and Operational Challenges for Humanitarian Action. My name is Beth Ferris; I'm a Senior Fellow here at Brookings, and Co-Director of the Brookings LSE Project on Internal Displacement, which works on a whole range of humanitarian issues.

The landscape in which humanitarian actors are working these days has become extraordinarily complex. Not only are there thousands and thousands of NGOs, myriad UN agencies, governmental actors galore, but also increasingly non-state actors that take many different forms, ranging from criminal gangs to so-called terrorist groups, to armed groups that have different political objectives, different ways of working, and pose different kinds of challenges to humanitarians trying to get access to communities affected by violence or disaster.

So we organized this together with ICRC to explore some of the challenges of working with armed groups. We've got three different panelists here, each of which will be speaking from their own particular area of expertise. We have Vanda Felbab-Brown, who is a Fellow here at Foreign Policy, does research on illicit economies, armed groups, has certainly had the most unusual travel schedule, I'm sure, of anybody else at Brookings in terms of going out to meet with, observe, study, analyze and occasionally even run away from armed groups.

She's going provide an overall context of the ways in which particularly states are dealing with armed actors. She'll then be followed by

Vincent Bernard, who is sitting at my far left, here, who is the Editor-In-Chief of the International Review of the Red Cross, which is actually being launched here today, the Special Edition on Armed Groups, and we're very glad to give some publicity to this important publication.

Vincent has worked with ICRC for 15 years, both in the field in places such as Gaza, occupied Palestinian territories, Senegal and other places, and quite a few different positions at Headquarters, as well. Then we'll have Marco Sassoli, who is the Director of the Department of International Law and International Organization of the University of Geneva, and he also chairs the Board of Geneva Call.

He's going to give us some of the legal dimensions of negotiating or working with armed groups in the context of their increasing activity. So we'll start with Vanda, and then perhaps we'll go to the law, and then we'll have the practice of what it's like on the ground to be working with armed actors.

Vanda, welcome.

MS. FELBAB-BROWN: Thank you very much. Good morning, everyone, and welcome to Brookings. It's a great pleasure to be here on an aspect of international politics that is, in my view, going to be an increasing feature of the next several decades, both for states and non-state actors, humanitarian actors and NGOs to be engaging with armed actors. And an internal aspect of

international relations that is perhaps not as explored and studied, as should be the case, so it's great to be here.

Thank you, Beth, for organizing the panel, thank you for putting out the issue. Now, why did I say that I think that, increasingly, armed actors and other non-state actors, including armed actors, will be an important feature of the times that have already started? Well, one reason is the obvious, already, to date, there are very many non-governed or spaces or places that are not governed, I should say, by states, be it the borderlines of Pakistan, as well as the center part of Karachi or Jakarta, or be it parts of Somali or Columbia or Mexico today.

In the past decade, very much a part of nation building, of foreign policy in which the United States has engaged was interacting with armed actors, both criminal actors as well as militant actors. But one of the trends that is increasing is increasing urbanization, and already today in many cities, the state really does not have the capacity to extend its presence, especially its multifaceted presence to large parts of urban areas.

The pace of urbanization increases these urban slums governed by drug lords, war lords, slum lords, Mungiki vigilante groups will be increasingly frequent. In the context of a century, cities will play, perhaps, a greater political role than they have in a long time. Now, from the perspective of a state, it's quite possible to ignore these slum areas or other urban areas, as well as areas that are

directed where the state is not present, but often the state does it at its own risk, its own danger.

At some point, the governance of the native governance emerging in these places and the problems festering in these places will spill, and the state will encounter them, then perhaps the challenge that the state will encounter will be far greater than merely dealing with an armed actor, but, in fact, they're dealing with a protostate.

Armed actors are, of course, extremely varied. Groups are varied by ideology or its absence, criminal groups are not identical with ideologically-motivated groups, groups vary by the organizational structure, their hierarchy of the characters. The Anonymous is, of course, is a very different actor, not armed actor than, for example, the Somali pirates.

But more and more, especially in the context of armed actors, the state will encounter armed exchanges with them and the way that really borders or approximates warfare. Arguably, what we are seeing today in Mexico really borders on its intensity on war. In this case, it's not quite inappropriate to call the brutality and the violence in Mexico a war on drugs, a war within drug trafficking groups.

Similarly, in places such as Rio De Janerio and old Columbia's Medellin, when the state decided to take areas governed by armed actors, in this

case, criminal groups, and really mounted operations that approximated very much, or are akin to urban warfare that we will see in the settings of our tribe, civil war in urban places, for example, and if I go straightforward, what kind of threats these actors play to states.

However, the interactions between such armed actors in society are often highly complex. They are all the more complicated if the state is so deficient in its presence, these actors really come to function as protostate entities, especially if they can mobilize illegal economies, they really become the provider of socioeconomic benefits. If they are really clever, they become the provider of public goods, and not simply public goods such as access to jobs, for example, but public goods such as the provision of order and rule of law, the provision of crime suppression policies.

Now, you might be surprised to hear me say that a criminal group like the PCC in Sao Paulo, for example, is the provider of crime suppression. Of course, it's a criminal group that generates violence, it's the source of homicides, it's the source of kidnapping and extortion, but at the same time, it regulates the intensity and shape of violence, extortion, homicides. It appropriate rates the monopoly of power, or close to monopoly of power in areas where it operates. All the more so, the state is being ransomed.

So if the state is really deficient in providing public goods, both rule

of law, contract enforcement goods, as well as socioeconomic goods, the populations in such areas might very well transfer their allegiance to the groups away from the state. Their primary social identification might very well be the criminal gangs or political gangs or political actors like Taliban, or in the case of Somalia, the pirate gangs.

Often, such gangs or such armed actors not only compete for the allegiance with the state; they might very well compete for the allegiance with traditional political elites, be it the tribal Maliks in Pakistan or be it clan elites in Somalia. But nonetheless, they have the capacity to accumulate what I call capital and really become the principal source of order in the area.

So if the state then decides to challenge them, it often used to do so through far more complex, far more multifaceted mechanisms than simply law enforcement or military might. It really needs to expand its multifaceted presence because much of the competition stops being merely about the physical control of territory or the exchange of physical power, but it's really about capturing the allegiance of the population.

This is true even if one thinks or talks purely about criminal groups, and all criminal groups are alike, but it too simplistic to say, on the one hand, that political groups like the FARC in Columbia have lost political ideology, or what distinguishes criminal actors is that they do not have political effects. In fact, that

is not the case; they often have deep political effects, deep effects on how society is aligned with them or the state.

Now, if the state decides that it wants to confront these groups in a very limited way, let them go on, or just occasionally confront them through military action without really fully incorporating these areas into the areas of state presence, and extend a multifaceted state presence, the worst thing it can do is then to criminalize the engagement of humanitarian actors and other actors with those marginalized populations.

To say that, for example, money cannot flow into Somalia during the context of an extreme crisis as long as there cannot be a guarantee that the money will not seep to al Shebaab. In the context of non-state presence, obviously, in the context of non-state actors, obviously, the non-state actors will control the territory and will demand a cut of the money.

So, for the state to say you cannot engage because some of the money might go to these entities that we cannot control or we chose to ignore, that means that the marginalized populations will become completely aligned and completely dependent on these actors. Not because they prefer them, but because that's the only game available in town, it's the only provider of public goods or socio economic goods.

Let me conclude by speaking about Taliban in Afghanistan where



the question is often asked in polling whether people like Taliban, and the answer inevitably becomes they do not like Taliban, Afghans, but it's also a completely irrelevant question. The only question that matters to the population is not whether they like Taliban, but whether there is anyone else available to them as a governing entity that they might like better.

If the answer is no, there isn't, Taliban is the only provider of rule, the only provider of both security and insecurity, then that's the ruling entity that the population is left with. So, in this case, to say, well, we will not provide aid, or humanitarian actors cannot get into the territory because Taliban, or the Somali pirates, or al Shebaab might get the access to some of the resources means that these populations are forever bound to these non-state actors and cannot ever transfer their allegiance to the state or the international order.

MS. FERRIS: Well, that's a rather grim introduction to a complex issue. Tell us, Marco, what International Humanitarian Law and legal norms have to say. You might want to talk a little bit about your experience in working with some non-state actors on issues of IHL, International Humanitarian Law.

MR. SASSOLI: Thank you. Thank you for having invited me. Indeed, now, perhaps, I speak, I take the hat of the international lawyer and I speak about international law. Perhaps after Vincent, if you allow, I speak, I take the other hat with chairing the Board of the Geneva Accord, which is an NGO

trying to engage armed groups to respect some humanitarian norms.

So I would start with international law which, despite all modern theories still has something to do with states, and it is still obsessed by States, and while international reality, and I fully agree with you, is more and more also dominated by non-state actors, think about multinational enterprises, NGOs, armed groups, terrorist groups, and so on. International law is still very, despite all tendencies, state-focused.

It is basically made by states, and we come back to that, that's a problem. It is, with some exceptions, addressed to states, it is enforced by states, and you have many more mechanisms to enforce international law against states. I mean, if your human rights have been violated by a state, you have a whole list of more or less efficient mechanisms to get your human rights respected.

Those who, like my friend Andrew Clapper, who is in the room, say that human rights are also addressed to non-state actors, have to admit that there are less mechanisms. Now, in International Humanitarian Law, at least since 1949, it clearly addresses non-state armed groups that's in the famous Article 3 Common, to the full Geneva Conventions, which applies to non-international armed conflicts.

I start from the idea that every armed conflict which is not international is necessarily non-international, and I have the US Supreme Court

with me. In the Handam case, it says, in the case of armed conflict not of an international character, each Party to the conflict shall be bound to apply as a minimum the following provisions, and then you have a sort of a mini Geneva Convention.

This means two things; first of all, and states don't like to hear that, necessarily, armed groups are subject of international law, as far as humanitarian law is concerned, because you cannot ask someone to respect the rules if that person or entity is not a subject of the law. For instance, the Canadian Criminal Code prohibition of murder is not addressed to Polar Bears.

When a Polar Bear kills a tourist, that Polar Bear did not violate the Canadian Criminal Code, because it's not a subject of the Canadian Criminal Code. The same thing is true for armed groups, it would be meaning less, the rules on non-international armed conflict, which are also addressed to armed groups, if they were not subjects.

This rule means also each party, that both parties are bound by the same rules. This is a very basic principle, which this issue of review I challenge for the purpose of debate with Hubert Chang. But Hubert Chang is not here, so I have to defend both positions. So the basic principle in humanitarian law is equality of the belligerence before humanitarian law, both parties have to have the same rights and the same obligations, as far as humanitarian law is concerned.

This is very important, I must agree. For non-international armed conflict, sometimes it is controversial of who the government is and who are the rebels. Think about Libya, think about Ivory Coast. Second, from humanitarian point of view, it is obviously important that the victims are protected on both sides the same way, and it's not your fault if you are a civilian, that you are happening to live on the wrong side.

If you had differentiated rules for armed groups and states, you would be less protected if you happen to be the victim of an armed group. Even morally, one cannot automatically say I hope I will not be arrested, that states are always right, and armed groups are always wrong.

So this is the equality of the belligerence, what applies equally to both sides? It's the law of non-international armed conflict, which is made up of Article 3 to the Geneva Conventions, protocol additional to at a slightly higher level because the armed group has to control territory for the protocol to apply, and today, one would mainly add customary law.

Here we have a little problem, because a very welcome development of the last 20 years is that the law of non-international armed conflict has become closer to the law of international armed conflict through the jurisprudence of international criminal tribunals that try each case. And the Yugoslavia tribunal somehow had to manipulate slightly the law because they

didn't really know whether it's international or non-international.

So they simply said, well, it doesn't matter anyway, because the rules are the same. In the treaties, the rules are clearly not the same. This is due to customary law. And the International Committee of the Red Cross has made a study about Customary International Humanitarian Law, and has come to the conclusion that, out of 161 rules of Customary Humanitarian Law, 136, I think arguably 141, are the same in international and non-international armed conflict.

This is good for the victims of governments. How could a government -- this is the famous sentence of the regretted Judge Cassesi -- how could a government justify doing something to their own people, which is prohibited to do in an international armed conflict against an enemy?

Now, the problem is the law of non-international armed conflict is also adverse to armed groups. And there, in my view, we have always, before we interpret the humanitarian law, before we claim the rule is customary law, before we develop humanitarian law of non-international armed conflict, to think about whether it is realistic for an armed group, because an armed group is different from a state.

Unrealistic rules do not protect anyone, and undermine the willingness of the addressees to respect even the realistic rules. For instance, the prohibition of torture, if an armed group has an impression that I try to sell the

group plenty of rules which they cannot comply with, they say this branch is not for me. And therefore, they do not even feel themselves bound by the rules, which are realistic.

Another factor which has brought the two branches closer, and which creates problems for armed groups, with all respect to my friend Andrew Clapham, is international human rights law. Because, obviously, under human rights law, non-international armed conflict, international armed conflict, and non-conflict situations are governed by the same rules which is justified for government, while more and more rules of humanitarian law are interpreted in the light of human rights law, and it becomes more delicate for an armed group.

First of all, it's very controversial where armed groups are bound by human rights law, but it's even more difficult than for humanitarian law for an armed group to respect those rules. I give you some examples where practically, there is a problem. For instance, there is a non-controversial customary rule prohibiting arbitrary detention. Who in this room is favor of arbitrary detention?

Now, if this is a rule of humanitarian law, of non-international armed conflict, and then it also applies to armed groups. What does arbitrary detention mean? According to the ICRC study, not to be arbitrary detention must have a legal basis, and there must be a possibility to check the lawfulness, to challenge the lawfulness of the detention.

Now, how does an armed group make a legal basis, and especially, how do you define the jurisdiction of an armed group? I mean, they create a legal basis, but the legal basis is applicable to whom? Then, Habeas Corpus procedure by armed groups is not such an easy thing. And therefore, you could say, okay, but armed groups shouldn't detain anyone.

But this story is unrealistic. If you find an armed conflict, and you want to have those who fight respect those who surrender or otherwise come to order, you must allow them to detain people. And to call any detention by an armed group taking of hostage is not helping people, but encourages summary executions.

There are two other examples of pillage. You know, I am against pillage, but what's the definition of pillage? One of the elements of pillage is appropriation without the consent of the owner. Now, international law does not really say who the owner of natural resources is. So we look into domestic law, and under domestic law of most countries, it's the government. So, the government never commits pillage if it exploits natural resources, and the armed group -- take the SPLA in southern Sudan.

Now it's a state, so that's different, but before, it was an armed group. As soon as it exploits the natural resources of their people on their territory, this was legally pillage. Don't try to sell them this rule of humanitarian law. The

last one, the last example in my article, I give some other ones, is the rule on child soldiers.

Please don't believe that I am in favor of child soldiers. I'm even sensitive to the 18-year straight argument, and I am sensitive to the gender argument that girls are much often more exploited, not to fight directly, but otherwise associated with armed groups. The result of this is that everyone of good will in the world considers that children should not at all be associated with armed groups. But children, obviously, may be associated with states with governments.

Please don't try to convince a Karen rebel in Myanmar that he should fight and let his family and his children in the hands of the government, which he considers will simply try to eliminate the Karen people. What can we do about this? There are basically two possibilities -- and this is the discussion I have with you, Burt Chang, therefore you understand his argument, don't think that I am so convinced of my argument.

One possibility is we keep the equality of the belligerence, but then we should not develop too much the rules of humanitarian law. But we should not forget that humanitarian law is not alone, there is human rights law. So, the government is bound by basic rules of humanitarian law, Article 3 Common, for instance, and if applicable, Protocol II.



In addition, by plenty of rules of international human rights law, which, even if humanitarian law is the *Lex Specialias*, our *Lex Specialias* doesn't say anything, we look into the *Lex Generalis*, which is human rights law, why, the armed groups -- again, with all respect to my friend Andrew -- the armed group would simply be bound by humanitarian law.

So they remain equal, but simply another branch adds up to, or -- and this is my proposal -- here, we abandon the equality of belligerence before humanitarian law, because it is a fiction, and the fiction doesn't protect anyone. Then we would have the government bound by their full rules of International Humanitarian Law in a non-international armed conflict, while the unarmed group fighting against the government would only be bound according to a sliding scale of obligations.

The more their total control, organization, the higher the degree of violence, the more rules of International Humanitarian Law of, like international armed conflicts, they would be bound to. Now you will ask me, okay, but is this a proposal *De lega ferenda*, or should we make new Geneva Conventions? I'm not sure, because it is somehow the existing law. Article 3 Common is the minimum which can and must be respected by everyone.

Protocol II is often criticized by humanitarians, because it has a higher threshold, it requires territorial control. And I think this is realistic, because

many rules, you can respect them only if you control territory. How can you try a person without controlling the territory? And then the rest is customary law, and here I come to my last point.

The existing customary law, which has been found based on state practice, according to the ICRC Customary Law Study, Customary law, by definition, is always realistic. Customary law cannot be unrealistic because it's based on practice. That problem is only here, it is based on practice, and even there one can have some doubts, but ICRC simply bases it on what states say, not what states actually do, which is defensible in public international law, it's based on state practice.

Why, if we look also at the practice of non-state armed groups, then my sliding scale corresponds to existing customary law, because in reality, armed groups don't respect rules which they are unable to respect. And therefore, if customary law, in my view, has a sense, it must be based on the practice of those who are the addressees of the rules. Therefore, I submit that it is possible to claim that my proposal is not a proposal, but is the existing law.

MS. FERRIS: Well, thank you very much; it's certainly a lot to think about. Vincent, tell us about operational challenges of working with non-state actors.

MR. BERNARD: Thank you, Beth. Thank you for co-organizing this

event, we appreciate a lot the commitment of Brookings in fostering this debate on humanitarian policy. I'd like also to thank Cambridge University Press, we have published through them. The Director of Legal Publications at Cambridge, our publisher for this edition.

I guess you have received copies of this edition at the entrance; it's actually the first edition on armed groups. The second one will be on engaging armed groups. So we started with understanding armed groups, and I think, with your presentation, we got already a very good introduction on the problem with Marco discussing about the law and its limits.

Somehow, the limits of the law, when it comes to promote compliance by armed groups, and my part will be on engaging armed group, and I would like to talk about the expansion of the ICRC, and I would like to start with a small story, a real story which happened to one of my colleagues some years ago in west Africa.

He was going to meet an armed group in the field, not a nice thing like this beautiful room you have here, probably in the open. And he met a militia in West Africa, these guys were on the drugs, they were really tough warriors, they were guilty of looting, abusing civilians. His role was to explain the work of the ICRC and to give them an introduction on International Humanitarian Law.

So he started talking, breaking the ice, what's your name, one of

them said my name is Rambo, Easy Trigger. Then he gave his presentation, and at the end, he opened for questions, and Easy Trigger raised his hand and said, Mr. Delegate of the Red Cross, I have a question. Please go ahead, Easy Trigger. My question is what is the penalty of International Humanitarian Law for killing a Red Cross delegate?

It's a funny story, but it is a sad story at the same time. But it shows a lot. It shows, first, that there are crazy people going there and meeting these warriors and trying to access foreign operations. It shows that we need to engage with armed groups for security, it's about security; it's about protecting the lives of the people, the humanitarian workers going in the field.

But it's also talking about the law, and their understanding of the law, and the fact that we can actually discuss these things. We can actually start discussing about the impact of having international criminal courts and the possibility to have sanctions. So I'd like to start with this, I think it sets the scene for the question of how to engage armed groups.

So Marco said, okay, we'd like to move away from equality in International Humanitarian Law. There are many ways, differences between states and armed groups. Both can violate the law, not only armed groups violating the law today that has to be said. But there are an equal showing their capacity to respect the law; they don't have the same mechanisms. And I think

Marco gave a lot of illustrations of that.

So this is why we need to go and meet them also, because they have less capacity to implement their obligations. So there is a need to engage armed groups, and that's why we decided to devote two editions of the Review. For those who are not familiar with our journal, the Review, the International Review of the Red Cross is a very old publication on humanitarian action; it started in 1869, actually.

I think it qualifies as the oldest publication in this field. Today, when we prepare an edition, we try to have three types of articles or elements to build an edition. We like to focus on the problem first; second, we like to look at the law and the challenges to make it respected in the field in reality; and finally, we look at humanitarian response and challenges.

So with armed group, I think we have quite a lot, and this panel here reflects also the way we have built our outline. So I really encourage you to have a look, and also to maybe in the future help us in our projects to disseminate this law and discuss areas to develop the law.

So let me give you, very briefly, let's say three main elements on ICRC and armed groups. First, I would like to talk about the findings of the ICRC working in the field around the world in so many non-international armed conflict situations and our reading of the humanitarian situation, then I will talk about how

we engage armed groups, and finally, I will talk about engaging armed groups on International Humanitarian Law.

So, first, I would like to talk about our findings and our reading of the situation all around the world. I'm not talking here from a think tank perspective or as a researcher, but based on the operations of the ICRC and maybe a few facts on what we see in the field. Today, we see that the nature of armed conflicts continue to evolve, and the predominant form, as is well known, is non-international armed conflicts.

In 2011, the ICRC has qualified 48 conflicts as situations of non-international armed conflict. Among this context, you have old conflicts like Afghanistan, which has been going on for 40 years, and you have new conflicts like Cote D'Ivoire or Libya. There are 48 situations, but they are very different. We see conflicts which are completely forgotten with sometimes very low level of violence; sometimes we see conflicts involving international forces with very big asymmetry between the two parties. So they are very different from each other.

Another important element is that we have a great diversity of armed groups. We are talking about armed groups today, and we have already evoked the fact that some of them are very different, some of them can control territories, and some are very small. We have identified 170 armed groups in these situations where we work.

Depending on the way you assess criterias for armed groups, you can possibly find many more armed groups, and this does not include gangs or Maras or other groups we find in other situations. The nature of violence has changed a lot, and it primarily targets civilians. Confrontations between armed groups and governments are actually quite rare; most of the violence is against the civilian population.

Which in non-international armed conflict is the price, is the main goal, to control the civilian population, and they are the ones suffering from the brutality of non-international conflicts, sometimes by armed groups, sometimes also victims of counter guerilla tactics.

We also observe that these conflicts are less and less ideologically driven, and that it's very difficult sometimes to distinguish between criminality and political motives. So even armed groups who choose to have a political agenda tend to use criminal activities to, for instance, get funds and support their military operations, or even not support their military operations, but simply support their existence.

We see that, outside conflict situations, so below the threshold of political activity of International Humanitarian Law, violence is also on the rise with situations where actually violence is even higher than in some conflicts that we see in the world.

After these few elements on the situation, I'd like to talk now about the engagement, how ICRC engage armed groups and why. I would also like to start with a few examples which are happening today. In the coming days, the ICRC will facilitate the release of the last military and police officers still detained by the FARC in Columbia; I think it's something we are preparing for in the coming days.

It was supposed to take place today, but I think the operation has been delayed until Monday, so we hope this will happen. It's a very important move by the FARC also to release these people. A few weeks ago, the ICRC visited 72 Yemeni soldiers, government soldiers who are detained by a group which is very close to Al-Qaeda, which is called Ansar al Sharia in Yemen.

So we are talking here about detention of government soldiers by armed groups. This is equal to what Marco said; armed groups actually detain government forces. Here, we can play an important role to visit these soldiers detained by armed groups. At the moment, we are in contact with opposition, all parties, actually, in Syria, so this is also very important in order to get access to some rebels in Syria.

So these contacts are taking place on a daily basis, and these contacts between the ICRC and armed groups are actually not new. It's also striking sometimes to mention this, and people are astonished, wow, you are



meeting these guys, you're meeting Taliban, some people are really shocked to hear that. But, actually, we've been doing that for quite a number of years; it started during the First World War

After the First World War, during the Russian Revolution, and since then, ICRC has been operating in non-international conflicts in dialogue with both parties. So we do that, first, because as a humanitarian organization, we want to work in close proximity to victims. In order to assess their needs, we need to operate in the conflict area, so we need to engage with both parties.

International law provides us with the basis to do that, Common Article 3 that you mentioned, gives the possibility for the ICRC to offer its services to the parties of a non-international armed conflict. We do that, let's admit it, first, for our own security. Because we need safe access, we need acceptance to have access to detainees, to meet for instance, with these Yemeni soldiers, to have access to the population in the war zone.

We need this access to provide assistance, to provide production for the detainees, and we also need this access to engage armed groups on the law, on respect for the law. How do to it, and there I could speak for a long time, but I know I have to refrain from that. Very often, it's a Catch-22, dialogue is facilitated by operations, dialogue is not based simply on principles on Article 3.

Very often, it is linked to demonstrating our impartiality or neutrality

in the field. So operations and dialogue come together, but very often it's a Catch-22 situation. For instance, in Afghanistan in 2003 when one of our colleagues was killed, we lost access to the field. How do you reestablish this access when you don't have actually operations where you're not really directly useful when people don't know exactly what you can bring to the population?

So access, dialogue, and operations go together, so you need to find ways to engage armed groups to assess the needs, and to find the niche which will allow you to operate in the context, like Afghanistan. In the case I mentioned, in 2006, it was possible to resume activities because we identified the need to bring first aid in the provinces, because many people could not travel within Afghanistan, could not reach the hospitals.

So we started to build a network in the field which, of course, allowed us to have more amend more contact with the armed opposition. Then facilitated our ability to have access to these areas. Of course, there are many challenges. Many challenges, come from armed groups themselves, but they alsosometimes come from the perspective of governments, which see the engagement with armed groups as a kind of recognition or giving them some kind of legitimacy.

Governments can also restrict our capacity to engage armed groups. Maybe we'll come back to that later. My last point is on engaging armed

groups to respect the law. , I'm also very often facing the comment that people perceive armed groups as criminals. They tend to think that armed groups are unable to respect the law by definition.

Why? Because in an asymmetric conflict, they will hide among the population, so they tend to live among the population, and use tactics to spread terror, and they are perceived as violating armed groups.

Sometimes, indeed, these groups deliberately violate International Humanitarian Law. There is this slogan that Charles Taylor used in 1997 when he was reelected as president of Liberia, his slogan was, "he killed my Ma, he killed my Pa, but I will vote for him." Because, yes, spreading terror was a tactic to control population, and people would possibly, yes, prefer to have this armed group, which is spreading terror among the population, controlling the situation so it appears to have stability.

Because, for the population, the big question is should I rely on armed group, should I rely on the government, where will I find stability, what are the rules of the game, who can provide me with security? And sometimes they will choose armed groups, as you suggested also, Vanda. But some groups have actually good reasons to comply.

In the Review, you'll find several articles, in this edition, there is one article on the arguments which can also convince armed groups to comply with the

law. It would be a bit too long to describe them, but definitely some groups can actually respect the law. I've met personally a former rebel and a former soldier at the same table after the internal conflict was over.

One of them had been detained by the other guy, but they were very good friends, because they actually managed to do that in a proper way, and once the war was over, they were both integrated in the national army. It is possible that armed groups respect the law, very often for public relations, for their self-esteem, for their image. There are many arguments that can be used to convince them to respect the law.

Actually, ICRC has engaged in these communication programs and very often base its work on local traditions, local culture, and try to identify looking at armed groups, not, let's say, through their political agenda, but looking at the reality of armed groups, trying to understand them so as to find the mechanisms which will make them respect the law.

There, we need to have a very pragmatic approach. But dissemination or convincing them to respect the law is probably not enough, and we need to work on some mechanisms which will create a commitment on their side and for which they will be accountable. So ICRC has also made a study, and we identify several mechanisms like agreements, declarations, and inclusion of International Humanitarian Law in code of conduct.

Here, we also published a collection of code of conducts by armed groups; it's quite fascinating to see how they perceive their obligations and how they define the obligations. In a previous edition, we published a code of conduct of Taliban in Afghanistan, which describes the way they look at their obligations, the treatment of prisoners, how to win hearts and minds of the population.

The Taliban are also concerned about winning hearts and minds. Sometimes, these codes of conducts are not according to the law, but it shows that, on their side also, there are possibilities to create commitment. So, to conclude, armed groups today are a major reality and they are bound by the law, so we have a responsibility in engaging with armed groups to discuss these issues.

We need to understand them, and we need to look beyond stated political motives. Not all armed groups are the same, and we tend to think that armed groups always violate the law. It's actually not true. They can make decisions to respect or not the law, so we need to be capable of helping them in this. Conversely, perception by armed groups matters, because if we need to understand them, they will also look at us, and they will look at our operations and they will look at our principles, and we better walk the talk. We see today that very few humanitarian organizations are capable of operating in conflict areas, and there we think that humanitarian organizations have also, when they want to

engage with armed groups, to question the way they operate.

We think that neutrality and independence and impartiality are key principles in our experience in building this capacity to engage armed groups. Humanitarian organizations also tend to limit themselves on security issues and possibly securing access. But I think also in the ICRC, we need more and more to go beyond access and security, and we need to really tackle this issue of engaging armed groups on respect of the law more seriously, and be very ambitious in our work on that.

However, and I want to conclude on that, this is a very challenging endeavor, and armed groups are not well equipped and sometimes are not willing to respect the law. So we have to be ambitious, but we have to be realistic. Many of these armed groups won't be in a position to respect the law, or are not willing to do that, but we still have to continue.

I think it's time for questions, now.

MS. FERRIS: Thank you very much, Vincent, and all of our panelists. We have time for questions, comments, et cetera, and we have microphones that will magically appear right here at the front. If it's okay, we'll take two or three, and then give you a chance to respond. And, if you could, identify yourself, please.

MR. CHATTERJEE: This is Samar Chatterjee from SAFE

Foundation. You've talked about armed groups, and also plunder, I guess, those were the terms used. And I'm wondering when United States invades Afghanistan or Iraq, is it considered an armed group? Because it's behaving in an illegal manner, so it should be treated as an armed group?

Therefore -- and since you said you're teaching the armed group to follow the law, are you able to teach these governments who behave like armed groups, the law? Because United States is in violation of a lot of things during these Afghan and Iraqi wars, and so on. So that's the question.

MS. FERRIS: Other questions? I have over here, one.

MR. CLAPHAM: Thank you very much, Andrew Clapham from the Geneva Academy of International Humanitarian Law and Human Rights. I think on the question of engaging an armed group, and suggesting to them that they have exactly the same obligations as the state that they're fighting against, Professor Marco Sassoli is absolutely right. It's not a realistic way to start, and therefore, I think his suggestion that there should be what he calls a sliding scale is actually a very good one.

I don't think it goes against the foundation of International Humanitarian Law to suggest that a rebel group is not in the same position as a state, and therefore, we can expect less. What I'd like to add into the mix, as he prefigured, is that I think we can do the same thing with human rights law.

Human rights law does already operate on a sliding scale for states; we don't expect the same of Tonga and France when it comes to the right to health or the right to education. There's a sliding scale, I mean, human rights, of course, with torture, it's exactly the same, but most human rights, there's a built-in sliding scale. What I wanted to suggest to the panel is that maybe it's useful to think about a sliding scale of human rights obligations for the groups, the armed groups.

Now, where apart company with Marco Sassoli slightly is I'm not sure that that sliding scale should be generated by the practice of the group. I think the sliding scale can be generated by human rights law. Why am I insisting so much on human rights law? It's because, in many of the situations that you've been talking about, and one could mention Rio or even Syria when the Commission of Inquiry went to Syria, there was no armed conflict.

So the Commission of Inquiry had to work out what standard to hold that armed group to. If you read the report to the Human Rights Counsel, they say we're using human rights against the armed group, but not the same human rights obligations that we're going to impose on Syria, it's a much reduced set of rights, which seems to be to be imminently practical.

I'd like the comments of the panel on that. Thank you.

MS. FERRIS: Okay. Another question? I have, let's take the woman right here, one and then two.



MS. RIZZO: Thank you. I'm Kathy Rizzo of the Public International Law and Policy Group. My question may be a broad question, but can any of the panelists speak to any engagement that's being done with Libyan militias right now, or ideal situations that you could see happening in a situation?

MS. FERRIS: Thank you. We'll take one more question here, and then we'll give the panelists a chance to respond.

MR. DE BONET: My name is Zachiras De Bonet, it is just a small question from a student who is a professor. When I defended my thesis one year ago, the professor asked me, when I talk about armed conflict party, I talk about a government, or I talk about with states. It is an opportunity for me today to ask back and for you, dear professor, when you read the article for the Geneva Convention, do you talk about a government, or do you talk about a state, and what are the implications or ethics of your answer on the question of equality in the practice field? If I take the example with Mali, actually, I think the rebel group, the Twilight rebel group today is stronger than the government, is there a context of serial war or coup d'etat? So I think the rebel group is stronger, and in this case, what is the implication on the question of equality? Thank you.

MS. FERRIS: We have some varied questions, here; who defines an armed group, can a state be an armed group in terms of respect for international law, is sliding scale of applicability of human rights law, could that be

a useful way to proceed? Anything you know about Libyan militias, and the government versus state question, particularly with the situation in Mali. Who would like to jump in? Vanda, do you want to start?

MS. FELBAB-BROWN: I'll just make one comment on the sliding scale from the perspective of the population of being an international lawyer and not being present of the humanitarian community. But in many ways, the sliding scale does operate, because populations have very different expectations of what is right, what is wrong, what are the responsibilities is that they place on non-state actors than they place on governments.

Often, this is very frustrating from the perspective of government or counterinsurgency forces, police forces, does the other point have, look at Taliban, is the cause of 75 percent of civilian casualties, for example. We make every possible consideration to minimize civilian casualties. We do cause them, but we are always blamed so much more for the one violation, or one slippage than the non-state actor, and this is the same be it the police in Rio, or be it forces in Afghanistan.

The reality is that populations, even in these extremely marginalized and victimized circumstances have a sense that the state, by virtue of being the state, or the international forces have violated obligations to respect rights, and to deliver services than armed actors do. So armed actors have this great playing

advantage of being able to minimize and justify an excuse, their violations far more than states do. If armed actors deliver some sort of service, it is met with far greater appreciation, far greater gratitude by the population than the state.

But it's the reality, and I think that as long as the exchange between military forces or law enforcement forces and the population is, look, you don't apply the same standards, it's a losing game. The reality is that the standard is different, and the question is not to focus on this different perception, but to maximize the good behavior and minimize the bad behavior on the part of the state.

MS. FERRIS: Thank you. Marco?

MR. SASSOLI: Well, first, the US is not an armed group, it's a state.

Humanitarian law is addressed to states, so you don't have to call it an armed group for it to be bound by International Humanitarian Law, and it's precisely very important with armed groups. The underlying assumption that people acting illegally are armed groups is not true. I mean, it doesn't matter whether someone acts legally or illegally, they are bound if they are engaged in armed conflicts by International Humanitarian Law. As far as I know, not the ICRC, is certainly, I would say, very much engaged in trying to get states to respect the law and disseminate the law to the states.

What is perhaps not so much existing is precisely for the armed

groups, so we have to push more there. But I agree with you, and it's very important to clarify that both states and armed groups violate humanitarian law. And the fact that states violate humanitarian law has never been used as an argument for saying don't engage them because they violate the law.

This is precisely when the ICRC, for example, in the second World War did not engage a profoundly inhuman regime on respect of humanitarian law, then it was criticized, rightly so. Today, states, many states expect from humanitarian organizations not to engage certain armed groups because they are so inhumane. No, that's the starting point.

A theoretical armed group or a theoretical state which perfectly complies with IHL, you don't even have to engage it. On the sliding scale of human rights obligations, I have a theoretical and a practical remark. The theoretical remark is, obviously, the human rights treaties are not binding upon armed groups, and unlike the humanitarian law treaties.

So we have to go through customary law, and in my view, the same issue comes up, but in my view, the same -- and here, I am OSU -- similar responses can be given. And the greatest positive is, in international law, Dionisio Anzilotti said, Logic is the source of international law, not only the will of state.

Therefore, I would say it would be very useful if someone was making an analysis in detail which rules of human rights law are binding for which

armed groups in what situations. What does the allegedly inderogable right to Habeas Corpus practically mean for an armed group, for instance?

Then, in answer to my former doctoral student who wrote a whole entire thesis on armed groups, and he has also written an article in this review on unarmed groups and international law; first, they are practical. The remark, it is one of the possibilities which works well with armed groups which want to become in charge of a state, or create a new state, secessionist group, or a group which wants to become the government.

It's one of the better arguments which convinces them to say you want to be the government of X, well start to comply with the obligations of X, because the obligations of international law are not obligations are governments, but of states. It is interesting that armed groups which do not want to become a state, the Taliban wants to become a state, Al-Qaeda doesn't want to become a state, it's easier to engage groups which want to become a state than those which do not want.

My theoretical answer is, indeed, the parties to non-international armed conflict are, in my view, development of the rebels, and not the state and the rebels. But obviously, it's the government, perhaps you know better than I, who represents an international law, the state, and except in situations like Cote D'Ivoire, where you don't exactly know.

This means that, in particular, transnational/non-international armed conflict -- that's another crazy thing of lawyers -- but, say, Afghanistan is a transnational/non-international armed conflict because it's different states, including the US, fighting against a non-state actor, which will soon, again, be the state. That's another story.

You have to say that those third states intervening on the side of what is still the government of Afghanistan, obviously, have their obligations as, not the government, but as states. Perhaps later I can make some remarks about Geneva.

MS. FERRIS: Why don't we take another round, and then we'll come back. I have this gentleman here from before, and then Jenny.

UNIDENTIFIED SPEAKER: Maybe I should say on Libya, and just very shortly. To go back to states, of course, they are also dissemination efforts with States, and we have programs all over the world to engage states on some respect for the law. Sometimes our groups are very well organized, and I remember the SPLA, the Study for Strategic Studies which was capable of training officers. So, actually, I agree with Marco, it is when a group wants to become a state.

Another thing I want to say about the law, and here, maybe to refer to what you said; the humanitarian needs come first, we need to be pragmatic.

Many of these dialogues on the law, on the respect for the law maybe will take place without us mentioning the law. You enter the compound of an armed group, and you see that there are child soldiers, and then you engage with the rebel leader and discuss about why are they here, what are we doing for these child soldiers, do you really need them, and start the discussion.

It's possibly not a legal discussion, so we need to be pragmatic, we need to look at the humanitarian needs first, and then the law will help us and give us some tools. But that's a lesson we learned from history, also. That you look at humanitarian needs, and then the law will provide you with the tools to address some problems.

But very often, these negotiations or these discussions are not legal ones, they can be very pragmatic. Regarding Libya, very briefly, when the crisis started in Libya, I think very quickly MSF came in from Egypt, entered into Benghazi, ICRC came also. We didn't have contacts with the Libyan government before, we were not present in Libya, very quickly also established an office in Tripoli, and ICRC could work with both sides.

So there are plenty of examples of engaging with the armed groups during the Libya crisis, and those armed groups now have become the government of Libya. But there are, yes, many things on which we work together, including detention of the, let's say, pro-Gaddafi captured by the Libyan rebels. So many,

many contacts, and a significant amount of information can be found on our website, for instance, regarding these operations.

MS. FERRIS: Great, thanks. We'll come to this gentleman again right here. I believe the microphone is coming.

MR. O'NEILL: My name is Michael O'Neill from Save the Children International. Thank you for your presentations and for the book, I will read it with great interest. Insofar as armed groups are also quite diverse, as are those providing humanitarian assistance. I listened with great interest to some of the approaches that the ICRC uses to engage armed actors.

But a lot of these strategies are predicated on ICRC's unique mandate, and my question is; outside of that mandate, what strategies would you recommend or have you found to be effective outside of dealing with the detention of combatants or negotiating or being an intermediary in conflict in other areas that non-ICRC providers of humanitarian assistance might apply?

MS. FERRIS: Jenny?

MS. MCAVOY: My name is Jenny McAvoy from InterAction. My question perhaps is related a bit to Michael's in that I couldn't agree more that humanitarian actors are quite often not nearly compliant enough with humanitarian principles, and that inhibits effective engagement with all parties to conflict.

But I think there's another difficulty there, and adherence to IHL is



not meant to confer legitimacy, political legitimacy or further the aims necessarily of the actor that you're trying to get compliance from. And yet, that, in fact, is quite often the main incentive to compliant with International Humanitarian Law, this desire for legitimacy. It may be viewed in terms of, for example, winning hearts and minds. That -- so pursuing that angle, pursuing that incentive and seeking compliance from an armed group may, in effect, become a challenge for the humanitarian organization in terms of remaining impartial and neutral in its posture in that particular scenario.

I wonder whether, either have Vincent or from Marco, if you could comment on approaches to navigate that kind of scenario to avoid seeming to be partisan in pursuing those incentives. Thanks.

MS. FERRIS: Thank you. And we have this woman right here.

MS. GUINANE: Thank you, Kay Guinane with the Charity and Security Network. This is partly a question and partly a comment, but it strikes me there's an elephant in the room in having this conversation in the United States, with our Material Support Law would criminalize much of the engagement that you're talking about. I'd like to get your views on that issue, and the effect that the US law has had internationally.

MS. FERRIS: Thank you. And we have a woman right here. Please turn off your cell phones.

MS. SWARUP: Thank you. My name is Manish Swarup of the Office of the High Commission for Human Rights from the United Nations. Thank you very much for a fascinating and extremely interesting discussion. I actually have two questions, one for Vanda, please. It is very interesting that you looked at armed groups also in the context of urban armed groups. My question to you is really about the legal framework in which you are entering into this discussion, because a lot of people tend to think, because this is called war on drugs, war on whatever, all kinds of wars, then we can use IHL in that context.

Clearly, we in the Office of the High Commission for Human Rights are extremely nervous about this notion and the fact that, you know, when there are people who happen to be criminal gangs or who happen to be fighting in a particular context, and you mentioned a few countries, actually, Mexico and so on, where this issue is quite important.

I am always extremely worried about expanding IHL in this area, and having humanitarian actors enter into this area because then you enter into the notion of who is a combatant, who is not a combatant, and then instead of looking into law enforcement measures in a human rights context where we know exactly what we mean and what the use of force in that context can be, then we do, we blur that. So I'm a bit nervous about it, and I'd like you a bit to explain it.

On Libya, our understanding is that there are, at this stage, four

types of, basically, people in detention. There are four types of detention facilities, but also four types of people in detention. Some people are really -- I mean, the question is about the militias acting in Libya. Some of these militias, there's no doubt that they are not under total control of the government.

Now, systems of the people who are currently being detained are migrant workers, they happen to be people who are thought to be pro-Gaddafi loyalists. The big problem there is that, currently, there is no adequate review of detention, and there is no individual screening of detainees in all detention centers.

So it's very difficult for us, and I think for you at the ICRC, to say in a very firm way who are these people who are in detention. So I would like maybe, if you can tell us how are you engaging with, and I think I know a bit about it, but I'd like if you can tell us a bit more, how you are engaging with regard to these four categories, government actors who are actually detaining people, but also militias, the security apparatus, who is detaining also people, but not necessarily under the power of the government.

Then you have the people who are totally outside the power of the government, and we have secret detention centers that we are aware of. We know that there are people who are secretly detained with no access to anybody; including one very famous man who we know is the son of Gaddafi. So it's very important, I would be very, very interested in these two questions.

MS. FERRIS: We have five very diverse questions and general advice to organizations that aren't ICRC in terms of working with armed groups; a question of whether working with armed groups, engaging with them confers legitimacy on them; the question about the role of US policies and material support, and does that make this conversation a bit irrelevant in terms of US organizations engaging; a question about urban armed groups and some of the pitfalls, perhaps, of expanding IHL to cover criminal gangs; and finally, something about ICRC's experience in working with different types of Libyan detainees.

We have about eight minutes, so that means about a minute and a half per question, so it's bound to be profound. Vanda, do you want to start?

MS. FELBAB-BROWN: Thank you, I'll take up the question on the material support and criminalizing engagement. Now, I ended my comment saying that I think it's very problematic. And I say that while one of my heads is working on counterinsurgency and counterterrorism.

But having that perspective, I'm quite aware that anti-money laundering laws and material support laws tend to have very limited effect on the physical capacity of armed groups and often emphasizing the physical component of power, and underemphasizing the political power that comes from having populations bound to them is deeply counter productive.

So while I see reason to have these laws on the books, I would like

to see our administration having far more flexibility to issue exceptions for humanitarian actors. In many cases, it's just totally not enforceable. What is the big source of Taliban funding? It's money that is siphoned off from logistical companies that move money for the US military.

Obviously, you have not going to make the argument to the US government that we should fine our military for having some of the money that are necessary for logistical support seep to the Taliban. So while I would not say we should change the laws necessarily, at least I think there should be far more flexibility to allow exceptions of due diligence, not insist on unenforceable level of due diligence.

For example, for the purpose of understanding that the larger fight is not just about the material power, but it's about where the allegiance of the population lies. On the question of urban actors, urban armed groups, I'm not a lawyer, so I would not want to enter the legal debate about what kind of human rights or humanitarian law should apply to these actors.

I would just say from the practical perspective, many criminal groups really function as Protostates, they control physical territories. The real example was brought up, then the Civitas come under Vimeo, for example, controls some of the favillas, you had a checkpoint that was manned by boys with machine guns, and they would pat anyone down who would want to enter.

They control the territory, they acted as the rule, they said who could come in, NGOs could only come in with their permission, and the state would only come in through violent invasion. For all practical purposes, although they might not have political ideology, they ended as an armed combatant controlling important parts of territories.

As I believe that increasing urbanization in the context are rather profound and maybe increasing state weakness in many parts will lead to more territories looking in this manner, perhaps there is some need to readjust how we think about engaging these actors, with kind of humanitarian law, human rights law will apply to them.

MR. FERRIS: Thank you. Vincent, let's go to you next, and then I'll give you a minute, then Marco to talk about Geneva Call.

MR. BERNARD: First of all, to answer your question, unfortunately, I don't have enough information, and as you seem to follow closely, I don't want to go into the details of the Libyan case. I do not comment on this work regarding detention, so I would not be in the position to give more information on this particular issue.

But, as I said, this is a concern for the ICRC, and we have been working on detention with the rebels when they were not yet the government, and we are continuing to do so. But on this particular case, I am afraid I cannot give

you more information.

Regarding the two questions on lessons learned by ICRC and lessons learned which can benefit other actors; as Marco as the Geneva Convention --

**MR. SASSOLI: That's right.**

MR. BERNARD: -- Article 3 mentions that, in situations of international conflict, the ICRC and other impartially maintained organizations can offer services, which points out the principle of impartiality. So it's really, the ICRC has a very specific mandate, and as we say, a radical principle of humanitarian action.

Other impartial organizations can also offer their services to armed groups and governments in times of non-international conflict. The ICRC cannot really talk on behalf of humanitarian organizations, we can only share our lessons, and it seems that, in today's conflicts, adherence to the principles are the only ways that we find relevant to have access to, in the longer term, to the population in situations of non-international conflict.

There was lots of questioning of the principle of neutrality in the wake of the Afghanistan invasion. I think these principles stood the test of time. Now every organization looks at its own mandates and its own priorities, but we would like to share these lessons, that's why we publish in the Review. We try to

publish case studies, and looking at the principles and how they were applied in the field.

In the Afghanistan edition, we talk about that, we talk also about that in these traditions of armed groups. So we hope that these lessons can be shared. Also, the arguments that we present to armed groups, which are also, I think, useful arms that can be used by other organizations, are shared in these editions of the Review.

Regarding the question of the legitimacy, actually, armed groups can respect the law, not only to improve their public image, they could also decide to respect the law for many other reasons like, for instance, because they want to win hearts and minds, because they want to get the support of the population.

The legitimacy argument is, I think, exaggerated, mostly by governments. I don't think that an armed group can benefit a lot from simply engaging with a legitimate actor. I think this is largely a perception by the governments which are very scared that actually an armed group can get this kind of legitimacy.

Today we are engaging with all these armed groups around the world, I don't know if they benefit so much from that, so I would not overestimate this problem. It's more on the side of the government that it is a problem, the perception. So how do we navigate with government is actually the question.



Again, I think you asked the question about the criminalization of aid.

We say states have to take into account their international obligations. States have given rights to humanitarian organizations to engage with armed groups for the protection of the civilian population. So when they draft legislation criminalizing what they call support or assistance, then they need to make exceptions for the work of humanitarian organizations.

I think this is based also on the same Article 3, for instance, which gives the possibility to humanitarian actors to offer their services.

MS. FERRIS: Okay. Marco, you had the last word, the last two minutes.

MR. SASSOLI: Thank you. One thing on legitimacy. You know, I don't like armed groups, I would prefer a world without armed groups, but armed groups are a reality, and they will not disappear because we ignore them.

It's like Henri Dunant and humanitarian law. I don't think Henri Dunant or the people in the ICRC, they like armed conflict, they would prefer a world without armed conflict. But they came to the conclusion it is not by ignoring armed conflict that we can help people, and I think it's not by ignoring armed groups that we can get better results of respect.

On the terrorism issue, I have to make my little coming out; I am a supporter of terrorists, officially. For instance, a US law school severed the

possibility to have a law clinic with Geneva Call, which is an organization which is seen under US law to support terrorists, because we engage armed groups, including armed groups which are considered by some states, or by many states as terrorists to comply with humanitarian rules.

If they comply with humanitarian rules, obviously, they are no longer terrorists. But I think it's precisely those who are terrorists who must be engaged. And -- well, when we speak with US authorities, they tell us, oh, it's not about you, don't -- but this is the beginning of the arbitrary state. They could arrest anyone legally after tomorrow.

When I go to Dulles Airport, they could arrest me. They say we will not arrest you, but they could. So, indeed, I think we have a good legal argument for saying that Article 3 Common implies that impartial humanitarian bodies may offer their services and they cannot be criminalized, and it doesn't make a difference between terrorists and non-terrorists.

Armed groups are now -- two wards about Geneva Call, it's an organization which tries to end gauge armed groups on very limited field, not to use land mines, not to use children, and now also on sexual violence. The first step is to get a Deed of Commitment, and that's symbolic.

They come to Geneva and they sign a Deed of Commitment in the presence of the government of Geneva. There's no material support of terrorism

law in Switzerland, fortunately, otherwise, we'd be arrested. And this gives them a sense of ownership, that then we start to say, okay, now you sign it, and now we come to your place and we want to see you deliver with your commitment.

Obviously, for hand mines, it's easier than for all humanitarian rules or ICRC has much more difficult work. At the end, in some cases when there is an allegation of violations, there have even been, for instance, in the Philippines, with the agreement of the government of the Philippines and of the armed group, a fact-finding mission to find out whether there was actually violations.

For the time being, we have such Deed of Commitment by 41 armed groups. And fortunately, some of these armed groups are on terrorist lists. Now, we cannot eliminate them and say, we don't want your commitment, because otherwise, the government of Columbia or the government of Myanmar would say our rebels are also terrorists, why do you take them, and then we close shop.

There is no armed group in the world which is not considered terrorist by the government against which the armed group is righting. SPLA, you can see that in Sudanese government documents 15 years ago was considered as a terrorist group. So, we cannot make the distinction between terrorists and non-terrorists.

MS. FERRIS: Thank you very much. Join me in thanking the panel for a very provocative discussion, and thanks to all of you for participating.

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I, Carleton J. Anderson, III do hereby certify that the forgoing electronic file when originally transmitted was reduced to text at my direction; that said transcript is a true record of the proceedings therein referenced; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken; and, furthermore, that I am neither a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

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