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Human rights in conflicts – how to better synergize the efforts of official actors and of civil society

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CONTENTS

I.   Introduction

The processes of globalization, the nature of contemporary conflicts as well as stronger role of civil society in general lead, among other things, to the stronger role of non-state actors in international relations, especially in the fields of humanitarian assistance, human rights, poverty reduction and conflict prevention. The end of the Cold War also brought the escalation and diversification of small-scale conflicts which, together with the openness toward non-state actors in international relations created more space for non-state actors in the areas that traditionally belonged to the official diplomacy, such as peace-making through mediation, and disarmament. On the other hand, the protection and promotion of human rights that was traditionally perceived as to be in a domain of civil society have become a part of official foreign policy and of diplomacy.

There is a growing understanding that serious violations of human rights have strong potentials to trigger violent conflicts, and that a neglect of active protection and promotion of human rights can provoke pressures that might lead to a conflict. In contemporary violent conflicts human rights are massively violated. Long term sustainable peace can not be achieved without properly addressing the issue of human rights violations.

The main pan-European security architecture; the Organization of Security and Cooperation in Europe, has put human rights at the heart of its conflict prevention efforts. In the European Union the democracy and respect of human rights and fundamental freedoms is seen as a foundation of the integration process. More recently, the EU has developed mechanisms and instruments for conflict prevention and crisis management in its foreign policy area as well. It has also developed a systematic and diversified cooperation with non-state actors in its CFSP, in particular in the area of human rights and in its ESDP.

The proliferation of state- and non-state actors that engage in a conflict may lead to confusion of who does what and with what purpose. In order to avoid conflicting agendas and maximize the effectiveness there is a strong need for good inter-agency cooperation and coordination. The efficiency of non-state actors in the conflict management and resolution is closely related to their ability and willingness to interact with official actors; and vice versa - the efficiency of official actors depends on their ability and willingness to interact with non-state actors.

The main question of my paper is related to 'the division of work' between official and non-state actors in human rights in conflict situation. The challenge here is how to synergize the efforts in protecting and promoting human rights in all stages of conflict management in order to build long-term and sustainable peace and prevent relapse into the conflict.

The first part of the paper will focus on some of the dilemmas connected with the triangle of human rights, civil society and conflict situation. The interactions between official and non-state actors in promoting human rights in conflict situation will be a subject of the second part of the paper. Two issues are of particular interest here. Firstly, there is a dilemma how to protect and promote human rights in the areas that are beyond the reach of official actors. Some answers could be found with an NGO Geneva Call and its efforts to work with non-state actors "on the other side", such as rebel groups etc, to bring them closer to the international framework for human rights protection. The second dilemma is related to the operationalization of the cooperation between state and non-state actors on the ground. The engagement of the NGO Conflict Management Initiative in the Aceh peace process highlights both the importance of better coordination with non-state actors and civil society, and the necessity for the EU to mainstream human rights in its mission more systematically and efficiently.

II.   Civil society and human rights in conflicts - key questions and dilemmas

In search for a proper theoretical framework for contemporary conflict situation: Approaches to security and conflict management

Although traditional international relations theories still decisively influence the decision makers and practitioners there is a growing recognition of widening of the gap between these theories and the development on the ground. In a contemporary world a 'westphalian' state hardly exists in any part of the developing world. The nature of war has changed; there are elements of privatization and commercialization as well as of the blurring of the division line between criminal activities (organized crime) and war in classical terms. Parties to the conflict are diverse and include state as well as non-state actors. Although a majority of violent conflict situations and wars is now of intrastate character there is a strong international dimension to almost all of the existing violent conflicts. The gravest violations of human rights are perpetrated in the war time. All these expose the role of non-state actors in conflict situation and in human rights in particular.

Despite serious efforts to adapt to these changed circumstances on the ground, main shortcomings of traditional approaches remain the same; their state-centrism, a rather strict distinction between internal-external, and a narrow understanding of security that neglects a wide range of contemporary security threats. New schools that emerged out of necessity to answer to various challenges on the ground attempt to address these shortcomings. Some attempt to shift the focus from security of the state to the security of an individual. Among them the Human Security approach combines its focus on individual and in addition it highlights the interrelatedness between human rights, security and development. It thus offers a framework for a comprehensive and sustainable conflict transformation.[1]

International security theories significantly differ in their approaches to conflict management. The traditional approaches, usually labeled as *conflict settlement approaches*, are outcome-

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[1] Human security approach is at the heart of the OSCE understanding of security whereby the three baskets; politico-military, human dimension and economic cooperation represent three equal pillars of the security. A major recognition of the concept of human security has come with the 2005 UN Summitt and the call of the then UN Secretary General for a comprehensive approach to security.

oriented. They concentrate on short term conflict management of armed conflict. For that purpose they attempt to identify key representative of the parties to the conflict and to negotiate peace among them. The aim of conflict settlement is "achieving sustainable win-win situations and/or putting an end to direct violence, without necessarily addressing the underlying causes."[2] Key actors in conflict-settlement approaches are states and international governmental organizations. The role of civil society actors is very limited. The ability of such an approach to offer long-term solution and to prevent relapse to the conflict is very limited.

On the other hand, the *conflict resolution approach* "refers to all process oriented activities that aim to address the underlying causes of direct, cultural and structural violence."[3] Main actors are civil society actors. Such an approach could be efficient in a long time frame, but as such it could appear to be detached from violence on the ground.

The *conflict transformation approach* combines the outcome-oriented approach and the conflict resolution approach with addressing shortcomings of the both of them. It attempts to address the root causes of the conflict and it defines roles for state as well as non-state actors. Lederach speaks about three levels; Conflict settlement approach is designed for the top leadership level with track I interventions. The middle range leadership could be engaged in conflict resolution (track II interventions), the third level is represented by wide range of civil society actors and projects (local peace commissions, trauma healing etc.).[4] Conflict transformation approach stresses the importance of both horizontal work, as well as vertical cooperation. The cooperation and coordination between Track I, Track II and Track III is not only desired, even more, it is a necessity for successful long-term and sustainable peace.

Conflict transformation approach strengthens the awareness of the need to address root causes of the conflict and to work closely with civil society. At the same time it keeps the focus on action to stop the violence. It combines state security with security of an individual. As such it fits well into comprehensive "human security approach".

The conflict transformation approach is, despite its potentials for practitioners, entering the mindset of official actors with rather weak intensity. The OSCE, which has from the very beginning of its existence stressed the importance of holistic approach to security and to close

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[2] Cordula Reinmann (2005), p.8
[3] Ibid. p.9
[4] Lederach (1996), p.14

cooperation between state and non-state actors, has been followed by the UN, the EU and even NATO[5]. The latter has rather recently recognized the importance of liaising more closely with civil society and to broaden its focus from pure military to wider societal goals. The UN term peace-building has expanded from building peace in purely security terms to embrace all phases: prevention, conflict management and post conflict peacebuilding. Peacebuilding in its broad understanding includes apart from security also socio-economic foundations, political framework, and reconciliation and justice.[6] Such understanding of peacebuilding opens widely the space for civil society participation.

The EU has also broadened the meaning of the term it uses; crisis management now encompasses consultation and cooperation with civilian actors and it focuses on all phases of the conflict.[7]

Civil society and human rights

The term "civil society" originates in the Enlightenment Europe and was rediscovered by leftist movements in Latin America in the 1970s and by dissidents in some of the Eastern European Countries in the 1980s. The third revival that came with the end of the Cold War was enhanced with the assumption of the existence of "global civil society".

Despite its rather long history the term "civil society" is still elusive and its meaning is contested. The broader understanding places civil society between the private sphere and the state as an "intermediate associated realm between state and family populated by organizations which are separate from the state and enjoys autonomy from the state"[8]. Three main problems with the term are:

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[5] Nato uses the term Crisis management.
[6] Utstein report lists following elements; under the security heading: humanitarian mine action, disarmament, demobilisation and reintegration of combatants and of child combatants, security sector reform and small arms and light weapons; under the socio-economic foundation heading: physical reconstruction, economic infrastructure, infrastructure of health and education, repatriation of IDPs, food security; under the political framework heading: democratization, good governance, institution building, human rights; and under the heading of reconciliation and justice: dialogue between leaders of antagonistic groups, grass root dialogue, other bridge-building activities; truth and reconciliation Commissions; trauma therapy and healing. The Report of the Utstein Group of European Donors as cited in the World Bank Report on Civil Society and Peacebuilding.
[7] Gourlay (2006)
[8] White (2004), as cited in Fischer (2005).

Firstly, there is a question whether the term civil society as conceptualized in and by the West could be used as an analytical tool and/or as a prescriptive tool for policy makers for other parts of the world. James warns against uncritical prescriptive universalism and against western exceptionalism. The western concept of civil society "ignores (i) the historical legacy of colonial civil society building and (ii) organizations which either do not fit with its prescriptions (because they are based on kin or ethnicity of local 'tradition') or which it misses altogether (before form taken is unfamiliar)"[9]. James offers the third (adaptive prescription) and the forth option (to ask the question differently) as the possible way out.

In a sway, the definition used by the World Bank is broad and somehow adaptive; Civil society is an "arena of un-coerced collective action around shared interests, purposes and values."[10]

The second problem with the term "civil society" is that it is more often than as an analytical concept used as normative one. When used normatively, the assumption of civil society's emancipatory functions is often taken for granted. In NGOs discourses, civil society is seen as "one of crucial underpinnings for strengthening capacity of societies to manage conflict peacefully[11]. Also the EU understands civil society as a positive force. The EU check-list for early warning is for example, based on the presumption that all civil society and media are forces for the good.[12] The EU thus checks if civil society can operate freely and openly and whether the media are independet. However, there is sometimes a very fine silver line between civil society as a force for the good and "uncivil society" that might steer up hatred and violence. The EU could neglect the existence of "uncivil" society and of media that incite to violence.

Thirdly, the diversity of terms used for civil society actors adds to the confusion. The term "*non-governmental organization*" is limited in scope and usually too closely connected with the development cooperation and partly also with advocacy groups. The term leaves out civil society actors that are not organized as NGOs. The somehow wider term "*civil society organizations*" embraces non-governmental and not-for-profit organizations that have a presence in public life and express the particular interests of their members. Non of the two terms, non-governmental organizations, nor civil society organizations, does cover individuals

[9] James (2002)
[10] World Bank Report on Civil Society and Peacebuilding, 2006. www.
[11] Fisher (2005), p. 14
[12] http://ec.europa.eu/external_relations/cfsp/cpcm/cp/list.htm

who might engage in conflict situation nor does it cover private enterprises that might also engage in the conflict. The term "*civil society actors*" would enter into the trap of contested definition of "civil society" and its applicability to the non-western societies.

The term "*non-state actors*" refers on the other hand to all actors that are of non-state character, and that are not necessarily organized in an organization. It thus covers also private security companies that are hired by parties to the conflict and that quite often appear among violators of human rights, and that are difficult to be brought to justice. The term covers also individual non-state actors who might be involved in peace initiatives.

All three major types of non-state actors, national, foreign, and transnational, play role in each and every phase of the conflicts and they might promote or violate human rights.[13]

The main dilemmas and challenges that non-state actors are faced with are the question of their accountability, representation and transparency. Related to that are questions of their autonomy and independence. A number of mainly foreign and international NGOs, but in some cases also local NGOs, are perceived as being accountable to donors and detached from local communities and local civil society. As such, international and foreign advocacy groups are often criticized as promoters of cultural imperialism in a new cloth. They might impose inadequate concepts and quite often they prioritize political and civil rights over economic and social rights. They might - due to the lack of knowledge of cultural and developmental characteristics of the local communities, employ culturally and contextually inappropriate conflict resolution techniques. In some cases - because they are assumed to be foreign-state driven, they are accused of interfering with internal affairs of sovereign states.

On the other hand there are handful of non-state actors that are perpetrators of human rights violations; among them for example organized and sometimes violent opposition (guerilla and rebel groups); private enterprises and professional organizations that discriminate their employees, clientele etc.; the media; aid agencies, religious institutions, people's tribunal.[14] Rather recent phenomena of private security companies hired by the parties to the conflict can be added to the list.

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[13] The distinction between criminal activity and human rights violations should be made as the perpetrators were the state actors; that is, human rights violations are actions of violations of human rights as listed in both international covenants (ICCPR and ICESCR) as well as in other key international conventions.
[14] Kabasakai Arat (2006)

Many of non-state actors can appear in both roles, as promoters or as violators of human rights. Even the activities of well intended and towards the protection of human rights oriented non-state actors might have negative impacts on the human rights situation. Their action may worsen division between conflicting parties, increase danger for participants in peace activities, reinforce structural violence, and/or disempower local population.[15] There are also the cases of illegal combatant groups transforming into human rights NGOs and back to illegal combatant activities, depending on circumstances.

Non-state actors are by nature not bound to international legal obligations.[16] The UN human rights framework, including UN Charter, Universal Declaration of Human Rights and a vast body of international legal mechanisms create a statist human rights regime. The existing international mechanisms of monitoring human rights are, contrary to the development in the last decades toward greater role of non-state actors, still state-centered. There is no international monitoring mechanism for non-state actors despite the fact that non-state actors play crucial role not only as promoters but also as violators of human rights. A question is how to reach out to "uncivil society" to bring them closer to the UN human rights framework. There is an on-going discussion on how to address this problem. On the one hand there is a risk that the extension of the existing legal framework for protection and promotion of human rights to non-state actors, would give them more legitimacy that the states are prepared to recognize. Further dilemma is related to the labeling of different rebel groups as terrorist groups - this might push such groups even further out of the reach. The question therefore remains how to bring non-state actors closer to the respect of international legal framework for protection of human rights and what is the role of state and respectively non-state actors in these efforts.

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[15] Issue paper on Negative Impacts published by the Collaborative for Development Action, www.cdainc.com/rpp/negative_impacts.php

[16] Zehra F. Kabasakai Arat (2006), offers a model with analytical framework that looks beyond the state. In the proposed framework foreign state agencies, foreign private individuals and groups, international governmental organizations and transnational groups and individuals, all affect human rights of an individual or a group, and they also influence behaviour of each other.

Human rights and conflicts

The Universal Declaration of Human Rights stipulates the protection of all human rights for all. One of the major achievements of the 60 year long history of UDHR is that human rights have entered into discourse of decision-makers. Nowadays one could hardly hear even the most authoritarian regimes say that torture is good. At the same time it is also true that in practice the world is still very far away from the declaratory principles enshrined in the Declaration and other international instruments. The western understanding of human rights is not commonly accepted by other societies and there are evidences of growing tendencies for communitarian approach to human rights. Even less commonly accepted is the notion of the importance of protection and promotion of human rights in conflict situation. Sequencing of security before the development and before human rights persists in all conflicts despite the growing recognition that serious violations of human rights have strong potentials to trigger violent conflicts, and that even a neglect of active protection and promotion of human rights can provoke pressures that can lead to a conflict.

Human rights have so far more successfully entered into the first and last phases of conflict cycle; the conflict prevention with early warning, and into the post-conflict peacebuilding. International bodies have developed mechanisms that concentrate on human rights violations as potential triggers for the conflict. In the case of the OSCE, the Commissioner on National Minorities belongs to the conflict prevention tools of the organization.[17]

The importance of human rights protection during the conflict escalation phase and in the peace-making phases is not sufficiently recognized yet. However, even in the conflict escalation and peace negotiations key human rights concerns must be addressed in order to assure successful post-conflict peacebuilding. The list of key human rights concerns that need to be addressed already in that phase would depend on particular situation and might cover for example crimes against humanity, long-term grievances of certain ethnic or religious groups, gender issues, internally displaced persons, arbitrary executions, etc. The question of how to properly address the issue of accountability is on of the most important ones however, the dilemma of peace vs. justice remains largely unsolved despite some extremely important

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[17] www.osce.org

attempts such as regional human rights courts and in particular the International Criminal Court.

Civil society, conflict situation and human rights

Long term and sustainable peace can be achieved only through close cooperation of different actors, be it national and transnational, official and non-governmental; in different fields, humanitarian, development, security (disarmament), governance and the rule of law, environment and human rights.

The management of the conflict situation demands a multi-dimensional and multi-layered approach. Despite the fact that human rights are still very often perceived as secondary to security there is a growing recognition of the importance of the mainstreaming of human rights into all policies and activities related to conflict transformation and of peacebuilding.

The World Bank Report on Civil Society and Peacebuilding lists seven functions of civil society in the peacebuilding process: protection, monitoring and early warning, advocacy and public communication, socialization, social cohesion, intermediation and facilitation, service provision.[18] These functions relate to all conflict phases; prevention, conflict management and post conflict peacebuilding, and to all levels of action. Non-state actors are active in early warning activities (raising awarness for emerging crises, reporting on developments etc.) and they cooperate with state actors in the development of early warning systems on global level.[19] They have a role also in peace-making processes; ie. as facilitators for the peace negotiations (they form Track II activities, they might assist to Track I Diplomacy) or even as mediators (Track 1,5 Diplomacy). With many of its function civil society can contribute to the improvement of relationship across conflict lines and ethnic divides. The most diverse is the role of non-state actors in post-conflict peacebuilding activities. Among them are elections monitoring, establishment of alternative media, support for education reform, youth work, establishment of the cultures of peace, initiatives for interfaith dialogues, human rights monitoring and reporting, providing assistance to minority groups, IDPs and returning refugees, documentation of war crimes, psychosocial rehabilitation to war victims, reconciliation, etc.

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[18] Civil Society and Peacebuilding: Potential, Limitations and Critical Factors, Draft. 2006. World Bank Report
[19] Fischer, p. 6

In order to achieve long-term and sustainable peace the promotion and protection of human rights must be mainstreamed into all phases of peacebuilding. This is already often the case when it comes to early warning activities and to post-conflict peacebuilding. Many of the above listed activities of non-state actors in conflict situation have strong human rights dimension. The same applies for non-state actors' engagement in post-conflict peace building. In addition to human rights monitoring and reporting, activities such as election monitoring, establishing alternative media, support for education reform, youth work, establishing peace cultures, initiatives for interfaith dialogues, providing assistance to minority groups, IDPs and returning refugees, documentation of war crimes, psychosocial rehabilitation to war victims, reconciliation, etc. all includes a strong human rights aspects.

However there is still a lack of detailed analysis of the role of non-state actors in protecting human rights in the conflict escalation phase and in efforts for stopping immediate violence. The seriousness of the abuses of human rights in the escalation phase of the conflict contributes to the length and intensity of the conflict as well as to the possibilities for long-term and sustainable peace.

The real challenge for non-state actors lies in their ability to influence policy makers. At the same time policy makers and official practitioners must be able not only to recognize the messages from non-state actors[20], but also to involve them in already at early stages.

There is a strong need for an integrated approach that would overcome different levels and different types of peacebuilding. Ricigliano speaks about three types of peace-building; political, social and structural. On the basis of negative assessment of non-integrated approach he stresses the need for an integrated approach.[21] As a model he offers the use of the Network of Effective Action. A Network of Effective Action would bring together actors from different disciplines. Through communication network (exchange of information between political, social and structural actors is crucial) with common goal and some shared rules it will (give them ability) encourage them to approach the peace-building in the field in a holistic manner.

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[20] The case of Rwanda where a coalition of NGOs systematically reported on the increase in violations of human rights prior to the escalation of violent conflict, but was not taken seriously, is illustrative. Also as a result of catastrophes such as Rwanda many international and regional organizations have developed early warning mechanisms. An important role is in this context attributed to civil society.

[21] Ricigliano (2003) as an example cites Bosnia and Herzegovina where efforts to rush with structural peacebuilding actually undermined political and social peacebuilding;

The European Union considers the protection and promotion of human rights as an essential element in the conflict prevention and crisis management. It has developed a checklist for root causes of conflict/early warning indicators, which includes the following aspects: legitimacy of state, rule of law, respect for fundamental rights, civil society and media, relations between communities and dispute solving mechanisms, sound economic management, social and regional inequalities, geopolitical situation.[22] Violations of human rights are thus listed among root causes of conflict. A series of politics, programmes, instruments and mechanisms for conflict prevention and crisis management have been developed. Among civilian instruments of its crisis management the EU lists political dialogues underpinned by different agreements, trade and economic measures, development and other co-operation assistance, emergency relief, support for rehabilitation and reconstruction and macro-economic support.[23]

Key instruments of EU programme on conflict prevention include among others development co-operation, trade, arms control, environment policies and human rights. The programme stresses the need for "a co-operative approach to facilitate peaceful solutions to dispute and implies addressing the root-causes of conflicts".[24] The importance of the principle of local ownership is underlined. A range of state actors, in particular international and regional, respectively sub-regional organizations are included on a list o partners that the EU has to co-operate with, however, the need to co-operate with non-governmental organizations is mentioned only in the framework of practical cooperation with humanitarian actors.

The European Union Crisis Management Procedures and the EU Action Plan for Civilian Aspects of European Security and Defense Policy both foresee cooperation with civilian actors.

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[22] http://ec.europa.eu/external_relations/cfsp/cpcm/cp/list.htm
[23] Civilian Instruments for EU Crisis Management. 2003
www.ec.europa.eu/external_relations/cfsp/doc/cm03.pdf
[24] EU programme for Prevention of Violent Conflicts www.ec.europa.eu/external_relations/cfsp/doc

III. The role of state and non-state actors in promoting human rights in conflict situation

The experience of the last twenty years shows intervention of a large number of both state and non-state actors in many conflict situations. The third party intervention might happen in all phases of the conflict and might be in favor of, or detrimental to peace.

State and non-state actors that intervene with the aim of helping to achieve long term and sustainable peace quite often engage in the same arena of action. Non-state actors are taking over some of the functions traditionally ascribed to the state - as for example mediation for conflict resolution. On the other hand the state is taking over some of the functions that were traditionally ascribed to the non-state actors such as the protection and promotion of human rights. A proliferation of actors that intervene in a conflict could be confusing to local communities as it is not clear who does what and with what purpose. A lack of coordination among the actors and a lack of cooperation with local communities is unfortunately still a rather typical feature of third party interventions. Each of actors brings to the conflict situation its own advantages and shortcomings. Awareness about limits and constraints of each of the actors is a precondition for a quest for synergies among different actors.

Limits and constraints of official and of non-state actors in promoting human rights in conflict situation

Comparative advantages of non-state actors over state actors are in their ability to provide channels of communication and are able to reach out to non-state actors that are - due to political or legal reasons, beyond the reach of official actors. Non-state actors can work where state actors can not. They liaise better with local communities and they can provide better information on the situation on the ground and can thus efficiently inform and monitor policy. They can facilitate the development of new and creative ideas. They are usually also more flexible in their operation.

At the same time, non-state actors face some serious limits and constraints. Their institutional capacity as well as their financial and management expertise is rather low. These limits are even more significant in situation of violent conflicts. Apart from that, non-state actors have quite often a rather weak networking and coordination mechanisms with other civil society

actors. Sometimes they also lack an understanding of the broader social and economic context.

In addition to above mentioned characteristics that apply both to local and to foreign and international non-state actors, one of the key comparative advantages of foreign non-state actors in relation to domestic ones is that in protracted conflicts the domestic non-state actors are rarely impartial. They are quite often themselves a party to the conflict.

On the other hand, the advantage of local non-state actors over foreign and international ones is better knowledge of the situation and their genuine ties to the local community whereby foreign and international non-state actors often appear to be loyal primarily to their donors and much less to the local communities.

Non-state actors in the Track II and in the Track 1,5 diplomacy

Diplomacy is by definition concerned with the management of relations between states and between states and other actors. Most often, diplomacy is perceived as a peaceful activity, although some authors would argue that diplomacy engage in violent conflicts as well.[25] The main characteristic of the traditional definitions is that non-state actors are on "receiving end" of diplomacy, since diplomacy is understood to be action primarily focused on inter-state relations. As a rule, official efforts usually aim primarily at official actors and sometimes also at non-state actors, while efforts of non-state actors are focused on other non-state actors, especially those that are from different reasons (legal or political) beyond the reach of official actors. The recent phenomena of non-state actors taking over parts of the role of official actors are often treated with a lot of skepticism and hesitancy.

Non-state actors play a role in all phases of the conflict. They do not limit their action to the track two and track three activities. They more and more engage also in activities that were traditionally ascribed to official actors, such as preventive diplomacy, mediation, disarmament. In mediation they most often appear as facilitators to the negotiations however in some cases the role of non-state actors might go beyond that, as the case of the Aceh peace

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[25] Diplomacy seeks overflight for an airstrike for example. According to Barston the blurring of the line "between diplomatuc activity and violence is one of the developments of note distinguishing modern diplomacy." See Barston, p. 1.

talks illustrate so well.[26] Similarly, in disarmament non-state actors appear primarily as advocacy groups for strengthening of the international mechanisms. As the case of Geneva Call will show, they can appear also as an important parallel diplomatic avenue for reaching out to non-state actors that are left outside the international framework for protection of human rights.

This briefly described dynamics highlights the need for both non-state actors and state actors to work hand in hand in order to be efficient and successful.

Achieving synergies between state and non-state actors in dealing with "uncivil" society actors: the case of Geneva Call

Geneva Call focuses on the work with non-state actors to respect the international humanitarian norms starting with the ban of ant-personal mines. As such it serves as a good example of a non-state actor reaching out to (armed) non-state actors that are usually beyond the reach of official (national, foreign or international) actors.

Due to the state-centrist international system of protection and promotion of human rights, there is no international monitoring mechanism for non-state actors despite the fact that they are not only promoters but also violators of human rights. The main objection is that in international system of states the inclusion of non-state actors would give the latter too much legitimacy. Although the international humanitarian law stipulates that responsibility for respecting international human rights obligations lies with all parties to the conflict it has been only recently that international criminal law started to address the issue. The International Criminal Court thus refers also to the situations where parties to the conflict are non-stare armed groups.[27] On political level, there was couple of - so far rather modest, attempts to speak more explicitly about non-state actors. The Commission of Human Rights in 1998

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[26] Former Finnish President mediated succesfully the peace talks between the Indonesian Government and Aceh Liberation Movement. For several other examples of the role of Track II in mediation see also Herding Cats (1999)

[27] ICC issued indictments against five warrants of arrest against [the] five top members of the Lords Resistance Army, and against some others, who are, with the esception of the current Sudanese President, all non-state actors http://www.icc-cpi.int/menus/icc/home

adopted a resolution calling for the release and safe return of children and for all relevant actors to "exert all possible pressure" on the Lord Resistance Army to release children immediately.

Also rather recent phenomena are attempts to engage non-state actors in international legal framework. As a result of the conference "Engaging Non-State Actors in a Landmine Ban" that took place in March 2000 in Geneva, the NGO Geneva Call started to lobby non-state actors to adhere to the principles to a total ban of anti-personnel mines. As a result, many of non-state groups signed "Deeds of Commitment for adherence to a Total Ban on Anti-Personnel Mines for Cooperation in Mine Action".[28]

It is interesting that the Deeds of Commitments have even stronger human rights language that the Ottawa Convention itself. The preamble to the Deed contains clear reference to human rights obligation and the article 5 includes a commitment to the "ideal of humanitarian norms, particularly of international humanitarian law and human rights".[29]

Similarly also the monitoring and accountability of the Deed also goes beyond the Ottawa convention. In addition to the reporting mechanism the Deed demands monitoring and verification. The monitoring is implemented with the help of local non-state actors. If information provided by them appears to be insufficient Geneva Call verify the allegations on the spot. Between 2000 and 2008 there were six allegations, and in none of the cases non-state actors refused such a verification process. However in one of the cases the government turned down access to an independent monitoring mission.[30]

Based on the successive work with non-state actors in demining Geneva Call has in 2008 expanded its action to children and armed non-state actors. The objective of this initiative is to contribute to better compliance of armed non-state actors with international norms related to children and armed conflicts, in particular with the resolution 1612 of the UN Security Council.

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[28] Among the participants were many non-state armed groups which are both the victims and the users of landmines (such as Polisario, Moro Islamic Liberation Front, the Kurdish Working Party, and the Sudan People's Liberation Army). www.genevacall.org
[29] Ibid.
[30] Geneva Call Newsletter, Vol 6 - N. 3/November 2008. www.genevacall.org

The motivation of non-state actors to adhere to rather comprehensive obligation of the Deed of commitment are broadly speaking twofold; with adhering to the norms and obligations these actors want to earn a respect and to be seen as legitimate partners in the conflict. They might also wish to pressure government forces to commit themselves to the ban of anti-personnel mines.[31]

The Geneva Call's Deed of Commitment, although not part of the international legal framework, represents and interesting avenue for reaching out to non-state actors that are usually beyond the reach of official actors. The main interlocutors of the Geneva Call are therefore non-state actors however there is a variety of interaction between Geneva Call and state actors as well. Firstly, Geneva Call works in international environment created by states. Further, the organization is funded partially by individual countries and by the EU and is also given full political support by the EU.[32] Secondly, Geneva Call needs to interact with the official authorities of the state in which territory it want to engage a non-state actor. In performing its verification function the organization depends on willingness of state authorities to allow them access to the country. Lastly, there is also an unusual interaction between the state and rebel groups. In some cases the signing ceremony of the Deed of Commitment was in the presence of the Ambassador from the state against which the rebel groups are fighting.[33]

Achieving better coherence between the action of state and non-state actors in protecting and promoting human rights in conflict, case: Aceh

Former Finnish president Marti Ahtisaari and the NGO Crisis Management Initiative, that he leads, got involved in the peace talks between Indonesian Government and Acehnese separatist rebel movement GAM in 2004 after several other attempts to bring one of the bloodiest and longest conflict in South Asia to the end.[34]

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[31] Clapham's list of motivation is more detailed. See Clapham (2006), p. 296
[32] ibid
[33] ibid
[34] The Geneva based humanitarian non-governmental organization Centre for Humanitarian Dialogue, initiated negotiations between Acehnese separatist rebel movement GAM and Indonesian Government in 1999. These rather humanitarian motivated talks were followed by an attempt for political mediation in 2002. However, due to various reasons the Peace Agreement signed in 2002 failed and it was only after the, in 2004 elected President Susilo

After five rounds of negotiations, during which Ahtisaari and his CMI got strong support from several governments and international organizations, including the European Union, a Memorandum of Understanding was signed between the two parties to the conflict in August 2005.[35] The CMI was involved also in the implementation phase of the MoU, concretely in the EU planning and implementation of the Aceh Monitoring Mission. On the paper the Aceh Monitoring Mission would be a good example of interagency cooperation in post-conflict peacebuilding.

What is significant here is that in all three attempts of peace talks the mediators were non-state actors. While the first two attempts were "track II diplomacy", that is, facilitation of the real negotiation, the efforts of M. Ahtisaari went beyond that. Some authors labelled this case as a "Track 1,5 diplomacy" as he actually took over the role that is usually prescribed to state actors.

In the recent report on the lessons learnt of AMM the CMI highlights the importance of early establishment of cooperation with non-state actors. It also stresses the need for better mainstreaming of human rights into ESDP operations and monitoring missions.

For the policy makers the key question is how to link different phases of peacebuilding and how and where to include civil society actors in these processes. Crisis management is still focused mainly on short term security issues. Much more needs to be done to tie security and immediate humanitarian tasks with human rights and long-term development challenges. Local civil society is on the receiving end, however, it should - together with foreign and international CSOs also be an actor and a partner.

The Crisis Management Initiative advises in its report that "local civil society have to be mapped out immediately from the beginning and that clear structures, goals and timetables for collaboration can be built and implemented during the mission."[36] The paper also argues that one of the key challenges of the Aceh Monitoring Mission was related to the human rights monitoring. The report thus touches upon two crucial issues in the post-conflict peacebuilding; the role of local civil society and the importance of monitoring human rights.

Bambang Yodhoyono, announced intention for greater regional autonomy and security sector reform on one hand, and the intention for a peaceful resolution of the Aceh problem on the other, that serious negotiations could take place.

[35] The Tsunami disaster that hit Indonesia in December 2004 and caused between 130.000 and 170.000 casualties in Aceh alone, strengthened the will of both sides to solve the problem.

[36] Rintakoski, Kristina and Mikko Autti (2008)

Civil society has a key role in strengthening the capacity of post-conflict societies. Conventional crisis management and peacemaking focus on political and military leaders and often neglect the role of civil society actors. The report clearly states that "achieving long term goals of peacebuilding by promoting political and economic development is a task of indigenous actors."[37] Civil society actors should be included in all phases of peacebuilding including in the planning of exit strategy.

The report evaluates the mandate of the AMM as adequate with the exception of human rights. The mandate was namely limited to the monitoring of human rights situation in the context of disarmament, demobilisation and reintegration processes. There were no specific strategies for cooperation with local civil society with regard to the monitoring of human rights. Based on the lessons learnt the report proposes following recommendations with regard to the civil society: capacity building of local NGOs as an integral part of any civilian crisis management mission; the inclusion of participation of local civil society actors in ESDP planning budget and in Civil Society Strategy (which should be prepared at the beginning of the mission); preparation of exit strategy (which should begin as early as possible) in close cooperation with local CSOs. The report also recommends that the EU plays its role in strengthening the capacity of Track II actors. In recruiting staff for the mission special attention should be paid to training and gaining knowledge in issues such as civil society, human rights and reintegration.

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[37] Ibid.

IV. Conclusion: Crisis management and conflict prevention in the ESDP and CFSP; is there a need to re-conceptualize the approach to peace-building

Contemporary conflicts, parties to which are different state and non-state actors, involve massive and systematic human rights violations. The response to such conflict must be a solution to stop the violence and at the same time it must address the root causes of the conflict in order to prepare foundations for long-term and sustainable peace. Usually, a short-term success in bringing parties to the negotiating table is easier to achieve than efforts for long-term sustainable peace, in particular when enthusiasms for ending the violent conflict expires and when a society is faced with a basic development challenges.

It is important that non-state actors are involved in all stages of peace-building, including in state-building which must go hand in hand with strengthening of the civil society in order to avoid further polarization. However, artificially provoked proliferation of NGOs does not necessarily guarantee vibrant and lively civil society. The experiences of the peace-building in Bosnia and Herzegovina can serve as an example of ambigous results of the ambitions of international communitiy to establish functioning civil society through financing a miryad of NGO project. NGOs were detached from society.[38] As this and many other cases from the recent past have shown, home grown civil society actors are of key importance. The role of foreign and international non-state actors should be directed toward strengthening of local capacities.

Protection and promotion of human rights is enshrined into the European Security Strategy. There have been a lot of efforts to mainstream human rights into the ESDP. This mainstreaming is related to the implementation of two UNSC resolutions (1325 and 1620). The protection and promotion of human rights is considered also as an essential element in the conflict prevention and crisis management.

Although a series of politics, programmes, instruments and mechanisms for conflict prevention and crisis management have been developed there is still a lack of

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[38] Fischer (2005) p. 18

operationalization of mainstreaming of both, human rights as well as cooperation with non-state actors into all programmes and politics.

Non-state actors, in particular human rights NGOs also complain that while the cooperation with the EU worked well on Brussels level, this is much less the case when it comes to the cooperation on the ground.[39] NGOs often feel that the cooperation is one-way; they provide monitoring and reporting but they do not get feedback from the EU. The particular challenge for the EU remains its institutional set-up which often represents a real obstacle for adequately addressing the triangle of civil society, conflict and human rights. Future efforts of the EU should take into account the lessons learnt from the Aceh Monitoring Mission as well as from other attempts to bring closer state and not state actors in promoting human rights in conflicts.[40]

Given the state-centric arrangement of the international human rights framework which is not binding for non-state actors there is a need to explore ways how to reach out to non-state actors, potential perpetrators of human rights violations, in order to bring them closes to international human rights norms and standards. The activities of Geneva Call show an avenue that is worth further exploring.

It is already quite clear that in the practice the emphasis has shifted from the state-centric approach to security to the approach that combines state security with the security of an individuals and groups.[41] Also, there is a development towards more comprehensive approach to security that includes security, human rights and long-term development concerns. These trends are still rather fragile and needs a lot of further efforts. In particular in the case of the EU, what misses is operationalization of its already declared will to integrate civil society and human rights into its crisis management operations.

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[39] Increasing the impact on the Ground: EU and NGO Cooperation in the Thematic Area of Children Affected by Armed Conflict

[40] There were some – still rather isolated, attempts to find a solution such as the EU-NGO Conference in the framework of EU-NGO cooperation in crisis management in April 2008. See Ibid.

[41] Such shift could "neutralize the potential opposition of many states concerned with the perceived proliferation of human rights triggers for enforcement action". Andreopoulos (2006), p. 157

To sum up, there is the following set of recommendations that can be made:

- To be careful when applying the concept of civil society to non western countries;
- To avoid normative use of civil society in order to be able to recognize that parts of civil society can violators of human rights;
- To do more research on actual role of non-state actors and to enhance knowledge of comparative advantages of state- and non-state actors in individual phases of conflict;
- To actively support outreaching to non-state actors, perpetrators of human rights violations;
- To take into account recommendations based on lessons learnt in activities on the ground;
- To support domestic peace constituencies and build on local peacebuilding initiatives
- To encourage stronger ties of foreign and international non-state actors with local non-state actors and local communities (and prepare with them an exit strategy already at early stages of intervention);
- To encourage long term (rather than medium- and short-term) projects in post-conflict peacebuilding or in conflict prevention;
- To mainstream human rights in all phases of conflict management and to operationalize mainstreaming of human rights and to elaborate the role of non-state actors in this.

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