

## REPORTS AND DOCUMENTS

# Respect for international humanitarian law by armed non-state actors in Africa

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### Abstract

*This report presents the instruments and strategies used by non-state actors to respect international humanitarian law during intra-state conflicts in Africa and highlights the recognition by these non-state actors of the role of humanitarian organizations. It examines the impact of such recognition on the development of international humanitarian law and the activities of humanitarian organizations, and shows the problems encountered by non-state actors with respect to their commitments. It concludes with some suggestions as to a way forward.*

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By 2004 all 53 African Union countries had ratified the four Geneva Conventions, while of the two 1977 Additional Protocols, Protocol I had been ratified by 45 and Protocol II by 44 African Union countries. However, this manifestation of respect for international humanitarian law (IHL) by states parties does not give a complete picture of reality, since between 1955 and 2005 more than 200 armed groups were involved in about forty armed conflicts on the African continent. These conflicts could be broadly classified in two categories, namely wars of liberation and internal post-independence wars, while the armed non-state actors have included freedom fighters, guerrillas, separatists, secessionists, terrorists and rebels.

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From a historical perspective, the involvement of non-state actors in conflicts on the African continent can be divided into four phases:

*The period of wars of liberation*, between 1955 and 1976, with the emergence of armed non-state groups in Algeria, Kenya, Cameroon, the Portuguese territories of Angola, Cape Verde and Mozambique, the French territories of Djibouti, and so on. Some of these wars, such as those in Zimbabwe, Namibia and South Africa, went on into the 1980s and 1990s. Most of these armed groups were recognized liberation movements inspired and led by “freedom fighters”, and their members, if captured, had the status of prisoners of war (POW).

*The period of ideological wars*, between 1977 and 1992, influenced by cold war politics and waged in Angola, Mozambique, Zaire (now Democratic Republic of Congo – DRC), Uganda and the Horn of Africa.

*The period of secessionist wars*, which came in two waves first in the 1960s, with the Katangese and Biafran secessions in the Congo and Nigeria respectively, and later in the 1980s, with the wars of Eritrea and Ogaden against Ethiopia, as well as of southern Sudan against the Republic of Sudan.

*The period of identity-related conflicts*, which were complementary to most post-cold war armed conflicts in Africa and abound in the Horn of Africa, the Great Lakes region and west Africa.

This period stretched between 1992 and 2005, and was marked by the end of the cold war, the demise of apartheid and the decolonization of Namibia, and led to new types of identity-based armed conflicts in Africa fought by new types of non-state actors, mostly ethnic militias like the Mai Mai (DRC), Interhamwe (Rwanda), Kamajors (Sierra Leone) and Janjaweed (Darfur, Sudan).

The participation of non-state actors in African conflicts raises a number of issues with regard to respect for IHL:

- respect during conflicts for protected persons, such as prisoners of war, children and civilian populations;
- methods of conducting hostilities, including violations of human rights, hostage-taking and summary executions;
- the types of weapons used in conducting hostilities; and
- recognition of the role of humanitarian organizations such as the International Committee of the Red Cross (ICRC) as neutral humanitarian intermediaries.

To address these issues, a number of instruments and strategies have been put in place, such as the signing of special agreements on visits to prisoners of war, unilateral declarations, provision for amnesties in peace agreements, application of Deeds of Commitment initiated by the international humanitarian organization Geneva Call, as well as the integration of IHL into African peace agreements,

Organization of African Unity (OAU) resolutions and the military doctrines of the armed non-state parties to a conflict.

This paper will examine the instruments and strategies used by non-state actors to respect IHL during intra-state conflicts in Africa. It will also highlight the recognition by these non-state actors of the role of humanitarian organizations such as the ICRC. It will further examine the impact of such recognition on the development of IHL and the activities of humanitarian organizations, as well as highlight the problems encountered by the non-state actors in respecting IHL. It concludes with some suggestions as to the way forward.

## **Instruments ensuring respect for international humanitarian law principles by African armed non-state actors**

The main instruments used to ensure compliance with international humanitarian law by African armed non-state actors during armed conflict include unilateral declarations, OAU resolutions and special agreements on methods of warfare, ceasefire agreements, and the integration of IHL principles into the armed groups' military doctrines.

### **Unilateral declarations**

A number of unilateral declarations by armed non-state parties to a conflict have been used as mechanisms for ensuring compliance with IHL in accordance with Article 96.3 of Additional Protocol I, which gives national liberation movements the option to make unilateral declarations whereby they undertake to apply the Geneva Conventions. The following unilateral declarations since 1963 by African non-state actors can be cited as examples:

Declaration of 23 May 1968 in Kampala by the rebel Biafran authorities, pledging to respect civilian populations, give the ICRC facilities for the delivery of humanitarian assistance and organize the exchange of prisoners of war through the ICRC;<sup>1</sup>

Declaration of 16 June 1977 by Joshua Nkomo of the African National Congress and the Zimbabwean African People's Union (ANC-ZAPU), undertaking to apply the Geneva Conventions and their Additional Protocols;<sup>2</sup>

Declaration of 8 September 1977 by Ndabaningi Sithole of the African National Congress (ANC, Zimbabwe), undertaking to apply the Geneva Conventions and their Additional Protocols;<sup>3</sup>

1 See ICRC Annual Report, 1968, pp. 13–14.

2 See ICRC Annual Report, 1977, p. 16.

3 Ibid.

Declaration of 23 September 1977 by Bishop Muzorewa of the United African National Council (UANAC), undertaking to apply the Geneva Conventions and their Additional Protocols;<sup>4</sup>

Declaration of 25 July 1980 by the União Nacional para a Independência Total de Angola (UNITA), pledging to respect the fundamental rules of IHL;<sup>5</sup>

Declaration of 28 November 1980 by the African National Congress (ANC, South Africa) president, Oliver Tambo, that his organization would respect the Geneva Conventions and the Additional Protocols;<sup>6</sup>

Declaration of the South West Africa People's Organization (SWAPO) to the ICRC of 15 July 1981 by its president, Sam Nujoma, on respect for the Geneva Convention and its Additional protocols;<sup>7</sup>

UNITA (Angola) Declaration of 5 April 1988, authorizing the ICRC to visit detained persons and captured Angolan soldiers;<sup>8</sup>

Declaration in June 1988 in Geneva to the ICRC director of operations by John Garang (Sudan), relating to his movement's respect for IHL principles;<sup>9</sup>

Declaration of 6 October 1988 in Geneva by the SWAPO secretary-general, Toivo ya Toivo, assuring his movement's application of IHL;<sup>10</sup> and

Declaration of the Rwandese Patriotic Front of 22 October 1992 in Geneva, confirming its application of IHL and recognition of the ICRC's activities.<sup>11</sup>

These declarations were very formal and well-written legal documents. The 28 November 1980 ANC Declaration signed in Geneva by its president, for instance, stated that:

“It is the conviction of the African National Congress of South Africa that international rules protecting the dignity of human beings must be upheld at all times. Therefore, and for humanitarian reasons, the African National Congress of South Africa hereby declares that, in the conduct of the struggle against Apartheid and racism and for self-determination in South Africa, it intends to respect and be guided by the general principles of international humanitarian law applicable to armed conflicts.

4 Ibid.

5 See ICRC Annual Report, 1982, p. 11.

6 See ICRC Annual Report, 1980, p. 14.

7 See ICRC Annual Report, 1991, p. 16.

8 See ICRC Annual Report, 1988, p. 15.

9 Ibid.

10 Cited in Churchill Ewumbue-Monono, *Promoting Humanitarian Public Diplomacy in Africa*. CEREDDA, Buea, 2003, p. 70.

11 Ibid.

Wherever practically possible, the African National Congress of South Africa will endeavour to respect the rules of the four Geneva Conventions of 12 August 1949 for the victims of international conflicts.”<sup>12</sup>

On the other hand, the SWAPO Declaration of 15 July 1981, signed in Geneva by its president, Sam Nujoma, stated that

“It is the conviction of SWAPO that fundamental rules protecting the dignity of all human beings must be upheld at all times. Therefore, and purely for humanitarian reasons, SWAPO declares hereby that in the conduct of the struggle for self-determination, it intends to respect and be guided by the rules of the four Geneva Conventions of 12 August 1949 for the protection of the victims of armed conflicts and the 1977 additional Protocol relating to the protection of victims of international armed conflicts (Protocol I).

As soon as possible, SWAPO will consider addressing the Swiss Federal Council, as the government of the Depository State, a declaration according to article 96 paragraph 3 of the 1977 Protocol. Such a declaration would be considered as a preliminary step to becoming a party to these instruments.”<sup>13</sup>

Apart from these formal declarations, many liberation movements also made a number of statements of commitments to respect the IHL, for example the statements of commitment of December 1975 by Ethiopian liberation movements such as the Eritrean Liberation Front (ELF), Eritrean People’s Liberation Front (EPLF), and by the Popular Front for the Liberation of Saugua el Hamra and Rio de Oro in Western Sahara (POLISARIO) to respect IHL; the statements of commitments in 1976 by the representatives of nationalist movements in southern Africa, notably the Zimbabwe African People’s Union (ZAPU), the ANC and SWAPO, to co-operate with the ICRC in promoting IHL; and the pledge by the various armed groups in Angola, given in January 1976 during the OAU Extraordinary Summit on Angola, to respect their IHL commitments. Unlike the declarations, these statements of commitment and pledges are less formal but are at least manifestations of good intentions by the non-state parties to conflicts.

### The Organization of African Unity resolutions and compliance by armed non-state actors with international humanitarian law

Between 1970 and 1990 the OAU passed a number of resolutions on the application of and respect for IHL principles by liberation movements, the earliest of which were Resolution CM/Res. 242/Rev.1 (XVII) of 15–19 June 1971 and CM/Res. 270 (XIX) of 5–12 June 1972. These early OAU resolutions were part of a worldwide campaign to “ensure that the freedom fighters enjoy the benefits of provisions of the Geneva Convention on prisoners and ensure participation of liberation movement in the drafting and application of international humanitarian

12 See <<http://www.genevacall.org/signatory-groups/signatory-groups.htm>> (last visited 5 January 2007).

13 Ibid.

law applicable to conflicts described as internal”. In 1973 the OAU further adopted Resolution CM/Res. 307 (XXI) of 17–24 May 1973 requesting its secretary-general to organize a seminar for the liberation movements to enable them to harmonize their views and make concrete proposals for the application of IHL to their movements.

After the adoption of the 1977 Additional Protocols most of the OAU resolutions, such as CM/Res. 681 (XXXII) and CM/Res. 695 (XXXII) of February–March 1979,<sup>14</sup> addressed the non-application of IHL to mercenaries in African conflicts. Resolution CM/Res. 695,<sup>15</sup> for instance, reiterated the organization’s policy of selective application of IHL principles to the different categories of armed conflicts and non-state actors such as mercenaries and freedom fighters. Among other things, the resolution stressed that

The two Protocols additional to the Geneva Convention of 1949 relative to the protection of war victims provide:

- i. that wars of national liberation in African territories under colonial domination or racist minority regimes are international conflicts subject to the provisions of the additional protocols of the Geneva Convention of 1949;
- ii. that protected persons and places, notably civilian populations and refugees camps, must under no circumstances be subjected to acts of reprisals;
- iii. that mercenaries do not enjoy the status of combatants and therefore are liable to summary execution, if captured.

The OAU also passed a number of resolutions on the application of IHL principles to the freedom fighters in Southern Africa.<sup>16</sup> It likewise passed a number of resolutions on the methods of conducting hostilities against freedom fighters, and especially on the use of chemical weapons in Africa by Western colonial powers such as Portugal and the racist regimes in southern Africa. Such resolutions included those of CM/Res. 234 (XV) of August 1970<sup>17</sup> and Resolution CM/Res. 268 (XIX) of June 1972,<sup>18</sup> which denounced Portugal for “employing chemical weapons such as napalm, toxic gas and defoliant, against the freedom fighters and the African population in the territories under its domination in flagrant violation of international conventions”, as well as CM/Res. 1207 (L) of

14 Available online <[http://www.africa-union.org/root/au/Documents/Decisions/com/14CoM\\_1979a.pdf](http://www.africa-union.org/root/au/Documents/Decisions/com/14CoM_1979a.pdf)> (last visited 4 December 2006).

15 Ibid. Resolution on the activities of mercenaries in Zimbabwe and Namibia and against the front-line states, p. 25.

16 See Resolution CM/Res. 767 (XXXIV) of February 1980, CM/Res. 911 (XXXVIII) of February 1982, CM/Res. 933(XL) of February 1984, CM/Res. 1148 (XLVIII) of May 1988, and CM/Res. 1207 of February 1989.

17 Resolution on Decolonization, available at <[http://www.africa-union.org/root/au/Documents/Decisions/com/uCoM\\_1970b.pdf](http://www.africa-union.org/root/au/Documents/Decisions/com/uCoM_1970b.pdf)> (last visited 4 December 2006), p. 28.

18 Available at <[http://www.africa-union.org/root/AU/Documents/Decisions/com/zCoM\\_1972b.pdf](http://www.africa-union.org/root/AU/Documents/Decisions/com/zCoM_1972b.pdf)> (last visited 4 December 2006), p. 6.

July 1989<sup>19</sup> on South Africa, which condemned the “the use of poisonous chemicals by the racist regime against members of the Liberation Movements and mass democratic organization”.

### Special agreements on methods of conducting hostilities

Special agreements between armed non-state entities and states parties or with the ICRC have been a strategy used to ensure compliance by African non-state actors with IHL. Common Article 3 of the four Geneva Conventions states in paragraph 2 that “the Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention”.

The use of this mechanism in African conflicts is widespread.

- During the Algerian civil war the ICRC signed special agreements with the president of the Provisional Government of the Republic of Algeria (GPRA), Ferhat Abbas, which led to the release of French prisoners of war seven times between October 1958 and December 1961.<sup>20</sup>
- In the 1960–4 Congo crisis, the ICRC made special agreements with the rebels in the Katanga and Orientale provinces for the exchange of UN soldiers against Katangese gendarmes in March 1961, January 1962 and May 1963, while on 18 September 1964 the organization launched an appeal to “all exercising authority in Congo to respect prisoners of war and non-combatants and comply with the prohibition on hostage-taking and bombing civilian targets”.<sup>21</sup>
- Between 1967 and 1968 the ICRC further negotiated a special agreement for the evacuation of European mercenaries fighting for the Katangese secessionists from Zaire to the Shagasha camp in Rwanda, and eventually their repatriation to Brussels, Zurich and Paris.<sup>22</sup>
- During the 1967–71 Nigerian civil war the ICRC, the OAU and the Biafran authorities signed a special agreement in October 1968 for a humanitarian corridor to evacuate Biafran children through Santa Isabel and Obilago. In August 1969 the ICRC concluded another special agreement with the Biafran authorities for an emergency relief plan, the fair treatment of prisoners of war and the repatriation of foreigners. Following such agreements the ICRC was able to visit hundreds of Nigerian prisoners of war held by the Biafran authorities in the Urualla, Ntuene and Achina prisons, and in June 1969 it negotiated the release of eighteen employees of the Italian ENI oil prospecting firm.<sup>23</sup>

19 Available online <[http://www.africa-union.org/root/au/Documents/Decisions/com/33CoM\\_1989b.pdf](http://www.africa-union.org/root/au/Documents/Decisions/com/33CoM_1989b.pdf)> (last visited 4 December 2006).

20 See ICRC Annual Report, 1958, p. 10, and 1962, p. 10.

21 See ICRC Annual Report, 1964, p. 22.

22 See ICRC Annual Report, 1968, p. 21.

23 See ICRC Annual Report, 1969, pp. 16–18.

- During the liberation wars in Portuguese Africa the ICRC negotiated a number of special agreements between 1967 and 1976 with liberation movements there. In Guinea Bissau the ICRC concluded an agreement with Amilcar Cabral's African Party for the Liberation of Guinea and Cape Verde (PAIG) for the release of Portuguese soldiers in March and December 1968. It furthermore ensured that thirty-three PAIG freedom fighters were granted POW status and released before the country attained independence on 10 September 1974.
- In Mozambique the ICRC negotiated special agreements with the National Front for the Liberation of Mozambique (FRELIMO) for the release of Portuguese prisoners of war between 1968 and September 1974, as well as with the rebel Mozambique National Resistance (RENAMO) for the release of about eighty foreign detainees in December 1986 and in April and December 1987.
- In Angola the ICRC negotiated special agreements in November 1974 for the release of Portuguese prisoners held by the Popular Movement for the Liberation of Angola (MPLA), the National Front for the Liberation of Angola (FNLA) and the Front for the Liberation of the State of Cabinda (FLEC) in DR Congo (Zaire) and the Congo Republic. Moreover, after the Bicesse Agreement of May 1991 between the MPLA government and the rebel UNITA, the ICRC and UNITA leader Jonas Savimbi signed special agreements for the delivery of humanitarian relief and the release of prisoners of war in the UNITA-controlled zone, which led to the release by UNITA of 94 Angolan government prisoners of war and foreign abductees in 1982, followed by 136 releases in 1983 and 148 in 1984.<sup>24</sup>
- The various liberation movements in Rhodesia also made special agreements with the ICRC during the November–December 1976 Conference on Rhodesia, held in Geneva, to respect IHL and the ICRC's work. In February 1979 the ICRC signed an agreement with ZANU on the provision of medical and material assistance to ZANU war amputees and returnees, while in Namibia the ICRC negotiated with SWAPO for the release of South African soldiers captured by SWAPO in Angola in 1978.<sup>25</sup>
- In Rwanda, the ICRC and the rebel Rwanda Patriotic Front (RPF) signed a special agreement on humanitarian co-operation in June 1993 for the safe return of war victims, which provided an enabling environment for the release of three RPF officials exchanged against 121 officials of the government of Rwanda in August 1993.<sup>26</sup>
- In the Western Sahara conflict, the ICRC negotiated the release of Moroccan, Mauritanian and French prisoners of war held by POLISARIO between 1975 and 1977, as well as the extension of POW status to POLISARIO freedom

24 See ICRC Annual Report, 1984, p. 12.

25 See ICRC Annual Report, 1982, p. 11.

26 See ICRC Annual Report, 1993, p. 80.



fighters by Mauritania and Morocco in 1977. Moreover, on 24 November 1981, the ICRC offered its services to both Morocco's King Hassan and the POLISARIO secretary-general Abdel Aziz, to visit the detainees held by the POLISARIO forces. The offer was sent in 1982 to the OAU Committee on Western Sahara chaired by President Daniel Arap Moi of Kenya. On 6 March 1982 POLISARIO accepted the ICRC offer as a mark of its will to respect IHL and ICRC activities.

- In Chad the ICRC made special agreements with the National Front for the Liberation of Chad (FROLINAT) to visit over 1,550 prisoners of war belonging to Chadian government forces held by that organization, and for the release of forty-three prisoners of war to the N'Djamena government in December 1978.
- In Somalia the ICRC negotiated with rebel leaders of the Western Somalia Liberation Front (WSLF), the Somali National Movement (SNM) and the Oromo Abbo Liberation Front between 1979 and 1989 and, in the 1990s, with opposition groups such as the United Somali Congress (USC), the Somali Patriotic Movement (SPM) and the Somali Salvation Democratic Front (SSDF) to visit detainees in their hands.
- In Sudan the ICRC negotiated visits to prisoners of war between 1989 and 1991 in the areas controlled by the Sudan's People's Liberation Movement (SPLM).
- In Ethiopia it negotiated to have access to POWs held by Ethiopian and Eritrean and rebel groups such as the Eritrean People's Liberation Front (EPLF), the Tigrayan People's Liberation Front (TPLF) and the Eritrean Liberation Front (ELF) between 1975 and 1991. Since 1996 it has been negotiating with armed opposition groups such as the Oromo Liberation Front (OLF), the Oromo National Liberation Front (ONLF), the Islamic Front for the Liberation of Oromia (IFLO), Al Ittihad and the Somali National Front (SNF) in order to obtain respect for IHL.
- In the 1989–99 Liberian crisis, the ICRC concluded special agreements with armed opposition groups such as the Armed Forces of Liberia (AFL) and the National Patriotic Front of Liberia (NPLF) for access and visits to POWs in areas under their control. In January 1991, for instance, it negotiated the release of NPLF fighters, and in February 1991 that of 9 hostages by the NPLF. In January 1992, the ICRC also negotiated the release of detainees in the hands of the NPLF in Gbarnga, and in June 1992 it met with Charles Taylor in Gbarnga to discuss the organisation's access to civilian victims cut off by the hostilities.
- In Mali the ICRC negotiated the government's release of twenty-four Tuareg prisoners of war in April 1992, while the Tamashek (Tuareg) rebels freed twenty-eight people held by them, who were flown to Bamako.<sup>27</sup>

27 See ICRC Annual Report, 1992, p. 22.

## Special agreements on types of arms and weapons in hostilities

The fear that armed non-state groups or individuals, notably terrorists, could use either deadly weapons of mass destruction such as nuclear, chemical and biological weapons or other conventional weapons such as landmines, booby-traps and other devices prohibited by the 1980 Convention on Certain Conventional Weapons (CCW) has been a major security concern.

This threat became serious with the sarin poisoning incident in Matsumoto, Japan, in 1994 and the 1995 sarin attack on a Tokyo subway by the Aum Shinrikyu doomsday cult. In Africa chemicals have been used as weapons in agro-terrorism by Kenyan non-state actors such as the Mau Mau fighters in 1952, who used a local toxic plant, “the African milk bush”, to poison thirty-three steers at a British mission station. Moreover, chemical weapons were reportedly used by the Spanish against the Rif rebels in Spanish Morocco (1922–7), and in the 1970s and 1980s by Portugal and apartheid South Africa against freedom fighters in Angola, Mozambique, Guinea Bissau and Namibia.<sup>28</sup>

With regard to conventional weapons such as landmines, there have been reports of the use of anti-personnel mines by non-state actors such as UNITA in Namibia, Angola and Zambia, various groups in the Democratic Republic of Congo, the Movement of Democratic Forces in Casamance (MFDC) in Senegal, various factions in Somalia, the Sudan People’s Liberation Army (SPLA) in Sudan and the Lord’s Resistance Army (LRA) in Uganda.<sup>29</sup>

A number of measures have therefore been taken to ensure compliance by armed non-state groups with commitments relating to anti-personnel landmines and unexploded ordnance in Africa. For instance, the SPLM passed a resolution on 1 November 1996, ahead of the entry into force of the Mine Ban Treaty in 1997,<sup>30</sup> committing itself “to unilateral demining effort in the areas under its control”.<sup>31</sup>

Since March 2000, when the independent Geneva-based non-governmental organization (NGO) Geneva Call launched the Deed of Commitment as a parallel instrument for non-state actors to pledge compliance with the principles of humanitarian law enshrined in the Mine Ban Treaty, a number of African non-state actors have become party to it. Between 2000 and 2004 the Deed of Commitment

28 See Stephen Burgess and Helen Purkit, “The rollback of South Africa’s biological warfare program”, INSS Occasional Paper, 37 February 2001, pp. 16–19.

29 Stott Noel, “Armed non-state actors in Africa and the ban on anti-personnel landmines”, *African Security Review*, Vol. 13, no. 3, 2004, p.7. Available at <<http://www.iss.co.za/pubs/ASR/13No3/FStott.htm>> (last visited 5 December 2006).

30 Available at <<http://hrw.org/landmines/ratification.htm>> (last visited 5 December 2006).

31 The SPLM/A commits itself to “a unilateral demining effort in the areas under its control ... to demine the liberated areas of New Sudan and to help put an end this scourge”, in Sudan People’s Liberation Army, “Resolution on problem posed by proliferation of anti personnel mines in liberated parts of New Sudan”, Statement signed by Commander Salva Khr Mayardit, Deputy Chair, NLC/NEC (SPLM) and SPLA Chief of General Staff, New Kush-Himan, 1 November 1996.

was signed by twenty-six non-state actors, eighteen of which were in Africa, six in Asia and two in the Middle East.<sup>32</sup>

Most of the African non-state actors that have acceded to that instrument are from the east African region, where there is considerable advocacy by the Nairobi-based Kenya Coalition against Landmines (KCAL) and the Greater Horn of Africa Mine Action Network (GHAMAN), which deal with non-state actors in Burundi, the Democratic Republic of Congo, Ethiopia, Somalia and Uganda.

### The incorporation of international humanitarian law in African ceasefire agreements

An important strategy in ensuring compliance with international humanitarian law by armed non-state actors is to include provisions relating to the fair treatment of prisoners of war, respect for IHL and the delivery of humanitarian assistance in the various ceasefire and peace agreements concluded with them. Since the March 1962 Evian Agreement between the National Liberation Front (FLN) in Algeria and the French authorities there have been over thirty such agreements concluded with non-state actors, for example

the Lomé ceasefire agreement on Liberia of 13 February 1991, which urged the warring parties to “cooperate with all humanitarian agencies in their efforts to provide relief and assistance to the people of Liberia; and also to agree to respect the Red Cross (Geneva) Conventions”;

the Cotonou Agreement on Liberia of 25 July 1993, which stipulated that “all prisoners of war and detainees shall be immediately released to the Red Cross authority”;

the ceasefire agreement of 1 November 1998 between the government of Guinea Bissau and the self-proclaimed military junta in Abuja, which guaranteed “the free access to humanitarian organisations and agencies to reach the affected civilian population”;

the Lomé Peace Agreement on Sierra Leone of 7 July 1999, which pledged “the enforcement of humanitarian law” and guaranteed the “safe and unhindered access by humanitarian organisations to all people in need” and the establishment of “safe corridors for the provisions of food and medical supplies to the Economic Community for West Africa Monitoring Group (ECOMOG) soldiers behind the Revolutionary United Forces (RUF) lines and to RUF combatants behind ECOMOG lines”;

32 The African non-state actors that have acceded to the Deed of Commitment are the National Council for the Defence of Democracy – Forces for the Defence of Democracy (CNDD–FDD) in Burundi (December 2003); the SPLM/A in Sudan (October 2001); and the Transitional National Government (TNG), United Somali Congress (USC), SNA, Somali Reconciliation and Reconstruction Council (SRRC), Rahanweyn Resistance Army (RRA), Somali National Front (SNF), Hiran Patriotic Alliance (HPA), Southern Somali National Movement (SSNM), Somali African Muke Organization (SAMO), BIREM and Somali Patriotic Movement (SPM) in Somalia (November 2002).

the preamble to the 7 July 1999 Lusaka ceasefire agreement on the DRC, which stated that the parties were “determined to ensure the respect by all parties signatory to this agreement for the Geneva Conventions of 1949 and the Additional Protocols of 1977”; and the ceasefire agreement on Liberia in 2003, the parties to which pledged to “respect as well as encourage the Liberian populace also to respect the principles and rules of international humanitarian law in post-conflict Liberia”.<sup>33</sup>

## **Recognition of humanitarian organizations by armed non-state groups**

Since 1955 the role of humanitarian organizations such as the ICRC as a neutral humanitarian intermediary has been recognized by many armed non-state groups in Africa, notably for such functions as advocacy, negotiations, dissemination and supervision of exchanges of prisoners by such groups during conflicts.

Respect for the role of the ICRC has been expressed in African peace-making instruments such as the following peace agreements and reconciliation agreements:

- the Lancaster House talks of 1979, which led to the ceasefire in the conflict in Zimbabwe and gave the ICRC a role in providing postwar humanitarian assistance there;
- the 13 May 1991 Bicesse Agreement, which called on the ICRC as a neutral intermediary to supervise the release of prisoners in the hands of the warring parties;
- the ceasefire agreement of 15 May 1991 between the government of Angola and the rebel UNITA, which contained the provision that verification for the release of prisoners of war “will be performed by the International Committee of the Red Cross”;
- the Kinyira agreement of 30 May 1993 between the government of Rwanda and the rebel RPF, which stipulated that in matters related to aid distribution “the ICRC position on each individual shall be final”;
- the 4 August 1993 Arusha Peace Agreement on Rwanda, providing for the mandatory protection of the expatriate community and the security of contributors of humanitarian assistance such as the ICRC;
- the Lomé ceasefire agreement of 18 May 1999 between the government of Sierra Leone and the Revolutionary United Front/ Sierra Leone (RUF/SL) on the release of prisoners of war and non-combatants through a committee “chaired by the UN Chief Military Observer in Sierra Leone

33 Churchill Ewumbue-Monono and Carlo Von Flüe, “Promotion of international humanitarian law through cooperation between the ICRC and the African Union”, *International Review of the Red Cross*, Vol. 85, no. 852, December 2003, p. 757.

and comprising representatives of the ICRC, UNICEF, and other relevant UN agencies and NGOs”;

the Lusaka agreement of 7 July 1999 on the DRC, in which parties undertook to “allow immediate and unhindered access to the International Committee of the Red Cross (ICRC) and the Red Crescent for the purpose of arranging the release of prisoners of war and other persons detained as a result of the war, as well as the recovery of the dead and the treatment of the wounded”;

the Nuba Mountains ceasefire agreement of 19 January 2002 in Buergenstock (Switzerland) between the government of Sudan and the rebel SPLM/Nuba, which stipulated that the parties “shall allow immediate and unhindered access to the International Committee of the Red Cross (ICRC) for the purpose of identifying and assuring the well-being of any person detained as a result of the conflict”; and

the ceasefire agreement on Liberia in 2003 between the government of Liberia and the armed National Salvation Army (NSA), which stated that “All parties shall provide the International Committee of the Red Cross (ICRC) and other relevant national and international agencies with information regarding their prisoners of war, abductees, or persons detained because of the war, to enable the ICRC ... to visit them.”<sup>34</sup>

## **The impact of international humanitarian law compliance by non-state actors on humanitarian action**

Compliance by armed non-state actors with the principles of international humanitarian law and respect for the activities of the ICRC have had a tremendous impact on the development of that law and humanitarian action in Africa, notably in areas such as participation in IHL conferences, adherence to IHL instruments, dissemination, the delivery of humanitarian assistance, the establishment of ICRC offices in Africa and the integration of IHL principles in the military doctrines of some African non-state actors.

### **African non-state actors and the development of international humanitarian law**

African non-state actors have participated in diplomatic conferences for the development of IHL. In response to the invitation sent to recognized liberation movements, African nationalist movements such as the FNLA, the Pan African Congress of Azania (PAC), Seychelles People’s United Party (SPUP) the ANC, the ANCZ, the FNLA, the MPLA, SWAPO, ZANU and ZAPU took part in the 1974–7 Diplomatic Conference on the Reaffirmation and Development of Humanitarian

34 Churchill Ewumbue-Monono, above note 10, pp. 69–70.

Law (CDDH) in Geneva. In addition, some African liberation movements such as the PAC and SWAPO actually demonstrated their commitment to IHL instruments by formally signing the Geneva Conventions and the Final Act of the Additional Protocols. Moreover, on 18 October 1983 the United Nations Council for Namibia (UNCON), created in 1967, acceded to the Geneva Conventions and their Additional Protocols at the request of UN General Assembly Resolution 37/233 (1982).

### Spreading knowledge of the Geneva Conventions among all combatants

Compliance by armed non-state actors has facilitated the dissemination of knowledge of IHL principles by the ICRC in African conflicts.

In the Congo crisis of 1960–4, for instance, the ICRC translated and published Common Article 3 of the four 1949 Geneva Conventions in nine languages. In 1962, it published the “Brief summary of the Geneva Conventions for use by military personnel and the public” in Lingala, Swahili, Tshiluba and Kikongo, while in 1999–2000 it translated *The Soldiers’ Handbook* into Kiswahili, the language used in eastern Zaire and by most of the rebel groups. Compliance by non-state actors also helped in the translation of the Geneva Conventions into local African languages in Somalia and Burundi, in order to reach most of the uneducated members of the armed groups.

It furthermore led to the integration of liberation movements in ICRC regional dissemination efforts, as in July 1978, when most such movements of the southern Africa region participated in a regional dissemination meeting in Dar es Salaam. The same applied to similar dissemination efforts in July 1993 for fifteen officials of the rebel Rwanda Patriotic Front (RPF) in Rwanda and IHL programmes for 300 SPLA and Southern Sudan Independence Army (SSIA) commanders in 1999 in Sudan.

### Humanitarian assistance to non-state actors

Compliance by armed non-state actors with IHL and their recognition of the ICRC’s work have furthermore increased the effectiveness of humanitarian aid distributions in armed conflicts. Between 1960 and 1971 the secessionist authorities in Katanga and Biafra played a prominent role in this regard, and by 1976 a dozen other African liberation movements had followed suit.<sup>35</sup>

In 1975, the ICRC provided African liberation movements with relief supplies to a total value of 172,800 Swiss francs, distributed as follows FNLA

35 Between 1967 and 1975, the ICRC had developed fruitful relations with African liberation movements such as the Mozambique Revolutionary Committee (COREMO), the National Front for the Liberation of Mozambique (FRELIMO), the Popular Movement for the Liberation of Angola (MPLA), the Pan African Congress of Azania (PAC), the African Party for the Independence of Guinea and Cape Verde (PAIGC), the South West Africa People’s Organization (SWAPO), the Zimbabwe African National Union (ZANU), and the Zimbabwe African People’s Union (ZAPU).

(32,000 francs), PAIG (70,000 francs), MPLA (35,000 francs), FRELIMO (11,000 francs), PAC (10,000 francs), SWAPO (5,300 francs), ZANU (5,000 francs) and ZAPU (4,500 francs). ICRC assistance to these groups also included medical equipment and ambulances worth 76,000 Swiss francs.<sup>36</sup>

The application of humanitarian principles by most armed non-state actors in African conflicts has also led them to create humanitarian agencies. In Algeria the FLN set up the Algerian Red Crescent Society in 1956. In Eritrea, the armed EPLF also had humanitarian agencies such as the Eritrean Relief and Rehabilitation Agency (ERRA) and the Eritrean Red Cross and Red Crescent Society (ERCCS). In Tigray, the Relief Society of Tigray (REST) was set up by the TPLF. In Sudan the SPLM created the Sudan Relief and Rehabilitation Association (SRRA) and Operation Save Innocent Lives (OSIL). Most of these “liberation humanitarian organizations” created by non-state actors helped considerably in the application of humanitarian principles in African armed conflicts.

On 16 July 1992 RENAMO and the government of Mozambique signed a joint declaration on the guiding principles of humanitarian assistance, which among other things reaffirmed “the understanding reached in December 1990 between the Government of Mozambique, RENAMO, and the ICRC on the principles of free movement of populations and assistance for all Mozambicans”.<sup>37</sup>

### Non-state actors and the operational organization of the ICRC in Africa

Because of its recognition by non-state actors, the ICRC has been adjusting its operational presence in Africa to be closer to the military bases of armed non-state groups, mostly in neighbouring countries, or to the headquarters of the governments-in-exile of those groups.

- During the Algerian war of liberation, the ICRC conducted negotiations with the FLN from its offices in Cairo, Morocco and Tunisia.
- In Angola, the ICRC established operational centres for contacts with the various non-state armed group movements in 1975, which included the Carmonaorllige centre for the FNLA zone, the Nova Lisboa (Huambo) centre for the UNITA zone, and in N’Dalatando centre for the MPLA zone.
- In Zimbabwe, the ICRC set up an office in Bulawayo in 1977 for its relations with the ZANU-ZAPU freedom fighters; its office in Salisbury dealt with the Ian Smith government; in Namibia, it opened an office in Windhoek in 1981 to handle SWAPO issues.
- In Chad, an ICRC delegation was opened in Faya for relations with FROLINAT, in addition to those in N’Djamena, Moundou and Sahr for relations with the government of Chad.<sup>38</sup>

36 See ICRC Annual Report 1974.

37 See <[http://www.santegidio.org/archivio/pace/mozamb\\_19920716\\_EN.htm](http://www.santegidio.org/archivio/pace/mozamb_19920716_EN.htm)> (last visited 05 January 2007).

38 See ICRC Annual Report, 1979, p. 27.



- In Sudan the ICRC also used its offices in Nairobi, Addis Ababa, Kampala, Wau and Lokichokio for its relations with the armed rebel groups such as the SPLM.
- In the west African conflicts, the ICRC maintained an office in Monrovia for relations with the Liberian government and ECOMOG peacekeeping forces, while the Gbarnga and Kakata offices handled relations with the National Patriotic Reconstruction Assembly (NPRA) government; the Man office in Cote d'Ivoire handled relations with the NPLF. In Sierra Leone, the ICRC set up sub-delegations in Kenema, Makeni and Segbwema to handle relations with armed rebel movements. In Mali, it opened two offices, in Timbuktu and Bourem, for its contacts with the Tuareg rebels, while the Bamako delegation concentrated on relations with the government.
- In the Great Lakes conflicts, the ICRC's operational presence for the Rwandan crisis included its delegations in Bujumbura and Nairobi, as well as its offices in Ngara (Tanzania), Kabale (Uganda) and in Goma and Bukavu (Zaire), which handled relations with the various armed groups.
- In Uganda, where armed resistance was fanned by the LRA, the West Nile Bank Front (WNBFB) and the Uganda National Rescue Front (UNRF), the ICRC opened offices in Kampala, Kasese, Arua, Kitgum, Gulu and Koboko in 1997.
- Finally, in the Democratic Republic of Congo, the ICRC opened offices in Kolwezi, Goma, Bukavu and Bunia between 1994 and 1998 to negotiate with the warring armed groups.

### Integration of international humanitarian law in military doctrines

Another important manifestation of compliance with IHL by non-state actors in African conflicts has been the integration of its principles in the military doctrines of some leading rebel movements, notably Uganda's National Resistance Movement (NRM) (1980–6), the Rwandan RPF (1990–4) and, to some extent, John Garang's SPLM in Sudan. As part of their bid to abide by humanitarian principles, these non-state actors formulated a set of directives governing the conduct of hostilities. These directives were centred on a declaration of intent to respect IHL, and in particular to take captives prisoner rather than execute them, to attack only military objectives and combatants, to desist from using terror tactics and to punish violations of IHL in fair and regular trials.

### **Problems of respect for international humanitarian law and the ICRC by African non-state actors**

Respect for IHL by armed non-state actors in African armed conflicts, and recognition by them of the activities of humanitarian organizations such as the



ICRC as neutral, humanitarian intermediaries have, however, come up against a number of problems, such as the management of state sovereignty, the variance between the need for justice and for national reconstruction, security concerns, the nature of the conflict concerned, the non-participation of post-independence rebel movements in IHL-related international events and the problem of confidentiality.

With regard to the problem of state sovereignty, there is a perception that the negotiation of special agreements with non-state actors or acceptance of their unilateral declarations confers on them recognition by humanitarian organizations such as the ICRC and Geneva Call. If states feel that these humanitarian organizations have granted recognition to rebel armed groups or are negotiating with them on the same level, their willingness to co-operate with them might be affected. The problem of sovereignty has rendered most of the agreements and unilateral declarations by African non-state actors meaningless, since they are usually contested by the national authorities. For instance, the accession of the UN Committee on Namibia (UNCON) to the Geneva Conventions on 18 October 1983, like SWAPO's unilateral declarations, was contested by the government of South Africa on 12 March 1984.<sup>39</sup>

The second problem is the conflict between justice and national reconciliation. The general amnesty granted in African peace and national reconciliation instruments to perpetrators of war crimes has only intensified the zeal with which IHL is being violated on the continent.<sup>40</sup>

Although Common Article 3.2, for instance, prescribes that “the application of [special agreements] shall not affect the legal status of the Parties to the conflict”, this situation creates a conflict between the need to enforce respect for IHL principles through the promotion of justice by the special criminal tribunals, such as those for Rwanda and Sierra Leone, and the need to promote national reconciliation.

The need to promote justice was also a strong argument used by the racist governments in southern Africa to justify their failure to respect members of liberation movements as having prisoner-of-war status, despite the special

39 See ICRC Annual Report, 1984, p. 14.

40 \*\*\*In the Angolan crises of 1975–6, the Alvor Agreement of 15 January 1975 between the FNLA, the MPLA and UNITA provided, in its Article 9, that an amnesty “be granted to cover all the effects of the patriotic acts performed in the course of the national liberation struggle in Angola, which could have been considered to be liable to punishment under legislation in force at the time of their commission”. Moreover, the Lagos Accord of August 1979 on national reconciliation in Chad pledged, in Article 4(a), to “release all political prisoners of war and political detainees not later than 15 days from the date of formation of the Transitional National Union Government” and stipulated in Article 4(b) that “the Transitional National Union Government shall proclaim immediately amnesty for all political exiles to enable them to return to their homes”. The Sudan Peace Agreement of 21 April 1997 provided for a “general and unconditional amnesty for all offences committed between 16 May 1993 through to 1997 in accordance with the common will of the people of the Sudan.” It also stressed that “No action or other legal proceeding whatsoever, civil or criminal, shall be instituted against any persons in any court of law or any place for, or on account of, any act, omission or matter done inside or outside Sudan as from 16-05-1983 to 1997, if such act or omission or matter was committed by any member.” In 1999, the Uganda Parliament passed an amnesty law applicable to all armed groups, “without fear of further pursuit”, while in July 2001, Taylor declared a general amnesty for all armed groups.

agreements by those movements to respect IHL and the work of the ICRC. In Rhodesia, the government of Ian Smith stated in January 1977 that it would not grant POW status to members of the various liberation movements, despite their commitments and unilateral declarations and the appeals in July and December 1977 by the president of the ICRC, arguing that as Rhodesian citizens they were liable to legal prosecution and punishment by hanging for their terrorist acts.<sup>41</sup>

Third, some special agreements with non-state actors on humanitarian issues were abortive because of security considerations. In the 1990s, for instance, the ICRC's attempts to broker a special agreement between the Mozambican government and RENAMO to set up a neutral "combat-free zone" humanitarian corridor, the "Tete Corridor", on the Mozambique–Malawi border failed because of security considerations.

Fourth, the implementation of special agreements with non-state actors has been obstructed by problems in defining the nature of some armed conflicts. In the Ogaden war, for instance, the Somali government did not consider itself a party to the conflict and insisted that because it was an internal armed conflict, only Common Article 3 of the Geneva Conventions could be applied. Conversely, the Ethiopian government deemed the war in Ogaden to be an international armed conflict between Ethiopia and Somalia, which meant that all four Geneva Conventions and their Additional Protocols had to be applied. This problem of determining the nature of armed conflicts became more prominent in the 1990s in the various armed conflicts of the Great Lakes region.

Fifth, the absence of non-state actors in international fora where respect for IHL is discussed has also hampered implementation. In the 1960s and 1970s many liberation movements were recognized as observers within the OAU and as such participated in some international fora on the development of IHL, such as the Diplomatic Conference on International Humanitarian Law in 1974–7. Post-independence armed non-state groups, on the contrary, have not been able to take part in events where respect for IHL is discussed.

## Conclusion

The present study has shown the efforts made by most armed non-state actors to comply with IHL and co-operate with humanitarian organizations such as the ICRC and Geneva Call in promoting humanitarian principles in African conflicts. It has also shown that respect by African non-state actors for IHL and the ICRC's work was greater between 1956 and 1989, when most of the fighting was by recognized liberation movements and the majority of them had observer status and the support of the OAU. With the proliferation of post-cold war identity-based conflicts spearheaded by ethnic militias such as the Mai Mai, Interhamwe, Kamajors, and Janjaweed there has been little respect for IHL, the reason being

41 See ICRC Annual Report, 1978, p. 10.

that some traditional concepts of warfare promote terror tactics, torture and executions.

For IHL principles to take root under these circumstances it might be preferable to promote a wider dissemination of African best practices as expressed in terms of respect for humanitarian principles in African societies. Second, the humanitarian organizations, together with the African Union and the ICRC, should integrate African non-state actors as much as possible into some of their IHL dissemination activities and thereby enable them to integrate IHL into their military doctrines. Third, rebel movements with a clear track record of respect for IHL should be given incentives during peace and national reconciliation talks to maintain and uphold this course.

### Select list of abbreviations used in this article

|           |   |
|-----------|---|
| AFL       | Armed Forces of Liberia   |
| CNDD-FDD  | National Council for the Defence of Democracy – Forces for the Defence of Democracy |
| ECOMOG    | Economic Community of West Africa Monitoring Group                                  |
| EPLF      | Eritrean People's Liberation Front  |
| FLEC      | Front for the Liberation of the State of Cabinda                                    |
| FNLA      | National Front for the Liberation of Angola   |
| FRELIMO   | National Front for the Liberation of Mozambique                                     |
| FROLINAT  | National Front for the Liberation of Chad   |
| HPA       | Hiran Patriotic Alliance  |
| ILFO      | Islamic Front for the Liberation of Oromia  |
| KCAL      | Kenyan Coalition against Landmines  |
| LRA       | Lord's Resistance Army  |
| MFDC      | Movement of Democratic Forces of Casamance  |
| MPLA      | Popular Movement for the Liberation of Angola                                       |
| NPLF      | National Patriotic Front of Liberia   |
| OLF       | Oromo Liberation Front  |
| ONLF      | Oromo National Liberation Front   |
| OSIL      | Operation Save Innocent Lives – Sudan   |
| PAIG      | African Party for the Liberation of Guinea and Cape Verde                           |
| POLISARIO | Popular Front for the Liberation of Western Sahara                                  |
| RENAMO    | Mozambique National Resistance  |
| RUF/SL    | Revolutionary United Front/Sierra Leone   |
| SAMO      | Somali African Muke Organisation  |
| SPLA      | Sudan People's Liberation Army  |
| SPLM      | Sudan's People's Liberation Movement  |
| SPM       | Somali Patriotic Movement   |
| SNF       | Somali National Front   |
| SNNR      | Somali Reconciliation and Reconstruction Council                                    |
| SSIA      | Southern Sudan Independence Army  |
| SSNM      | Southern Somali National Movement   |
| SSDF      | Somali Salvation Democratic Front   |

|       |   |
|-------|---|
| SVM   | Somali National Movement                |
| SWAPO | South West Africa People's Organization |
| TPLF  | Tigrayan People's Liberation Front      |
| UNRF  | Uganda National Rescue Front            |
| USC   | United Somali Congress                  |
| WNBF  | West Nile Bank Front                    |