

Interview with Miriam Coronel Ferrer of the Non-State Actors Working Group

The challenges and success of the Non-State Actors Working Group are discussed with Miriam Coronel Ferrer.

by Margaret Busè, Editor

Margaret Busè (MB): Why was it necessary to form the Non-State Actor Working Group (NSA WG)?

Miriam Ferrer (MF): From the beginning, the Working Group (WG) has served as the mechanism to get together country campaigns and individuals who saw the merit of engaging NSAs in a landmine ban, despite the fact that such work is sensitive, dangerous and largely unchartered terrain. The group has become the lead group in the ICBL to see through this newest agenda in the ICBL—from convincing the rest and especially the leadership of the ICBL to adopt this area of work as equally legitimate as the other branches of work already established (treaty work, mine clearance, victim assistance) to developing its concept, strategy and program of action.

The WG continues to undertake such planning and coordination of efforts of country campaigns and works closely and supportively with other programs and institutions that have evolved to advance NSA engagement (e.g., the NSA Database hosted by the International Alert, the Geneva Call led by Swiss campaign's Elisabeth Reusse Decry) Interestingly, these other programs were also initiated by WG members who saw the merit of enjoying autonomy from the WG/ICBL procedures/processes, but certainly find congruence in purpose and objectives.

MB: How do you go about engaging NSAs in a dialogue?

MF: I'm sure others will have their stories to tell—whether because they live with NSAs in their midst, or they may be based in another country but their work requires them to deal with one or more NSAs.

I will talk largely about our experience in the Philippines, which you may say is a relatively open society because political negotiations are in place; rebel leaders have come out in the open as spokespersons, negotiating panel and technical support staff for negotiations. They also have websites, e-mail addresses, fax/telephone/cell phone numbers etc. that make contacting them and accessing their positions possible. There are also legal groups that more or less openly support these armed groups. Then we have the traditional connections of family/kin, school contemporaries, hometown friends, and personal friends. Through these various connections we are able to pass on letters, appeals and documents, set appointments for face to face meetings, exchange e-mails, etc. We've also held relatively formal small-group meetings with NSA representatives, attended peace negotiation ceremonies, and arranged the attendance of two groups to the pioneering conference held in Geneva. All these activities and occasions can be considered part of the dialogue process.

It's also quite important to note that we are able to do this because we

have developed the trust and confidence of these NSAs as well as the state, because of relations (or perhaps reputation or image) built over time not only on the landmine issue but on other peace/national issues as well. They trust our impartiality and at the same time know where we stand on the landmine (and other) questions.

MB: What was the catalyst for engaging Non-State Actors in the landmine issue?

MF: The push started in late 1996/early 1997 from three country campaigns—Colombia, Philippines and South Africa. These three countries have a long history of internal conflict and are aware of the need to develop such a complementary process to the main thrust of ICBL work that has emerged (a focus on states towards coming up with a treaty). This initiative was led by Colombian Eduardo Marino who at that time sat at the Coordinating Committee of the ICBL and steered the formation of an ad hoc NSA WG, drawing up its initial concept and bringing together country campaigns to thresh out the mechanics.

One of the initial concerns was that the treaty text "criminalized" all such mine use, and of course put all such acts under the jurisdiction of the state. But experience with working with NSAs and knowledge of NSA dynamics showed that criminalizing NSAs may not necessarily be the best way to deal with revolutionary/insurgent groups, and that some states in any case do not have the capacity to exercise such jurisdiction, having no actual control over portions of the territory.

Country campaigns in the south

(like Pakistan, Afghanistan, Nepal, Kenya, Zimbabwe, India) with their own NSAs easily saw the validity of this need and were supportive of the initiative. Some northern campaigns (e.g., Canada, Australia, Italy, New Zealand, UK, Germany, Ireland) were equally supportive upon learning of this new agenda. The Swiss

Campaign, through its chair Elisabeth Reusse Decry, was there almost immediately from the beginning, especially to deal with the problem posed as to how to see through NSA compliance given the fact that NSAs may not be state parties to international treaties. Eventually, the mechanism of the Geneva Call, a

Swiss-registered NGO, was put up precisely to deal with this argument/problem. Thus, the ICBL assembly in Maputo in 1999 (at the time of the First Meeting of State Parties) approved the regularization of the WG, despite continuing wariness/opposition of some key ICBL personalities/groups.

European Parliament resolution on measures to promote a commitment by non-State actors to a total ban on anti-personnel landmines

The European Parliament,

- having regard to its resolutions of 17 December 1992 on the injuries and loss of life caused by mines¹, of 29 June 1995 on landmines and blinding laser weapons² and on anti-personnel landmines: a murderous impediment to development³, of 18 December 1997 on the 1997 Convention on the prohibition and destruction of anti-personnel mines⁴ and of 25 October 2000 on anti-personnel landmines⁵,

- having regard to the communication from the Commission to the European Parliament and the Council on action against anti-personnel landmines: reinforcing the contribution of the European Union; and the proposal for a European Parliament and Council Regulation concerning action against anti-personnel landmines (COM(2000) 111),

A. whereas the use of anti-personnel landmines, in addition to resulting in the loss of human life, especially among the civilian population, represents a serious obstacle to the social and economic recovery of affected countries,

B. whereas today the majority of landmines are laid in the context of armed conflict and/or civil war where both State armed forces and non-State armed groups may be involved in the use of landmines,

C. whereas the 1997 Mine Ban Treaty has been ratified by 119 States and signed by 141,

D. whereas 52 States have not yet signed and ratified the Ottawa Convention,

E. having regard to the importance of the Conference of States signatories to the Ottawa Convention to be held from 18 to 22 September 2001 in Managua,

F. whereas the international community has a moral duty to seek commitments from all the parties involved in such conflicts, States and non-State actors, to ban the use of anti-personnel landmines, in order to achieve a truly universal ban on these inhumane weapons,

G. whereas this does not imply support for, or recognition of the legitimacy of, non-State actors or their activities,

H. recognising the efforts made by governments, international institutions and specialist NGOs to encourage non-State actors to ban the use of anti-personnel landmines,

1. Asks the European Union to consider all possible means of putting pressure on those non-State actors openly reluctant to undertake to adhere to a total ban on anti-personnel landmines;

2. Calls for the elimination of the use, production, stockpiling and transfer of anti-personnel landmines by non-State actors;

3. Urges the Council and the Commission to identify the sources of supply of anti-personnel landmines to non-State actors;

4. Calls for increased resources for humanitarian demining and mine awareness and landmine victim rehabilitation and assistance programmes;

5. Welcomes proposals to seek commitments from non-State actors, for example through a Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Landmines and for Cooperation in Mine Action;

6. Calls on the Managua Conference to support the efforts to obtain strong commitments from non-State actors;

7. Calls on the States party to the Ottawa Convention to give closer attention to the problem of anti-personnel mines in relation to non-State actors and to support the efforts made by specialist NGOs and international institutions to commit non-State actors to the mine ban process;

8. Instructs its President to forward this resolution to the Commission, the Council, the governments of the Member States, the Secretary-General of the United Nations, the International Committee of the Red Cross, the Committee for the International Campaign to Ban Landmines, the ACP-EU Joint Parliamentary Assembly, and the governments of the United States of America, the Russian Federation and the People's Republic of China.

¹ OJ C 21, 25.1.1993, p. 161.

² OJ C 183, 17.7.1995, p. 44.

³ OJ C 183, 17.7.1995, p. 47.

⁴ OJ C 14, 19.1.1998, p. 201.

MB: Why do you feel it is important to engage NSAs?

MF: The reasons are very basic. One is that you cannot universalize the ban without getting this other set of users, producers, traders and stockpilers into the mine ban camp. Another reason is that some states use their NSAs as a reason not to join the mine ban regime. Equally important, NSAs and the communities where they operate are victimized by landmines and would also need humanitarian assistance.

MB: Who are the terrorism or insurgency experts that advise the NSA WG?

MF: Individually, as country campaigns, we benefit from advice of people (government/non-government) in our own communities, among them former combatants. The WG itself lists the following advisers: London-based Eduardo Marino, Mary Foster currently based in Germany, Rae McGrath and retired Indian Maj. Gen. Dipankar Banerjee.

MB: Will the recent world events have an impact in the way NSAs may be engaged now and in the future?

MF: I think the basic strategy and framework would continue to hold. There is, however, danger that current action against Afghanistan, especially if prolonged, would fan the flames of radicalism among Islamic groups in various countries, including the Philippines. In our case, this would set back current negotiation and rehabilitation efforts — sort of bringing us to a square one position once more. It is obviously more difficult to talk in a situation of high-intensity conflict.

Of course, this consideration is already operative even before the current global conflict — e.g., one Islamic group talking to another Islamic group about a ban is definitely

more effective, especially since such a dialogue would be founded on Islamic principles. But perhaps such unifying — or is it dividing? — lines will become more crucial if this conflict ends up polarizing the whole world.

MB: What has been the response by state parties in engaging NSAs? Do you expect this to change?

MF: We are working in different contexts. As I said the Philippine campaign has the benefit of working in a more open society. We will not get arrested for talking to our NSAs. We can even perhaps expect our government to assist us if we get into trouble for talking to other countries' NSAs. This is not the same situation for the other campaigners in South Asia, Burma.

Of course, one would expect that a state party to the Ottawa Convention would be supportive of such efforts — e.g., Colombia, Philippines. But then again, this may not necessarily be the case because the state (or elements of the state such as the military/certain military officials or foreign affairs officials) may fear that doing so would legitimize the NSAs. In countries with large-scale demining operations and victim assistance programs underway like in Sudan, Afghanistan (until recently), the approach and responses have also been different. Basically positive cooperation from the ruling authorities was sought and established to make possible such programs.

Other states and NSAs that cannot be approached in their own country by the country campaign (or perhaps in the absence of a country campaign) are being approached by country/individual campaigners in other countries through their embassies/consulates in the case of states, or through their exiled leaders or foreign offices in the case of NSAs. WG members in some of the North countries are doing this as their contribution to the effort.

MB: Because of a constantly evolving political/military climate in many NSAs operating countries, is it difficult to monitor their compliance with a landmine ban?

MF: For monitoring, we rely on reports of country campaigners on the ground, and reports finalized and published in the *Landmine Monitor*. Follow-ups/verification/appeals are then made with the concerned parties by country campaigners, but the more established mechanism being developed is through the Geneva Call.

For example, the Moro Islamic Liberation Front in the Philippines signed the Deed of Commitment of the Geneva Call in 2000 but subsequently planted mines when they were forced to retreat from their camps by the Philippines army several months later. Geneva Call is currently organizing a fact-finding mission that will look into the reported violation and recommend subsequent courses of action.

MB: Do you see a risk that states parties combating internal NSAs may change their position to signing the Ottawa Treaty if being engaged in the process legitimizes NSAs?

MF: The opposite seems to be truer. I understand from the dialogues conducted by ICBL/WG campaigners that the signing of the SPLA of the Deed of Commitment is actually facilitating the ratification of the Treaty by the Sudanese government. States may not want their NSAs to be legitimized in this manner, true, but getting their NSAs to commit to a ban actually puts states in a defensive position because they lose some of their justification for resisting the ban. To react the opposite way would be irrational and hard to defend from a moral/political plane. I also imagine that real "hardline" states would not even merit these NSAs by crediting these NSAs for any position/policy that they adopt.

MB: Have you seen a demonstrable benefit or drawback to engaging NSAs in the issue of landmine use? How so?

MF: The benefit is really more evident not in the political gain of getting commitments, but in the impact on the ground. NSA cooperation, as our colleagues in the UK Landmine Action Group have experienced, greatly facilitates demining operation, which contributes to preventive action and victim assistance programs, in all to make the world a safer place [see Rae McGrath's, Aleyu Aleu's and SPLA/M representative's input in the NSA Conference Proceedings (chapter 7,4, & 5 respectively)]. We hope also to reach this point — though the scale of our landmine problem is much smaller, in our lobby for joint mine clearing operation in Mindanao between our army and the MILF.

You may say that the universality principle is the most important advantage of the landmine campaign compared to the small arms lobby. We are asking all state and non-state actors to stop use, production, trade of landmines whereas the regime envisioned in the small arms campaign is one where use and production would be mediated only among states. This can be problematic for people living under rogue states/illegal or repressive regimes and for NSAs, fighting what they perceive as state terrorism. It would be very hard to ask NSAs to accede to the terms of such a campaign. But the landmine ban comes across as more impartial, fair and just in that everyone is being asked to stop using landmines.

Also, while we have not yet achieved this, the other benefit of engaging beyond the terms of the Treaty is that through other mechanisms — such as unilateral and bilateral declarations — not only APMs but other mines and potentially other weapons can be the subject of such a ban.

MB: Do you feel the "Declaration of Non-Use" has legitimized NSAs in the political arena?

MF: In undertaking this work, we adopt the position of the Protocols to the 1949 Geneva Conventions, that compliance with international humanitarian law does not affect the legal status of the parties to the conflict.

At the same time, one cannot be naive not to see that NSAs engage in order to earn political points, just like states. But engaging also creates demands on them and puts them at risk, should they go against their commitments, of losing more points — again, just like states.

Depending on the scale of the landmine problem, humanitarian considerations rather than political tactics may in the end be the bigger consideration of some NSAs — e.g., of some Burmese groups. It perhaps may not be avoided that in engaging NSAs, we antagonize some governments. After the NSA Conference, we had to face the ire of two such governments. This is, in fact, understandably, one source of fear on the part of some ICBL colleagues whose work has been to get the support of governments/states. Even among governments, thinking has changed quite fast on this matter. Only last June, the European Parliament passed a resolution recognizing this necessity. The Managua Declaration at the Third Meeting of State Parties likewise acknowledged this need. Certainly, we are slowly making states have a broad-minded attitude about peacefully engaging NSAs.

MB: Do you see this declaration by NSAs as a possible step by NSAs in following humanitarian law?

MF: Yes. But perhaps our lawyers in the campaign like Sol & Saliya and IHL experts like Eduardo can elaborate more on this point.

MB: Given that even horrible war crimes have difficulty being prosecuted in international criminal courts, what leads you to believe prosecution of an NSA, or anyone else, for APL use is viable?

MF: This possibility was considered in the NSA Conference, particularly in the workshop on tools of engagement. We have not really extensively discussed this as a WG and have no unified position on the matter as yet. Prosecution at the national level is already possible under the Ottawa Convention as operationalized in State parties' implementing legislation.

MB: Are there any types of NSAs that are more likely to engage in the declaration than other NSAs? If so, why?

MF: I don't think we have enough cases to draw up a typology. Also, we work on a very pragmatic basis — we are engaging these NSAs because we have people who could do it or have already been doing it in the past. Also, you may have noticed that although NSA is a very encompassing term, we most of the time refer to insurgent/rebel/revolutionary groups, rather than armed syndicates engaged in criminal activities (though they may have links with the former).

One type of NSA that will engage in this arena is the politically astute/sophisticated ones. Another type would be those who may or may not be politically sophisticated in global politics but because of humanitarian considerations see the benefit of joining the ban.

MB: The Taliban has issued a declaration that was read at the NSA working group meeting held in Geneva by the ICBL. Many say they have carried out crimes against humanity. Do you feel that by engaging certain NSAs, that it can undermine the NSA working group and/or the ICBL?

MF: The Afghan campaign was instrumental in getting the Taliban to this position and in doing so was crucial for them to get about their mine clearance work. The Taliban statement on “landmines as un-Islamic” was also supportive of our work with other Muslim groups toward a landmine ban. We did not consider it as promoting the Taliban but supportive in advancing our own dialogues with our Muslim rebels because of its foundation in Islam.

All these approaches support our humanitarian goal and benefit the most affected people. The landmine question will remain no matter the outcome of Afghanistan’s or other countries’ civil war or the current global conflict. And it would be important to deal with whoever is in power — or the new NSAs that would emerge from these conflicts — and to engage them first in their own terms, if we are to have a stepping-stone towards a universal ban. Of course, approaches on such sensitive cases vary. The same dilemma applies to dealing with states. Take the case of Burma — to engage or not to engage Burma not only on the landmine question is a big debate in the international community.

Does this work undermine the WG/ICBL? It might have an initial consequence of doing so in some cases but this is all part of the dialogue process. This consideration highlights the need for coordination within

ICBL, the WG and among partners, as well as parallel initiatives that can complement work with states and non-states at the same time.

MB: How does your definition of the “Law of War” apply to NSAs when there is no clear definition of a “combatant”?

MF: From my understanding of IHL [International Humanitarian Law], certain criteria/qualifications exist to define a combatant. In any case, the status of combatant may not be a big question if we recognize that our current effort in engaging NSAs largely utilizes the “soft” persuasive approach even as all these initiatives are founded on the principles of international humanitarian law.

MB: Overall, have the priorities of the NSA Working Group changed since September 11, 2001?

MF: I guess not, except to be very particularly concerned about the safety and setback in the work of our campaigners in Afghanistan and Pakistan.

MB: Would the NSA WG refuse engagement with an NSA based on past behavior?

MF: If they are ready to commit, then we welcome their commitment and ask them to validate this by

compliance in the future and cooperation on action to deal with existing landmines stockpiled or on the ground. I do not think the ICBL has refused engagement with a state based on past behavior.

MB: What are the future plans for the working group?

MF: Continue work in the field; consolidate research on NSA landmine use, production, etc.; continue advocacy on the need to engage NSAs within ICBL, with states and other NSAs; build strength, capability, resources to continue with the work.

MB: Are any follow-up workshops/conferences planned?

MF: Yes, but small, low-key ones where NSAs within/across countries can continue/start the dialogue process. ■

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