

NGOs and International Peacekeeping – Issues, Prospects and Lessons Learned

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I. Introduction

Over the past century, the cooperation between non-governmental organizations (NGOs) and international organizations has increased significantly. The League of Nations provided for NGO involvement in its early years, by engaging them in many of its committees and conferences.¹ In 1945, the United Nations Charter reaffirmed the benefit of NGO involvement in the work of the organization. The opening words of the Charter “We the peoples” indicate that the mandate of the United Nations as a whole is based upon cooperation with civil society. Art. 71 of the Charter states that the United Nations Economic and Social Council (ECOSOC) “may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence.”² NGOs have been particularly involved in the work of some of ECOSOC’s subsidiary bodies, including the Commission on Human Rights, the Commission on Sustainable Development and the Commission on the Status of Women. While consultative status with ECOSOC is at the heart of the formal relationship between the United Nations and NGOs, practice has evolved to establish other channels of cooperation.³ NGOs have participated in special

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¹ For a survey, see S. Charnovitz, Two Centuries of Participation: NGOs and International Governance, *Michigan Journal of International Law* 18 (1997), 183, at 245. See on the Convention Establishing an International Relief Union of July 12, 1927, P. Macalister-Smith, *The International Relief Union*, in: *The Legal History Review* LIV (1986), 363–374.

² For nearly 30 years, arrangements for consultation with NGOs were governed by ECOSOC Res. 1296 (XLIV) of 23 May 1968. On 25 July 1996, the Council adopted resolution 1996/31, which established three categories of status for NGO’s. NGOs with a “General status” have the right to place items on the agenda of the Council and its subsidiary bodies. Organizations with a “special consultative status” may designate authorized representatives to sit as observers at public meetings of the Council and its subsidiary bodies. NGOs with a “roster status” may send representatives to meetings concerning matters within their field of competence. The number of NGOs with consultative status amounts to over 1,350.

³ Building on the experience gained through the consultative arrangements under Art. 71 of the Charter, ECOSOC Decision 1996/26 recommended that the General Assembly examine, at its 51st session, the question of the participation of NGOs in all areas of the work of the UN.

sessions of the General Assembly.⁴ Many United Nations specialized agencies (e.g. the Food and Agriculture Organization, the United Nations Educational, Scientific and Cultural Organization or the World Health Organization) and the majority of funds, agencies and programmes within the United Nations system, such as the United Nations Conference on Trade and Development, the United Nations Children's Fund, the United Nations Development Programme (UNDP), the World Food Programme (WFP) or the United Nations High Commissioner for Refugees (UNHCR) have developed their own cooperation mechanisms with NGOs, often involving the granting of a formal status for consultation.⁵ Furthermore, even the Security Council has occasionally addressed NGOs in its resolutions.⁶

The growing participation of NGOs in the United Nations systems coincides with the increasing role and influence of non-state actors in shaping public life in all parts of the world. The growth of associations not directly traceable to or dependent upon state institutions is related to factors such as the emergence of civil society as an "intermediary space between the individual and the state"⁷ and the increased role of the private sector and of privatization in general. This development is of major importance for the international community. NGOs disseminate information and provide services related to their area of engagement, while at the same time transmitting the concerns and the views of the various sectors of civil society. Moreover, they advocate new approaches and, most notably, generally increase the accountability and legitimacy of the global governance process.

Within the area of United Nations peacekeeping, NGOs have gained an important role in the delivery of development assistance and humanitarian aid. Originally only few peacekeeping operations had a truly humanitarian mandate.⁸ However, in the 1990s when the United Nations started to conduct more and more comprehensive peacekeeping operations, requiring peacekeepers to carry out civilian, military and political tasks instead of acting as a wall between combatants, NGOs have become indispensable partners of peacekeeping units.⁹ Experiences

⁴ At the twentieth special session of the General Assembly, held in 1998, NGOs were invited to make an input into the draft guiding principles of drug demand reduction. Accreditation was granted to all NGOs with a serious interest on the questions of drug abuse and illicit trafficking.

⁵ Cf. Report of the Secretary-General, Arrangements and practices for the interaction of non-governmental organizations in all activities of the United Nations system, UN Doc. A/53/170 of 10 July 1998, at para. 15 et seq.

⁶ In 1975 the Council invited NGOs to submit information about violations of the sanctions against Southern Rhodesia.

⁷ See on the different concepts of "civil society", R. Belloni, *Civil Society and Peacebuilding in Bosnia and Herzegovina*, in: *Journal of Peace Research*, 38, No. 2 (2001), 163, at 168. For the various documents concerning the issue of UN and Civil Society, see *The United Nations, Partners in Civil Society*, under <http://www.un.org>.

⁸ See C. Thornberry, *Peacekeepers. Humanitarian Aid and Civil Conflicts*, in: J. Whitman/D. Pocock (eds.), *After Rwanda, The Coordination of United Nations Humanitarian Assistance*, 1996, 227 et seq.

⁹ See F. Kofi Abiew/T. Keating, *NGO's and UN Peacekeeping Operations: Strange Bedfellows*, in: *International Peacekeeping* 6, No. 2 (1999), 89, at 92; P. Aall, *NGOs, Conflict Management*

such as the United Nations operations in Rwanda, Somalia or Bosnia and Herzegovina have made it quite clear that an effective response to humanitarian emergencies requires a close cooperation between different actors such as UNHCR, UNDP, WFP, the military units of international forces and major relief NGOs. Some United Nations interventions such as the operations in Somalia and Rwanda have even been expressly motivated by the objective to enforce the delivery of humanitarian relief and to protect NGO workers from the local authorities.

The involvement of NGOs as privileged implementation partners in relief situations is nowadays a well established rule. All United Nations offices directly involved in humanitarian and relief operations, but also those working in the field of development, have established strong operational relations with NGOs. NGOs are actively involved in United Nations activities either as executing agencies of UN-led projects or as beneficiaries of projects or grants. UNHCR usually devolves management and delivery of assistance to refugee camps to NGOs such as Care, the International Rescue Committee (IRC) or the Caritas chapters.¹⁰ Furthermore, NGOs have become natural partners of the WFP in the area of food distribution and monitoring, especially in relief situations, where national governments were unable or failed to act.¹¹ Finally, United Nations agencies have regularly created local NGOs in order to act as implementing partners in humanitarian programmes. These NGOs are mostly charged with tasks such as mine-clearing or the distribution of resources (cash, vehicles, office equipment).¹² It has been noted that in Somalia in 1994 there were an estimated 1000 local NGOs set up by Somalis to channel foreign funds into worthy projects. By the end of its mission the United Nations was apparently the biggest employer in Somalia, supporting, according to some estimates, a hundred thousand people.¹³

The performance of more and more complex peacekeeping operations by the United Nations, involving not only the re-establishment of law and order, but also the transitional administration of a country, provides new opportunities for NGO participation. In situations such as in Kosovo¹⁴ or in East Timor¹⁵, where the

and Peacekeeping, in: T. Woodhouse/O. Ramsbotham (eds.), *Peacekeeping and Conflict Resolution* (2000), 121, at 123.

¹⁰ UNHCR has a direct operational partnership with over 400 NGOs. See Report of the Secretary-General (note 5), at para. 38.

¹¹ Cf. World Food Programme, *Partnership with NGOs*, Doc. WFP/EB.1/99/3-A of 21 Dec. 1998, at 6. The WFP collaborates with about 1,200 NGOs worldwide, covering activities such as data collection, needs assessment, food transportation and food distribution.

¹² See on the practice of United Nations agencies A. Donini, *The Bureaucracy and the Free Spirits: Stagnation and Innovation in the Relationship Between the UN and NGOs*, in: T.G. Weiss/L. Gordenker (eds.), *NGOs, the UN and Global Governance* (1996), 83, at 92 et seq.

¹³ See Donini, *ibid.*, at 96.

¹⁴ On the United Nations Interim Administration in Kosovo, see Security Council Res. 1244 of 10 June 1999. For an analysis, see C. Stahn, *International Territorial Administration in the Former Yugoslavia: Origins, Developments and Challenges ahead*, in: *ZaöRV* 61 (2001), 107 et seq.

¹⁵ On the United Nations Transitional Administration in East Timor, see Security Council Res. 1272 of 25 Oct. 1999. See also S. Linton, *Rising from the Ashes: The Creation of a Viable Criminal Justice System in East Timor*, in: *Melbourne University Law Review* 25 (2001), 122 et seq. See also

international community exercises governmental functions for the benefit of the local population, NGOs may become more actively involved in the execution of functions that typically would be run by organs of a state. NGOs may be given an advisory role in the re-establishment of the national judicial system. Moreover, NGOs may help carrying out a broad scope of community-based tasks in the area of public administration such as health care, education, water and sanitation projects, construction and environmental programmes. Even in fully operational state systems, the devolution of public tasks to private actors is not an unusual phenomenon. In territories, which are temporarily placed under international administration, the need to devolve public tasks is even greater, because international organizations such as the United Nations, NATO or the OSCE are hardly in a position to provide all of the services of public welfare, which a functioning state normally provides.

A number of reasons lend support to the view that the conditions are right for greater NGO influence. It is evident that the military is in many situations not the best-suited organ to interact with civil society. NGOs, on the contrary, seem to have a comparative advantage in responding to conflicts at the local level.¹⁶ In addition, NGOs have gradually become chief providers of public welfare and sources of employment. In many countries, NGOs fill important short-term gaps in the national administration by providing essential services, particularly in the fields of health and education. Even UNDP, originally known for its strong emphasis on cooperation with state-actors, has started to involve NGOs in project execution.¹⁷ Furthermore, NGOs often present the advantage of being in the area years before the outbreak of the conflict or the violence. Their knowledge of local society and culture cannot be acquired instantly by outside entities that choose to get involved in the conflict. Finally, the inclusion of local level NGOs in the multi-layered system of governance of a United Nations administered territory furthers the development of self-rule and democracy building at the local level, which is particularly important in the context of post-war societies. Conflict management specialists have claimed that international approaches to post-conflict peace building have focused too often on the national level elites. The increasing integration of local NGOs and officials in the international administrative system would strengthen a bottom-up approach.¹⁸

In 1994, the United Nations Secretary-General distinguished three main areas, in which NGOs may usefully complement the United Nations' activities in the course of a conflict: preventive diplomacy, peacemaking and post-conflict peace-

C. Stahn, *The United Nations Transitional Administration in Kosovo and East Timor: A First Analysis*, in: *Max Planck Yearbook of United Nations Law* 5 (2001), 105 et seq. (forthcoming).

¹⁶ See on this aspect A. Natsios, *NGOs and the UN System in Complex Humanitarian Emergencies: Conflict or Cooperation?*, in: Weiss/Gordenker (note 12), 67, at 75.

¹⁷ UNDP formalized guidelines for the execution of projects by NGOs in 1997. See Report of the Secretary-General (note 5), at para. 42.

¹⁸ See also T.D. Sisk, *Global Networks for Democracy Promotion: Enhancing Local Governance*, available under <http://www.globalpublicpolicy.net>.

building.¹⁹ These three different stages of intervention shall serve as an overall framework for the following analysis.

II. Conflict Prevention

Conflict prevention in a broader sense is one of the classical fields of NGO activism. The roles of NGOs in this area are multi-faceted. They do not only include the collection and evaluation of conflict-related information, but extend to the preparation of humanitarian and human rights standards and monitoring functions. NGOs are particularly apt to assume a “watchdog function” of the international community because they are, by their very nature, independent actors, capable of reminding states of their obligations under international law. Taking into account the contribution of humanitarian and human rights NGOs to both the development and the implementation of rules of international law, it has even been suggested to conceive of them as “trustees of the values and principles of humanity as a whole”.²⁰

1. Dissemination of Information and Human Rights Monitoring

NGOs play an important role in conflict prevention, owing to their knowledge of and their involvement in potential conflict areas. NGOs are often inside the country or nearby and able to respond quickly. In addition, they are mostly not only the best informed actors concerning human rights violations and conditions in the field, but also more willing than governments to investigate and report their findings and recommendations publicly.²¹ The need for an active involvement of NGOs in human rights monitoring is further increased by the growing number of internal armed conflicts in which close-to-the ground cooperation is essential for receiving detailed and valuable information on the conflict and its victims.²²

The important role of NGOs in conflict prevention was acknowledged by the Carnegie Commission on Preventing Deadly Conflict, which in its 1997 report found that “the prevention of deadly conflict is, over the long term, too hard – intellectually, technically, and politically – to be left to the responsibility of

¹⁹ See UN Secretary-General’s address at the 47th Annual Conference of NGOs, 1994.

²⁰ Cf. D. Thüerer, *The Emergence of Non-Governmental Organizations and Transitional Enterprises in International Law and the Changing Role of the State*, in: R. Hofmann (ed.), *Non-State Actors as New Subjects of International Law* (2000), 37 et seq., at 46.

²¹ For a recognition of the role of NGOs in conflict prevention, see Report of the Secretary-General to the Security Council on the protection of civilians in armed conflict of 30 March 2001, para. 53, UN Doc. S/2001/331. See generally on the work of NGOs in world-wide promotion and protection of human rights, P. Macalister-Smith, *Non-Governmental Organizations, Humanitarian Action and Human Rights*, in: *Recht zwischen Umbruch und Bewahrung*, Festschrift für R. Bernhardt, 1995, 477 et seq.

²² See on this aspect also F. Tanner, *Conflict Prevention and Conflict Resolution: Limits of Multilateralism*, in: *IRRC* 82 (2000), 541 et seq., at 553.

any single institution or government, no matter how powerful. Strength must be pooled, burdens shared, and labor divided among actors."²³

Because of their nature and their organization, which allows them to react quickly to situations of emergency, NGOs are particularly valuable as early warning mechanisms. They may, for example, provide useful information to United Nations organs on local developments such as the political situation in the area, refugee flows or concrete relief needs. This has been recognized even by the Security Council, which has on several occasions engaged in consultations with NGOs (the so called "Arria" consultations²⁴), by adjourning its session and continuing in an informal meeting.²⁵

But this is just one of many ways in which NGOs provide important help. Perhaps the greatest impact of preventive NGO action lies in the early submission of information to specialized human rights mechanisms and special United Nations rapporteurs. In fact, the work of international human rights institutions such as the Human Rights Commission or the United Nations treaty monitoring bodies relies heavily upon information provided by NGOs. The Commission on Human Rights, which is composed of government representatives, has given NGO representatives the opportunity to present documentary evidence of human rights abuses at its plenary sessions.²⁶ In 1994, the chairpersons of all human rights treaty committees have agreed that NGOs should be allowed "to make oral interventions and to transmit information relevant to the monitoring of human rights provisions through formally established and well-structured procedures."²⁷ In some cases, NGOs have even been charged with the undertaking of fact-finding missions within particular states.²⁸ These significant tasks provide evidence that the activities assumed by NGOs in the area of humanitarian affairs and human rights protection introduce a rudimentary form of "checks and balances" in the international legal system.²⁹

²³ See *Preventing Deadly Conflict: Final Report, with Executive Summary*, Carnegie Commission on Preventing Deadly Conflict, N.Y., December 1997.

²⁴ Arria is the name of a former Representative of Venezuela who initiated this practice.

²⁵ On 12 Feb. 1997, for example, three NGOs (OXFAM, Care and Medecins sans Frontières) briefed the Security as well as the bureau of ECOSOC on the situation in the Great Lakes region.

²⁶ Felice Gaer notes that "violation countries themselves compete actively for election to the Commission and the ECOSOC NGO committee, both to protect themselves from a negative vote and to reply to and often intimidate the nongovernmental organisations." See Felice D. Gaer, *Reality Check: Human Rights NGOs Confront Governments at the UN*, in: Weiss/Gordenker (note 12), 51, at 53.

²⁷ See UN Doc. A/49/537 of 19 Oct. 1994, para. 41.

²⁸ Cf. on this issue H. Thoolen/B. Verstappen, *Human Rights Missions, A Study of the Fact-Finding by Non-Governmental Organizations* (1986).

²⁹ See on this idea also Thüerer (note 20), at 55. Under some regional human rights instruments such as the European or the American Convention on Human Rights, NGOs have even been authorized to lodge complaints with the treaty bodies provided that they have been victims of a violation by a state party. Cf. Art. 44 of the American Convention on Human Rights and Art. 25 of the European Convention on Human Rights, which makes this procedure dependent on a prior enabling declaration by the state concerned. See M. Olz, *Non-Governmental Organizations in Regional Human Rights Systems*, in: *Columbia Human Rights Law Review* 28 (1997), at 308 et seq.

2. Human Rights Standard-Setting

Due to their unique capacity to gather public support for and raise awareness on a number of important subjects, NGOs have also gained an important role in the norm-building-process of the international community.³⁰ Various international instruments designed to improve respect for human rights have been promoted or actively shaped by NGOs either through NGO campaigns or through their participation in the treaty conferences and negotiations. The Ottawa process, which was initiated by an umbrella group of NGOs and led to the adoption, in December 1997, of the Convention banning anti-personnel landmines³¹ was a landmark in this regard. Another example of effective partnership between inter-governmental, governmental and non-governmental actors is the adoption of the Rome Statute of the International Criminal Court in 1998.³²

Although NGOs neither hosted nor organized the underlying treaty conferences, they can no longer be seen as disseminators of information only. They are, in the words of the UN Secretary-General "shapers of policy and indispensable bridges between the general public and intergovernmental processes".³³ Admittedly, NGOs do not have at this stage a direct role in formal law-making. However, they can adopt soft law instruments. Furthermore, they exercise pressure on governments to prepare draft standards and to ratify international conventions in the area of humanitarian and human rights law.

III. Conflict Resolution

Throughout the years, NGOs have become indispensable actors in the area of humanitarian aid and disaster relief within the framework of United Nations peacekeeping operations. Their action is of essential importance for the realization of humanitarian assistance, which has been qualified as the solidarity right with "the best chance to emerge as a true legal right of populations in emergency situations".³⁴

Although the role of NGOs in this field of activity is widely recognized, some problems have emerged which require further attention. Some of the most crucial issues are the cooperation of NGOs with other actors such as the United Nations agencies and the military, and the accountability and responsibility of NGOs.

³⁰ Cf. R. Wedgwood, *Legal Personality and the Role of Non-Governmental Organizations and Non-State Political Entities in the United Nations System*, in: Hofmann (note 20), 21, at 25.

³¹ See *Ottawa Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-Personnel Landmines and on their Destruction*, reprinted in I.L.M. 36 (1997), at 1507.

³² See *Rome Statute of the International Criminal Court of 17 July 1998*, UN-Doc. A/CONF.183/9, reprinted in I.L.M. 37 (1998), at 999. See on the role of NGOs at the Rome Conference, W. Pace, *The Relationship between the International Criminal Court and Non-Governmental Organizations*, in: H. Hebel/J. Lamers/J. Schukking (eds.), *Reflections on the International Criminal Court (1999)*, 189 et seq.

³³ See Report of the Secretary-General (note 5), at para. 57.

³⁴ See C. Tomuschat, *Solidarity Rights (Development, Peace, Environment, Humanitarian Assistance)*, in: EPIL 4 (2000), 460, at 465.

1. The Role of NGOs in Complex Humanitarian Emergencies

Once a situation of emergency has emerged, both the development assistance process and disaster relief involve a variety of different actors and tasks.

a) A multiplicity of actors

The international humanitarian assistance community can be divided roughly into the following actors which work towards the same goals: United Nations agencies, international organizations, the Red Cross organizations and NGOs. A typical reaction scheme is the following: NGOs are often the first to alert the international community to impending humanitarian crises, and are invariably in the forefront of any response. The United Nations is generally the principal agency coordinating the international community's response, and as such assumes a preeminent role in coordinating its own agencies, the military supporting the operation and NGOs working in the country. The United Nations Office for the Coordination of Humanitarian Affairs (OCHA)³⁵ is mainly responsible for mobilizing and coordinating the collective efforts of the international community to meet human needs in disasters and emergencies in a coherent and timely manner. United Nations humanitarian agencies such as the UNHCR and the WFP respond to specific emergencies under the direction of either the Security Council or United Nations member states. On a day-to-day basis, relief operations are usually carried out by a United Nations lead agency with other United Nations agencies in a division of labour (UNHCR – refugees and displaced persons, WFP – food aid, UNICEF – children, health etc). All of these programs work both with their own staff and with individual NGOs that implement United Nations programs in the field, usually on the basis of a written agreement with the United Nations lead agency.³⁶

At the same time, military forces have increasingly been called upon to play a crucial role in humanitarian operations extending far beyond the primary responsibility of ensuring a secure environment. In complex emergencies such as Somalia or Bosnia, tasks of the military included the coordination of the unloading of relief aircrafts, the delivery of medical assistance, the gathering of information on war criminals, the establishment of an auxiliary security system (including police,

³⁵ See on the work of and the services provided by OCHA, <http://www.reliefweb.int/ocha>.

³⁶ The UNHCR, the WFP and other agencies have direct contracts with NGOs paying them to carry out programmes that would once have been carried out by themselves. Cooperation with UNHCR is determined by an operational partnership agreement, which sets out a basic common understanding of standards of conduct and field coordination. WFP has negotiated a "Memorandum of Understanding on collaborative working arrangements" and Memorandums of understanding on stand-by arrangements with a number of NGOs. The collaboration between NGOs and UNDP is also governed by operational guidelines which must be approved. See Report of the Secretary-General (note 5), at para. 38–46, M. Duffield, *NGO Relief in War Zones*, in: T.G. Weiss (ed.), *Beyond UN Subcontracting* (1998), 139, at 149.

the judiciary and a prison system), the protection of civilian convoys and assistance to NGOs.³⁷

In addition to United Nations agencies and security forces, a large network of other NGOs offers relief assistance in emergency situations. The spectrum of NGOs includes organizations with religious, medical, social and occasionally political purposes, representing such a wide range that any attempt to generalize would end in failure. Many of these organizations do not work under United Nations subcontracting arrangements, but as independent actors funded by national governments or international donor agencies. Their relief efforts are often complemented by the activities of the Red Cross Community (International Committee of the Red Cross, International Federation of Red Cross and Red Crescent Societies), which is one of the principal actors in any disaster.³⁸

The Kosovo crisis³⁹ illustrates the complexity of the international crisis response machinery. The UNHCR formally served as a leader among United Nations agencies and humanitarian groups. However, since it was not fully prepared for the massive refugee crisis at the beginning of the conflict, NATO troop contingents built refugee camps in Macedonia and Albania. As the crisis unfolded, UNHCR played the lead role in operations, surrounded by several hundred NGOs, which became gradually involved in the relief operation. The WFP provided food which was distributed by forty different NGO partners. The WHO took care of the health needs of women, children and vulnerable groups. NGOs provided camp management, water, sanitation, and other services in camps. The UNHCR offered cash to families hosting refugees.

b) The spectrum of tasks performed by NGOs

The scope of activities exercised by NGOs within the framework of relief operations is as widespread as their focus of action in general. In the initial phase of a conflict, which is usually marked by starvation, disease and death, the focus of NGO activity lies in the provision of water, food, sanitation equipment and shelter to distressed populations and on the prevention and treatment of diseases. Moreover, some NGOs disseminate information on impending crises, thereby

³⁷ For an excellent survey, see M. William, *Civil-Military Relations and Peacekeeping*, in: B. Huld/A. Hilding/A. Eriksson (eds.), *Challenges of Peace Support into the 21st Century* (1998), 96 et seq.; T. Findlay, *Mixing Guns and Butter: Military-Civilian Relations in Complex Humanitarian Emergencies*, in: Huld/Hilding/Eriksson, *ibid.*, 112 et seq. See specifically on the situation in Somalia, B. Deppeler, *The ICRC in Complex Emergencies: An Outsider or Part of a Team?*, in: Whitman/Pocock (note 8), 128, at 133.

³⁸ For the activities of the Red Cross Community, see the ICRC's website: www.icrc.org. On the spectrum of actors involved in humanitarian emergencies, see Natsios (note 16), at 72 et seq.

³⁹ On humanitarian action in the Balkans, see P. Krähenbühl, *Conflict in the Balkans: Human Tragedies and the Challenge to Independent Humanitarian Action*, IRRC 82 (2000), at 11 et seq., and B. Mégevand Roggo, *After the Kosovo Conflict, a Genuine Humanitarian Space: A Utopian Concept or an Essential Requirement?*, in: IRRC 82 (2000), at 31 et seq. See generally on the role of humanitarian NGOs, P. Macalister-Smith, *Humanitarian Action by NGOs*, in: *Bulletin of Peace Proposals* 18, No. 2 (1987), 111 et seq.

ensuring broader media coverage of events and perspectives on the conflict. On a more long-term basis, NGOs assume community building tasks such as health care training or repatriation assistance. In the Kosovo crisis for example, NGOs developed innovative methods to assist family reunification. They used Internet-based information and Yugoslavian phone books in order to create a database for the identification of refugees and displaced persons.⁴⁰

Some tasks may also emerge within the course of the conflict. In Kosovo, local NGOs played a crucial role in assisting refugees. NGOs established an information network, which permitted local NGOs to alert larger and more influential organizations such as the ICRC or Human Rights Watch in cases, in which the Macedonian border authorities denied refugees access to the territory. As a result of the international pressure, refugees were often allowed to enter the country within 24 hours. In Ethiopia, NGOs have acted as diplomatic agents by helping to negotiate agreements between the warring parties, in order to facilitate the delivery of humanitarian assistance to inaccessible crisis areas.⁴¹

In their response to emergencies NGOs have several comparative advantages to other types of relief organizations. These advantages include flexibility, quick response capacity and grassroots contact. Due to their private status, NGOs may more easily than states or international organizations conduct humanitarian assistance operations on a particular territory without the invitation or consent of the territorial state. Furthermore, NGOs have often remained in dangerous conflict areas, long after national governments had withdrawn their civilian and military personnel. Moreover, their informal decision-making procedures and their intensive links to the local level have allowed NGOs to adopt inventive solutions and case-to-case approaches corresponding to the needs of the particular relief operation. Another factor encouraging NGO involvement in peacekeeping operations is the fact that governments in crisis areas are often more willing to accept help provided by NGOs than assistance by other states or international organizations.

2. Crucial Issues

It is clear, however, that the involvement of many different actors in the field creates a number of problems.

a) Coordination

The experiences in Iraq, Somalia, Haiti and Rwanda have shown that closer cooperation among United Nations agencies, military troops and NGOs is necessary to improve humanitarian assistance in complex emergencies. Presently, a

⁴⁰ Cf. Report of the Independent International Commission on Kosovo, under 7: "Humanitarian Organizations and the Role of the Media", available under <http://www.kosovocommission.org>.

⁴¹ See P. Shiras, Humanitarian Emergencies and the Role of NGOs, in: Whitman/Pocock (note 8), 106.

variety of organizations serve as coordinating mechanisms between the different actors. At the United Nations level, the experience with the Kurdish crisis in northern Iraq led to the establishment of the Inter-Agency Standing Committee (IASC), which is the “central humanitarian policy-making body in the UN system”.⁴² The IASC is composed of the Red Cross organizations, three consortia of NGOs – InterAction, the International Council of Voluntary Agencies (ICVA)⁴³, and the Steering Committee for Humanitarian Response⁴⁴ – and UN agencies such as UNDP, UNICEF and the WFP.

As emergency responses have become more frequent and more complex, the NGO community has also started to organize coordination among itself. Confronted with overwhelming difficulties and a lack of international organization and leadership, coordination and communication among the usually independent NGOs became a necessity.⁴⁵ One of the first intracommunity coordination centers was the NGO Coordinating Committee for Iraq (NCCMI). A more recent example is the International NGO Council in Kosovo, which was formed by major international NGOs such as Care, Action against Hunger, the Mercy Corps International or the Save the Children Alliance in 1999, prior to the NATO intervention.⁴⁶ The International NGO Council was established “for the purposes of mutual discussion, the sharing of information and reviewing potential joint action concerning”: “relations between the NGO community and governmental authorities, United Nations agencies, and other international organizations”; and “coordination [in a broad sense] among the NGOs to achieve maximum benefit for the people of Kosovo”.

Unfortunately, problems of coordination in the field persist, particularly where a multiplicity of actors is present and where humanitarian, military, political, human rights and development activities are all taking place. Overlapping mandates often result in tensions and in inter-agency and inter-entity rivalry in the field impeding progress of the relief operation. The President of the ICRC was one of the experts to note that closer cooperation among the various entities is a key issue. He commented:

⁴² See Report of the Secretary-General (note 5), para. 36.

⁴³ The ICVA is a consortium of some 100 private relief and development organizations.

⁴⁴ The Steering Committee is an alliance of major NGOs involved in relief operations.

⁴⁵ For the lack of coordination among NGOs and the problems caused by it in Somalia, see Shiras (note 41), at 112. Shiras notes: “... [M]any NGOs which had never worked in Somalia entered the country after very little consultation with other NGOs already established there, or with Somalis themselves. Often driven by headquarters pressure to set up shop and start doing something, valuable consultation with others, which might have led to much more efficient programmes, was sacrificed. ... [T]his lack of consultation and coordination had a direct effect on NGO security. Each new NGO had to negotiate with the Somalis for protection and for rental of housing, office space and the like. By not coordinating these negotiations, NGOs not only paid exorbitant rates, but the failure of one or another NGO to meet Somali demands could result in security problems for the whole NGO community. Without a coordinated NGO position Somalis, who were often directly linked to the warlords, were able to extort large sums from NGOs which were then used to fund their war efforts.”

⁴⁶ See on the principles, purposes and activities of the International NGO Council, <http://www.reliefweb.int/hcic>.

“Competition among various agencies and organizations, the tendency of certain states to engage in undisciplined bilateral action, the lack of professionalism shown by some new NGO’s – whose goodwill is not in doubt – all these constitute obstacles that must be overcome.”⁴⁷

Several independent observers have come to the same conclusions when analysing the Kosovo crisis. The Independent International Commission on Kosovo noted:

“The military commands, despite a lack of extensive experience in this activity, did not cooperate with UNHCR and those who tried to offer advice about how to set up refugee camps. Competition developed among the different NATO governmental/military groups, and between them and the international humanitarian groups that the military perceived as slow and inefficient.”⁴⁸

UNHCR, as the leader among United Nations agencies and the potential leader of NGOs, also received blame for its lack of coordination. An independent group of experts concluded that the UNHCR was not fully capable of dealing with the crisis in the initial phase of the emergency and that its coordination of the international response was weak.⁴⁹

Criticism was also raised with respect to national governments, which made bilateral funding arrangements with NGOs, undermining UNHCR’s mandate and monitoring efficiency. European Union countries were criticized for bypassing UNHCR by acting unilaterally and through NATO, even before UNHCR had the chance to prove whether or not it could handle the task.⁵⁰

The role of the NGOs involved in the Kosovo crisis has also raised some concerns. An independent study commissioned by UNHCR concluded that NGOs “arrived unannounced, often deposited their inappropriate materials and sometimes simply entered the camps and set up a project without reference to either the government or the UNHCR.” By acting “according to their own criteria and priorities” some NGOs contributed to the bilateralism and the failure of coordination efforts.⁵¹

The experiences made in the Kosovo crisis clearly show that the issue of close cooperation between the different actors in the field requires further attention in future operations. Several solutions have been proposed to improve the cooperation with and among NGOs. One way to prevent confusion and disorder among

⁴⁷ Cited after Deppler (note 37), at 134. See on the interaction between state and non-state actors in the context of the International Relief Union established in 1927, Macalister-Smith (note 1), 368 et seq. See generally on the coordination of humanitarian assistance, P. Macalister-Smith, *Non-Governmental Organizations and Coordination of Humanitarian Assistance*, in: *Transnational Associations* (1988), No. 2, 69 et seq.

⁴⁸ See Independent International Commission on Kosovo (note 40), under 7.

⁴⁹ See the report “The Kosovo refugee crisis: an independent evaluation of UNHCR’s emergency preparedness and response”, paras. 124 et seq., available under <http://www.unhcr.ch/evaluate/kosovo>.

⁵⁰ Cf. E. Schenkenberg van Mierop, ICVA Coordinator, NGOs must seriously reflect on their roles following the Kosovo refugee crisis, *Balkans news from the field*, available under <http://www.oneworld.org/voice/crisis>.

⁵¹ See Schenkenberg van Mierop, *ibid*.

independently funded NGOs is to make participation in a co-ordination arrangement with the United Nations a precondition for governmental funding.⁵² Another possibility to enhance co-ordination is the establishment and support of NGO-driven co-ordination mechanisms such as the International NGO Council. There is a need for such institutions, especially in situations in which NGOs are forced to act independently of United Nations agencies.

b) Cooperation with military forces

Another delicate issue is the cooperation between NGOs and military forces. In the past, NGOs have generally acted independently. Cooperation with military personnel involved in the conflict was limited. However, with the proliferation of complex peacekeeping and peace-enforcement operations in the 1990s, NGOs have been required to perform their humanitarian tasks alongside military forces. The capacity to provide security and logistical assistance makes the military a valuable partner in emergency situations. But the relationship between the military and humanitarian organizations is not always an easy one.⁵³ In some cases, the provision of humanitarian assistance to certain targeted groups in the conflict runs counter to the military objective of the operation. This has been the case in Somalia and Rwanda, where humanitarian aid and road construction carried out by NGOs served the purposes of "opponent" militia groups.⁵⁴ In addition, NGOs have occasionally hired security services from the warring factions, in order to distribute humanitarian aid, thereby supporting and financing the military activities of the conflicting groups.⁵⁵ Furthermore, if the military force is a party to the conflict, such as in Kosovo, a close cooperation between the military contingents and humanitarian organizations may compromise the principles of impartiality and neutrality which are at the heart of the delivery of humanitarian aid.⁵⁶

When fulfilling humanitarian mandates, military troops often share the same goals as NGOs.⁵⁷ Nevertheless, their operational strategies differ considerably

⁵² See also the recommendation of the independent team of experts commissioned by UNHCR in its report on the Kosovo refugee crisis (note 49): "Donors should tie NGO funding to a co-ordination contract with UNHCR, and themselves undertake early and full consultations with UNHCR".

⁵³ See generally on this issue: I. Fedorov, *Civil-Military Relations – Command and Control, Co-operation and Integration in the Field*, in: Hultdt/Hilding/Eriksson (note 37), 83 et seq.; M. Studer, *The ICRC and Civil-Military Relations in Armed Conflict*, in: IRRC 83 (2001), 367 et seq. For a critical appraisal of the cooperation between UNHCR and NATO in the Kosovo crisis, see the report (note 49), at paras. 519 et seq.

⁵⁴ See Kofi Abiew/Keating (note 9), at 103.

⁵⁵ For the situation in Somalia, see Shiras (note 41), at 114.

⁵⁶ Cf. Independent International Commission on Kosovo (note 40), under 7: "Humanitarian Organizations and the Military". NGOs have not always fully respected the principle of neutrality in humanitarian relief operations. In Ethiopia, Guatemala, El Salvador and Nicaragua few NGOs worked with both parties to the conflict. See Shiras (note 41), at 114.

⁵⁷ In Bosnia and Herzegovina IFOR and SFOR units were mandated to undertake humanitarian support. IFOR was authorized to assist in accomplishing humanitarian missions "within the limits of its assigned principal tasks and available resources, and on request". See Art. VI, para. 3 of Annex 1

from the methods deployed by humanitarian agencies.⁵⁸ The first priority of the military is to create a secure environment. In most cases, the military concentrates its forces in a safe area first, before extending its operational activities to other areas. In contrast, the NGOs' first priorities are to deliver aid to those who need it most. This involves immediate action in conflict areas. If humanitarian agencies rely too much on the alliance with military forces, they risk to neglect their humanitarian mandate.⁵⁹ Yet, in many situations, NGOs are unable to carry out their tasks without the protection of military forces. The relationship between these actors is therefore complementary in nature.

The action of NGOs in the East Timor crisis is a good example. Both NGOs and the Australian military, which headed INTERFET (the International Force in East Timor), had to deal with the Indonesian military and fighting militia groups. INTERFET pursued a security-driven approach, emphasizing that military resources could only be diverted to humanitarian tasks, as and when the "core tasks" (security and support to the United Nations Assistance Mission in East Timor) allowed it. This approach was explained by the risks and dangers inherent in a peace-enforcement rather than a peacekeeping operation.⁶⁰ NGOs, on the contrary, pushed for the immediate transport of aid workers and relief supplies to the crisis areas. They felt that INTERFET relegated the distribution of relief.⁶¹ However, with the increasing agency presence in East Timor, communication and cooperation between the military and the humanitarian agencies improved, allowing task-sharing in areas such as reconnaissance, warehouse security and food distribution.

In the Kosovo conflict, the imperative of impartiality has not always been fully respected by NGOs. The fact that KFOR was a warring party in the conflict and that NGOs were often funded by governments also funding KFOR troops, put NGOs in a difficult situation. The Independent International Commission on Kosovo notes in its report:

A (Agreement on the Military Aspects of the Peace Settlement) to the Dayton Peace Accords, 1995. The US sent a Civil Affairs bataillon to Bosnia. Its tasks included *inter alia* assistance to displaced persons, control and distribution of humanitarian aid, civil control, local infrastructure restoration, dissemination of news and information and liaison with the local media.

⁵⁸ See also A all (note 9), at 133.

⁵⁹ For a good example based on the experience in Bosnia, see A all, *ibid.*, at 136: "Official and public concern in the United States for the safety of their military personnel led to the requirement that US officials, including military staff, travel only in convoys of four vehicles, in order to provide protection for the group. On the other hand, the ability to move quickly around the country was important to the work of international NGO staff. American NGO workers, therefore, often traveled by themselves in private cars or hitched rides in armoured vehicles with officials of the OSCE or UNHCR. Waiting for a military convoy would have hampered their capacity to work, so most chose to take the risk of being unprotected over curtailment of their freedom of movement."

⁶⁰ The military pointed out that the area around the airport was not yet secure and that INTERFET resources were occupied with identifying militia groups.

⁶¹ See C. McDowell, *Responding to the Crisis in East Timor: Relief, Rehabilitation and Sustainable Development*, 2000, 17, available under <http://www.uow.edu.au/research/groups/capstrans/pubs>.

“The impartiality of humanitarian efforts involving NATO was in fact compromised. The distinction between military and humanitarian tasks could not be maintained as security efforts surrounding refugee camps also served the fight against Serbia. Second, and perhaps even more troubling, civilians on the Serbian side faced both real and perceived risks of not getting the humanitarian aid they deserved. While refugees in Albania and Macedonia had video rooms and even better access to health care than Albanians and Macedonians themselves, the international community was unable to provide sufficient humanitarian assistance to Serbian Kosovars. Partiality was both the symbolic message and the fact.”

These examples demonstrate the pressing need for both NGOs and international peacekeeping forces to develop a more refined strategy for dealing with complex emergencies. Cooperation between NGOs and military forces should be promoted whenever it is essential to the protection of civilians. But it must also be recognized that NGOs and military contingents operate quite differently. Collaboration with the military can spell danger for NGOs bound by a mandate based on the principle of neutrality. The basic distinction between the military and the humanitarian mandate should therefore be kept in mind in situations in which armed forces play a major role in the humanitarian crisis.⁶² The work of peacekeepers and aid agencies needs to be harmonized so that they remain both distinctive and complementary. A common strategy must necessarily take into account the local context of conflict.

At the same time, there is a great need for increased information sharing between NGOs and the military sector. The exchange of information about operational details such as minefield locations, infrastructure damage or military or relief staff rotations is of crucial importance for the success of a relief operation. However, military agencies are unaccustomed to exchanging information with NGOs, and vice versa. In East Timor, the military was noticeably uncomfortable with the relatively unstructured style of working of NGOs and treated much information as if for “military eyes-only”.⁶³ Furthermore, the difficulties encountered in the mutual cooperation between these entities are vividly described in the following E-mail from a First Lieutenant assigned to the American sector of Kosovo:

“This is the second deployment where I have had to deal with NGOs. It is apparent to me that NGOs are worthless organizations ... Most of these organizations will not work in conjunction with the military but demand that KFOR help when needed. Most of the individuals working for NGOs feel that they own the territory, yet they don't know anything about it and refuse to listen when we advise [them] ... They also like to run through our Checkpoints at high speeds and feel that they do not need to slow

⁶² See also Office for the Coordination of Humanitarian Affairs, Final Report, OCHA/PPF Ministerial Conference on Regional Cooperation and Coordination in Crisis Management for Europe and the NIS, Fribourg, Switzerland 15–16 June 2000, Framework for Action, under B “Issues to be considered: ... Recognition by States, Regional and International Organizations of the need to differentiate between emergency humanitarian assistance provided under civilian responsibility and activities carried out for political and/or military objectives.”

⁶³ See McDowell (note 61), at 17.

down ... NGOs do two things (not very well) and those are evaluate and report ... This has created a rift between KFOR and NGOs.”

These lines illustrate that joint education and training sessions, involving both military and civilian actors, are necessary to develop more efficient cooperation in crisis situations. Joint training will not only reduce the natural mistrust between the military and NGOs, but also facilitate information sharing. NGOs have been known to inflate data to dramatize the seriousness of the crisis and their work in order to attract donors. The military, on the contrary, is said to unnecessarily classify and withhold data because of operational security risks. Efforts to improve cooperation between civilian and military entities will require the development of common information-sharing mechanisms, taking into account each entity's distinctive mission.⁶⁴ A first step in this direction is the creation of civil-military operation centres (CMOCs) and other coordination mechanisms that allow NGOs and the military to share information and views on security and practical issues within the framework of peacekeeping operations.⁶⁵

c) Standards of accountability for NGOs

Another issue frequently raised in the context of NGO involvement in complex peace operations is the question of accountability. Over the last years, the observance of humanitarian law by military forces operating within the framework of UN peacekeeping operations has been a subject of legal debate.⁶⁶ The ICRC, in particular, has made extensive efforts to ensure that the rules of international humanitarian law apply to all parties to a conflict, including forces acting under UN authorization. A somewhat parallel question arises with respect to NGOs. NGOs are not parties to the conflict and therefore not formally accountable under international humanitarian law, as states or individuals may be.⁶⁷ However, as principal actors in a relief response they have to act in line with basic humanitarian standards such as impartiality and neutrality. A list of principles guiding the action of NGOs is contained in some recent soft law documents.

⁶⁴ See also Independent International Commission on Kosovo (note 40), under 7: “Humanitarian Organizations and the Military”. Some attempts to find a common ground of understanding have been made. Cf. the report by the United States Institute of Peace, *Taking it to the Next Level: Civilian-Military Cooperation in Complex Emergencies* (2000), and L.W. Davidson/M.D. Hayes/J.J. Landon, *Humanitarian and Peace Operations: NGOs and the Military in the Interagency Process* (1996), available under <http://www.dodccrp.org>.

⁶⁵ In East Timor, for instance, the establishment of Civil Military Operation Centres in both Darwin and Dili greatly improved the cooperation between NGOs and the military. McDowell notes: “Problems which were earlier thought to be exclusively military concerns became shared concerns, and the resolution a joint undertaking.” Cf. McDowell (note 61), at 18.

⁶⁶ The adoption of the Secretary-General's Bulletin on the Observance by United Nations Forces of International Humanitarian Law lends support to the proposition that humanitarian law is in principle applicable to UN peacekeeping operations. See UN Doc. ST/SGB/1999/13 (1999), reprinted in *I.L.M.* 38 (1999), at 1656.

⁶⁷ See also Wedgwood (note 30), at 28 (“Though NGOs ... may not be said to have full legal personality, nonetheless they are real actors in international systems ...”).

Humanitarian relief NGOs acknowledge more and more that they must not allow themselves to become allied with a party to the conflict, but respect the principles of humanity, impartiality, and neutrality. When NGOs operate on the basis of cooperation arrangements with UN agencies, they work within a mandated system which mostly implies the acceptance of neutrality and security guidelines agreed by the lead agency with the warring parties. But general standards of behaviour in disaster relief have even gained wider recognition. In 1996, several NGOs and the Red Cross agencies elaborated a Code of Conduct for the International Red Cross and Red Crescent movement and Non-Governmental Organizations in Disaster Relief⁶⁸, which sets out a number of important general principles, including the principle of neutrality which requires that humanitarian aid be provided without bias to any party involved in the conflict. The drafters of the Code affirm that human suffering should be relieved wherever it is found. Furthermore, they emphasize their commitment to deliver aid on the basis of need alone, irrespective of the race, creed or nationality of the recipients and without adverse distinction of any kind. Particular weight is also given to the independence of humanitarian relief organizations. The drafters of the Code declare that they formulate their “own policies and implementation strategies and do not seek to implement the policy of any government, except in so far as it coincides with [their] own independent policy”.⁶⁹

The Sphere Project⁷⁰, launched in 1997 by NGOs and the Red Cross, goes even one step further than the above-mentioned Code of Conduct. Over 800 people contributed to a handbook, which includes a humanitarian charter, a set of minimum standards in core areas of humanitarian relief and guidance notes on the five basic life-sustaining sectors of disaster: water and sanitation, food aid, nutrition, shelter and site selection and health. The handbook is an important instrument in the field of disaster relief, which combines principles, legal norms and quality standards providing a reference point for the evaluation of NGO relief action. The humanitarian agencies involved in the Sphere Process define their role in the area of humanitarian assistance with reference to the major human rights treaties.⁷¹ Moreover, they declare that they “expect to be held accountable to [their] com-

⁶⁸ See Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief, prepared jointly by the International Federation of Red Cross and Red Crescent Societies and the ICRC, 29 Feb. 1996, available under icrc.org and reprinted in French in: RICR 817 (1996), 124 et seq. See also the earlier Red Cross Disaster Relief Handbook of the League of Red Cross Societies, Geneva, 1976. For a discussion of draft texts on international humanitarian assistance between 1970 and 1990, see P. Macalister-Smith, Protection of the Civilian Population and the Prohibition of Starvation as a Method of Warfare, in: IRRC (1991), No. 284, 440, at 450 et seq.

⁶⁹ See Code of Conduct (note 68), sub. 3.

⁷⁰ See <http://www.sphereproject.org>.

⁷¹ Cf. para. 2.2 and para. 2.3 of the Humanitarian Charter: “2.2 International law recognises that those affected are entitled to protection and assistance. It defines legal obligations on states or warring parties to provide such assistance or to allow it to be provided, as well as to prevent and refrain from behaviour that violates fundamental human rights. These rights and obligations are contained in the body of international human rights law, international humanitarian law and refugee law. 2.3 As humanitarian agencies, we define our role in relation to these primary roles and responsibilities ...”.

mitment and undertake to develop systems of accountability within [their] respective agencies, consortia and federations." Many humanitarian actors have recognized the principles contained in the handbook as a framework for, and commitment to, quality and accountability in humanitarian practice.⁷²

Unfortunately, in the Kosovo crisis, awareness and application of the principles enshrined in the Sphere handbook and in the Code of Conduct have been poor.⁷³ In order to overcome these shortcomings in future conflicts, governments should consider incorporating the Sphere standards in their criteria for funding decisions.⁷⁴

IV. Post-Conflict Reconstruction

As correctly pointed out by some observers "NGOs provide the international community with both a window from which they can observe and monitor developments in ... zones of conflict and a door through which assistance can be delivered to the victims of ... conflicts".⁷⁵ But the function of NGOs within the international community goes even a step further than conflict prevention and conflict resolution.

1. The Role of NGOs in the Framework of Peacebuilding

After the end of a war, there is mostly a void in civil governance, including the absence of ordinary policing, judicial systems and administrative management. Humanitarian aid must therefore be replaced by development assistance. NGOs can play a crucial role in this process.⁷⁶

a) Civil society building

The overall purpose of peacebuilding efforts is to rebuild a properly functioning state system and a vibrant civil society. The input of NGOs is an extremely valuable resource in this process. Long-lasting political objectives such as the establishment of a stable democracy and a pluralist society cannot be imposed by the international community; their realization requires a bottom-up dynamic that has often been lacking in post-war situations. The organization of elections at the national level, a widely promoted goal of second-generation peacekeeping operations, is crucial and necessary. But democracy-building involves more than elec-

⁷² The consensus-building process included agencies and networks of experts from a variety of NGOs and United Nations agencies.

⁷³ See Disasters Emergency Committee, *Evaluating the Humanitarian Response to Kosovo*, ODI HPN Report, available under <http://www.odihpn.org>.

⁷⁴ For a discussion of the obligations of donor states, see P. Macalister-Smith, *Disaster Relief: Reflections on the Role of International Law*, in: *ZöRV* 45 (1985), 25, at 41 et seq.

⁷⁵ See Kofi Abiew/Keating (note 9), at 97.

⁷⁶ See also A. Gerson, *Peace Building: The Private Sector's Role*, in: *AJIL* 95 (2001), 102 et seq.

tions, it requires citizens' participation and a solid foundation at the local level. NGOs play an important role in this regard because they are usually better positioned to cooperate and work with local forces than international institutions. Moreover, in post-war societies, the establishment of local NGOs takes on a special significance. The creation of indigenous organizations pursuing community-based activities is an important prerequisite of a stable and peaceful society, capable of shaping its own political and social system. In many ways, task-sharing with service-providing NGOs can thus be considered as central to improving post-conflict reconstruction.

b) The provision of community-based services

Devolving responsibilities to local actors and outsourcing public services can take several forms. NGOs have, most notably, performed state-type functions in areas like health care, the re-establishment of water and sanitation systems and in the agricultural and environmental sector. Besides filling gaps in basic infrastructure, NGOs have also provided useful services in the information sector by conducting impartial and needs-based radio programmes or by supporting existing media.⁷⁷ Other fields of NGO activities are education and election-monitoring.

Complex peacekeeping missions such as the operations undertaken in the former Yugoslavia illustrate the important role of NGOs in post-conflict reconstruction and the broad range of tasks performed by them in this context. In Bosnia and Herzegovina, the allocation of funds to civic groups has contributed to the creation of over 400 local NGOs covering many tasks vital to the long-term development of the country.⁷⁸ In Kosovo, an astounding 642 NGOs have been registered by United Nations Interim Administration in Kosovo (UNMIK). About 400 of them are local NGOs. Many NGOs carry out functions which are under normal circumstances discharged by public institutions.

(1) Reconstruction

In the aftermath of a conflict, repairing conflict-related damage to housing and infrastructure is a key issue.⁷⁹ NGOs provide very useful services in this field. For example, mine clearing has become a well established task of NGOs after the cessation of hostilities.⁸⁰ In Kosovo, this task is carried out by the United Nations

⁷⁷ See generally on the media as an instrument of crisis management: J. Shea, *Media, Information, Technology and Crisis Management*, in: Huldt/Hilding/Eriksson (note 37), 154 et seq.; T. Thomas, *Virtual Peacemaking: A Military View of Conflict Prevention through the Use of Information Technology*, in: Huldt/Hilding/Eriksson, *ibid.*, 179 et seq.

⁷⁸ See for the numerical growth of NGOs in Bosnia, Belloni (note 7), at 169.

⁷⁹ In Kosovo, some 120,000 buildings were destroyed in the course of the conflict. This is roughly one third of all the houses in Kosovo.

⁸⁰ In Afghanistan, the United Nations Office for the Coordination of Humanitarian Assistance set up facilities to train Afghan de-miners and created several local NGOs for that purpose. See Donini (note 12), at 95.

Mine Action Programme, by KFOR and by NGOs.⁸¹ There is great need for NGO involvement, because KFOR's role in demining is restricted to securing the routes, roads and sites necessary for their deployment. Several NGOs (Handicap International, Norwegians Peoples Aid and the Mines Advisory Group) are developing a mine action response in Kosovo. Many of them have already been involved in mine action programmes in Bosnia. Moreover, NGOs play an important role in transmitting information concerning mine-endangered areas.

A number of other NGOs work in the field of housing and reconstruction. Shelter Now International for example is designed to assist in the reconstruction of 450 houses in Kosovo through a "Materials for Work" project, that provides labour for community cleanup. Furthermore, several NGOs have launched projects to build schools in Kosovo and in Bosnia.

(2) Education and Health

Another important field in which NGOs exercise public service tasks is the area of education. NGOs can carry out educational programmes in schools or provide higher education. A good example is the Kosovo Law Center, which was established by the OSCE as a locally run and independent NGO designed to comment on the legal system in Kosovo and to revive education in law at the University of Pristina.⁸² Furthermore, health care is a sector which remains at the focus of NGO attention even after the end of a crisis. Improvements in the delivery of health-care services are often dependent on support and training offered by NGOs active in the field of medical assistance.⁸³

(3) Public information

NGOs can also provide very useful services in the media sector by organizing informative and impartial broadcasting or by supporting local radio stations and newspaper publishers.⁸⁴ Frequently, after a war, a new media culture needs to be established in the crisis area, which meets the requirements of objectivity, tolerance and pluralism and allows all parts of the population to voice their concerns.

⁸¹ Mines and unexploded cluster munitions continue to pose a major threat in Kosovo. Currently, there are about 16 de-mining organizations at work, which are coordinated by the United Nations Mine Action Coordination Centre.

⁸² The KLC is staffed with national legal advisors working side-by-side with OSCE staff. For further details, see <http://www.kosovolawcentre.org>.

⁸³ For example, in Kosovo a polio immunization programme was successfully carried out by several NGOs in cooperation with the WHO, UNICEF and KFOR, as part of which 69,579 children were immunized. See Report of the Secretary-General on the United Nations Interim Administration in Kosovo, 15 Dec. 2000, UN. Doc. S/2000/1196, para. 60.

⁸⁴ The crucial role of the media in conflict situations was recently emphasized by the United Nations Secretary-General in its report to the Security Council on the protection of civilians in armed conflict. The Security-General recommends "that the Security Council make provision for the regular integration in mission mandates of media monitoring mechanisms that would ensure the effective monitoring, reporting and documenting of the incidence and origins of "hate media". Such mecha-

In most cases, an international organization such as the UN or the OSCE is vested with the overall media mandate, i.e. the authority to develop the regulatory framework, issue licences and foster a code of conduct for the media.⁸⁵ International NGOs play an important role in setting the standards for objective journalism. Furthermore, they may help reducing tensions by working in cross-cultural settings and designing programmes to overcome ethnic rivalries.⁸⁶

(4) Election-monitoring

Another field of NGO activism in a post-war society is election-monitoring. Election monitoring has become an important aspect of United Nations peacekeeping operations in the 1990s. Some of the most prominent examples of United Nations-led elections are those held in Namibia (1989), Cambodia (1993) and El Salvador (1994).⁸⁷ Election monitoring serves different functions. First, the presence of international observers furthers the credibility of the election results; second, election observers may provide useful assistance, ranging from the improvement of voter registration lists to the development of quick-count methods. NGOs have on several occasions participated in the process of election monitoring by sending representatives working as officially accredited observers.⁸⁸ A good example are the 1994 elections in Mexico, where an international NGO sent the largest delegation of international observers.⁸⁹

All these findings illustrate that the transformation of United Nations peacekeeping in the 1990s⁹⁰ and the breadth of functions undertaken by the United Nations in these operations goes hand in hand with a proliferation of opportunities for non-state actors. In the aftermath of a civil strife, NGOs may take on roles usually filled by governments or international organizations. The active NGO engagement in the Balkans underlines this development. The growing involvement of NGOs in United Nations peacebuilding meets the support of the international community. In Kosovo, the OSCE provides, through its NGO Support Centers,

nisms would involve relevant information stakeholders from within the United Nations and other relevant international organizations, expert non-governmental organizations, and representatives of independent local media". See paras. 38 et seq. of the report (note 21) and its Annex I G.

⁸⁵ For the situation in Kosovo, see UNMIK Regulations 2000/36 and 2000/37 establishing a Temporary Media Commissioner and a Media Appeals Board working under the auspices of the OSCE.

⁸⁶ One NGO active in this field is Media Action International, which conducts needs-based radio programmes in Kosovo, Albania, Macedonia and Mozambique.

⁸⁷ In Cambodia, the United Nations organized and conducted the 1993 election entirely; in Namibia, it supervised an election organized by the South African government. See generally on the issue of International Election Monitoring, G.H. Fox, *The Right to Political Participation in International Law*, *Yale Journal of International Law* 17 (1992), 539, at 570 et seq.

⁸⁸ Cf. on this issue V.K. Chand, *Democratization from the Outside In: NGOs and International Efforts to Promote Open Elections*, in: Weiss/Gordenker (note 12), at 160 et seq.

⁸⁹ The NGO Global Exchange fielded 105 observers.

⁹⁰ Second-generation peacekeeping usually involves executive, mediatory and guarantor tasks including the restoration of security and public order, election monitoring, the exercise of governmental authority and refugee repatriation. Cf. S.Ratner, *The New UN Peacekeeping* (1996), at 25 et seq.

training and logistical support to NGOs and assists in establishing a network of associations. Furthermore, UNMIK Regulation 1999/22 has established a formal NGO registration system, which carries with it administrative duties such as the creation of a board, statutes and reporting to UNMIK, but permits NGOs to open a bank account, receive international funding, and eventually import tax-free goods.⁹¹ In Bosnia, the Office of the High Representative is working on a legal framework which would empower local NGOs from both entities to operate on the entire territory of Bosnia and Herzegovina and remove financial obstacles affecting the work of NGOs.⁹² These developments show that while providing greater opportunities for NGOs the international community tries at the same time to establish a legal framework guiding the action of NGOs operating in a system of international administration. A good example is again UNMIK Regulation 1999/22, according to which domestic “NGOs shall have the status of a legal person in Kosovo upon registration”, while “international NGOs are authorized to operate as a legal person in Kosovo”.⁹³ The establishment of a regulatory framework for NGO action may lay the foundations for a greater accountability of NGOs, coinciding with their new opportunities.

2. A Few “Caveats”

By discharging public functions in the process of peacebuilding and national reconstruction, NGOs have become more than a social and political phenomenon that must be tolerated; in fact, they have turned into indispensable partners of peacekeeping forces which complement or temporarily replace state institutions in a post-war situation. Nonetheless, the increased prominence of NGOs in peacekeeping operations raises also some critical questions. When assessing the benefits of active NGO involvement in peacebuilding, one must ask at the same time, where its limits and dangers lie.

a) A right balance between international and local actors

NGOs are often as much part of the problem as they are part of the solution. To strike the right balance between local and international actors is a central challenge for successful NGO involvement in UN peacekeeping. The advantage of international NGOs is that they are often in a better position than local actors to run sensitive projects after the end of a conflict because they are comparatively

⁹¹ According to Section 10 of Regulation 1999/22 of 15 Nov. 1999, an NGO may apply for public benefits if it undertakes one of the following activities: humanitarian assistance and relief, charity, education, health, culture, environmental conservation or protection, economic reconstruction and development, the promotion of human rights, the promotion of democratic practices and civil society, the promotion of gender equality, or any other activity that serves the public benefit.

⁹² See OHR, Civil Society/NGO Development Policy, under <http://www.ohr.int/humanrts/civilsoc.htm>.

⁹³ See Section 6 of Regulation 1999/22.

neutral and impartial, which is of crucial importance for the implementation of peacebuilding activities. Local actors, on the contrary, are frequently still influenced and divided by the events and the underlying tensions of the conflict.

Nevertheless, experience has also shown that the presence of too many international NGOs can have a distorting effect on the local economy and development of civil society. Competition among international agencies to recruit local staff can lead to scenarios in which a professionally trained doctor or lawyer earns more money as a translator than in his original job. This may easily create an environment in which international NGOs push aside local actors, thereby hampering reconstruction and the development of civil society.

International NGOs are often praised as vehicles for “people power” in the era of globalization. However, in the situation of post-conflict reconstruction, their action may harm the interests of the people they claim to serve. In East Timor, for instance, international NGOs have marginalized local NGOs, undermining their capacity to respond to the continuing crisis.⁹⁴ The failure to cooperate and to establish partnerships with local NGOs is a serious obstacle to reconstruction and reconciliation. Efforts to promote the role and participation of NGOs in post-conflict reconstruction must therefore take into account the interests of both international and local NGOs, and encourage projects in which international NGOs work together directly with national NGOs with a view to handing over activities when feasible.⁹⁵

b) Limits of “privatization”

It must also be acknowledged that the activity of service-providing NGOs cannot make up for the establishment of a viable state system.⁹⁶ NGOs are extremely valuable in situations of emergency, because they are able to operate in the absence of a properly functioning state system. But their strength is also their weakness. NGOs are independent, private actors which come and go without taking long-lasting responsibilities.⁹⁷ The services they provide depend to a large extent upon international resources. If the international community loses interest in their activity, they leave or disappear. NGOs can fill temporary gaps by performing public services in post-conflict areas. But the development of a stable civil society requires a more systematic and sustainable approach, including the establishment of state-based service-providers and accountable public institutions.

⁹⁴ International NGOs have, for instance, failed to distribute food through locally-based groups. See J. Goodman, Partnership versus “Consultation” in East Timor, available under <http://www.aidwatch.org.au>.

⁹⁵ See also Goodman, *ibid.*, at 2. Both UNHCR and WFP encourage international NGOs to work with local partners. See Report of the Secretary-General (note 5), para. 62.

⁹⁶ See also Kofi Abiew/Keating (note 9), at 107; Belloni (note 7), at 178.

⁹⁷ NGOs are accountable to many different actors such as their boards of directors and the constituents who elect them, their donor governments and their partner organizations in crisis countries; but they are not accountable to the population of the territory on which they operate.

