

Monitoring armed non-state actor compliance with humanitarian norms: a look at international mechanisms and the Geneva Call *Deed of Commitment*

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Abstract

Armed non-state actors are involved in most armed conflicts today, yet international law provides few mechanisms to ensure that they comply with humanitarian norms applicable to them. In particular, monitoring and verification mechanisms that address the conduct of armed non-state actors rarely appear in multilateral treaties, and, even when they do, are weak and not applied in practice. Over the past few years, a number of alternative mechanisms have been developed to better monitor respect of humanitarian norms during internal armed conflicts and

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verify allegations of violations. This article examines the strength of these various mechanisms and then focuses on the Deed of Commitment, an innovative instrument developed by the Swiss-based non-governmental organization Geneva Call, to hold armed non-state actors accountable. Experience with the Deed of Commitment on the prohibition of anti-personnel mines shows that these alternative mechanisms can be effective in ensuring better compliance with at least some humanitarian norms.

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War gives such a rude shock to the whole legal system that, if the means by which the rule of law is upheld are too vulnerable, its very authority may be endangered.¹
(Jean Pictet)

Humanitarian norms² applicable to armed non-state actors (ANSAs)³ have evolved significantly over recent history. Traditionally, only the recognition of belligerency by the opposing state triggered ANSA rights and obligations under the law of war. Article 3 Common to the Geneva Conventions of 1949 marked the first international humanitarian law (IHL) treaty provision applicable to non-state parties to conflict, and this was expanded upon by Additional Protocol II of 1977.⁴ By 2005, according to the International Committee of the Red Cross (ICRC) study on customary IHL, at least 140 rules governed the conduct of ANSAs.⁵ Moreover, a number of legal experts contend that certain standards of human rights law may bind ANSAs,⁶ while some of the most recent international and regional human

1 Jean Pictet (ed.), *Commentary on the Geneva Conventions of 12 August 1949 for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, International Committee of the Red Cross (ICRC), Geneva, 1952, p. 377.

2 The term 'humanitarian norms' refers to international humanitarian law and relevant standards of international human rights law.

3 There is no universally agreed definition of 'armed non-state actors'. For its operational purposes, Geneva Call uses this term to refer to organized armed entities that are primarily motivated by political goals, operate outside effective state control, and lack legal capacity to become party to relevant international treaties. This includes armed groups, *de facto* governing authorities, national liberation movements, and non- or partially internationally recognized states.

4 However, Additional Protocol II only refers to conflicts which meet certain criteria, i.e. those 'which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol'. See Additional Protocol II, Art. 1(1).

5 There are eight additional rules whose applicability to non-international armed conflicts is listed as 'arguable'. See Jean-Marie Henckaerts, 'Study on customary international humanitarian law: a contribution to the understanding and respect for the rule of law in armed conflict', in *International Review of the Red Cross*, Vol. 87, No. 857, March 2005, pp. 198–212.

6 Andrew Clapham, *Human Rights Obligations of Non-state Actors*, Oxford University Press, Oxford, 2006; Christian Tomuschat, 'The applicability of human rights law to insurgent movements', in H. Fischer, U. Froissart, W. Heintchel von Heinegg, and C. Raap (eds), *Krisensicherung und Humanitärer Schutz – Crisis Management and Humanitarian Protection: Festschrift für Dieter Fleck*, Berliner Wissenschafts-Verlag, Berlin, 2004, pp. 586–587.

rights treaties address the conduct of ANSAs, even if the language does not seem to create direct obligations.⁷

So, now that it is recognized – at least with respect to IHL – that, for the most part, the same norms apply to ANSAs and states,⁸ what can be said about mechanisms to ensure compliance with these norms? Indeed the shock exerted by war, as noted in Pictet's epigraph, is even greater in internal armed conflicts, where state authorities often face an existential threat from within. In a recent speech marking the sixtieth anniversary of the Geneva Conventions, the President of the ICRC lamented the weaknesses of IHL compliance mechanisms, noting that they are not mandatory and they depend on consent of the parties once conflict has broken out. He further emphasized that 'while lack of compliance of non-State armed groups is also a very serious problem that we need to address, reinforcement of international law rules *and mechanisms* lies in the hands of States'.⁹ While the ICRC President is certainly correct that states have responsibility for the development of international law mechanisms in the formal sense, this article shows that, in real terms, ANSAs can contribute not only to improved respect for humanitarian norms but also to the reinforcement and effective functioning of compliance mechanisms. In fact, when they do not contribute as such, there is a greater risk that ANSAs will perceive such mechanisms as biased in favour of states.

There are different types of compliance mechanisms to ensure respect for humanitarian norms, but this article deals with the role of monitoring, reporting, and verification (MRV)¹⁰ mechanisms that address the conduct of ANSAs. Some of these are anchored in multilateral treaties, others in humanitarian agreements, and others through United Nations (UN) institutions. All of the above involve states, or regional or international organizations. However, there are also examples of MRV mechanisms that are independent of state involvement. One such mechanism – the focus of the central sections of this article – derives from the *Deed of Commitment* under Geneva Call, a Swiss-based non-governmental organization (NGO) that since

7 For example, the word 'should' appears in Art. 4(1) of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, which refers to armed groups. Also, Art. 7(5) of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa starts off with the words, 'Members of armed groups shall be prohibited from: ...' and subsequently lists several actions that are to be prohibited.

8 International Criminal Tribunal for the former Yugoslavia (ICTY), *Prosecutor v. Dusko Tadic*, Case No. IT-94-1-AR72, Decision on Jurisdiction (Appeals Chamber), 2 October 1995, paras. 96–126, esp. paras. 113, 119, and 126.

9 Jakob Kellenberger, 'Ensuring respect for international humanitarian law in a changing environment and the role of the United Nations', 60th Anniversary of the Geneva Conventions – Ministerial Working Session, 26 September 2009, emphasis added, available at: <http://www.icrc.org/eng/resources/documents/statement/geneva-conventions-statement-260909.htm> (last visited 12 March 2012).

10 For the purpose of this article, monitoring is defined as the systematic collection, analysis, and use of information to follow up on compliance with humanitarian norms; verification or fact-finding refers to the investigation of alleged violations or incidents that have taken place in a particular situation; reporting is defined as the processing of information in oral or written reports. These definitions derive from Program on Humanitarian Policy and Conflict Research (HPCR), *Monitoring, Reporting and Fact-finding Mechanisms: A Mapping and Assessment of Contemporary Efforts*, HPCR, Harvard University, November 2010 and Amnesty International and Council for the Development of Social Science Research in Africa, *Monitoring and Investigating Human Rights Violations in Africa: A Handbook*, Russell Press, Basford, Notts, 2000.

2000 has been engaging ANSAs to abide by humanitarian norms, initially with respect to the ban on anti-personnel (AP) mines.¹¹

There are a number of reasons why it is of interest to look specifically at MRV mechanisms that address the conduct of ANSAs. First, and foremost, ANSAs are involved in the vast majority of today's armed conflicts.¹² Second, although ANSAs have obligations to respect humanitarian norms (as discussed above), they are excluded from the supervision of multilateral treaty-based MRV mechanisms in practice, if not as a matter of law.¹³ Third, many of the non-multilateral treaty-based MRV mechanisms that address ANSAs are either new¹⁴ or have not been the subject of comparative analysis.¹⁵ Little is known about these mechanisms, their practice, and their impact on ANSA compliance with humanitarian norms.

This article aims to share Geneva Call's MRV experience with the *Deed of Commitment for Adherence to a Total Ban on Anti-personnel Mines and for Cooperation in Mine Action* (hereafter the *Deed of Commitment Banning AP Mines*). It is hoped that this contribution may encourage other organizations to expand on such work and document other examples of MRV mechanisms addressing the conduct of ANSAs. The article first provides a brief overview of MRV mechanisms in IHL, human rights, and weapons treaties in order to discern general trends as to their strengths and weaknesses. It then looks in more detail at the MRV mechanisms, both treaty-based and otherwise, that address ANSAs. The discussion is mainly limited to the mechanisms as such and does not evaluate their effectiveness. The main part of the article turns to Geneva Call's particular experience in monitoring and verifying ANSA compliance with the *Deed of Commitment Banning AP Mines*. The work of this organization is presented, along with its innovative approach, whose centrepiece is the *Deed of Commitment* instrument. In the next section, the MRV mechanisms provided for under the *Deed of Commitment Banning AP Mines* are described, with comparative attention given to pinpointing similarities with and differences from the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (the Ottawa Convention). Actual practice and implementation of these mechanisms is also examined, with emphasis on the *Deed of Commitment*. The article concludes by analysing some of the main strengths and limitations of the *Deed of Commitment* MRV machinery and by looking at lessons learned and potential areas for improvement in the ways in which these mechanisms address the conduct of ANSAs.

11 See below, pp. 684–689.

12 In 2010, according to the Stockholm International Peace Research Institute (SIPRI), all major armed conflicts waged worldwide were intrastate. Over the decade 2001–2010, only two of the twenty-nine major armed conflicts recorded by SIPRI were interstate. See SIPRI, *SIPRI Yearbook 2011: Armaments, Disarmament and International Security*, Oxford University Press, Oxford, 2011.

13 See below, pp. 679–680 on the Enquiry Procedure and the International Humanitarian Fact-Finding Commission.

14 For example the Geneva Call *Deed of Commitment*: see below, pp. 685–687.

15 This is generally the case for humanitarian agreements: see below, p. 680.

Analysis of international MRV mechanisms

It would be redundant to reproduce here a survey of international MRV mechanisms¹⁶ relevant to situations of armed conflict.¹⁷ Rather, the analysis will focus on such mechanisms that address ANSAs, and highlight aspects of them that shed light on the following criteria: a) who performs the monitoring (self or external); b) what triggers the mechanism, to what extent consent is required, and, if so, whether there are sanctions for non-cooperation; and c) the transparency of the mechanism. In all cases, it will be considered whether ANSAs are treated differently from states.

Before doing so, a few words should be said on MRV mechanisms in IHL, human rights, and weapons treaties in general.¹⁸ In an ideal world, such mechanisms would address all parties to conflict (in terms of the provisions relevant to armed conflict), would involve self-reporting as well as external MRV, would be mandatory, with sanctions for non-cooperation, and would be fully transparent. The world, however, is not ideal.

MRV mechanisms in IHL, human rights, and weapons treaties: a brief overview

IHL treaties such as the Geneva Conventions and their Additional Protocols do not contain self-reporting mechanisms. However, periodic, compulsory self-reporting by states is a common component of many international human rights treaties.¹⁹

16 International mechanisms refer to mechanisms that formally involve states or regional or international organizations.

17 See Sylvain Vité, *Les procédures internationales d'établissement des faits dans la mise en œuvre du droit international humanitaire*, Bruylant, Brussels, 1999; ICRC, *Improving Compliance with International Humanitarian Law: ICRC Expert Seminars*, ICRC, Geneva, 2003; Eric David, *Principes de droit des conflits armés*, Bruylant, Brussels, 2008; Théo Boutruche, 'Credible fact-finding and allegations of international humanitarian law violations: challenges in theory and practice', in *Journal of Conflict and Security Law*, Vol. 16, No. 1, January 2011, pp. 105–140; Toni Pfanner, 'Various mechanisms and approaches for implementing international humanitarian law and protecting and assisting war victims', in *International Review of the Red Cross*, Vol. 91, No. 874, June 2009, pp. 279–328; Patricia Watts, 'Monitoring human rights treaties', in *Verification Yearbook 2004*, Verification Research, Training and Information Centre (VERTIC), London, 2004, pp. 213–232; ICRC & Swiss Federal Department of Foreign Affairs, *60 Years of the Geneva Conventions and the Decades Ahead (Geneva, 9–10 November 2009)*, Merkur Druck, Bern, 2010.

18 Weapons treaties are considered distinct from IHL treaties for convenience of analysis. Those considered are: Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (Biological Weapons Convention, BWC); Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (Chemical Weapons Convention, CWC); Convention on the Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (Convention on Certain Conventional Weapons, CCW); Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Ottawa Convention), and the Convention on Cluster Munitions (Oslo Convention). This article does not consider nuclear weapons treaties.

19 States parties must submit a report every four years under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Rights of the Child (CRC).

Sometimes referred to as confidence-building or transparency reporting, it also features in several weapons treaties.²⁰ Under human rights treaties, state reports are generally subject to supervision and recommendations by treaty bodies. This process does not occur as extensively with respect to weapons treaties.²¹

While IHL treaties do, in some cases, contain external MRV mechanisms subject to the consent of the parties, human rights treaties and most weapons treaties tend to be weak on external monitoring, especially fact-finding and on-site verification.²² For human rights treaties that do envision external monitoring, opt-in²³ or opt-out²⁴ provisions exist, and consent is generally required for on-site visits.²⁵ The Optional Protocol to the Convention Against Torture (CAT OP) creates an exceptionally strong mechanism, under which the Subcommittee on Prevention undertakes mandatory regular inspections of places where persons are deprived of their liberty.²⁶ On the weapons side, the Chemical Weapons Convention (CWC) is an exception to the rule, with a strong verification mechanism, elements of which are mandatory.²⁷

When envisioned, external MRV mechanisms under international treaties can be performed by a variety of actors, including treaty bodies, Protecting Powers,²⁸ the ICRC or other humanitarian organisations,²⁹ and NGOs.³⁰ Some human rights treaty mechanisms are triggered by individual complaints, but, when they are,

20 In 1986, the second Review Conference of the BWC introduced confidence-building measures, see <http://www.unog.ch/bwc/cbms> (last visited 12 March 2012). Art. 7 of the Ottawa Convention is an example of transparency reporting in a weapons treaty, while Art. 13(4) of CCW Protocol II provides for transparent annual reports by High Contracting Parties.

21 Implementation bodies do exist for the BWC and CWC, but these do not function in the same way as human rights treaty bodies. No similar body exists with respect to the Ottawa and Oslo Conventions. See below, pp. 690–693.

22 See below, pp. 693–696, for the Ottawa Convention.

23 See CAT, Art. 22(1), and Art. 31(1) of the International Convention for the Protection of All Persons from Enforced Disappearance (CED). Sometimes, Optional Protocols act as opt-in mechanisms: see Art. 1 of the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR OP) and Arts. 1 and 2 of the Optional Protocol to the Convention on the Elimination of Discrimination against Women (CEDAW OP).

24 Where provision is made in a treaty for a more investigative inquiry or fact-finding mechanism, states can generally opt out. See CEDAW OP, Art. 8; CAT, Art. 20; and Art. 6 of the Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD OP), which all allow for inquiry mechanisms, while CEDAW OP, Art. 10; CAT, Art. 28; and CRPD OP, Art. 8 allow states to opt out of the respective mechanisms.

25 For example, CEDAW OP, Art. 8(2); CAT, Art. 20(3); CRPD, OP Art. 6(2).

26 CAT OP, Arts. 2 and 4. Note that, as of February 2012, there are 150 states parties to the CAT (with 10 states taking advantage of Art. 28 to opt out of the mandatory fact-finding provision envisioned under Art. 20), while there are only 62 states parties to the CAT OP, which establishes a much more stringent mechanism. This is perhaps indicative of states' reluctance to commit to stronger MRV mechanisms.

27 See Part III of the Verification Annex to the CWC.

28 The 'Protecting Powers' system was one of the main mechanisms for monitoring compliance with IHL in international armed conflicts prior to World War II. Although the mechanism was incorporated in the four Geneva Conventions, the "Protecting Powers" system has been infrequently relied upon: the Suez Affair (1956), Goa (1961), the Franco-Tunisian conflict in Bizerte (1961), the Indo-Pakistani war (1971) and to some extent the Falklands/Malvinas war between Argentina and the UK. The limited list of cases reveals that states are generally reluctant to appoint protecting powers in international armed conflicts.' (ICRC & Swiss Federal Department of Foreign Affairs, above note 17, p. 38).

29 See Arts. 10/10/10/11 of the 1949 Geneva Conventions and Art. 5 of Additional Protocol I.

30 See below, p. 681. NGOs are in many cases allowed to submit information to treaty bodies.

domestic remedies must be exhausted first.³¹ Others can be triggered by reliable information indicating widespread or systematic violations,³² or by other states parties.³³ Human rights treaty mechanisms are a mixed bag when it comes to transparency. Self-reporting is predominantly transparent, whereas external monitoring tends to be confidential in most treaty body regimes that allow for external MRV – with the exception of NGO shadow reports.³⁴ The CAT OP uses transparency as a sanction against non-cooperation with the MRV mechanism. If the state party refuses to co-operate with the Subcommittee regarding its MRV functions, the Committee Against Torture can make a public statement or publish the Subcommittee's report.³⁵

International mechanisms that address ANSAs

As most current armed conflicts involve ANSAs, it is crucial that MRV mechanisms address their conduct. For the purposes of this analysis, the following four sources are examined in order to identify those actual mechanisms that address ANSAs: multilateral treaties, humanitarian agreements, UN ad hoc commissions, and UN Security Council (UNSC) thematic monitoring mechanisms. These mechanisms will be evaluated according to the three criteria given above.³⁶

Multilateral treaties

Most IHL, human rights, and weapons treaties only address the conduct of states. Neither Additional Protocol II nor Common Article 3 – the two major IHL treaty regimes that do address the conduct of ANSAs – have any MRV provisions. On the other hand, the Enquiry Procedure common to the Geneva Conventions could be interpreted to apply to situations of non-international armed conflicts covered by Common Article 3,³⁷ and the International Humanitarian Fact-Finding Commission (IHFFC), established under Additional Protocol I, has deemed its mandate to extend to these conflicts with the agreement of all parties.³⁸ These

31 Most human rights mechanisms that allow consideration of individual complaints require exhaustion of local remedies. See, for example, CAT, Art. 22(4)(b); CED, Art. 31(2)(d); CEDAW OP, Art. 4(1); International Convention on the Elimination of All Forms of Racial Discrimination, Art. 14(7)(a); CRPD OP, Art. 2(d); and ICCPR OP, Art. 2.

32 E.g. CAT, Art. 20(1); CEDAW OP, Art. 8(1); and CRPD OP, Art. 6(1).

33 E.g. Ottawa Convention, Art. 8 and Oslo Convention, Art. 8.

34 Art. 45(a) of the CRC allows for formal submission of such reports. Other treaty bodies may informally receive reports from NGOs. See Office of the High Commissioner for Human Rights (OHCHR), *Working with the United Nations Human Rights Programme: A Handbook for Civil Society*, OHCHR, New York and Geneva, 2008, pp. 33, 40, 49, and 50.

35 CAT OP, Art. 16(4).

36 There are other sources of international MRV mechanisms such as special procedures, but they remain outside the scope of this analysis.

37 Articles 52/53/132/149 of the Geneva Conventions. One could argue that it is applicable because the scope of coverage is 'concerning any alleged violation of the Convention' and the term 'Party to the conflict' – the same as in Common Article 3 – is used.

38 E. David, above note 17, p. 670.

mechanisms will therefore be considered in the analysis below, without prejudice to whether they in fact apply to the conduct of ANSAs.³⁹

Humanitarian agreements

These agreements may be pursuant to Common Article 3 of the Geneva Conventions – in which case they are referred to as ‘special agreements’ – wherein state and non-state parties agree to apply some or all of the further provisions of the Conventions otherwise only applicable to international armed conflict,⁴⁰ or they may be more expansive, covering human rights issues as well. This article considers six such agreements.⁴¹ In addition, it considers a bilateral agreement between a third party – the UN – and an ANSA, the Justice and Equality Movement (JEM).⁴²

UN ad hoc commissions

Ad hoc commissions may be established by various bodies of the UN, and many such commissions do address the conduct of ANSAs. This analysis is limited to two samples that have received significant attention: the International Commission of Inquiry on Darfur (the Darfur Commission), established by the UNSC Resolution 1564 of 18 September 2004, and the UN Fact Finding Mission on the Gaza Conflict (the Gaza Mission), established by the UN Human Rights Council Resolution S-9/1 of 12 January 2009.

39 These mechanisms have never been used in international armed conflict, so one may question whether they would ever be invoked in conflicts involving ANSAs. There is, however, an indication that the IHFFC was about to be used in Colombia before a change in government. See Frits Kalshoven, ‘The International Humanitarian Fact-Finding Commission: a sleeping beauty?’, in *Humanit res V lkerrecht*, Vol. 15, Issue 4, 2002, p. 215.

40 Para. 3 of Common Article 3 to the Geneva Conventions reads as follows: ‘The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention’.

41 These agreements are drawn from the compilation made by Olivier Bangerter, ‘Collection of agreements on IHL: armed groups and governments or third parties’, unpublished document, April 2011 (on file with the authors). They are: Agreement signed on 22 May 1992 by representatives of the Presidency of the Republic of Bosnia-Herzegovina, the Serbian Democratic Party, the Party of Democratic Action and the Croatian Democratic Community (the Bosnia-Herzegovina Agreement); Mozambique National Resistance–RENAMO Joint Declaration with the Government of Mozambique on the Guiding Principles of Humanitarian Assistance, 16 July 1992 (the Mozambique–RENAMO Agreement); Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law between the Government of the Republic of the Philippines and the National Democratic Front of the Philippines, 16 March 1998 (the CARHRIHL Agreement); Agreement on the Civilian Protection Component of the International Monitoring Team (IMT) between the Government of the Republic of the Philippines and the Moro Islamic Liberation Front, 27 October 2009 (the Philippines–MILF Agreement); San Jose Agreement on Human Rights between the Government of El Salvador and the Frente Farabundo Marti para La Liberacion Nacional, 26 July 1990 (the San Jose Agreement); Agreement between the Government of the Republic of Sudan and the Sudan People’s Liberation Movement to Protect Non-Combatant Civilians and Civilian Facilities from Military Attack, 10 March 2002 (the Sudan–SPLM Agreement). All these documents are in the public domain.

42 Memorandum of Understanding between the Justice and Equality Movement (JEM) and the United Nations regarding the Protection of Children in Darfur, 21 July 2010 (the JEM–UN Agreement), available online at: http://reliefweb.int/sites/reliefweb.int/files/resources/3864EE07BF38473C852577670066EA08-Full_Report.pdf (last visited 12 March 2012).

UNSC thematic monitoring mechanisms

The UNSC has created separate monitoring mechanisms addressing conduct of ANSAs on children and armed conflict issues,⁴³ as well as sexual violence in armed conflict.⁴⁴

The next section analyses the international MRV mechanisms addressing non-states parties to conflict from the sources described above. It does not attempt to analyse whether the mechanisms have been effective in their implementation.

Who performs the MRV?

It is clear that MRV mechanisms limited to self-reporting are insufficient. ‘Trust, yet verify’ is the Russian proverb made famous by United States President Ronald Reagan regarding arms control. Nevertheless, the virtues of self-reporting should not be ignored.⁴⁵ It can strengthen a sense of ownership of the implementation process – especially important for ANSAs, who are generally excluded from formation of norms – and the process of self-critical reflection can result in new measures to improve compliance with substantive obligations.

Self-monitoring: Humanitarian agreements are the only international MRV mechanisms addressing ANSAs that contain self-MRV provisions. This is the case in three of the seven agreements analysed.⁴⁶ JEM commits to periodic monitoring, but no timeframe is included in the agreement.⁴⁷

External monitoring: As far as multilateral treaties are concerned, Article 90 of Additional Protocol I to the Geneva Conventions establishes the IHFFC, composed of fifteen members ‘of high moral standing and acknowledged impartiality’, while the Enquiry Procedure leaves it up to the parties to decide on the modalities.⁴⁸ In treaties where the conduct of ANSAs is addressed, and the mechanisms allow for formal or informal monitoring by NGOs, then ANSA conduct may be subject to external monitoring through NGO shadow reports. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict is one such example. In other mechanisms such as humanitarian agreements, external MRV is conducted by the UN,⁴⁹ ‘mediators’,⁵⁰ an international monitoring team,⁵¹ or mission personnel selected by the United

43 UN Security Council Resolution 1612, UN Doc. S/Res/1612, 26 July 2005, para. 3.

44 UN Security Council Resolution 1960, UN Doc. S/Res/1960, 16 Dec 2010, paras. 3 and 4. As this process is still being developed, it will not be addressed in this article.

45 ‘Opinions on the value of the system range from the view that it is an empty diplomatic ritual that should be disbanded, at one extreme, to the opposite view that, while the system is not flawless, it is a valuable tool in ensuring implementation’. P. Watts, above note 17, p. 221. On the virtues of self-reporting, see also below, pp. 690–692.

46 Bosnia-Herzegovina Agreement, Art. 5.2; CARHRIHL Agreement, Part V; JEM–UN Agreement, Art 1.2.

47 JEM–UN Agreement, Art. 1.2.

48 Arts. 52/53/132/149 of the Geneva Conventions.

49 San Jose Agreement, Art. X.

50 Mozambique–RENAMO Agreement, Art. V.

51 Philippines–MILF Agreement, Art. 2.

States and funding partners.⁵² The UNSC thematic mechanisms also allow for NGOs to contribute to the Monitoring and Reporting Mechanism (MRM); nevertheless, all information included in reports must be UN verified.⁵³ NGO monitoring is also central to the Philippines–MILF Agreement.⁵⁴

The only international mechanism that envisions both self and external MRV is the JEM–UN Agreement, although the ‘external’ MRV is to be performed by the UN – a party to the agreement yet not a party to the conflict.⁵⁵

Trigger mechanisms, consent, and sanctions for non-cooperation

A recent contributor to this *Journal* observed that ‘the history of international humanitarian law shows that states have consistently rejected any form of binding supervision of their conduct in armed conflict, especially in non-international conflicts’.⁵⁶ The Enquiry Procedure of the Geneva Conventions may be initiated at the request of only one party to the conflict, but, if the parties cannot agree on the procedure, they ‘should’ agree on an umpire. Far from a technicality, this could indefinitely delay the mechanism.⁵⁷ While the IHFFC contains a voluntary provision recognizing reciprocal jurisdiction, it would only be applicable in international armed conflicts, as it only applies between High Contracting Parties. Otherwise, consent by all parties is required to trigger the IHFFC.⁵⁸ Consequently, even if the Enquiry Procedure and/or the IHFFC would be operable in a non-international armed conflict, the result remains the same – there are no mandatory MRV provisions in multilateral treaties that address the conduct of ANSAs.

Other mechanisms generally go further towards incorporating binding provisions. The MRV components of two of the humanitarian agreements are mandatory and operate without the need for specific allegations to trigger the processes.⁵⁹ Parties to the Bosnia-Herzegovina Agreement undertake to open an enquiry when informed ‘of any allegation of violation of international humanitarian law’.⁶⁰ The Sudan–SPLM Agreement also contains a mandatory mechanism, but

52 Sudan–SPLM Agreement Art. 2(2)(e). The parties must agree to the selection, but agreement must not be unreasonably withheld.

53 Office of the Special Representative of the Secretary General for Children and Armed Conflict, UN Children’s Fund (UNICEF) and UN Department of Peacekeeping Operations (DPKO), *MRM Field Manual: Monitoring and Reporting Mechanism (MRM) on Grave Violations Against Children in Situations of Armed Conflict*, Section F.3.1 (‘Basics of verification for MRM’), August 2010, p. 22.

54 Art. 2 of the Philippines–MILF Agreement states, ‘the Parties shall designate humanitarian organizations and nongovernmental organizations, both international and national, with proven track record for impartiality, neutrality and independence, to carry out the civilian protection functions’.

55 JEM–UN Agreement, Art. 1.3.

56 T. Pfanner, above note 17, p. 307.

57 *Ibid.*, p. 285, ‘An enquiry procedure is provided for under the Geneva Conventions, but to date has never been used since its inception in 1929. Its dependence on the belligerents’ consent is doubtless one of the reasons why this mechanism has not been put to the test.’

58 Additional Protocol I to the Geneva Conventions, Art. 90(2)(a) and (d). See also Yves Sandoz, Christophe Swinarski, and Bruno Zimmermann (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC/Martinus Nijhoff, Geneva/Dordrecht, 1987, para. 3626.

59 Philippines–MILF Agreement, Art. 2; JEM–UN Agreement, Arts. 1.2 and 1.3.

60 Bosnia-Herzegovina Agreement, Art 5.2.

with a higher threshold that is only triggered by alleged serious violations of the agreement, which include but are not limited to grave breaches as defined in the Geneva Conventions. Moreover, it is the overall co-ordinator of the Verification Mission who is empowered to decide when an alleged incident warrants investigation.⁶¹ Under the CARHRIHL Agreement, agreement by consensus by a Joint Monitoring Committee comprised of the parties to the conflict triggers investigation of alleged violations.⁶² The San Jose Agreement mechanism is not initiated until the cessation of the armed conflict.⁶³

Both UN ad hoc commissions were established after the fact to investigate alleged violations, and therefore the concept of triggers is not relevant. Neither requires consent of the parties. The Darfur Commission, established by UNSC resolution, calls upon all parties to co-operate with the Commission.⁶⁴ The resolution establishing the Gaza Mission, under the Human Rights Council, 'calls upon Israel not to obstruct the process of investigation and to fully cooperate with the mission'.⁶⁵ The co-operation of the ANSA is not addressed, which may be explained by the fact that the resolution itself originally only contemplated a fact-finding mission to investigate violations committed by the state, namely Israel.

The UNSC MRM mechanism does not require consent, and is formally triggered by the listing of a party to a conflict in the annexes to the UN Secretary-General's annual report on children and armed conflict.⁶⁶ At the time of writing, a party to a conflict should be listed if it violates international child use and recruitment obligations 'applicable to them',⁶⁷ and/or engages 'in contravention of applicable international law, in patterns of killing and maiming of children and/or rape and other sexual violence against children, in situations of armed conflict'.⁶⁸ For an ANSA to be de-listed, it must enter into dialogue with the UN.⁶⁹ However, consent of the state party to the conflict is required for such dialogue. Without such consent, it seems that the ANSA will remain listed indefinitely, regardless of whether or not it ceases violations.⁷⁰

There is only one mechanism considered in this section to which a specific provision on sanctions for non-cooperation applies. UN Security Council

61 Sudan-SPLM Agreement, Art. 2.

62 CARHRIHL Agreement, Art. 3.

63 San Jose Agreement, Art. XIX.

64 UN Security Council Resolution 1564, UN Doc. S/Res/1564, 18 September 2004, para. 12.

65 Human Rights Council Resolution S-9/1, 12 January 2009, para. 14.

66 *MRM Field Manual*, above note 53, p. 5.

67 UN Security Council Resolution 1379, UN Doc. S/Res/1379, 20 November 2001, para. 16.

68 UN Security Council Resolution 1882, UN Doc. S/Res/1882, 4 August 2009, para. 3.

69 'As part of the de-listing process, a party to the conflict, whether a State or non-State actor, is required to enter into dialogue with the United Nations to prepare and implement a concrete, time-bound action plan to cease and prevent grave violations committed against children for which the party has been listed in the Secretary-General's report on children and armed conflict, in accordance with Security Council resolutions 1539 (2004), 1612 (2005) and 1882 (2009)'. Report of the UN Secretary-General to the Security Council, *Children and Armed Conflict*, UN Doc. A/64/742-S/2010/181, 13 April 2010, p. 179.

70 UN Security Council Resolution 1612, para. 2d. See also 'Letter dated 4 April 2007 from the Permanent Representatives of Myanmar, Nepal, the Philippines, Sri Lanka, the Sudan and Uganda to the United Nations addressed to the Secretary-General', UN Doc. A/61/845-S/2007/189.

Resolution 1564 contemplates the possibility of ‘additional measures’ against the state party, Sudan, if it fails to comply fully with the resolution – which would include failure to co-operate with the Darfur Commission.⁷¹ There is no mention of potential sanctions for non-cooperation of the non-state party, the SPLM.

Transparency of the mechanism

While none of the international mechanisms stipulate that the findings will remain confidential, only the Sudan–SPLM Agreement clearly states that MRV reports will be made public.⁷² Many humanitarian agreements do not address transparency of reporting,⁷³ and, although both of the UN ad hoc commissions publicized their reports, the resolutions pursuant to which they were established did not request them to do so. MRM reporting is partially transparent, as annual reports, the listing regime, and ad hoc country reports are public, while bi-monthly global horizontal notes and action plans are confidential.⁷⁴ The IHFFC may only publicly report its findings with the agreement of all parties to the conflict. Some of the other international mechanisms point to specific end users. For example, one humanitarian agreement stipulates that any substantiated violation may be communicated to the international community,⁷⁵ whereas another mandates the verification body ‘to use the media to the extent useful for the fulfilment of its mandate’.⁷⁶

Geneva Call and the *Deed of Commitment Banning AP Mines*

It is not surprising that the weakness of multilateral treaty-based MRV mechanisms addressing the conduct of ANSAs has spawned alternative approaches, such as some of the international mechanisms described above. This section focuses on the *Deed of Commitment*, an innovative MRV mechanism that has been developed by Geneva Call to supervise ANSA commitments on specific humanitarian norms. The section outlines the origins and work of this NGO, as well as the progress achieved to date. Subsequent sections then look in more detail at the MRV mechanisms provided for under the *Deed of Commitment Banning AP Mines* and the ways in which these mechanisms have been put into practice, with comparative attention paid to the Ottawa Convention. Two country cases studies are presented in associated boxes.

71 UN Security Council Resolution 1564, para. 14.

72 Sudan–SPLM Agreement, Art. 4(b).

73 CARHRIL Agreement, Philippines–MILF Agreement, and Bosnia-Herzegovina Agreement.

74 See *MRM Field Manual*, above note 53, p. 32. Note that MRM also contributes to other monitoring mechanisms such as the Universal Peer Review.

75 Mozambique–RENAMO Agreement, Art. VII.

76 San Jose Agreement, Art. XIV(k).

Geneva Call

In current armed conflicts, violations of humanitarian norms are widespread. Many of these violations – though by no means all – are committed by ANSAs. Yet, the state-centric nature of international law poses challenges when it comes to addressing their behaviour. First, existing international treaties and their implementation mechanisms remain predominantly focused on states. Second, even though they are bound by IHL, ANSAs cannot become parties to relevant international treaties, and they are generally precluded from participating in norm-making processes. Thus, ANSAs may not feel bound to respect rules that they have neither put forward nor formally adhered to.⁷⁷

Against this background, humanitarian actors have increasingly engaged with ANSAs in recent years. Through a variety of methods (such as advocacy, dialogue, negotiation, training, and capacity-building), UN agencies, the ICRC, and NGOs have sought to enhance ANSA compliance with international standards.⁷⁸ This practice of engagement is not new⁷⁹ but has expanded significantly since the 1990s.⁸⁰

Geneva Call's creation should be considered in this context. The initiative originated in the late 1990s from the International Campaign to Ban Landmines (ICBL) in response to the understanding that AP mines would not be eradicated

77 See Sandesh Sivakumaran, 'The ownership of international humanitarian law: non-state armed groups and the formation and enforcement of the rules', in Benjamin Perrin (ed.), *Modern Warfare: Armed Groups, Private Militaries, Humanitarian Organizations, and the Law*, University of British Columbia Press, Vancouver, 2012 (forthcoming).

78 For details, see Nicolas Florquin, Pascal Bongard, and Emilia Richard, 'Options for engagement: armed groups and humanitarian norms', in Small Arms Survey, *Small Arms Survey 2010: Gangs, Groups, and Guns*, Cambridge University Press, Cambridge, 2010, pp. 308–310.

79 As far back as 1871, Henry Dunant, one of the founders of the ICRC, engaged with leaders of the Paris Commune to negotiate the release of hostages taken by the insurgents. See Olivier Bangterter, 'The ICRC and non-state armed groups', in Geneva Call, Program for the Study of International Organization (PSIO), and UN Institute for Disarmament Research (UNIDIR), *Exploring Criteria and Conditions for Engaging Armed Non-state Actors to Respect Humanitarian Law and Human Rights Law*, Geneva Call, Geneva, 2008, p. 75.

80 The issue of ANSA compliance with humanitarian norms has also been the subject of many studies and seminars over the last decade. See, *inter alia*, Claude Bruderlein, *The Role of Non-state Actors in Building Human Security: The Case of Armed Groups in Intra-state Wars*, Centre for Humanitarian Dialogue, Geneva, 2000; David Petrasek (ed.), *Ends and Means: Human Rights Approaches to Armed Groups*, International Council on Human Rights Policy, Geneva, 2000; Liesbeth Zegveld, *Accountability of Armed Opposition Groups in International Law*, Cambridge University Press, Cambridge, 2002; ICRC and College of Europe, *Relevance of International Humanitarian Law to Non-state Actors*, Collegium No. 27, Bruges, 2003 and *Improving Compliance with International Humanitarian Law*, Collegium No. 30, Bruges, 2004; Gerard McHugh and Manual Bessler, *Humanitarian Negotiations with Armed Groups: A Manual for Practitioners*, UN, New York, 2006; ICRC, *Improving Respect for International Humanitarian Law in Non-international Armed Conflicts*, ICRC, Geneva, 2007; Coalition to Stop the Use of Child Soldiers, *International Forum on Armed Groups and the Involvement of Children in Armed Conflict*, London, 2007; International Institute of Humanitarian Law, *Non-state Actors and International Humanitarian Law: Organized Armed Groups: A Challenge for the 21st Century*, FrancoAngeli, Milano, 2010; Forced Migration Review, *Armed Non-state Actors and Migration*, No. 37, Refugee Studies Centre, Oxford, March 2011; and Geneva Academy of International Humanitarian Law and Human Rights, *Rules of Engagement: Protecting Civilians through Dialogue with Armed Non-state Actors*, Geneva, 2011. See also A. Clapham, above note 6, and Geneva Call, PSIO, and UNIDIR, above note 79.

unless ANSAs also renounced their use.⁸¹ This type of weapon has been used by more ANSAs than government forces in past years.⁸² Some armed groups have even manufactured their own mines or mine-like explosive devices. Moreover, the Ottawa Convention does not apply directly to ANSAs⁸³ but requires states parties to impose penal sanctions to suppress any activity prohibited under the Convention undertaken on territory under their jurisdiction or control.⁸⁴

While initially focusing on the AP mine ban, Geneva Call aims to engage ANSAs on wider humanitarian norms and its work has recently expanded to encompass the protection of children and the prohibition of sexual violence in armed conflict.⁸⁵ It has also increasingly responded to ANSA demands to help build their knowledge and enforcement capacities in IHL through customized training courses, sometimes delivered in collaboration with the ICRC, the International Institute of Humanitarian Law, and other partners.

In its efforts to address the lack of ownership of norms by ANSAs, Geneva Call has adopted an ‘inclusive’ approach, whereby ANSAs have the opportunity – through signing an innovative instrument named the *Deed of Commitment* – to declare formally their adherence to humanitarian norms and to pledge to respect them. The *Deed of Commitment* contains provisions similar to those in international treaties. It is signed by the ANSA leadership and countersigned by Geneva Call and the Government of the Republic and Canton of Geneva, usually at a ceremony in the Alabama Room in Geneva’s City Hall, where the first Geneva Convention was adopted in 1864.⁸⁶ The signed documents are deposited with the Canton of Geneva, which serves as custodian of the *Deed of Commitment*. For Geneva Call, engaging ANSAs is a long-term effort: it involves constructive and sustained dialogue to persuade them to sign the *Deed of Commitment*, and continues after signature through supporting its implementation and monitoring compliance. The *Deed of Commitment* does not in itself guarantee a better respect of humanitarian norms but provides a useful tool to hold signatories accountable for their pledge.

81 On the origins of Geneva Call, see ICBL, *Landmine Monitor Report 1999: Toward a Mine-free World*, Human Rights Watch, New York, 1999, pp. 940–945; Swiss Campaign to Ban Landmines, *Engaging Non-state Actors in a Landmine Ban: A Pioneering Conference*, Quezon City, 2001, pp. 137–138; Yeshua Moser-Puangsuwan, ‘Outside the treaty not the norm: non-state armed groups and the landmine ban’, in Jody Williams, Stephen D. Goose, and Mary Wareham (eds), *Banning Landmines: Disarmament, Citizen Diplomacy, and Human Security*, Rowman & Littlefield Publishers, Lanham, MD, 2008, pp. 166–169.

82 Landmine Monitor has identified ANSA use of AP mines in at least twenty-eight countries from 1999 to 2009. The armed groups that have made the most extensive use of AP mines and improvised explosive devices are probably the Revolutionary Armed Forces of Colombia (FARC) and the Liberation Tigers of Tamil Eelam (LTTE) in Sri Lanka, followed by the Karen National Liberation Army (KNLA) in Myanmar/Burma. In comparison, Landmine Monitor identified twenty-one governments that have allegedly used AP mines during the same period. See ICBL, *Landmine Monitor Report 2009: Toward a Mine-free World*, Mine Action Canada, Ottawa, 2009, p. 10.

83 On ANSAs obligations towards the Ottawa Convention, see Kathleen Lawand, ‘Non-state actors and the mine ban: the Ottawa Convention framework’, in Italian Campaign Against Landmines, *Beyond States: Engaging Non-state Armed Groups for a Truly Effective Mine Ban*, Rome, 2005, pp. 17–22.

84 Ottawa Convention, Art. 9.

85 The development beyond the AP mine issue was foreseen from the outset in the statutes of Geneva Call (Art. 3).

86 For a discussion on the legal status of the *Deed of Commitment*, see A. Clapham, above note 6, pp. 291–299.



Figure 1. Signing of the Geneva Call *Deed of Commitment Banning AP Mines* by the *Conseil National pour la Défense de la Démocratie-Forces de Défense de la Démocratie* (CNDD-FDD), in the presence of the Ambassador of the Republic of Burundi to Switzerland, Geneva, Alabama Room, 15 December 2003. Photo: Geneva Call.

To date, Geneva Call has developed two such instruments: the *Deed of Commitment Banning AP Mines* in 2000 and the *Deed of Commitment for the Protection of Children from the Effects of Armed Conflict* in 2010.⁸⁷ This article does not look at the latter as there is no MRV experience with this instrument as yet.

The *Deed of Commitment Banning AP Mines*

The *Deed of Commitment Banning AP Mines* mirrors states obligations under the Ottawa Convention. In signing it, ANSAs indicate their willingness to prohibit the use, production, stockpiling, and transfer of AP mines, under all circumstances.⁸⁸ Signatories also commit to destroy any AP mine stocks that they may have,⁸⁹ to cooperate in and, where feasible, undertake mine action activities (mine clearance, victim assistance, and mine-risk education),⁹⁰ and to take necessary measures (orders, disciplinary sanctions, training, and dissemination measures) to enforce

87 The text of the two *Deeds of Commitment* is available on the Geneva Call website: <http://www.genevacall.org> (last visited 12 March 2012). A third *Deed of Commitment*, on the prohibition of sexual violence and gender discrimination, will be launched this year.

88 Geneva Call, *Deed of Commitment Banning AP Mines*, Art. 1. Under this article, all devices that effectively explode by the presence, proximity, or contact of a person are prohibited. This includes commercially manufactured AP mines, victim-activated improvised explosive devices, booby traps, and anti-vehicle mines that can be triggered by the weight of a person.

89 *Ibid.*, Arts. 1 and 2.

90 *Ibid.*, Art. 2.

compliance.⁹¹ Moreover, the *Deed of Commitment* contains an MRV provision, which includes a self-reporting requirement and, more radically, an agreement to allow for external monitoring of compliance, including field verification missions, by Geneva Call.⁹² This is discussed in depth below.

In addition to these provisions, which form the core obligations of the *Deed of Commitment Banning AP Mines*, signatories agree to consider their commitment to the mine ban as one step or part of a broader pledge to humanitarian norms.⁹³ This clause provides a basis for Geneva Call to engage ANSAs on other humanitarian issues. Signatories also recognize that, pursuant to Common Article 3 to the Geneva Conventions, adhering to the *Deed of Commitment* does not affect their legal status.⁹⁴ No sanctions are foreseen apart from the possibility for Geneva Call to publicize non-compliance in case of confirmed violations or in the event that the signatory does not co-operate in the MRV process, which is in itself a breach of the *Deed of Commitment*.⁹⁵

As of February 2012, forty-one ANSAs from ten different countries and territories (Myanmar/Burma, Burundi, India, Iraq, Iran, the Philippines, Somalia, Sudan, Turkey, and Western Sahara) have signed the *Deed of Commitment Banning AP Mines*.⁹⁶ Overall, their compliance record has been good. Except in one case,⁹⁷ no conclusive evidence of violation of the prohibition on the use, production, acquisition, and transfer of AP mines has been found by Geneva Call. The majority of signatories have carried out, or facilitated, mine action activities in areas under their control.⁹⁸ *Altogether, they have destroyed over 20,000 stockpiled AP mines to date, along with thousands of improvised explosive devices and abandoned explosive ordnance.* In addition, as a result of the efforts of Geneva Call and its partners, several other ANSAs that have not signed the *Deed of Commitment Banning AP Mines* have nonetheless pledged to prohibit or limit the use of AP mines, either unilaterally or within a ceasefire agreement with the government.⁹⁹

91 *Ibid.*, Art. 4.

92 *Ibid.*, Art. 3.

93 *Ibid.*, Art. 5.

94 *Ibid.*, Art. 6.

95 *Ibid.*, Art. 7.

96 See the full list of signatories on Geneva Call's website: <http://www.genevacall.org/resources/list-of-signatories/list-of-signatories.htm> (last visited 12 March 2012). Note that nineteen of the forty-one signatories are no longer active. Some of them have become part of state's authorities while the others have either dissolved or abandoned armed struggle.

97 See below, pp. 699–701.

98 For details on signatories' implementation of the *Deed of Commitment Banning AP Mines*, see Geneva Call, *Engaging Armed Non-state Actors in a Landmine Ban: The Geneva Call Progress Report (2000–2007)*, Geneva Call, Geneva, 2007, pp. 14–19, and Geneva Call, *Non-state Actor Mine Action and Compliance to the Deed of Commitment banning Anti-Personnel Landmines (January 2008–June 2010)*, Geneva Call, Geneva, 2010.

99 See Geneva Call, *Engaging Armed Non-state Actors*, above note 98, pp. 7–8. According to ICBL, the use of AP mines by ANSAs was confirmed in four countries (Afghanistan, Colombia, Myanmar, and Pakistan) in 2010–2011. This is the lowest number of countries with recorded ANSA use ever reported by Landmine Monitor since 1999. See ICBL, *Landmine Monitor 2011: Toward a Mine-free World*, Mine Action Canada, Ottawa, 2011, p. 12.

Engaging ANSAs has not been without its challenges and controversy¹⁰⁰ but, over the years, Geneva Call has won international recognition and support for its efforts, notably from states parties to the Ottawa Convention,¹⁰¹ the UN,¹⁰² the European Union,¹⁰³ and the African Union.¹⁰⁴

The *Deed of Commitment* MRV mechanisms

The key provision in respect of monitoring and verifying compliance with the terms of the *Deed of Commitment Banning AP Mines* is Article 3.¹⁰⁵ This Article obliges signatories to

allow and cooperate in the monitoring and verification of [their] commitment by Geneva Call and other independent international and national organizations associated for this purpose with Geneva Call. Such monitoring and verification includes field visits and inspections in all areas where anti-personnel mines may be present, and the provision of the necessary information and reports, as may be required for such purposes in the spirit of transparency and accountability.

Based on Article 3, Geneva Call has devised a three-pronged system to monitor compliance with the *Deed of Commitment*: self-reporting, third-party monitoring, and field missions. These mechanisms, which constitute the heart of the *Deed of Commitment* compliance regime, are detailed here, considered in relation to the three criteria given at the beginning of the article, and compared in turn with the Ottawa Convention MRV system and actual practice.

100 See Pascal Bongard, 'Engaging armed non-state actors on humanitarian norms: the experience of Geneva Call and the landmine ban', in Geneva Call, PSIO, and UNIDIR, above note 79, pp. 116–119.

101 See for example the Declaration of the Fifth Meeting of the States Parties, 19 September 2003, APLC/MSP.5/2003/5, para. 12. See also the Review of the Operation and Status of the Convention: 1999–2004 APLC/CONF/2004/5, Part II, para. 9 and the Review of the Operation and Status of the Convention: 2005–2009, APLC/CONF/2009/9, para. 24.

102 *Report of the Secretary-General on the protection of civilians in armed conflict*, UN Doc. S/2009/277, 29 May 2009, para. 43 and UN Doc. S/2010/579, 11 November 2010, para. 53.

103 See European Parliament resolutions, Measures to Promote a Commitment by Non-state Actors to a Total Ban on Anti-Personnel Landmines, B5-0542/2001, 6 September 2001; Review of Ottawa Treaty on Anti-Personnel Mines, B5-0215/2004, 22 April 2004; A Mine-free World, B6-0414/2005, 7 July 2005; and 10th Anniversary of the 1997 Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, B6-0518/2007, 13 December 2007. The European Commission has also regularly expressed political support for Geneva Call's work during meetings of states parties to the Ottawa Convention.

104 African Union, Common African Position on Anti-Personnel Landmines, adopted at the 2nd Continental Conference of African Experts on Landmines, 17 September 2004, para. 9(xi), available at: http://www.nairobisummit.org/fileadmin/pdf/review_conference/regional_conference/addis/AU_Common_African_Position_17Sept04_FINAL_E.pdf (last visited 12 March 2012).

105 Note that the MRV provision in the two *Deeds of Commitment* is substantially the same. See Art. 9 of the *Deed of Commitment for the Protection of Children from the Effects of Armed Conflict*.

Self-reporting

The first element of the *Deed of Commitment* compliance regime is the provision of information by signatories as to the implementation of their obligations. Article 3 does not stipulate the form or method of transmission of such information to Geneva Call, nor does it specify the timeframe, but in practice this has been done on a continual basis through written correspondences (emails, letters, reports, etc.), verbal communications, and statements at Meetings of Signatories to the *Deed of Commitment*.¹⁰⁶

In addition, Geneva Call designed a standardized reporting form for signatories in 2004, modelled on the Ottawa Convention Article 7 transparency reports,¹⁰⁷ which require states parties to report on their compliance.¹⁰⁸ Information to be supplied in Geneva Call's form includes: possible cases of violations of the prohibition obligations, enforcement measures, numbers and types of AP mines stockpiled, progress in mine action activities (including stockpile destruction), and information on other humanitarian commitments and policies. Following discussions at the second Meeting of Signatories to the *Deed of Commitment*, the template was further refined to make it more comprehensive and user-friendly. In particular, tick boxes were included, to allow signatories to respond to the principle questions on one page and provide additional information in separate annexes.

The purpose of these mandatory self-reporting measures is to assess progress in the implementation of the *Deed of Commitment*, and to identify challenges as well as assistance needs. Geneva Call plays a supervisory role; it compiles and reviews all the data provided by signatories and, when necessary, requests clarifications or additional details, and make recommendations. A summary of this information is publicized in its reports, communiqués, and statements.¹⁰⁹ In contrast to the Article 7 transparency reports, standard compliance reports completed by signatory ANSAs have not yet been made public, but Geneva Call will do so in the near future.¹¹⁰

For comparison, there is no standing institutional body mandated under the Ottawa Convention to oversee the transparency reports provided by states parties. The reports are submitted to the UN Secretary-General, the depositary of the Convention, who is only required to transmit them to the states

106 Geneva Call has convened two such meetings to date, in 2004 and 2009 in Geneva. These meetings are similar to the Meetings of States Parties and Review Conferences provided in Arts. 11 and 12 of the Ottawa Convention.

107 See Ottawa Convention, Art. 7. The first Meeting of States Parties, held in Mozambique in 1999, adopted standard forms for reporting under Art. 7. See Angela Woodward, 'The United Nations' role in implementing the compliance aspects of the Ottawa Convention', in ICBL, *Landmine Monitor Report 2000: Toward a Mine-free World*, Human Rights Watch, New York, 2000, p. 1083.

108 Each state party must submit an initial report to the UN Secretary-General, the Convention's depositary, no later than 180 days after the Convention enters into force and then provide annual updates by 30 April each year.

109 All these documents are available on Geneva Call's website, <http://www.genevacall.org>, under the section 'resources'. See in particular Geneva Call progress and annual reports.

110 Sensitive information, however, such as the location of stockpiles, will not be communicated.

parties.¹¹¹ However, annual Meetings of States Parties and Review Conferences, as well as the intersessional work programme,¹¹² offer important opportunities for review and monitoring, including on matters arising from the Article 7 transparency reports. In 2000, states parties also established an informal Contact Group on Article 7 to promote compliance with their reporting obligation. Furthermore, as part of its mandate to provide secretariat services and support to the Ottawa Convention and its states parties, the Implementation Support Unit (ISU)¹¹³ has been instructed, on behalf of successive Presidents of the Convention, to summarize the information contained in the transparency reports and to publicize this information.¹¹⁴

In practice, nearly all signatories to the *Deed of Commitment Banning AP Mines* (thirty-eight out of forty-one) have abided by their reporting obligation, providing information and reports to Geneva Call on their implementation.¹¹⁵ This represents a rate of compliance of 93%. The three signatories that did not fulfil their requirements dissolved shortly after their signing of the *Deed of Commitment* and did not report on their implementation while still active. For comparison, though the requirements are more stringent, all states parties to the Ottawa Convention but one (155 out of 156) have submitted initial transparency reports in compliance with Article 7 (99%), while the rate for annual updates has ranged between 54% and 79% since 1999.¹¹⁶

As with states parties to the Ottawa Convention, the quality of information supplied by signatories to the *Deed of Commitment* has varied considerably. Some reports have been quite comprehensive and have included many details, not only on the required issues but also on the general landmine situation, the origins of the problem, and the needs for assistance. Other signatories, on the other hand, have provided only scant or fragmentary information.¹¹⁷

111 This has been done through a database, which is accessible not just to states parties but also to the general public at: <http://www.unog.ch/80256EE600585943/%28http://Pages%29/A5378B203CBE9B8CC12573E7006380FA?OpenDocument> (last visited 12 March 2012).

112 The intersessional work programme was established at the First Meeting of the States Parties in 1999. At this meeting, the states parties recognized the importance of having intersessional Standing Committees of Experts on issues related to the operation of the Ottawa Convention. Subsequently, states parties established the intersessional work programme made up of thematic Standing Committees, which focus on key elements of treaty implementation (general status and operation of the Convention, stockpile destruction, mine clearance, and victim assistance).

113 Pursuant to a decision of states parties, the ISU was established in 2001 by the Geneva International Centre for Humanitarian Demining (GICHD) to support the operation and implementation of the Convention. See <http://www.apminebanconvention.org/implementation-support-unit/overview> (last visited 12 March 2012).

114 E-mail from Kerry Brinkert, ISU Director, 1 August 2011. For more details on the Ottawa Convention's implementation machinery, see Kerry Brinkert, 'An emphasis on action: the Mine Ban Treaty's implementation mechanisms', in J. Williams, S. D. Goose, and M. Wareham, above note 81, pp. 87–104.

115 See Geneva Call, *Non-state Actor Mine Action*, above note 98, p. 11.

116 Landmine and Cluster Munitions Monitor fact sheet, 'Transparency Reporting (Article 7)', November 2010, available at: <http://www.the-monitor.org/index.php/content/view/full/24553> (last visited 12 March 2012). This does not include the recent accession of three additional states as, at the time of writing, the Convention has not yet entered into force for these countries.

117 For example, Geneva Call has experienced difficulties in obtaining precise information from some signatories on the total number of stockpiled mines in their possession. See Geneva Call, *Engaging Armed Non-state Actors*, above note 98, pp. 28–29.

To date, Geneva Call has requested clarification from six signatories regarding allegations of non-compliance with the *Deed of Commitment Banning AP Mines*.¹¹⁸ All ANSAs provided responses, four of them after having conducted an internal investigation to clarify the circumstances of suspicious mine incidents. By contrast, the Ottawa Convention's compliance provisions contained in Article 8 have never been formally invoked to clarify compliance concerns.¹¹⁹ Nearly all cases have been addressed in a manner consistent with paragraph 1 of Article 8, through ad hoc informal consultations.¹²⁰ However, two states parties reportedly carried out investigations into allegations of use.¹²¹

Third-party monitoring

In addition to signatory ANSAs, Geneva Call gathers relevant information from a range of third-party actors (e.g. governments, media, international, NGOs, and civil society organizations) to monitor signatories' compliance with the *Deed of Commitment*. The information is collected either remotely or through field missions. It is a continuous process, involving a systematic tracking of developments on the ground. Allegations of a signatory ANSA's non-compliance with the terms of the *Deed of Commitment* usually emanate from one of these third-party sources. In such an instance, Geneva Call initially seeks a response to the allegations from the signatory and simultaneously consults with other sources.

The possibility of third-party monitoring is mentioned in the *Deed of Commitment's* text. Article 3 requires signatories 'to cooperate in the monitoring of their commitment by Geneva Call and other independent organizations associated for this purpose with Geneva Call'.¹²² Such other organizations are not defined but may include, for example, Geneva Call's local partners, such as ICBL country campaigns. Moreover, a number of ANSAs have stressed during Meetings of Signatories to the *Deed of Commitment* the importance of neutral, external monitoring, especially when investigating allegations originating from other parties to the conflict.¹²³

In practice, since its creation in 2000, Geneva Call has developed growing links with third-party actors present in areas where signatories operate, in particular with the ICBL and its Landmine Monitor's network,¹²⁴ mine action NGOs, and bodies monitoring ceasefire agreements, human rights, and IHL. Such links

118 *Ibid.*, p. 26; Geneva Call, *Non-state Actor Mine Action*, above note 98, p. 6.

119 ICBL, above note 99, p. 3.

120 Stephen D. Goose, 'Goodwill yields good results: cooperative compliance and the mine ban treaty', in J. Williams, S. D. Goose, and M. Wareham, above note 81, pp. 108–109.

121 ICBL, *Landmine Monitor Report 2002: Toward a Mine-free World*, Human Rights Watch, New York, 2002, p. 502; ICBL, *Landmine Monitor 2010: Toward a Mine-free World*, Mine Action Canada, Ottawa, 2010, pp. 3–4; ICBL, above note 99, pp. 3–4.

122 Emphasis added.

123 See the report of the first Meeting of Signatories to the *Deed of Commitment*, Geneva Call, PSIO, and Armed Groups Project, *An Inclusive Approach to Armed Non-state Actors and International Humanitarian Norms*, Geneva Call, Geneva, 2005, pp. 20–21.

124 The Landmine Monitor is an initiative of the ICBL created in 1998 to report on the universalization and implementation of the Ottawa Convention. In 2009, the Landmine Monitor changed its name to the

developed over the years have proved useful in monitoring implementation, particularly in areas where access is problematic and there have been concerns of non-compliance. Third-party actors have assisted in cross-checking information reported by signatory ANSAs; they have also drawn Geneva Call's attention to mine incidents and helped to verify allegations of violations. Several compliance issues were successfully resolved thanks to third-party sources.¹²⁵ In other cases, however, third-party informants have been unable or reluctant to provide precise information, citing the necessity to protect their sources or to safeguard their operational space. Moreover, local sources – in particular local media – often lack the necessary details or may be biased towards one side of the conflict.¹²⁶

The Ottawa Convention contains no mechanism for external monitoring, as is the case in other weapons treaties, but a number of third-party actors, such as the ISU and the ICRC, have monitored the Convention's operation in practice. Moreover, NGOs (especially the ICBL) have assumed an important watchdog role. Although it is not formally recognized in the treaty text, over the years the Landmine Monitor has become an accepted part of the compliance monitoring process.¹²⁷ Its independent reporting has complemented the states parties' transparency reports required under Article 7 and has enhanced the capabilities of the official system for detecting potential violations and promoting compliance.

Field missions

The third mechanism – field missions – is the main element of the *Deed of Commitment's* MRV machinery. Such missions are conducted on a routine basis to follow up on implementation of the *Deed of Commitment* (monitoring missions) or to verify compliance in the event of allegations of violations (verification missions).

As with the Ottawa Convention, the *Deed of Commitment Banning AP Mines* does not specify the precise circumstances under which a monitoring or verification mission may be triggered. However, whereas under the Convention the deployment of a fact-finding mission depends on the activism and agreement of other states parties to make use of Article 8,¹²⁸ Geneva Call can decide *on its own discretion* when circumstances warrant field investigation. No further approval is

Landmine and Cluster Munition Monitor to reflect its decision to report on the Oslo Convention in addition to the Ottawa Convention.

125 Geneva Call, *Non-state Actor Mine Action*, above note 98, p. 11, and Geneva Call newsletter No. 3, Vol. 6, November 2008, p. 3.

126 Media reports are frequently inaccurate regarding the circumstances of incidents involving the use of explosive devices (types of device used, mode of activation, etc.). These details are critical for determining whether the incidents constitute a possible violation of the *Deed of Commitment Banning AP Mines*. In some countries, Geneva Call has provided training to the local journalists to enhance the accuracy of their reporting.

127 Mary Wareham, 'Evidence-based advocacy: civil society monitoring of the Mine Ban Treaty', in J. Williams, S. D. Goose, and M. Wareham, above note 81, p. 60. See also <http://www.the-monitor.org> (last visited 12 March 2012).

128 Article 8 provides for the possibility of sending a fact-finding mission without the consent of the concerned state, but this must be agreed by a majority of states parties. See below, p. 694.

required from signatories, since consent to facilitate ‘visits and inspections’ has already been granted at the time of their signing of the *Deed of Commitment*.¹²⁹ In the event of allegations of violations, it is normally in situations where the allegations are credible and point to a serious breach of the *Deed of Commitment*, and where information gathered from third-party actors is inconclusive. The verification mission would naturally involve discussions with concerned stakeholders, confronting the signatory ANSA with the allegations, and, where possible, investigating facts on the spot and interviewing victims and witnesses of incidents.

With respect to the Ottawa Convention, Article 8 – its longest provision – establishes a procedure that states parties can use in order to address concerns about the compliance with the Convention by another state party.¹³⁰ As its first paragraph makes clear, this Article is founded on the preference by states parties ‘to work together in a spirit of cooperation to facilitate compliance by states parties with their obligations’ under the Convention.¹³¹ If this co-operative approach fails, one or more states parties may submit a ‘request for clarification’ to the suspected state, through the UN Secretary-General. If there is no response or an unsatisfactory response by the requested state within twenty-eight days, the matter may be taken up at the next Meeting of States Parties or a Special Meeting may be convened. States parties may then decide, by majority vote, to send an obligatory ‘fact-finding mission’ to the territory of the state in question to gather additional information for use in determining compliance.

In contrast to Article 8 of the Ottawa Convention, Article 3 of the *Deed of Commitment Banning AP Mines* does not specify the duties of the signatory during a verification mission, the composition of the visiting team, the duration of the mission, or the reporting procedure. It only states that the mission is to be granted access to all areas where relevant facts might be expected to be collated. Signatory ANSAs, unlike states parties to the Ottawa Convention,¹³² have no right to limit access to information, equipment, or areas that it deems sensitive. Only imperative security considerations may justify restrictions.

At the conclusion of a verification mission, Geneva Call meets with the relevant ANSA to present the results of its investigation and to discuss the appropriate measures, if any, to be undertaken. In accordance with the *Deed of Commitment* and Geneva Call transparency policy, the mission’s findings are then

129 *Deed of Commitment Banning AP Mines*, Art. 3.

130 For a critical analysis of the Ottawa Convention MRV mechanisms, especially Article 8, see Trevor Findlay, ‘Verification of the Ottawa Convention: workable hybrid or fatal compromise?’, in *Disarmament Forum*, UNIDIR, Geneva, No. 4, September 1999, pp. 45–55; Angela Woodward, ‘Verifying the Ottawa Convention’, in *Verification Yearbook 2001*, VERTIC, London, 2001, pp. 99–115. See also Thomas Hajnoczi, Thomas Desch, and Deborah Chatsis, ‘The Ban Treaty’, in Maxwell A. Cameron, Robert J. Lawson, and Brian W. Tomlin (eds), *To Walk Without Fear: The Global Movement to Ban Landmines*, Oxford University Press, Oxford, 1998, pp. 301–304; David Atwood, *Promoting Compliance: Observations on the Anti-Personnel Mine Ban Convention*, Geneva Centre for Security Policy, Geneva, No. 17, 2000; Stuart Maslen, *Commentaries on Arms Control Treaties, Volume 1: The Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-personnel Mines and on their Destruction*, Oxford University Press, Oxford, 2004, pp. 209–242; S. D. Goose, above note 120, pp. 106–110.

131 Ottawa Convention, Art. 8(1).

132 S. Maslen, above note 130, p. 238; A. Woodward, above note 130, p. 102.

publicly reported. Under Article 7, signatories accept that 'Geneva Call may publicize [signatories'] compliance or *non-compliance* with the *Deed of Commitment*'.¹³³ In the event that the signatory is found responsible for violations and refuses to implement the corrective actions recommended by the verification mission, Geneva Call may resort to a public denunciation. This is a measure of last resort that Geneva Call may take depending on the gravity of the violation and its potential impact on the behaviour of the non-compliant signatory.

With regards to the Ottawa Convention, Article 8 requires the fact-finding mission to report the results of its findings to the annual Meeting of States Parties or the Special Meeting of States Parties. States parties may then, by a two-thirds majority if consensus cannot be reached, request the state party concerned to take actions to address the compliance issue and, if this is not achieved, suggest further measures to resolve the issue, including 'the initiation of appropriate procedures in conformity with international law'.¹³⁴

In practice, Geneva Call has conducted periodic field visits to twenty-nine signatory ANSAs so far.¹³⁵ Most of these visits were routine follow-up missions aimed at monitoring and/or supporting implementation of the *Deed of Commitment Banning AP Mines*: observance of stockpile destruction operations, training on the *Deed of Commitment*'s obligations, implementation workshops, and so forth. They have sometimes included mine action specialists working with partner organizations. No signatory has ever refused to receive a Geneva Call delegation, even following allegations of non-compliance. On the contrary, ANSAs have generally facilitated field missions, by appointing focal persons during the visit, arranging meetings with relevant interlocutors, and/or providing local transportation. Some have even disclosed their weapons stockpiles.¹³⁶ Out of the twelve signatories that have not been visited by Geneva Call, seven dissolved shortly after their signing of the *Deed of Commitment*. With regard to the other five, access has not been denied by the signatory but rather by the concerned states, though in some cases Geneva Call's local partner organizations were able to meet with signatories on their territory.

No routine monitoring missions are formally envisaged under the Ottawa Convention¹³⁷ but in practice some of the work done by UN agencies, the ISU, ICBL, and other entities is indirectly related to the verification provisions of the Convention. For example, assessment missions conducted by UN agencies in mine-affected states often ascertain new information for those states' Article 7

133 *Deed of Commitment Banning AP Mines*, Art.7, emphasis added.

134 Ottawa Convention, Art. 8(19). These procedures are not spelled out but, according to Trevor Findlay, they are a 'commonly used euphemism for the imposition of some form of sanction such as suspension of treaty benefits or referral of the matter to the Security Council or the International Court of Justice'. See T. Findlay, above note 130, p. 46.

135 Geneva Call, *Non-state Actor Mine Action*, above note 98, p. 11.

136 Monitoring missions have not necessarily always included on-site inspections of signatories' weapons stockpiles.

137 For Trevor Findlay, 'with no continuous, routine monitoring or inspection system, any request for a fact-finding mission is bound to be seen as politically inflammatory, however reasonable the grounds for the request. The fact that the treaty portrays a fact-finding mission as a last resort in case of alleged non-compliance would further increase its political saliency and makes it less likely that one will ever be initiated'. See T. Findlay, above note 130, p. 47.

reports.¹³⁸ Landmine Monitor researchers also routinely monitor implementation of the Ottawa Convention by states parties.

Since 2000, there have only been a few occasions where it has been necessary for Geneva Call to conduct actual field verification missions. These were in 2002 and 2009 in Mindanao, southern Philippines, to investigate allegations of AP mine use by the Moro Islamic Liberation Front (MILF), and in 2007 in Puntland, north-east Somalia, to verify reports of AP mine acquisition from Ethiopia. The context and findings of these verification missions are detailed in the case studies below. In one other case, an on-site visit could not be undertaken owing to the concerned state's opposition.¹³⁹ Preliminary enquiries were nonetheless made by local partners inside the country. As mentioned earlier, except in one case, Geneva Call has found no conclusive evidence to support the allegations.¹⁴⁰

For comparison, no similar fact-finding mission has ever been conducted under Article 8 of the Ottawa Convention, in spite of serious and credible allegations of use and transfer of AP mines by several states parties.¹⁴¹

Case study 1: Geneva Call verification mission in Puntland, Somalia

The Puntland authorities signed the *Deed of Commitment Banning AP Mines* in 2002, along with fifteen other Somali ANSAs. Somalia is not yet party to the Ottawa Convention. In November 2006, the UN Monitoring Group on Somalia, a body that monitors the arms embargo, reported that the Puntland authorities had received from Ethiopia – a state party to the Convention – 180 AP mines and 340 unspecified landmines as part of a larger arms shipment.¹⁴² At that time, Puntland was preparing to enter into combat against the Islamic Courts Union (ICU), which controlled most of south and central Somalia.

Pursuant to Article 3 of the *Deed of Commitment Banning AP Mines*, Geneva Call requested clarification from the Puntland authorities, which categorically denied the allegations.¹⁴³ The Ethiopian government similarly denied the charges in the reports.¹⁴⁴ Meanwhile, Geneva Call sought additional information from the Monitoring Group itself, in particular regarding their source of information and the types of mines reportedly transferred, but did not obtain a response. Enquiries by the Presidents of the Seventh and Eighth Meetings of

138 A. Woodward, above note 130, p. 103.

139 Geneva Call, *Engaging Armed Non-state Actors*, above note 98, pp. 28–29.

140 See below, pp. 699–701.

141 See ICBL, above note 82, pp. 10–15; ICBL, *Landmine Monitor 2010*, above note 121, pp. 3–4; ICBL, above note 99, pp. 3–4. See also S. D. Goose, above note 120, pp. 111–114.

142 Report of the Monitoring Group on Somalia pursuant to Security Council Resolution 1676, UN Doc. S/2006/913, 22 November 2006, paras. 68 and 75.

143 Letter from Hassan Dahir Mohamud, Vice-President of the Puntland State of Somalia, to Geneva Call, 10 January 2007.

144 ICBL, *Landmine Monitor Report 2007: Toward a Mine-free World*, Mine Action Canada, Ottawa, 2007, pp. 384–385.

States Parties to the Monitoring Group in respect of the allegations against Ethiopia went similarly unanswered.¹⁴⁵ Geneva Call also contacted other actors that operate in Somalia about the report. No-one could corroborate or disprove the arms transfer but some expressed doubts regarding the reliability of other allegations contained in the report. No AP mines were reported to have been used in late 2006 during the fighting between Puntland armed forces and the ICU militia.

Nonetheless, the allegations were considered both serious and detailed enough to necessitate field verification and, in July 2007, a Geneva Call team visited Puntland to this effect. The mission was supposed to take place earlier but was delayed owing to security concerns and the lack of availability of specialists in stockpile destruction. Indeed, Geneva Call originally intended to take advantage of the visit to both address the allegations and assist the authorities in destroying forty-eight stockpiled AP mines that had been previously declared.¹⁴⁶ However, no partner organizations had technical experts available at that time and, in the end, the mission involved solely Geneva Call staff, including an ammunition and small arms specialist, as well as members of the Puntland Mine Action Centre (PMAC). During meetings with Geneva Call in Garowe, M. Jama Hersi Farah, Minister of State for Security, reiterated Puntland's respect of the *Deed of Commitment* obligations and the need for technical assistance in stockpile destruction. Geneva Call also discussed the allegations with Colonel Abdisamad Ali Shire, General Commander of Puntland's armed forces, who denied having acquired new AP mines and, in an unprecedented move, allowed the inspection of weapons stockpiles in several military camps cited in the Monitoring Group's report. In Galkayo, Geneva Call found twelve anti-vehicle mines and large amounts of unsafe abandoned explosive ordnance – including BM-21 rockets and white-phosphorus bombs – requiring urgent disposal. No banned devices were identified. In Garowe, Geneva Call was able to verify that the forty-eight PMP-71 AP mines that the Puntland authorities had disclosed to Geneva Call in 2004 remained in storage.¹⁴⁷ It was therefore concluded that there was no evidence to indicate that a violation of the *Deed of Commitment* had occurred.¹⁴⁸

Following on from these enquiries, Geneva Call facilitated the deployment of the Mines Advisory Group (MAG), a British technical organization, to ensure the destruction of the stockpiled AP mines, as well as the unsafe ammunition that had been identified during the inspection. In co-operation with PMAC, MAG destroyed the forty-eight PMP-71 mines

145 ICBL, *Landmine Monitor Report 2008: Toward a Mine-free World*, Mine Action Canada, Ottawa, 2008, p. 1005.

146 See Geneva Call, *Landmines in Somalia: Report of the Geneva Call follow up mission to Puntland, Hiran and Bakol regions, 15–27 September 2004*, Geneva Call, Geneva, 2005, pp. 9 and 13.

147 *Ibid.*

148 Geneva Call press release, 'Somalia: Puntland authorities grant unprecedented access to their stockpiles, request international assistance for humanitarian mine action', 30 September 2007, available at: <http://www.genevacall.org/news/press-releases/f-press-releases/2001-2010/2007-30sep-gc.htm> (last visited 12 March 2012).

in July 2008.¹⁴⁹ This was the first officially recorded destruction of AP mine stocks in Puntland. Subsequently, MAG and PMAC destroyed an additional 460 AP mines,¹⁵⁰ as well as several tonnes of abandoned ordnance held in Galkayo military camps,¹⁵¹ thus reducing the likelihood of accidental detonation.

In conclusion, while it is very challenging to verify allegations of AP mines acquisition and to know whether all stockpiles have been declared, Geneva Call was able to witness the co-operative attitude of the Puntland authorities, who demonstrated transparency and good faith and proceeded with the destruction of their AP mines stocks. Conversely, according to the ICBL,¹⁵² the allegations of transfer from Ethiopia were seemingly not pursued vigorously by states parties, and no fact-finding mission was conducted into this country under Article 8 of the Ottawa Convention.



Figure 2. Puntland forces hand over stockpiled AP mines to MAG for destruction, in compliance with the Geneva Call *Deed of Commitment Banning AP Mines*, Garowe, Somalia, July 2008. Photo: MAG Somalia.

149 Geneva Call/MAG/PMAC press release, 'Somalia: Puntland authorities destroy anti-personnel mines', 24 July 2008, available at: <http://www.genevacall.org/news/press-releases/f-press-releases/2001-2010/2008-24jul-gc-mag.pdf> (last visited 12 March 2012).

150 MAG, 'Somalia: munitions stockpile clearance in Puntland', 1 May 2009, available at: <http://www.maginternational.org/MAG/en/news/somalia-munitions-stockpile-clearance-in-puntland/> (last visited 12 March 2012); MAG, 'Somalia: largest haul of mines destroyed', 17 February 2011, available at: <http://www.maginternational.org/news/somalia-largest-haul-of-mines-destroyed/> (last visited 12 March 2012).

151 MAG, 'Somalia: twelve tonnes of unsafe munitions cleared from army compound', 9 December 2009, available at: <http://www.maginternational.org/MAG/en/news/somalia-twelve-tonnes-of-unsafe-munitions-cleared-from-army-compound-/> (last visited 12 March 2012).

152 ICBL, above note 144, p. 385.



Figure 3. Meeting with members of the Moro Islamic Liberation Front during Geneva Call verification mission, Mindanao, Philippines, November 2009. Photo: Geneva Call.

Case study 2: Geneva Call verification missions in Mindanao, Philippines¹⁵³

The MILF in the southern Philippines was one of the initial signatories to the *Deed of Commitment Banning AP Mines*. Allegations that it had used AP mines in the immediate period after its signing had been the subject of a first fact-finding mission in 2002 that had not been fully realized. The Government of the Republic of the Philippines (GPH), citing security concerns, did not give the necessary clearances to the international members of the mission, which included the technical experts, to visit relevant field locations. However, the 2002 verification team was able to meet relevant actors, including MILF representatives. The MILF acknowledged that ‘string-pull’-activated improvised explosive devices (IEDs) had been utilised by its forces, but believed that the use of such devices was consistent with its obligations under the *Deed of Commitment*. In this respect, the mission considered that command-detonation required an electronic (as opposed to a manual) firing mechanism. In certain instances, ‘string-pull’ devices had the potential to become victim-activated and therefore were prohibited under the *Deed of Commitment*. After clarification with its leadership, the MILF agreed to desist from using such devices in future. The full documentation and findings of this mission were later published by Geneva Call.¹⁵⁴

153 This section was written by Chris Rush, Senior Programme Officer with Geneva Call.

154 See Geneva Call, *Seeking Rebel Accountability: Report of the Geneva Call Mission to the Moro Islamic Liberation Front in Central Mindanao, Philippines (3–8 April 2002)*, Geneva Call, Quezon City, 2002.

In the period from 2003 until mid-2008, there were a few isolated allegations of AP mine use levelled against the MILF, which denied such use.¹⁵⁵ An incident scrutinized by Geneva Call in May 2008 involved the use of a device not banned under the *Deed of Commitment*.¹⁵⁶ However, from August to October 2008 there were a number of reports in the Philippine media that MILF forces were using landmines, including AP devices, in their conflict with the GPH. Most of the allegations emanated from government sources, specifically from within the armed forces and the police.¹⁵⁷ The reports varied from vague and passing references to specific and detailed accounts. The alleged incidents coincided with a marked escalation in the conflict, in the wake of the aborted signing of a Memorandum of Agreement between the GPH and the MILF that would have represented a significant step forward in the peace process.

Through desk enquiries and a routine field mission in October 2008, Geneva Call sought – and received – details of the allegations from the government. It compiled and shared these with the MILF leadership, who provided a response to each alleged incident. The responses ranged from denials of involvement in specific incidents to acknowledgement of involvement but with the assertion that the use of the weapons was not prohibited under the *Deed of Commitment*. Geneva Call also sought information from other actors who ordinarily had a ground presence in the relevant areas. However, it was readily apparent that the areas where the alleged incidents took place had been, and largely still were, highly insecure. As the population had mostly fled to safer areas, non-military actors had not been in the vicinity of the alleged incidents either when they occurred or afterwards and were therefore not able to provide significant information.

With the government asserting mine use and the MILF denying, and limited input from third-party actors, it was not possible to reach a definitive conclusion as to whether there had been any violations of the *Deed of Commitment*. However, these enquiries did lead Geneva Call to conclude that there was enough credibility to the allegations to seek to pursue them further. It was considered that the most effective way to do this was through conducting a verification mission approved and facilitated by both parties.

The MILF leadership, in line with its Article 3 obligations, quickly and publicly agreed to co-operate with the proposed mission. Geneva Call successfully advocated to the GPH that, being a state party to the Ottawa Convention, the approval and facilitation of the on-site inspection would serve towards meeting its obligations to ensure that the terms of that instrument were

155 ICBL, *Landmine Monitor Report 2004: Toward a Mine-free World*, Human Rights Watch, New York, 2004, p. 673; ICBL, above note 145, p. 587.

156 '2 MILF mujahideen killed, 11 troops wounded in Basilan clash', in *Mindanao Examiner*, 25 May 2008, available at: http://mindanaoexaminer.com/news.php?news_id=20080524235217 (last visited 12 March 2012).

157 See Geneva Call, *Fact Finding During Armed Conflict: Report of the 2009 Verification Mission to the Philippines to Investigate Allegations of Landmine Use by the Moro Islamic Liberation Front*, Geneva Call, Geneva, 2010, pp. 47–48.

respected within its territory.¹⁵⁸ The Terms of Reference for the mission were straightforward and consisted of a three-part test that may be paraphrased as follows:

- 1) Were AP mines utilized during the period in question?
- 2) If point 1 was answered in the affirmative, could their use be attributed to the MILF?
- 3) If both points 1 and 2 were answered in the affirmative, whether such violation(s) were, or should have been, known to those in the command structure of the MILF? Dialogue with the MILF leadership in respect of measures to redress non-compliance was prescribed in such an instance.

The verification team was assembled with the Terms of Reference very much in mind, and included a technical as well as a legal and fact-finding expert.¹⁵⁹ The mission took place in November 2009, over a year after the first allegations were made. The delay was caused by a combination of factors – pursuing initial inquiries, seeking permissions, and making the necessary arrangements. Most significantly, the ground situation was not considered by the GPH to be conducive for such a mission for much of the period in question. It was only after a suspension of military operations by the government in July 2009, which was immediately followed by a reciprocal measure by the MILF, that the final clearance was given for the mission to proceed. The fact-finding team, which, because of security considerations, was accompanied by representatives of the GPH and MILF ceasefire committees, travelled to relevant locations, interviewed witnesses, and inspected devices. It was able to conclude that there was AP mine use in two incidents that were the subject of its enquiries, and probable use in another. In terms of attribution, it was recognized that several armed actors were active in the areas where the incidents took place and there was not enough evidence to conclude definitively that the MILF was responsible for them, though the mission did conclude that in one of these incidents involvement of forces associated with the MILF was likely.

The mission shared its findings with the MILF. Although there had not been a finding of a violation of the obligations under the *Deed of Commitment*, it was considered that the leadership needed to ensure that its forces were better aware of the scope of the AP mine ban. The key recommendation in this respect was that the MILF should consider incorporating the ban into its internal code of conduct. Furthermore, it was recommended that the MILF should consider disseminating information on the AP mine ban within its ranks. The MILF agreed to both of these recommendations and is currently working with Geneva Call to ensure that they are implemented.

158 The approval letter is reproduced in *ibid.*, p. 51.

159 The legal and fact-finding expert was Eric David, Professor of International Law at the Free University of Brussels and a member of the IHFFC.

Strengths and limitations of the *Deed of Commitment's* MRV mechanisms

Taken together, the three MRV mechanisms developed under Article 3 of the *Deed of Commitment Banning AP Mines* have proven to be quite effective for monitoring compliance. They have enabled Geneva Call to clarify and resolve most cases of allegations made against signatories. According to Professor Andrew Clapham, who made this judgement as early as 2006, ‘the prospect of continual verification and monitoring through field missions means that, in terms of detecting non-compliance, the [*Deed of Commitment*] regime has the potential to become even more effective than the formal [Ottawa] treaty regime’.¹⁶⁰ Yet, individually, these mechanisms have both strengths and shortcomings. The following section outlines the main advantages and disadvantages inherent in each mechanism, based on lessons learned by Geneva Call over the last decade.

Strengths

Self-reporting has the advantage of ensuring that signatory ANSAs take responsibility for monitoring their own compliance. It increases their sense of ownership of the norms contained in the *Deed of Commitment* and allows them to demonstrate their implementation efforts. The information reported also provides valuable baseline data for Geneva Call to gauge progress, and to identify challenges as well as needs for support.

However, as described above, Geneva Call does not only rely on self-reporting to monitor compliance. Information reported by signatories is verified through third-party sources and first-hand observation. Furthermore, the *Deed of Commitment* creates absolute and unconditional (except for security reasons) obligations for signatory ANSAs to allow Geneva Call to monitor their actions, whereas under the Ottawa Convention there is a high threshold that has to be met before authorizing a fact-finding mission (a majority vote of states parties). Such a binding and permanent external monitoring system is crucial to assess compliance, to detect potential violations, and to verify allegations. Gaining trust is also important. It is unlikely that another organization, without this supervisory role accorded by signatories to Geneva Call, would be granted the same level of access. Many third-party actors have also shared sensitive information in confidence.

Additionally, Geneva Call has the advantage over humanitarian organizations with a broader mandate in that it focuses its engagement efforts solely on *specific* humanitarian norms. The obligations under scrutiny are narrower. Moreover, only ANSA commitments are monitored, which is a clear advantage in terms of scope.

Overall, while not matching the ‘intrusive’ verification measures typical of disarmament treaties, the *Deed of Commitment* MRV machinery is strong compared

160 A. Clapham, above note 6, p. 299. In the interest of transparency, it should be pointed out that Professor Clapham was a member of Geneva Call’s Board from 2004 to 2010.

to other systems that address ANSAs: a) it involves self- as well as external monitoring by Geneva Call and partner organizations; b) it has mandatory powers; and c) it is transparent. Furthermore, it provides for consequences – though not particularly heavy ones – in case of confirmed violations (publicity of non-compliance).¹⁶¹ The examples of the verification missions in the Philippines and in Puntland demonstrate how the three MRV mechanisms come into play when addressing allegations: a prompt response and full collaboration from the concerned signatory ANSA in the fact-finding process, consultation with third-party monitors about the credibility of the allegations, and more importantly, follow-up measures and implementation of the verification missions' recommendations. The interplay between self-reporting, third-party monitoring, and field missions mitigates any weakness inherent in each individual mechanism.

Challenges and limitations

In addition to its strengths, the *Deed of Commitment's* MRV system has been hampered by a range of external factors and has its own limitations. Travel restrictions imposed by states are undoubtedly the main challenge that Geneva Call has faced with regards to MRV. Several concerned states have, for purported political or security reasons, refused permission for field missions to proceed on their territory. This has had severe negative consequences on the verification process. In particular circumstances, such as in relation to 'failed states', securing governmental co-operation is less imperative, but these are exceptions and often states' political support is key to efforts to verify compliance. In this respect, Geneva Call's experience in the Philippines clearly indicates that concerned states may indeed co-operate in monitoring ANSA compliance.

Insecurity has also been an impediment for Geneva Call MRV efforts. ANSAs usually operate in a situation of armed conflict, and fighting has sometimes prohibited, or restricted, Geneva Call's access. Somalia is a case in point. Owing to the war conditions prevailing in the south of the country, Geneva Call has been unable on several occasions to travel to areas controlled by signatories.¹⁶²

Aside from lack of access, another important limitation concerns the level of resources and capacity available at Geneva Call. The organization makes a considerable effort to monitor implementation of the *Deed of Commitment* but has often not had sufficient resources to ensure systematic, let alone prompt, follow-up in each context. This is compounded by the fact that arranging field missions to ANSA-controlled areas, which are often remote, is time-consuming. In addition to

161 This does not preclude other forms of consequences. During Meetings of Signatories to the *Deed of Commitment*, some ANSA representatives recommended further measures to deal with proven cases of non-compliance, such as a public condemnation by signatories or exclusion from the *Deed of Commitment*. Other delegations suggested that the utility of sanctions varies widely and that they must be tailored to each specific situation in order to be effective. While recognizing the importance of exercising pressure on signatories that do not live up to their commitment, they stressed the need to help non-compliers address the challenges they face on the ground and that contribute to non-compliance. See Geneva Call, PSIO, and Armed Groups Project, above note 123, p. 22.

162 See Geneva Call, *Engaging Armed Non-state Actors*, above note 98, pp. 22 and 30.

logistical, security, and political challenges, funding shortages have also limited Geneva Call ground presence and contributed to delays in the deployment of a number of missions, including verification missions. A related aspect is that Geneva Call itself has limited expertise in fact-finding and needs to continue to improve its in-house methodological procedures. It has already worked with the Geneva Academy of International Humanitarian Law and Human Rights on a study focusing on standards of proof used in fact-finding processes.¹⁶³

Self-reporting and third-party monitoring mechanisms also present weaknesses. Although nearly all signatories have reported to Geneva Call on their implementation of the *Deed of Commitment*, the quality of information provided has been uneven. Likewise, reports from some third-party actors, in particular local media, have been fraught with bias or have lacked key elements – for example, on the nature of the device exploded or its mode of activation – making an objective judgement on compliance difficult. Other third-party actors have been reluctant to share or corroborate information for safety or institutional reasons.

Finally, some limitations are inherent to the peculiarities of the issue to be monitored. Because of the small size and portability of AP mines, verifying allegations of transfer or acquisition is particularly challenging.¹⁶⁴ Verification of non-production is equally problematic, as many ANSAs have easy access to explosives and the knowledge to manufacture homemade devices. The use of AP mines is perhaps more verifiable, since it is unlikely to go completely unnoticed. As Mary Wareham from Landmine Monitor has noted, ‘increased presence of NGOs and media in conflict zones together with improvements in information technology make it much harder for governments and even rebel groups to hide new anti-personnel mine use’.¹⁶⁵ The difficulty relates more to determining whether the device exploded is prohibited under the *Deed of Commitment* and to attributing responsibility, especially when several armed actors, including splinter factions, operate in the same territory. The experience of Geneva Call’s verification mission in the Philippines in 2009 is instructive in this regard. In a majority of incidents, the mission was able to make findings as to the nature of devices under scrutiny. However, on the issue of attribution of responsibility for the utilization, it failed to reach definitive conclusions. It is likely that the length of time that elapsed between the incidents and the investigation was a contributing factor. In the same manner, monitoring ‘positive’ obligations of signatories, such as stockpile destruction, is a hard task because the *Deed of Commitment*, contrary to the Ottawa Convention,¹⁶⁶ does not set deadlines for completion of these requirements.

As an overall lesson, Geneva Call will have to take into account such factors in implementing its new *Deeds of Commitment*, for example the circumstances

163 The forthcoming study was previewed at a Human Rights Day Conference entitled The UN Human Rights Council: Commissions of Inquiry, held in Geneva in December 2011. See <http://www.unige.ch/international/collOI/Events/UNOprogrammeDec11.pdf> (last visited 12 March 2012).

164 T. Findlay, above note 130, pp. 51–54.

165 M. Wareham, above note 127, p. 55.

166 Under Art. 4 of the Ottawa Convention, states parties must complete the destruction of their AP mine stocks no later than four years after becoming party to the Convention.

particular to children and armed conflict. This includes the volition of children, as well as the effect of other MRV mechanisms where they exist, such as the MRM.

Conclusion

Effective MRV mechanisms are a key component for ensuring compliance with humanitarian norms. However, multilateral humanitarian, human rights, and weapons treaties tend to result in less robust MRV mechanisms than other non-traditional means of oversight such as humanitarian agreements, the UNSC thematic processes, UN ad hoc commissions, and the Geneva Call *Deeds of Commitment*. Moreover, even when multilateral treaties do contain MRV components, they rarely address the conduct of ANSAs, or, if they do, these are not applied in reality.

It is therefore not surprising that alternative mechanisms have been developed in order to better monitor and verify the conduct of both state and non-state parties to conflict. Nevertheless, while these mechanisms are much more likely to involve mandatory provisions, most of them are not universally applicable, because they are either limited to a particular conflict or type of actor, or, in the case of the MRM, only formally address 'listed' parties. The *Deed of Commitment* is also limited, but the fact that it only contemplates the conduct of ANSAs does not suggest that non-state parties to conflict require greater oversight than state parties; rather, it responds to the gap in the application of other existing mechanisms. The *Deed of Commitment* is similar to treaties and agreements in that consent to be bound is a prerequisite to its application. Unlike the MRM and UN ad hoc mechanisms, it cannot be imposed upon an ANSA. However, once an ANSA becomes a signatory to the *Deed of Commitment*, its MRV mechanisms remain applicable at all times, without the need for further consent. Furthermore, unlike all but one of the international mechanisms assessed in this article (the JEM-UN Agreement), its provisions require both self- and external monitoring.

It should further be highlighted that MRV processes can do more than detect violations. They can also identify obstacles to implementation, and improve compliance. This is true of the self-reporting mechanisms of many human rights treaties, as well as some of the non-traditional mechanisms. For example, Geneva Call field verification missions have not only enabled the addressing of allegations of non-compliance with the *Deed of Commitment Banning AP Mines*, but have also resulted in further implementation measures by signatories, such as the destruction of stockpiled AP mines by the Puntland authorities and improvement of norm dissemination by the MILF.

In any situation, the co-operation of states is crucial to the process in order to secure access of external monitors, as was positively demonstrated by the Philippine government during the Geneva Call verification mission to Mindanao in 2009. The mission's legal and fact-finding expert, Professor Eric David, noted:

As far as I am aware, this is the first time in the history of international relations that such a fact-finding mission has been carried out with the agreement of, and

facilitation by, both parties to an armed conflict, *in casu*, a State and a non-State actor.¹⁶⁷

Such co-operation between the Philippine government and the MILF was proven to be possible, even during armed conflict.

Experience with the *Deed of Commitment Banning AP Mines* demonstrates not only that ANSAs can make humanitarian commitments but that they can indeed co-operate in the scrutiny of their own compliance. Signatories have reported on their implementation, and they have allowed for, and facilitated, monitoring and verification missions. They have even suggested improvements in the MRV system itself. This sense of ownership not only of norms but also of processes to ensure respect of norms should be encouraged.

Finally, Geneva Call's example shows that ANSAs can accept a formal inspection role for NGOs, including external monitoring.¹⁶⁸ Geneva Call has been able to conduct three field verification missions so far, whereas no similar fact-finding undertaking has been tested under the Ottawa Convention, despite credible allegations of non-compliance by several states parties. The case of Puntland and Ethiopia is telling in this regard.

In closing, this article has sought to argue that alternative MRV mechanisms, such as the *Deed of Commitment*, have proven capable of ensuring better ANSA compliance with at least some humanitarian norms. If political sensitivities are too great a barrier for traditional multilateral treaty mechanisms to become more effective, then other options should be explored. Suggestions have been made for ways to improve monitoring of ANSAs: for example, to create an independent expert body mandated to comment on ANSA self-compliance reports, or even to establish an auditing mechanism implemented by ANSAs themselves, similar to that used to monitor respect of human rights by corporate entities.¹⁶⁹ These suggestions also carry their own political sensitivities but, for the time being at least, embracing innovative non-traditional mechanisms may be the only way to prevent the rule of law from becoming just another casualty of war.

167 Geneva Call press release, 'Verification mission to investigate allegations of landmine use by the Moro Islamic Liberation Front in the Philippines conducted', 30 November 2009, available online at: <http://www.genevacall.org/news/press-releases/f-press-releases/2001-2010/2009-30nov-gc.htm> (last visited 12 March 2012).

168 For a discussion of the monitoring role of NGOs, see Andreas Persbo, 'The role of non-governmental organizations in the verification of international agreements', in *Disarmament Forum*, UNIDIR, Geneva, No. 3, September 2010, pp. 65–73; Olivier Meier and Clare Tenner, 'Non-governmental monitoring of international agreements', in *Verification Yearbook 2001*, VERTIC, London, 2001, pp. 207–227.

169 Marco Sassòli, 'Taking armed groups seriously: ways to improve their compliance with international humanitarian law', in *International Humanitarian Legal Studies*, No. 1, 2010, pp. 36–42.