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Engaging armed non-state actors on humanitarian norms: reflections on Geneva Call's experience

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Armed non-state actors (ANSAs) are active in most armed conflicts today and are responsible for many violations of international humanitarian law (IHL). Increasingly, humanitarian and human rights organisations have had to grapple with how to influence ANSA behaviour and enhance their compliance with international standards. This article reflects on some of the lessons emerging from the work of the Swiss-based non-governmental organisation (NGO) Geneva Call since 2000.

The context

According to the International Committee of the Red Cross (ICRC), there were at least 48 internal armed conflicts around the world during 2011.[1] Civilians are the primary victims of these conflicts, and are exposed to abuses of all kinds, including deliberate attacks, hostage-taking, torture, rape and other forms of sexual violence, use as human shields, forced displacement, destruction of property and looting. Many of these abuses – though by no means all – are committed by ANSAs. However, the nature of international law makes it difficult to address the behaviour of these groups. Existing IHL treaties and compliance mechanisms are predominantly focused on states, and, while they have obligations under IHL, ANSAs cannot become parties to relevant international treaties and are generally precluded from participating in normmaking processes. Thus, ANSAs may not feel bound to respect rules that they have neither contributed to creating nor formally declared their willingness to adhere to.

Geneva Call's approach

Geneva Call aims to promote and enhance ANSA compliance with international humanitarian norms.[2] It was established in 2000 by members of the International

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Campaign to Ban Landmines (ICBL) in response to the realisation that an inter-state treaty was not sufficient to eliminate anti-personnel mines, and that both states and ANSAs had to be persuaded to renounce these weapons. While initially focusing on landmines, Geneva Call has recently expanded its work on international norms pertaining to the protection of children – notably the recruitment and use of children in hostilities – and to the prohibition on sexual violence in armed conflict.

In its efforts to promote ownership of international standards, Geneva Call has adopted an inclusive approach, whereby ANSAs have the opportunity – through signing a formal instrument called a Deed of Commitment – to express their adherence to specific humanitarian norms and to be held accountable for their pledge. To date, the organisation has developed three such documents: the Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action in 2000, the Deed of Commitment for the Protection of Children from the Effects of Armed Conflict in 2010 and the Deed of Commitment for the Prohibition of Sexual Violence in Situations of Armed Conflict and towards the Elimination of Gender Discrimination in 2012.[3] The three Deeds of Commitment reflect international standards. They are signed by the ANSA leadership and countersigned by Geneva Call and the Government of the Republic and Canton of Geneva, which serves as the custodian of the signed documents. For Geneva Call, engaging ANSAs is a long-term effort: it involves constructive and sustained dialogue to persuade them to sign the Deeds of Commitment or undertake similar commitments, and continues after signature through implementation support and monitoring to ensure that commitments translate into actual practice. In recent years, Geneva Call has increasingly provided ANSAs with customised training on broad IHL rules, as well as advice on how to incorporate these rules into their codes of conduct and other internal regulations.

Lessons learned

A number of observations and lessons can be drawn from Geneva Call's experience over the past 13 years. First and most importantly, the experience of Geneva Call – and of other organisations – demonstrates that constructive engagement with ANSAs can be effective and can yield tangible benefits for the protection of civilians. With regard to the ban on anti-personnel mines, for example, more than 50 ANSAs have agreed to renounce these weapons, either by signing the Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action or through other measures. As with states, a number of ANSAs are still reluctant to join the ban but, according to Landmine Monitor,[4] global use of anti-personnel mines by ANSAs has decreased in the past decade. In 2000, there were 18 countries where ANSAs were confirmed as using this weapon; today there are only six. The impact of Geneva Call's work on the protection of women and children in armed conflict remains to be seen, but seven ANSAs have signed the Deed of Commitment for the Protection of Children from the Effects of Armed Conflict and five have signed the Deed of Commitment for the Prohibition of Sexual Violence in Situations of Armed Conflict and towards the Elimination of Gender Discrimination.

In the early years of Geneva Call's existence, many had doubts about the value of commitments made by ANSAs, considering them propaganda exercises. The reality is more nuanced. Without seeking to minimise the challenges that compliance presents, Geneva Call's experience shows that ANSA commitments should not be automatically dismissed and merit consideration in their own right.[5] Since its founding 13 years ago, Geneva Call has encountered few allegations of non-compliance. With one exception (the Moro Islamic Liberation Front (MILF) in the southern Philippines), no conclusive evidence of violations of the Deeds of Commitment has been found to date. Moreover, most signatory ANSAs have taken measures to enforce their obligations through orders, training and sanctions against group members for non-compliance, for instance. Most ANSAs have conducted or facilitated assistance activities (mine action, child protection) in areas under their control. For example, with technical support from specialised organisations, ANSAs have destroyed over 20,000 stockpiled anti-personnel mines, along with thousands of improvised explosive devices and abandoned explosive ordnance.

Another lesson that emerges from Geneva Call's experience is that, contrary to a commonly held view, ANSAs are willing to accept external oversight and to cooperate in the scrutiny of their compliance. Nearly all signatories to the Deeds of Commitment have abided by their monitoring obligation, providing information and reports to Geneva Call on their implementation and allowing field followup missions. No signatory has ever refused to receive a Geneva Call delegation in areas under its control, even after allegations of non-compliance. In one case – the Kurdistan Workers' Party (PKK) – an on-site visit could not be undertaken owing to the concerned state's opposition, but in three other instances Geneva Call was able to conduct verification missions with the active cooperation of the suspected ANSAs, namely the MILF in 2002 and 2009 and the Puntland authorities in 2007.[6] By contrast, despite serious allegations of violations by several states party to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (the Ottawa

Convention), no fact-finding missions have taken place pursuant to Article 8 of the Convention.

In what came as a surprise to many observers, Geneva Call's experience also shows that opposing states may cooperate in the humanitarian engagement of ANSAs. To be sure, some states facing internal armed insurgency have opposed ANSA engagement and have denied, or restricted, Geneva Call's – and other organisations' – access to areas where these insurgent groups operate. Some states have also adopted measures that criminalise dialogue with groups designated as 'terrorist organisations', or have introduced no-engagement conditions in their funding agreements. These restrictions pose serious challenges to engagement work. However, again, the reality is more nuanced than a simple assertion that all states object to dialogue with ANSAs. Many have supported engagement efforts and have allowed Geneva Call to engage with ANSAs on their territory.[7] At the initiative of Geneva Call, a few – such as the governments of the Philippines, Senegal and Sudan – have even agreed to meet opposing ANSAs to discuss humanitarian issues. Colombia has allowed Geneva Call to meet imprisoned leaders of ANSAs and temporarily released one of them to allow him to attend a forum organised by Geneva Call. The Philippines facilitated a verification mission conducted by Geneva Call on its territory to investigate alleged breaches of the Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action by a signatory group. Other states have prohibited direct interaction on the part of Geneva Call, but have allowed its local partners to meet ANSAs. Still others have funded Geneva Call to engage with ANSAs proscribed on their terrorist lists.

Lastly, Geneva Call's experience shows that ANSA commitments may positively influence the policies both of states and of other ANSAs. States may be encouraged to join a treaty because the opposing ANSA has made a similar commitment. A case in point is Sudan, where the signing of the Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action by the Sudan People's Liberation Movement/Army (SPLM/A) in 2001 was instrumental in Khartoum's decision to ratify the Ottawa Convention two years later. According to the former Director of the UN Mine Action Service: 'it is clear from conversation with senior officials of the Government that they would not have felt able to ratify the Treaty if the SPLM/ A had not already made a formal commitment to observe its provisions in the territory under its control'.[8] ANSAs may also influence one another. A number of signatories have introduced Geneva Call to other ANSAs and promoted their adherence to the Deeds of Commitment. Peer influence may also come into play if the signatory ANSA becomes part of the national government or succeeds in creating a new state. In such instances, the policy adopted while an ANSA may be continued when in government. Concrete examples exist in Iraq and South Sudan. Less than six months after declaring independence, the newly created Republic of South Sudan joined the Ottawa Convention through the rarely used process of succession, becoming the 158th State Party. The SPLM/A, which is today the ruling party in South Sudan, had signed the Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action ten years earlier. In Iraq, two Kurdish signatories to the Deed of Commitment which became part of the national government after the fall of Saddam Hussein's regime in 2003 successfully advocated for ratification of the Ottawa Convention.

Conclusion

Although it is too early to draw definitive conclusions on the basis of Geneva Call's experience to date, the lessons described above are instructive. They demonstrate – quite counter-intuitively for many people – that ANSAs can play a positive role in contributing to civilian protection. Of course, not all ANSAs agree to abide by international standards or act in good faith towards their commitments. Yet, to view ANSAs as perpetrators only and ignore their potential protective role would encourage repressive approaches, miss opportunities for constructive engagement and ultimately fuel more IHL violations. As the UN Secretary-General has put it: 'While engagement with non-State armed groups will not always result in improved protection, the absence of systematic engagement will almost certainly mean more, not fewer, civilian casualties in current conflicts'.[9]

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[1] See Vincent Bernard, 'Editorial', *International Review of the Red Cross*, no. 882, June 2011, p. 261.

[2] Geneva Call uses the term 'humanitarian norms' to refer to both IHL and those norms of international human rights law which should govern the conduct of ANSAs in situations of armed conflict or armed violence, regardless of their binding nature.

[3] The text of the three Deeds of Commitment is available on Geneva Call's website: <http://www.genevacall.org>.

[4] See ICBL, *Landmine Monitor 2012*, pp. 12–14.

[5] Geneva Call has recently launched an on-line directory of ANSA commitments, encompassing about 400 unilateral declarations, codes of conduct, agreements and other documents related to IHL and human rights issues. The database is available at www.theirwords.org.

[6] For details, see Pascal Bongard and Jonathan Somer, 'Monitoring Armed Non-State Actor Compliance with Humanitarian Norms: A Look at International Mechanisms and the Geneva Call Deed of Commitment', *International Review of the Red Cross*, No. 883, September 2011.

[7] The United Nations General Assembly and regional intergovernmental organisations, such as the European Union and the African Union, have also expressed support for ANSA humanitarian engagement.

[8] Quoted in Geneva Call, *Armed Non-State Actors and Landmines. Volume I: A Global Report Profiling NSAs and Their Use, Acquisition, Production, Transfer and Stockpiling of Landmines* (Geneva: Geneva Call, 2005), p.1.

[9] UN Security Council, *Report of the Secretary General on the Protection of Civilians in Armed Conflict*, S/2009/277, 29 May 2009, p. 9.

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