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Incentivizing Armed Non-State Actors to Comply with the Law: Protecting Children in Times of Armed Conflict

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Incentivizing Armed Non-State Actors to Comply with the Law: Protecting Children in Times of Armed Conflict

ABSTRACT

Although the use of child soldiers is an international problem, it is difficult to reconcile international law with the compliance of armed non-state actors, or ANSAs. International law usually binds states and seldom reaches ANSAs. Geneva Call, a non-profit group based out of Switzerland, has written Deeds of Commitment as possible compliance mechanisms for some international issues, including the use of children in armed conflict. Under current international law, Deeds of Commitment concerning child soldiers, such as the one created by Geneva Call, carry no binding nature and represent no enforceable norm against organized armed groups. However, they still hold significant potential as a method by which ANSAs may commit to abide by international norms in a way that is analogous to a unilateral statement. The international community should find ways to encourage compliance with these Deeds by threatening measures such as sanctions, delegitimization, and political isolation, or by offering economic incentives, training, law-making abilities, and a political position to help rebuild a state. As Deeds of Commitment have proven successful so far, it appears that attracting more ANSA signatories could broaden their positive international effect.

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I. INTRODUCTION

“[A] child is someone who is completely dependent on his parents to be fed, to be cared for, to be dressed and housed.”¹ Children play outside, fight with their siblings, and tease their parents. “Children are . . . very curious creatures.”² They follow what the adults do. But they are young, they are innocent, and they are naïve. “They have no fear and do not realize they can be affected.”³ They mimic the ways the adults socialize. The adults leave to get together with people from different communities, and sometimes the children are invited to come along. The children think that perhaps it is a sort of game played with people from other places. But this game is different. Sometimes, the ones who come back have changed. And sometimes, not everyone comes back. “The...[children] can be very happy during [these games], but then afterwards will be very sad when they realize that they have lost friends or when they have to confront wounded comrades. The children become very perturbed and no longer react

1. GENEVA CALL, IN THEIR WORDS: PERSPECTIVES OF ARMED NON-STATE ACTORS ON THE PROTECTION OF CHILDREN FROM THE EFFECTS OF ARMED CONFLICT 13 (2010) [hereinafter GENEVA CALL].

2. *Id.*

3. *Id.*

like children. Their faces are often sad. They spend their time reliving the different events in their heads.”⁴ The new game is war.

The above quotations come from an official statement from the Armée populaire pour la restauration de la République et la démocratie (People’s Army for the Restoration of Democracy), or APRD—a rebel group in the Central African Republic. In the same statement, the APRD expressed that it was “disagreeably surprised” to learn that it was on the UN’s list of movements that use children in warfare.⁵ It believes that children are never recruited, and that if children do get involved, it is often without the knowledge of the APRD chiefs.⁶ “It is because the war was brought to us that the children suffered the consequences,” the statement reported.⁷ In the APRD’s eyes, it is not its fault that children were fighting in its wars.

In fact, children fight in many nations. International criminal offenses committed by children encompass “crimes against humanity, war crimes, and genocide,” and they do not happen “by a child acting in isolation but are offenses that occur in the course of armed conflicts.”⁸ When economies suffer, “street children appear—working as hawkers, beggars, and child prostitutes,” because they effectively have to make the decision to provide for themselves.⁹ In areas of armed conflict, many children choose to become soldiers in order to survive. In some cases, armed groups may entice children to become soldiers, and seeing no other option, the children may easily be taken in.¹⁰

Instances of child recruitment are not identical.¹¹ Although state forces have historically been known to employ children in their armies,¹²

4. *Id.*

5. *Id.* at 14.

6. *Id.* at 13–14.

7. *Id.* at 14.

8. Paola Konge, *International Crimes & Child Soldiers*, 16 SW. J. INT’L L. 41, 43 (2010).

9. Ranee Khooshie Lal Panjabi, *Sacrificial Lambs of Globalization: Child Labor in the Twenty-First Century*, 37 DENV. J. INT’L L. & POL’Y 421, 432 (2009).

10. See Jason Hart, *The Politics of “Child Soldiers,”* 13 BROWN J. WORLD AFF. 217, 218 (2007) (expressing concern “at the ways that the issue of child recruitment is currently being appropriated in pursuit of aims that may have little or nothing to do with the well-being of the young”).

11. *Id.*

12. UNICEF, *Children as Soldiers*, THE STATE OF THE WORLD’S CHILDREN 1996, <http://www.unicef.org/sowc96/2csoldrs.htm> (last visited Sep. 30, 2016).

this practice is virtually nonexistent among state actors. Instead, “the primary crux of the child soldier problem has shifted to the recruitment of children by nongovernmental armed groups, such as insurgents; rebels; revolutionary movements; guerrilla fighters; global terrorist networks; regional tribal, ethnic, and religious militants; and local defense organizations.”¹³ In other words, armed non-state actors (ANSAs) are those primarily to blame for using child soldiers.

Although the use of child soldiers is an international problem, the concept of requiring ANSAs to comply with international law is difficult. ANSAs who use child soldiers are not compliant with international law. However, international law usually binds only states and seldom reaches ANSAs, except to the extent that it is translated into domestic law.¹⁴ Therefore, international laws that would prevent states from using child soldiers and provide sanctions for non-compliance are less effective with respect to ANSAs. Nevertheless, there are some mechanisms in place to combat this practice.

Geneva Call, a non-profit group based out of Switzerland, has written Deeds of Commitment as possible compliance mechanisms for some of these international issues, including the use of children in armed conflict.¹⁵ Deeds of Commitment are unilateral agreements that ANSAs can sign to pledge their compliance with international norms. Under current international law, Deeds of Commitment concerning child soldiers, such as the one created by Geneva Call,¹⁶ are non-binding and represent no enforceable norm against organized armed groups, particularly armed non-state actors. Geneva Call itself notes that “[t]here is no denying the challenges”¹⁷ of the situation.¹⁸ However, Geneva Call’s Deeds of Commitment give ANSAs the opportunity to unilaterally agree to humanitarian provisions.¹⁹ Further, the rising number of signatories indicates a willingness on the

13. David M. Rosen, *The Dilemma of Child Soldiers: How should international law treat children engaged in armed conflicts?*, 10 INSIGHTS ON L. & SOC’Y 6, 7 (2010).

14. See, e.g., *International Laws and Child Rights*, CHILD SOLDIERS INT’L, <https://www.child-soldiers.org/international-laws-and-child-rights> (last visited Sep. 30, 2016).

15. GENEVA CALL, *Deed of Commitment*, <http://genevacall.org/how-we-work/deed-of-commitment/> (last visited Sep. 30, 2016).

16. This Deed of Commitment regarding the use of child soldiers is called the “Deed of Commitment for the Protection of Children from the Effects of Armed Conflict.” *Id.*

17. GENEVA CALL, *supra* note 1, at 7.

18. *Id.*

19. GENEVA CALL, *Deed of Commitment*, *supra* note 15.

part of ANSAs to explore possible solutions.²⁰ Deeds of Commitment are useful as alternative mechanisms because they are voluntary.²¹ Even though they are non-binding, they have proven to be effective.²² It is possible to build upon and expand those successes by furthering the reach of these Deeds and by making them more effective and attractive to ANSA groups.

The international community should find ways to encourage compliance with Deeds of Commitment to protect children from the effects of armed conflict. To accomplish this objective, the international community could incentivize the signing of and compliance with Deeds of Commitment by threatening measures such as sanctions, delegitimization, and political isolation, or by offering economic incentives, training, law-making abilities, and a seat at the table in efforts to rebuild and govern war-torn states.

This Article will first explicate the problem concerning child soldiers. Part II introduces child soldiers, who are more effective as fighters than might be anticipated and often voluntarily involved in armed conflict. Next, it will address the current international law on child soldiers. Part III will explain that ANSAs are the primary users of child soldiers, and that they are not traditionally subject to international law. Part IV introduces non-governmental organizations, or NGOs, and their place with regard to those international laws. This Article will highlight Geneva Call as an NGO, and will place specific emphasis on its unique Deeds of Commitment, which will be explained in Part V, and how ANSAs can voluntarily commit to and sign these Deeds. Part VI will discuss engagement and compliance. As Geneva Call's Deeds have proven successful so far, it appears that the positive international effect of the Deed of Commitment for the Protection of Children from the Effects of Armed Conflict in particular could be broadened by attracting more ANSA signatories through enforcement and incentives, or rather, sticks and carrots. Part VII concludes.

20. See GENEVA CALL, *Who We Are, FAQs*, <http://genevacall.org/who-we-are/faqs/#faq> (last visited Sep. 30, 2016) (indicating that the expansion of Geneva Call's thematic areas to include the protection of children in armed conflict "has been encouraged by ANSAs themselves").

21. *Id.*

22. See, e.g., *id.*

II. BACKGROUND

The increase in and magnitude of the use of children in armed conflict are regarded as some of the “[m]ost horrifying of . . . human rights violations.”²³ Children have been utilized by state and non-state groups as soldiers, and “[d]espite . . . international laws, it has proven to be difficult to suppress the recruitment of children into armed groups.”²⁴ Although virtually all states no longer use child soldiers, hundreds of thousands of children are still participating in armed conflict through ANSAs.²⁵ Because international law is not binding on them, one of the biggest hurdles in overcoming this problem is effectively engaging and incentivizing ANSAs regarding their compliance with international norms.

A. Child Soldiering is a Problem

The use of child soldiers has historical roots. In fact, “historical studies show that the armies of the West were filled with ‘boy soldiers’ from at least the Middle Ages through World War I. Their ‘nobility’ and ‘sacrifice’ in battle were often publicly celebrated.”²⁶ Until the mid-1900s, “many national armies recruited children.”²⁷ Even though the practice among state actors is all but extinct²⁸ (with the exception of “Myanmar (Burma), which makes extensive use of child soldiers to meet recruitment goals”²⁹), child soldiers continue to be used by other groups.³⁰ There is evidence of “extensive participation” of child soldiers in the Democratic Republic of Congo, Sierra Leone, and Uganda,³¹ as well as in other “areas of turmoil” including Sudan and Afghanistan.³² In a 2008 *Global Report*, the Coalition to Stop the Use

23. Panjabi, *supra* note 9, at 448.

24. Rosen, *supra* note 13.

25. *Id.*

26. David M. Rosen, *Child Soldiers, International Humanitarian Law, and the Globalization of Childhood*, 109 AM. ANTHROPOLOGIST ASS’N 296, 297 (2007).

27. Rosen, *supra* note 13.

28. *Id.*

29. *Id.*

30. Noëlle Quéniwet, *The Liberal Discourse and the “New Wars” of/on Children*, 38 BROOK. J. INT’L L. 1053 (2013).

31. *Id.* at 1053.

32. Panjabi, *supra* note 9, at 432. Further, “[t]his crisis has in recent times prevailed in parts of Africa, Asia, Latin America, Europe, and the Middle East.” *Id.* at 448; *see, e.g., id.* at 449–50

of Child Soldiers concluded that “the military recruitment of children (under-18s) and their use in hostilities . . . still takes place in one form or another in at least 86 countries and territories worldwide.”³³

These countries and territories are currently in the midst of armed conflict, and are also likely dealing with government instability, particularly in Africa.³⁴ As a result of these conflicts, and due to the “combination of poverty, isolation, and upheaval,”³⁵ children have been used as “soldiers, spies, guards, human shields, human minesweepers, servants, decoys and sentries.”³⁶ In those positions, and due to their part in the armed conflict, children are “tortured, raped, mutilated, humiliated, and degraded on a scale that is almost incomprehensible,”³⁷ even culminating in some instances with armies forcing them to kill their own family members.³⁸

The concept of a child soldier is controversial and highly political, which makes it difficult to address with regard to international humanitarian norms.³⁹ Reports of the exact number of child soldiers vary from about 250,000⁴⁰ to 300,000,⁴¹ and fluctuate based on conflict across the world.⁴² One of the problems with trying to estimate the number of children used as soldiers is that although most statistics claim to be “derived from field-based research,” they are

(stating the idea that although it is not typically the practice any more, some nations still utilize children as soldiers, including Chad, Burma, and Sudan).

33. *Id.* at 448 (quoting Coalition to Stop the Use of Child Soldiers, *Child Soldiers: Global Report 2008*, 3 (2008), http://www.childsoldiersglobalreport.org/files/country_pdfs/FINAL_2008_Global_Report.pdf); *see also* https://www.hrw.org/legacy/pub/2008/children/Child_Soldiers_Global_Report_Summary.pdf; Panjabi, *supra* note 9, at 448 (stating that “children have been kidnapped and forced to become child soldiers, a clear and egregious violation of international law, and a practice that involves state and non-state actors, conventional armies, and terrorist groups”).

34. Panjabi, *supra* note 9, at 447.

35. *Id.* at 448.

36. *Id.* (quoting U.S. Dep’t of Labor: Bureau of Int’l Labor Affairs, *The Worst Forms of Child Labor*, in CHILD LABOR AND SWEATSHOPS 21 (Ann Manheimer ed., 2006)).

37. *Id.*

38. *Id.* at 449.

39. Rosen, *supra* note 26, at 297 (“[I]nternational law regarding the realm of child soldiers is “built on the humanitarian definition of *childhood*, [and thus] it inevitably clashes with many local understandings of the involvement of young people in war.”).

40. Rosen, *supra* note 13, at 7.

41. Hart, *supra* note 10, at 217.

42. Rosen, *supra* note 13, at 7.

not.⁴³ Ultimately, the figure is “not only unknown but unknowable.”⁴⁴ Regardless of the exact numbers, the scale of the problem is catastrophic and deserves the international community’s focused attention—it must find ways to intervene and prevent the continuing recruitment and use of child soldiers.

1. Children are unexpectedly effective soldiers, preserving a lamentable incentive to deploy them

It may initially seem that children would not make the most effective soldiers. They are smaller in stature and less mature, which would arguably make them less effective fighters than adults. However, the opposite actually proves true. Some view child soldiers as ideal members of an army.⁴⁵ They believe that “child soldiers become model soldiers. They are preferred because [they are] blessed with great endurance, the ability to survive on relatively little food and water, [and because] child soldiers accept orders with few questions.”⁴⁶ In addition, they are easier to manipulate and brainwash; their small stature and lack of maturity may make them easier to intimidate or force to fight.⁴⁷

2. Child Soldiering has negative effects on children

The effects on child soldiers are far deeper and longer-lasting than simply the time and physical effort it takes them to serve in armed conflicts. Many who are “trapped in this cycle of violence . . . suffer from a variety of psychological and physical problems; their health is

43. Hart, *supra* note 10, at 217.

44. *Id.* at 217 (quoting RACHEL BRETT & MARGARET MCCALLIN, CHILDREN: THE INVISIBLE SOLDIERS 27 (1996)). Part of the problem with determining a number of child soldiers is that different actors in the international community have their own definitions of what is or is not a child soldier. Many groups would not classify children in their non-state armed community as a soldier. In addition, if actors or groups are familiar with the international community’s disapproval of child soldiery, they may be reluctant to report or reveal their use of child soldiers.

45. Panjabi, *supra* note 9, at 449.

46. *Id.* (quoting Kingsley Banya & Juliet Elu, *The Dilemma of Child Soldiering in Sub-Saharan Africa*, in ‘SUFFER THE LITTLE CHILDREN’: NATIONAL AND INTERNATIONAL DIMENSIONS OF CHILD POVERTY AND PUBLIC POLICY 177, 184 (Carol Yeakey et al. eds., 2006)).

47. *See* Konge, *supra* note 9, at 55 (stating that “young people have heightened vulnerability, less maturity and a reduced capacity for moral judgment”) (internal citations omitted).

severely compromised.”⁴⁸ Further, the “emotional scars on such young minds continue for years.”⁴⁹ Girls are often brought into armed conflict to serve as sex slaves, and some even become mothers while they are involved in the conflict.⁵⁰ In those situations, the effects of being a child involved in armed conflict are indisputably permanent.

3. “Voluntary” enlistment is not really voluntary

The situation is not simple, especially because “children have engaged with military groups for a host of reasons.”⁵¹ Whether or not they are fighting in the war, it might be that children simply join an ANSA group to have a place to live, or because joining adds some structure and consistency to their lives.⁵² If given the choice, many would even choose to stay with ANSAs rather than going back to their homes.⁵³ This may be because there are situations where the shortcomings of the international community “created scenarios where children were willing to return to non-state armed forces, as conditions there were more familiar and better responded to children’s needs.”⁵⁴

Geneva Call, through a voluntary survey sent to ANSAs, found that many of their responses “highlight that children often come to [A]NSAs looking for protection, care, excitement, or the chance for revenge.”⁵⁵ Some scholars even take the view that the *majority* of children numbered among the ranks of child soldiers are voluntary recruits. Jonathan Somer, the former Legal Advisor and Programme Coordinator on Children and Armed non-State Actors for Geneva

48. *Id.* at 450.

49. *Id.*

50. *Id.*

51. Hart, *supra* note 10, at 218.

52. See GENEVA CALL, *supra* note 1, at 6.

53. Jonathan Somer, *Engaging Armed Non-State Actors to Protect Children from the Effects of Armed Conflict: When the Stick Doesn’t Cut the Mustard*, 4 J. HUM. RTS. PRAC. 106, 109 (2012).

54. GENEVA CALL, *supra* note 1, at 4.

55. *Id.* at 6.

Call,⁵⁶ remarked, “experience seems to indicate that worldwide there are many more ‘voluntary’ than forced recruits.”⁵⁷

But what constitutes “voluntary?” If a soldier holds a gun to the head of a child until he or she “volunteers” to join the group, then is participation really voluntary? As one scholar cautioned, “[g]iven a child’s surroundings and circumstances during a war, viewing a child’s participation as voluntary is suspect.”⁵⁸ The idea that children’s “voluntary” enlistment as soldiers stems from their lack of alternatives squares with traditional notions of child innocence.⁵⁹ Moreover, “it can be immensely distressing to contemplate the notion that children may serve effectively and willingly as soldiers, taking the lives of others.”⁶⁰ In addition, the conceptual idea that children may voluntarily engage in armed conflict “also entails an emotional challenge,” due to the “innocence and sacredness of childhood.”⁶¹

In some instances, children may join an ANSA group without realizing the meaning of that group’s involvement in armed conflict. For example, the Justice and Equality Movement, or JEM, reported the following:

A few children appear in JEM camps for different reasons—fleeing away following attacks on their villages; looking for food and shelter; wanting to connect with relatives in the army or simply for curiosity and fun. JEM always takes care of these children and sends them back to their families or refugee camps.⁶²

56. Jonathan Somer, PERSONA GRATA CONSULTING, <http://pgconsult.net/PROFILE/index.html> (last visited Sept. 30, 2016).

57. Somer, *supra* note 53, at 117.

58. Konge, *supra* note 8, at 66.

59. Child innocence is a widely accepted view, even in the criminal world. For example, domestic law typically treats children as incapable of consenting to certain crimes such as underage sex. Tamar R. Birckhead, *The “Youngest Profession”: Consent, Autonomy, and Prostituted Children*, 88 WASH. U. L. REV. 1055, 1097 (2011) (stating that “children should not be morally culpable for acts to which they cannot legally consent,” and further arguing that children who are statutorily raped “should be considered to lack the capacity to consent to sex”) (citing MODEL PENAL CODE § 213.1 cmt. at 276 (1980); *In re B.W.*, 313 S.W.3d 818, 820 (Tex. 2010) (“The notion that an underage child cannot legally consent to sex is of longstanding origin and derives from the common law.”)).

60. Hart, *supra* note 10, at 224.

61. *Id.*

62. GENEVA CALL, *supra* note 1, at 18.

In such cases, even though the children would undoubtedly be involved in aspects of armed conflict, if only by association, would they qualify as voluntary child soldiers?

The issue of voluntariness is not a legal issue as much as a moral one. There are not laws governing whether a child's involvement in armed conflict can or cannot be voluntary, but rather on whether children are allowed to participate at all, regardless of how they became involved in the conflict. The idea of a child voluntarily enlisting strikes moral discord, and the law and international standards accordingly preclude the use of child soldiers, whether voluntary or not. Regardless of the exact definition of what constitutes a child soldier "volunteer," there is a risk that "permitting voluntary association is a slippery slope that may lead to recruitment and use."⁶³ Further, if children were allowed to "voluntarily" enlist, the line between forced recruitment and voluntary enlistment would become very gray—"voluntary" enlistment would most likely not be "voluntary." In addition, children may mistake the motives of ANSA groups and volunteer with false expectations only to find themselves unwittingly in the middle of armed conflict.

Regardless of how children become involved with ANSAs, and despite the nuances between specific situations, it is worth considering the contexts that result in the use of child soldiers,⁶⁴ and how best to deal with the problem. So far, the international community "has developed only very short term instruments for dealing with the issue of children in war."⁶⁵ Even if there is not a flawless solution available, legal steps must be taken. And "[i]n determining what the law ought to be, we should consider whom the law is most likely to affect."⁶⁶ Based on the allegations that the primary users of child soldiers are ANSAs,⁶⁷ it would seem that involving ANSAs in the solution is crucial to solving the problem.⁶⁸ Further, despite the fact that international law is not binding on ANSAs, protecting and respecting the rights of

63. Somer, *supra* note 53, at 117.

64. Konge, *supra* note 8, at 72.

65. GENEVA CALL, *supra* note 1, at 4.

66. Konge, *supra* note 8, at 72.

67. See Rosen, *supra* note 13 and accompanying text.

68. Konge, *supra* note 8, at 72; see also GENEVA CALL, *supra* note 1, at 5.

children in war are obligations and standards to which ANSAs should still be held.⁶⁹

B. Current International Law on Child Soldiers

The history of international attempts to curb the use of child soldiers is long and intricate.⁷⁰ One scholar noted that “[u]ntil recently, virtually all rebel groups stood completely outside the framework of international humanitarian law.”⁷¹ Evidence of pressure to change ANSAs’ isolation from the law includes the recent action by the Special Representative of the Secretary-General for Children in Armed Conflict who argued that “[ANSAs] are under a legal obligation not to recruit or use child soldiers.”⁷² In fact, the International Committee of the Red Cross, or ICRC, reported that over 140 rules attempted to help govern ANSA conduct as of 2005.⁷³

However, as mentioned, it is widely accepted that human rights treaties encompass “hard legal obligations” for states only, and not for ANSAs.⁷⁴ There are varying views as to if and how these laws could apply to ANSAs based on whether they qualify as a “party” to conflict,⁷⁵ but most scholars agree that international law is only

69. Annyssa Bellal & Stuart Casey-Maslen, *Enhancing Compliance with International Law by Armed Non-State Actors*, 3 GOETTINGEN J. INT’L L. 175, 189 (2011).

70. Panjabi, *supra* note 9, at 453.

71. Rosen, *supra* note 13, at 7.

72. Cedric Ryngaert & Anneleen Van de Meulebroucke, *Enhancing and Enforcing Compliance with International Humanitarian Law by Non-State Armed Groups: An Inquiry into Some Mechanisms*, 16 J. CONFLICT & SEC. L. 443, 449 (2011).

73. Pascal Bongard & Jonathan Somer, *Monitoring Armed Non-State Actor Compliance with Humanitarian Norms: A Look at International Mechanisms and the Geneva Call Deed of Commitment*, 93 INT’L REV. RED CROSS 673, 674 (2011).

74. Ryngaert & Van de Meulebroucke, *supra* note 72, at 449.

75. Based on specific language in each respective law, some scholars believe that the following laws (which will be explicated in the following section) could imply that an ANSA group could be a party: Geneva Conventions, Optional Protocol, Rome Statute, Protocol I, and UNSCR. Although the language in these laws might suggest such a possibility, it remains that ANSA groups are not generally recognized as parties. For example, Additional Protocol I, Article 43(1) states:

The armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party.

Treaties, States Parties and Commentaries Protocol I: Armed Forces, INT’L COMM. OF THE RED CROSS (Aug. 31, 2016, 9:39 PM), <https://www.icrc.org/applic/ihl/ihl.nsf/>

binding on states. Even so, the international community has imposed laws of varying quality governing the use of child soldiers, some hard and some soft.⁷⁶ The next two sections will provide an overview of each.

1. The international community has taken formal actions to prevent child soldiering

The current formal actions, or “hard laws,” that apply to the use of child soldiers include the following: Customary International Humanitarian Law, the Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the Rome Statute, International Labour Organization’s Convention No. 182, Protocol Additional to the Geneva Conventions of 12 August 1949, the Protection of Victims of International Armed Conflicts, of 8 June 1977 (Protocol I), and UNSCRs. The age used to define a “child” differs somewhat from rule to rule. These laws are formal and customary, although they are not binding on ANSA groups.

Customary International Humanitarian Law “has its origins in the customary practices of armies as they developed over the ages”⁷⁷ and comes into existence when an act meets two elements: “Not only must the acts concerned amount to a settled practice, but they must also be such, or be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it.”⁷⁸ Customary International Humanitarian Law “is of

Article.xsp?action=openDocument&documentId=AF64638EB5530E58C12563CD0051DB93https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=AF64638EB5530E58C12563CD0051DB93; see also Annysa Bellal et al., *International Law and Armed Non-state Actors in Afghanistan*, 93 INT’L REV. RED CROSS 47, 51 n.22 (2011) (“[Article 43(1)] begs the question, of course, as to whether this provision has become a customary rule, as neither Afghanistan nor the US was a party to Additional Protocol I at that time.”). *But see* Quéniwet, *supra* note 30, at 1080 (stating that despite the lack of participation in these rules, international humanitarian law is in fact binding upon armed forces and armed groups).

76. “Hard law” includes formal customary and conventional international law, and is not binding on ANSAs. “Soft law” is a less formal attempt to impose obligations on ANSAs by allowing them to demonstrate commitment to international norms since international law cannot legally bind them.

77. *Introduction, Customary IHL*, INT’L COMM. OF THE RED CROSS, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_in (last visited Oct. 13, 2016).

78. North Sea Continental Shelf Cases (Fed. Republic of Ger./Den.; Fed. Republic of Ger./Neth.), Judgment, 1969 I.C.J. ¶ 77 (Feb. 20); see also Michael P. Scharf, *Accelerated*

crucial importance in today's armed conflicts because it fills gaps left by treaty law and so strengthens the protection offered to victims."⁷⁹ Further, it "continues to be relevant" because "while some States have not ratified important treaty law, they remain nonetheless bound by rules of customary law," and also because of "the relative weakness of treaty law governing non-international armed conflicts—those that involve armed groups and usually take place within the boundaries of one country."⁸⁰ Rule 135 of the Customary International Humanitarian Law states: "Children affected by armed conflict are entitled to special respect and protection."⁸¹ Further, Rule 136 states: "Children must not be recruited into armed forces or armed groups,"⁸² and Rule 137 follows with: "Children must not be allowed to take part in hostilities."⁸³ As a general rule, customary international law is binding on all states. The particular language in this statute regarding the special protection of children is fairly unique, but shows the international community's value on allowing children to remain and act as children rather than soldiers.

Formation of Customary International Law, 20 ILSA J. OF INT'L & COMP. L. 305, 311 (2014); *North Sea Continental Shelf Cases (Summary)*, *Public International Law*, RWANTHIKA GUNARATNE & PUB. INT'L L., <https://ruwanthikagunaratne.wordpress.com/2014/02/28/north-sea-continental-shelf-cases-summary/> (last visited Oct. 15, 2016) ("The North Sea Continental Shelf Cases confirmed that both State practice (the objective element) and opinion juris (the subjective element) are essential pre-requisites for the formation of a customary law rule. This is consistent with Article 38(1)(b) of the Statute of the ICJ."); *Customary International Law, Introduction, Customary IHL*, INT'L COMM. OF THE RED CROSS, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_in_asofcuin (last visited Oct. 13, 2016).

79. *Detail, Customary Law*, INT'L COMM. OF THE RED CROSS, <https://www.icrc.org/en/war-and-law/treaties-customary-law/customary-law> (last visited Oct. 13, 2016); *see also* Int'l Comm. of the Red Cross, *Customary International Humanitarian Law*, <https://www.icrc.org/en/document/customary-international-humanitarian-law-0> (2010).

80. *Customary International Humanitarian Law*, INT'L COMM. OF THE RED CROSS, <https://www.icrc.org/en/document/customary-international-humanitarian-law-0> (2010).

81. *Rule 135. Children, Customary IHL*, INT'L COMM. OF THE RED CROSS, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter39_rule135 (last visited Sept. 27, 2016).

82. *Rule 136. Recruitment of Child Soldiers, Customary IHL*, INT'L COMM. OF THE RED CROSS, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter39_rule136 (last visited Sept. 27, 2016).

83. *Rule 137. Participation of Child Soldiers in Hostilities, Customary IHL*, INT'L COMM. OF THE RED CROSS, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter39_rule137 (last visited Sept. 27, 2016).

Second, the Convention on the Rights of the Child outlines the responsibilities of States Parties in Article 38.⁸⁴ Article 38(2) declares, “States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.”⁸⁵ “All feasible measures” is a strong phrase, illustrating the extreme importance of protecting children in the eyes of the law.

In addition, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, ratified in 2000, notes a “need to increase the protection of children from involvement in armed conflict,” defining a child as “every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.”⁸⁶ The Optional Protocol also includes a clause in Article 4(1) that states: “Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.”⁸⁷ Interestingly, this law distinguishes between children used as soldiers in state and non-state groups. It categorizes “with the gravest concern the recruitment, training and use within and across national borders of children in hostilities by armed groups distinct from the armed forces of a State.”⁸⁸

Next, the Rome Statute, adopted in 1998, states in Article 8(2)(b)(xxvi) that “[c]onscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities” is a war crime.⁸⁹ The Rome Statute created the International Criminal Court (ICC) in 2002 as “an

84. G.A. Res. 44/25, art. 38, Convention on the Rights of the Child (Nov. 20, 1989).

85. *Id.* at art. 38(2); *see also* Ryngaert & Van de Meulebroucke, *supra* note 72, at 449 n.33 (pointing out that Article 38(2) of the Convention on the Rights of the Child states: “State Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities”).

86. G.A. Res. A/RES/54/263, ¶ 7 (May 25, 2000); *see also* Panjabi, *supra* note 9, at 451 (stating that the Geneva Convention also prohibits using children under age 15 from fighting in armed conflicts).

87. *Id.* at art. 4(1).

88. *Id.* at ¶ 11.

89. Rome Statute of the International Criminal Court, *opened for signature* July 17, 1998, 2187 U.N.T.S. 90, art. 8(2)(b)(xxvi) (entered into force July 1, 2002), [hereinafter Rome Statute]. This appears to be one of the first documents to distinguish a “child” from an “adult” based on age, which is an idea now carried followed by most States.

important new mechanism for implementing existing child protection standards.”⁹⁰

The International Labour Organization, in Convention No. 182, focused specifically on the worst forms of child labor, and categorized using children in hostilities as such. In Article 3(a), it detailed “compulsory recruitment of children for use in armed conflict” as one of the worst forms of child labor.⁹¹ This draws an interesting parallel between using children for labor within communities and within groups involved in armed conflict, both of which are deemed unallowable.

Protocol II states in Part II, Article 4(3)(c) that “children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities.”⁹² Article 77(2) of Additional Protocol I, which discusses the protection of children, states: “The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces.”⁹³ This law contains the same strong language as the Convention on the

90. *The International Criminal Court and Children’s Rights*, THE AM. NON GOVERNMENTAL ORGS. COAL. FOR THE INT’L CRIMINAL COURT, <http://www.iccnw.org/documents/FS-AMICC-ICCnChildRights.pdf> (last visited Sept. 29, 2016); *see also* Konge, *supra* note 8, at 45 (“[T]he Rome Statute of the International Criminal Court (ICC) codified the approach to take in determining the law.”).

91. Int’l Lab. Org. [ILO], *Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor*, art. 3(a) (June 17, 1999), http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182; *see also* Panjabi, *supra* note 9, at 451 (explaining that according to the International Labor Organization’s Convention No. 182, which was adopted in 1999, “[c]ompulsory recruitment of children is classified as one of the ‘worst forms of child labor’”).

92. <http://cpwg.net/wp-content/uploads/sites/2/2013/08/AP-I-and-II-to-the-Geneva-Conventions.pdf>; *see also* Ryngaert & Van de Meulebroucke, *supra* note 72, at 449 n.34 (explaining that the Optional Protocol to the Convention on the Rights of the Child, in Article 4(3)(c) APII states, “[C]hildren who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities”); *id.* at 449 (stating that Article 4, in fact, specifically imposes obligations on ANSAs, by providing in Article 4(1) that “[a]rmed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years”).

93. *Treaties, States Parties and Commentaries*, *supra* note 75; *see also* Ryngaert & Van de Meulebroucke, *supra* note 72, at 449 n.33 (stating that in “Art 77(2) AP I: ‘The Parties to the conflicts shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces’”).

Rights of the Child in mandating that parties “take all feasible measures” to keep children out of armed conflict.

The United Nations Security Council’s adoption of Resolutions 1539 and 1612 (in 2004 and 2005 respectively) has also been particularly effective in increasing awareness of the child soldier problem, “[c]alling for the establishment of a monitoring and reporting mechanism on children and armed conflict.”⁹⁴

These formal actions regarding the use of child soldiers illustrate the international community’s views on recruiting and using children in armed conflict. Although, again, not binding on ANSAs, these laws reflect the international community’s intolerance for the use of child soldiers, whether in a state or ANSA group.

2. The international community has taken informal actions to prevent child soldiering

Soft law illustrates other instances of the international community’s inclination to regulate the use of child soldiers, particularly in regard to ANSAs. Again, even though ANSAs are generally not bound by international law, they are involved in the use of child soldiers, and these rules exist in the international forum to help with that problem. These soft laws include Monitoring and Reporting Mechanisms (MRMs), such as the one by the Secretary General to the UN Security Council, and other individual acts, including unilateral acts and Deeds of Commitment.

MRMs are ways to watch and keep track of compliance by these armed groups. One MRM, established by the UN Security Council in 2005, “monitors the conduct of *all parties*, whether State or non-State, to a conflict listed in the most recent report of the Secretary-General on children and armed conflict.”⁹⁵ In this MRM, “action plans are designed in which armed groups commit themselves to halting the new recruitment of child soldiers and releasing already recruited child soldiers,”⁹⁶ and currently there are “[twelve] action plans [that] have been adopted and [twenty] country situations, not necessarily conflicts, [which] are being monitored.”⁹⁷

94. Panjabi, *supra* note 9, at 451.

95. *See also* Ryngaert & Van de Meulebroucke, *supra* note 72, at 458–59.

96. *Id.* at 459.

97. *Id.*

Despite the challenges of soft law,⁹⁸ various agreements with international organizations “seem to have had a positive effect on compliance.”⁹⁹ There is some indication that “armed groups have sought to bind themselves by particular humanitarian law rules and there is evidence to suggest that this has affected their behavior.”¹⁰⁰

UNICEF, for example, has “provided care, technical guidance and, at times, financial support for the successful implementation of national programmes for disarmament, demobilization and reintegration.”¹⁰¹ UNICEF supports their “intent to end child recruitment”¹⁰² through documents such as Deeds of Commitment similar to the one created by Geneva Call. The Karen National Union (KNU) of Burma, Myanmar, for example, “has signed a Deed of Commitment . . . with UNICEF.”¹⁰³

Other groups, such as the Chin National Front/Chin National Army (CNF/CAN) in 2009, have signed similar unilateral Deeds of Commitment “pledging not to recruit and use child soldiers.”¹⁰⁴ In addition, the Kachin Independence Organisation/Kachin Independence Army (KIO/KIA) “[has] also indicated [its]

98. These soft laws can be difficult to implement because often the government will not allow the UN or other similar groups to gain close enough access to the ANSAs to make action plans. CHILD SOLDIERS INT’L, CHANCE FOR CHANGE: ENDING THE RECRUITMENT AND USE OF CHILD SOLDIERS IN MYANMAR 29 (2013) [hereinafter CHILD SOLDIERS INT’L]. For example, KNU stated that they “sent a letter of invitation to the UN Special Representative of the Secretary-General for Children and Armed Conflict to visit . . . but there has not been a response.” GENEVA CALL, *supra* note 1, at 23–24. They report that their group does not use child soldiers, but that the Burmese national army does. *Id.* at 21. Similarly, JEM reports that “NGOs are unable to cooperate with JEM regarding protection of children, as they require government permission to do so.” *Id.* at 18. In their view, “[i]nternational organizations working in this field are reluctant to work with JEM as that will jeopardize their dealings with the Government of Sudan.” *Id.*

99. Anthea Roberts & Sandesh Sivakumaran, *Lawmaking by Nonstate Actors: Engaging Armed Groups in the Creation of International Humanitarian Law*, 37 YALE J. INT’L L. 107, 143 (2012).

100. *Id.* at 127.

101. U.N. INT’L CHILDREN’S EMERGENCY FUND, FACTSHEET: CHILD SOLDIERS 2–3.

102. CHILD SOLDIERS INT’L, *supra* note 98, at 28. (“Some armed groups including the KNU/KNLA and the Karenni National Peoples Party/Karenni Army (KNPP/KA) expressed their intent to end child recruitment by signing deeds of commitment not to recruit or use children in 2007.”).

103. GENEVA CALL, *supra* note 1, at 23.

104. CHILD SOLDIERS INT’L, *supra* note 98, at 28; *id.* at 28 n.151 (“A copy of the Deed of Commitment was transmitted by the CNF/CAN to the UN in March 2009 together with a request for assistance in its implementation.”).

willingness to sign [D]eeds of [C]ommitment not to use or recruit child soldiers.”¹⁰⁵

Deeds of Commitment are simply unilateral statements that are not inherently binding. However, they are analogous to unilateral statements by states. In some cases, those unilateral statements by states have been found to be binding.¹⁰⁶ For example, France issued a statement that it would stop testing nuclear weapons,¹⁰⁷ which was recognized as a unilateral statement in 1995 by the UN Security Council.¹⁰⁸ The International Court of Justice later found that unilateral act to be binding.¹⁰⁹ If ANSAs understand that concept and take on a Deed of Commitment voluntarily, knowing and intending that it would serve the same legal purpose of a state’s unilateral act by signifying the ANSA’s commitment to abide by international norms, the ANSA could be legally bound by such a statement.¹¹⁰

III. THE PROBLEM: ANSAs AND CHILD SOLDIERS

A. ANSAs are the Main Perpetuators of the Child Soldier Problem

ANSAs, as previously defined, are non-governmental groups who are involved in armed conflict but “lack the capacity to become party

105. *Id.* at 28.

106. The International Court of Justice “indeed support[s] the proposition that a unilateral statement may bind a state when the statement expresses an intention to be bound which could in good faith be relied on by other states.” BENITO MÜLLER ET AL., UNILATERAL DECLARATIONS: THE MISSING LEGAL LINK IN THE BALI ACTION PLAN 6 (2010).

107. Nuclear Tests (N.Z. v. Fr.), Summary of the Summary of the Judgment, 1974 I.C.J. Rep. (Dec. 20); Nuclear Tests (N.Z. v. Fr.), Judgment, 1974 I.C.J. Rep., ¶ 33–35 (Dec. 20).

108. *See France Will Not Lower Its Nuclear Guard, Vows President*, FRANCE IN THE UNITED KINGDOM (Mar. 2, 2015), <http://www.ambafrance-uk.org/France-will-not-lower-its-nuclear>.

109. Nuclear Tests (N.Z. v. Fr.), Summary of the Summary of the Judgment, 1974 I.C.J. Rep. (Dec. 20); *see also* Nuclear Tests (N.Z. v. Fr.), Judgment, 1974 I.C.J. Rep., ¶ 46 (Dec. 20) (“It is well recognized that declarations made by way of unilateral acts, concerning legal or factual situations, may have the effect of creating legal obligations.”)

110. *See* Roberts & Sivakumaran, *supra* note 99, at 143 (noting that “[t]here is some acceptance in the literature of the binding nature of unilateral declarations made by nonstate actors,” such as a Deed of Commitment); *see also* GENEVA CALL, *Who We Are, FAQs*, *supra* note 20 (stating that even though ANSAs do not have the ability to “become parties to relevant international treaties, and are generally precluded from participating in norm-making processes,” they still retain the ability to make unilateral statements, though they may not be binding).

to the relevant international treaties.”¹¹¹ Recent ANSAs include JEM in Sudan,¹¹² Boko Haram in Nigeria,¹¹³ the Revolutionary Armed Forces of Colombia (FARC),¹¹⁴ and Al-Qaeda in Iraq,¹¹⁵ in addition to many others. Even though these groups are not state actors, they still may be supported by states in armed conflict.¹¹⁶ However, despite those associations and the fact that ANSAs “have no single ideological commitment,”¹¹⁷ they are all “outsiders” on the world stage, and most governments and the international community as a whole “reject them as legitimate political actors.”¹¹⁸

ANSAs can be widely regarded as a physical manifestation of social problems, particularly because “they see themselves as representatives of distinct interests and may build on broad support within communities.”¹¹⁹ Intentionally using child soldiers, however, does not

111. GENEVA CALL, *supra* note 1, at 5; *see also* Claudia Hofmann & Ulrich Schneckener, *Engaging Non-State Armed Actors in State- and Peace-Building: Options and Strategies*, 93 INT’L REV. OF THE RED CROSS 603, 604 (2011) (stating that in general, they can be “defined as distinctive organizations that are (i) willing and capable to use violence for pursuing their objectives and (ii) not integrated into formalized state institutions such as regular armies, presidential guards, police, or special forces. They, therefore, (iii) possess a certain degree of autonomy with regard to politics, military operations, resources, and infrastructure”).

112. GENEVA CALL, *Sudan*, <http://www.genevacall.org/country-page/sudan/> (last visited Sept. 28, 2016); *see also* GENEVA CALL, *Who We Are, Mission*, <http://www.genevacall.org/who-we-are/> (last visited Sept. 29, 2016).

113. *See* Ahmed Rufai Abubakar, *The Case of Boko Haram in Nigeria*, in UNITED NATIONS SYSTEM STAFF COLLEGE, UNDERSTANDING A NEW GENERATION OF NON-STATE ARMED GROUPS 45–54 (2014) (ebook).

114. *See* Sarah Sensamaust, *Non-State Actors in Colombia, Guatemala and Nicaragua*, 8 J. CONVENTIONAL WEAPONS DESTRUCTION, Nov. 2004, <http://www.jmu.edu/cisr/journal/8.2/feature/sensamaust.htm>.

115. *Iraq: Non-State Actors*, RULE OF LAW IN ARMED CONFLICTS PROJECT http://www.geneva-academy.ch/RULAC/non-state_armed_groups.php?id_state=110 (last updated Apr. 13, 2012).

116. Jean d’Aspremont et al., *Sharing Responsibility Between Non-State Actors and States in International Law: Introduction*, 62 NETH. INT’L L. REV. 49, 58 (“[S]tates may provide support to non-state actors, or non-state actors may provide support to . . . states, in violation of international law.”).

117. Rosen, *supra* note 13, at 7; *see also* GENEVA CALL, *supra* note 1, at 5 (Geneva Call itself stressed that “[A]NSAs are not monolithic; they have different motivations, structures, and competencies, and therefore generalizations should be avoided.”). They “differ widely in kind, displaying different forms of appearance, aims, and underlying motivations.” Hofmann & Schneckener, *supra* note 111, at 619.

118. Rosen, *supra* note 13, at 7.

119. Hofmann & Schneckener, *supra* note 111, at 604; *see also* Somer, *supra* note 53, at 116 (stating that they are “intertwined with supportive communities”); GENEVA CALL, *supra*

appear to be one of the interests they represent. In fact, they generally view themselves as protectors of children.¹²⁰ That is one of the most dangerous components of the child soldier problem. “[A]ssociation of children with ANSAs may be the best of bad options during conflict situations,”¹²¹ and the ANSA group might feel that they are doing the children a favor by taking them in. In ANSAs’ views, they are helping, not recruiting, children.¹²²

As mentioned, permitting these volunteers may lead to their use as actual soldiers.¹²³ However, Jonathan Somer indicated that this

risk can be mitigated by making it clear to ANSAs that the best interests of the child should be the guiding principle, and if they do have associated children, they should take extra precautions in their internal implementation systems to ensure that such children are not recruited or used in hostilities.¹²⁴

If ANSAs believe that they are taking children in and not using them as soldiers, then hopefully they would abide by this suggestion. As another scholar stated, “no matter how noble the cause of any belligerent, it can never justify the use of children in hostilities or other violations against them.”¹²⁵ However, this is unlikely to be an effective remedy to the problem of child soldiers. This solution is not concrete and reliable, and does not have the strength to force an ANSA group who is already not abiding by international norms to start complying. Finding a better solution with the power to change ANSA behavior is imperative.

note 1, at 6 (stating that their views of themselves and their role in regard to child soldiers also illustrates that there are important nuances in the situation, which only make it more difficult).

120. GENEVA CALL, *supra* note 1, at 6; *see also* Somer, *supra* note 53, at 113 (“One of the major realizations to come out of . . . consultations with ANSAs is that in many cases they consider themselves to be child protection actors.”); GENEVA CALL, *supra* note 1, at 6 (arguing that ANSAs consider themselves to have a “protection role” extending “well beyond the prohibition on the recruitment of children and their use in hostilities”).

121. Somer, *supra* note 53, at 116 (stating that some children simply may get involved because their parents are fighters in an ANSA community).

122. *Id.* (stating that some children simply may get involved because their parents are fighters in an ANSA community).

123. *Id.* at 117.

124. Somer, *supra* note 53, at 117.

125. GENEVA CALL, *supra* note 1, at 4.

B. ANSAs are not Traditionally Subject to International Law

Hard law does not bind ANSAs, as long as they are not considered “Parties,”¹²⁶ and soft law, at best, *might* be persuasive. If an ANSA could be considered a “Party” according to international law, then it would be much more likely that hard law would be binding on it. Whether soft law applies would be circumstantial depending on the ANSA’s willingness to participate. One scholar noted that “[a]t most, [ANSAs] have *indirect* horizontal obligations under a human rights treaty such as the Optional Protocol: States are under the international obligation to regulate, at the domestic level, the child recruitment practices of [ANSAs].”¹²⁷ As mentioned, ANSAs do not have “the full extent of rights and obligations as States,”¹²⁸ which could illustrate why they may not feel compelled to change their behavior in the international community.

Further, “[a]s non-state entities, [ANSAs] cannot participate in the creation of the international legal norms regulating these issues, nor can they become parties to international treaties—yet efforts to improve the protection of civilians during armed conflict cannot afford to ignore ANSAs.”¹²⁹ Despite their reluctance to conform to these current international standards, “the practice of the United Nations, as well as of other international and regional organizations shows that efforts are increasingly being made to hold ANSAs accountable at the international level for the violation of international norms.”¹³⁰ Despite the lack of binding international law and the fact that ANSAs are not considered “Parties,” these efforts may become effective if implemented in a way that would be compelling to ANSA groups. In order to protect children involved in these conflicts, ANSAs must be held to a higher standard of complying with international norms.

126. *See supra* Section III.A (discussing how ANSAs cannot become parties to international treaties).

127. Ryngaert & Van de Meulebroucke, *supra* note 72, at 449.

128. Bellal & Casey-Maslen, *supra* note 69, at 188.

129. Pauline Lacroix et al., *Engaging Armed Non-State Actors in Mechanisms for Protection*, 37 FORCED MIGRATION REV. 10, 10 (2011).

130. Bellal & Casey-Maslen, *supra* note 69, at 176–77.

C. ANSAs are Unlikely to Voluntarily Conform to International Law on the Child Soldier Issue

Despite the strong international opinion against using child soldiers, “[i]nternational efforts to curb the use of child soldiers by non-state actors have had only limited success.”¹³¹ ANSAs might be reluctant to comply due to their distrust of the international community.¹³² One scholar opined that ANSAs may hesitate to negotiate with international organizations because they fear that the information they give might then “be used to take action against members of the ANSA or the ANSA itself.”¹³³

Although ANSAs could potentially be innocent in this problem, ANSAs might reject international standards because they do not agree with international views of the rights of children involved in armed conflict, and how violators of those international norms should be treated.¹³⁴ Many ANSAs believe that “the applicable standards have largely been forged in the West and imposed upon the rest of the world.”¹³⁵ Further, “[b]y labelling acts that are not contrary to international law as violations, the international community risks alienating ANSAs who genuinely feel they are protecting children.”¹³⁶ Because “many ANSAs are sensitive towards their perception of their role as child protection actors,”¹³⁷ such improper labeling can be a dangerous way of engaging these groups. Because ANSAs cannot help create these international laws, they “may not feel bound to abide by rules that they have neither put forward nor formally adhered to.”¹³⁸ It is also possible that ANSAs do not participate in international humanitarian law because they are “simply not aware of their obligations.”¹³⁹

131. David M. Rosen, *Who Is a Child? The Legal Conundrum of Child Soldiers*, 25 CONN. J. INT’L L. 81, 87 (2009).

132. See Bongard & Somer, *supra* note, 73 at 685 (supporting the idea that ANSAs may feel distrustful due to “the state-centric nature of international law” which “poses challenges when it comes to addressing [the behavior of ANSAs]”).

133. Pauline Lacroix et al., *supra* note 129, at 11–12.

134. See Rosen, *supra* note 13, at 8.

135. *Id.*

136. Somer, *supra* note 53, at 117.

137. *Id.* at 121.

138. GENEVA CALL, *Who We Are, FAQs*, *supra* note 20.

139. *Id.*

Even when ANSAs do attempt to abide by these norms, their efforts often go unrecognized. At times, “international courts have . . . referred favorably to undertakings by armed groups,”¹⁴⁰ but “nation states will not ordinarily grant recognition to rebel groups, even though there is considerable evidence that, when they do, both sides to a conflict are more likely to observe the laws of war.”¹⁴¹ One scholar opined that although international law requires that ANSAs avoid using child soldiers, “even if these groups were to strictly adhere to the laws of war, their efforts likely would yield no tangible rewards. They would still be considered criminals under domestic law and would receive no international recognition of the legitimacy of their causes.”¹⁴² This lack of recognition illustrates another reason why it is hard to engage ANSAs to comply with international laws.¹⁴³ For these reasons, “laws banning recruitment have had little or no influence on the behavior of non-state actors.”¹⁴⁴

IV. NON-GOVERNMENTAL ORGANIZATIONS (NGOs)

UN representatives have attempted to negotiate with ANSAs, but have “found it very difficult to achieve progress.”¹⁴⁵ Unsurprisingly, ANSAs generally “have a hostile view of the UN, are excluded from its proceedings, and have little or no stake in its decisions, which renders UN efforts at persuasion generally ineffective.”¹⁴⁶ Other groups have proven more successful, primarily non-governmental organizations, or NGOs, such as Geneva Call.¹⁴⁷ NGOs “have a strong capacity to influence public opinion . . . , to educate and raise awareness about certain issues, to lobby political decision-makers, and

140. Roberts & Sivakumaran, *supra* note 99, at 143.

141. Rosen, *supra* note 13, at 7.

142. *Id.*

143. *Id.*

144. *Id.* at 8.

145. Rosen, *supra* note 131, at 87.

146. *Id.*

147. One scholar offers the opinion that “[a] fine example of another organization that offers advisory services to [ANSAs]—and only [ANSAs] for that matter—is Geneva Call, which provides [ANSAs] which sign up to the ‘Deed of Commitment’ sound implementation advice.” Ryngaert & Van de Meulebroucke, *supra* note 72, at 458.

to engage with diplomatically unacknowledged actors, such as non-state armed actors without implying a political shift in their favour.”¹⁴⁸

Indeed, “NGOs’ long-term engagement in relevant fields often grants them a certain amount of trust even from [ANSAs].”¹⁴⁹ They are known as “neutral and independent actors,” and “benefit from [that] reputation” even if not everyone perceives them that way.¹⁵⁰ This advantageously “puts [NGOs] into a position to act as a facilitator for specific issues.”¹⁵¹ NGOs have great potential to influence ANSAs to look toward and increase compliance with international humanitarian norms.

Providing ANSAs an opportunity to commit to and abide by humanitarian law norms could also “improve compliance by the states they fight against.”¹⁵² This is noteworthy particularly because some states have been hesitant to sign humanitarian law instruments due to the lack of reciprocity by the ANSAs.¹⁵³ This reluctance could be remedied by “[a]llowing armed groups to demonstrate formally their commitment to be bound, or to express their intention to comply with existing legal obligations”¹⁵⁴ through NGOs.

In order to help ANSAs, these NGOs “focus heavily on the transmission of information and knowledge, including technical knowledge, and aim to [empathetically] persuade armed actors”¹⁵⁵ to comply with international norms. This approach is empathetic, flexible, and principle-oriented, and can adjust to varying situations of individual ANSAs.¹⁵⁶ This will prove to be important because, due to

148. Hofmann & Schneckener, *supra* note 111, at 618; *see also* Rosen, *supra* note 26, at 296 (stating that NGOs have been “enormously influential in shaping the international legal treaties that seek to ban the use of child soldiers”).

149. Hofmann & Schneckener, *supra* note 111, at 618.

150. *Id.*

151. *Id. But see id.* at 617 (“NGOs usually lack the capacities to employ serious leverage and effective bargaining attempts. Their goals for an engagement of armed actors may also differ distinctly from those of states.”).

152. Roberts & Sivakumaran, *supra* note 99, at 129.

153. *Id.*

154. *Id.*

155. Hofmann & Schneckener, *supra* note 111, at 618; *see, e.g.*, GENEVA CALL, *supra* note 1, at 18–19 (stating that one ANSA, the Justice and Equality Movement (JEM), has “invited numerous organizations to visit its areas to discuss adherence to child protection codes” and that it would welcome further training).

156. Hofmann & Schneckener, *supra* note 111, at 618 (stating that because of the effectiveness of these techniques, “NGOs are in the fairly unique position of being able to

the unique situations of different ANSAs, various sticks and carrots may be needed to maximize compliance. Geneva Call utilizes its unique position as an NGO by intentionally approaching ANSAs to “provide a platform for . . . [them] to adhere to international norms.”¹⁵⁷ The international community should find ways to incentivize ANSAs to sign and comply with the Deed of Commitment for the Protection of Children from the Effects of Armed Conflict.

V. DEEDS OF COMMITMENT

A Deed of Commitment is a mechanism created by Geneva Call to “allow . . . ANSAs to pledge to respect humanitarian norms and be held publically accountable for their commitments.”¹⁵⁸ There are different types of Deeds of Commitment that all follow the same process.¹⁵⁹ Geneva Call began offering a Deed of Commitment as a specific pledge to abstain from the use of anti-personnel (AP) landmines in 2000.¹⁶⁰ This Deed has so far proven to be effective: as of 2015, forty-nine ANSAs have signed the Deed of Commitment banning AP mines,¹⁶¹ and compliance “has been good.”¹⁶² Scholars have argued, “the most important mechanism through which unilateral acts by [ANSAs] are created is . . . Geneva Call’s Deed of [C]ommitment.”¹⁶³

communicate with non-state armed actors independently of political circumstances”). *But see* GENEVA CALL, *supra* note 1, at 18 (stating that NGOs cannot directly interact with JEM regarding the protection of children in armed conflict, because government permission is required).

157. Hofmann & Schneckener, *supra* note 111, at 618.

158. GENEVA CALL, *Who We Are, FAQs*, *supra* note 20.

159. *Id.*

160. GENEVA CALL, *Deed of Commitment*, *supra* note 15.

161. GENEVA CALL, *What We Do, Landmine Ban*, <http://www.genevacall.org/what-we-do/landmine-ban/> (last visited Sept. 29, 2016).

162. GENEVA CALL, *Success Stories*, <http://genevacall.org/success-stories/> (last visited Sept. 29, 2016).

163. Ryngaert & Van de Meulebroucke, *supra* note 72, at 447 (internal quotation marks omitted); *see also* Roberts & Sivakumaran, *supra* note 99, at 127 (“For example, Geneva Call, a Geneva-based organization dedicated to engaging armed groups in respecting and adhering to humanitarian norms, created a Deed of Commitment on anti-personal mines that can be signed by ‘armed non-state actors.’”); GENEVA CALL, *What We Do, Landmine Ban*, *supra* note 161 (suggesting that although there was a 1997 AP Mine Ban Convention to which seventy-five percent of the world’s states are a party, this does not apply to ANSAs, and thus does not give

After the success of the Deed banning AP landmines, Geneva Call expanded the reach of its Deeds of Commitment and created others to help ANSAs comply with other humanitarian norms.¹⁶⁴ With Deeds, and in anticipation of similar success, a snowball effect can take place by “[a]llowing armed groups to agree to comply with humanitarian law norms [that] can also influence other armed groups to agree to comply with such norms, either directly through peer pressure or indirectly through example setting.”¹⁶⁵ Arguably, as the reach of the Deeds expands, the number of signatories will correspondingly increase.¹⁶⁶ This is an idea that has “particular promise,” especially because it appears that in terms of NGOs influencing armed groups, Geneva Call “remains the most influential actor.”¹⁶⁷

A. Geneva Call

Members of the International Campaign to Ban Landmines originally launched Geneva Call in March of 2000.¹⁶⁸ It is a “neutral and impartial humanitarian non-governmental organization dedicated to engaging . . . [A]NSAs . . . towards compliance with the norms of international humanitarian law.”¹⁶⁹

Since its conception, it has “engaged in dialogue with some 90 ANSAs worldwide.”¹⁷⁰ Geneva Call “focuses on [A]NSAs that operate outside effective State control and that are primarily motivated by political goals, which include armed movements, de facto authorities, and internationally non-recognized or partially recognized States.”¹⁷¹

them an opportunity to prove compliance with international humanitarian norms); *supra* Section IV.B (discussing Deeds of Commitment as unilateral acts)

164. GENEVA CALL, *Deed of Commitment*, *supra* note 15.

165. Roberts & Sivakumaran, *supra* note 99, at 130 (“Geneva Call incorporates this potential for influence into its strategy for engagement.”).

166. *See id.* at 131 (Not only do Deeds of Commitment provide an opportunity for a group to prove to the international community that the group can abide by international humanitarian norms, but also that they can expand the foundation for engaging armed actors in the first place: “If several armed groups are involved in the same armed conflict, even if they are not formally related, links between them create the potential for peer influence”).

167. *Id.* at 131–32.

168. Somer, *supra* note 53, at 107.

169. GENEVA CALL, *supra* note 1, at 32.

170. GENEVA CALL, *Who We Are, Mission*, *supra* note 112.

171. GENEVA CALL, *supra* note 1, at 32.

Geneva Call remains “dedicated to promoting respect by armed non-State actors (ANSAs) for international humanitarian norms in armed conflict and other situations of violence.”¹⁷² Although there are a variety of types of ANSAs, Geneva Call specifically directs its focus toward “organized armed entities involved in internal armed conflicts that are primarily motivated by political goals, operate outside State control and therefore lack legal capacity to become party to relevant international treaties.”¹⁷³ It offers help to these groups in many ways, “such as providing advice on policy revision, organizing training workshops, and/or developing educational materials to help signatories disseminate their new policies to their rank and file.”¹⁷⁴ It also “responds to requests from ANSAs to help build their knowledge of, and capacities to implement international humanitarian norms.”¹⁷⁵ Additionally, “[i]n some cases, Geneva Call brings in partner organizations to support ANSAs in the implementation of their commitments.”¹⁷⁶

B. Geneva Call and Deeds of Commitment

1. The success of the Deed of Commitment banning land mines

Geneva Call secured a successful foundation for their Deeds of Commitment through the Deed banning land mines. The success of the Deed may be due to “the organisation[‘s] . . . ‘inclusive approach,’ refraining from employing coercive means (such as ‘naming and shaming’) but seeking rather to achieve change through dialogue, persuasion and cooperation.”¹⁷⁷ The fact that “[m]any of the signatories used anti-personnel mines before signing the Deed, [suggests] that the Deed has had some impact on their behavior.”¹⁷⁸

172. GENEVA CALL, *Who We Are, Mission*, *supra* note 112.

173. GENEVA CALL, *Who We Are, FAQs*, *supra* note 20.

174. *Id.*; *see also* GENEVA CALL, *Who We Are, Mission*, *supra* note 112.

175. GENEVA CALL, *Who We Are, Mission*, *supra* note 112.

176. GENEVA CALL, *Who We Are, FAQs*, *supra* note 20.

177. Lacroix et al., *supra* note 133, at 10 (footnote omitted). The authors also noted, “[I]n its efforts to address the lack of ownership of humanitarian norms by ANSAs, Geneva Call has developed an innovative mechanism, the ‘Deed of Commitment.’” *Id.*

178. Roberts & Sivakumaran, *supra* note 99, at 128. Since the Deed banning AP mines was implemented, “Geneva Call has reported a decline in the use of anti-personnel mines by signatories to the Deed and has facilitated the destruction of numerous stockpiles of mines.” *Id.* (citation omitted).

Furthermore, “the engagement of ANSAs in the AP mine ban has served as an entry point to highlighting the need to protect civilians from other abuses.”¹⁷⁹ While these results were specifically noted in application to mine bans,¹⁸⁰ the principles of the Deed of Commitment worked well enough to merit the creation of other Deeds.¹⁸¹ The Deed of Commitment for the Protection of Children from the Effects of Armed Conflict, for example, was launched in 2010.¹⁸² Although it does not yet have as many signatories as the Deed of Commitment banning landmines, it has great potential to make a meaningful international impact.

2. *Child soldiers and Geneva Call*

Addressing the international child soldier issue “is contemplated in the founding statute of Geneva Call.”¹⁸³ The opportunity to begin work in that area arose when Geneva Call saw the positive effects from the Deed of Commitment on banning landmines, and “built on its successes . . . by developing a new Deed of Commitment in respect of child recruitment in armed conflict.”¹⁸⁴ As part of this Deed, ANSAs can essentially issue a unilateral statement of their commitment to comply with international norms regarding the use of child soldiers.¹⁸⁵

In order to gauge interest in developing another Deed of Commitment, Geneva Call held a meeting with “44 high-level political and military representatives of 28 signatories and other ANSAs engaged by Geneva Call” regarding the effectiveness of the

179. Lacroix et al., *supra* note 133, at 10. Indeed, this original landmine Deed has provided an important framework for future Deeds, and illustrates a template for further international humanitarian success.

180. See GENEVA CALL, *Landmine Ban*, *supra* note 161 (stipulating that over 20,000 stockpiled AP mines have been destroyed since signatories “cooperated in humanitarian mine action”).

181. Another scholar remarked that “[e]xperience 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.” Bongard & Somer, *supra* note 132, at 706.

182. GENEVA CALL, *Deed of Commitment*, *supra* note 15.

183. Somer, *supra* note 53, at 108.

184. Ryngaert & Van de Meulebroucke, *supra* note 72, at 448.

185. *Id.* at 446; see also *id.* at 448 (stating that this happens “under relevant legal instruments: two provisions of the Additional Protocols to the Geneva Conventions, the Convention on the Rights of the Child (CRC), the Optional Protocol to the latter Convention, and the Paris Principles and Guidelines”) (footnotes omitted).

Deed banning land mines.¹⁸⁶ Geneva Call found that “[w]hile there were different opinions on standards and the fairness of international interventions, there was consensus to support Geneva Call’s efforts to expand into the thematic area of children and armed conflict.”¹⁸⁷ Those in attendance agreed that the Deed “should aim towards a higher standard than the minimum imposed by international obligations, but should not necessarily validate international (that is, state) attempts to create different standards for ANSAs, as this could be a dangerous precedent.”¹⁸⁸ Creating this new Deed was delicate and important, not just because of the differences between legal effects on states and ANSAs, but because a Deed of Commitment regarding children would be much more complex.¹⁸⁹

When it created the new Deed, Geneva Call aimed to “understand the perspectives of ANSAs and to feed this awareness into the drafting.”¹⁹⁰ Geneva Call could already boast established relationships with ANSAs, and consequently “was in a unique position to gather these perspectives.”¹⁹¹ These prior relationships, and the fact that the Deed incorporated the views of ANSAs, helped maximize its potential success.

There are significant differences in the Deed banning landmines and the Deed to protect child soldiers; most notably, the central component of the latter is living humans, which will require a “more complex and convoluted legal framework” and involves the agency of children¹⁹²—including their “human rights, needs, and desires.”¹⁹³ Where land mines are inanimate objects, children “experience various vulnerabilities,” resulting in a more complex picture where they are directly influenced by the humanity of the situation.¹⁹⁴ Jonathan Somer also noted that children are not passive actors, and that the

186. Somer, *supra* note 53, at 112.

187. *Id.*

188. *Id.* at 116 (footnote omitted).

189. Despite the dangers, it is hoped and expected that the “new *Deed of Commitment* brings us all one step closer to protecting children in vulnerable situations.” GENEVA CALL, *supra* note 1.

190. Somer, *supra* note 53, at 113.

191. *Id.*

192. *Id.* at 109.

193. *Id.*

194. Lacroix et. al., *supra* note 133, at 12.

intervention would need to be more immediate than it was in the earlier Deed.¹⁹⁵ In order to accommodate for these differences, and to be most effective and efficient, the scope of the Deed is limited, and intentionally so.¹⁹⁶

The first signatories to the Deed of Commitment for the Protection of Children from the Effects of Armed Conflict were the Karenni National Progressive Party, or Karenni Army, and the New Mon State Party, or the Mon National Liberation Army from Burma/Myanmar.¹⁹⁷ Signing the Deed provided them, and any other ANSAs who have or will sign, the “opportunity to formally express their agreement to abide by humanitarian norms and take ownership of these rules.”¹⁹⁸ A signature alone does not “guarantee better respect of humanitarian norms but provides a useful tool to hold signatories accountable for their undertaking.”¹⁹⁹

Geneva Call helps monitor the compliance of the ANSA groups in three ways: 1) providing ANSAs with self-monitoring mechanisms and collecting reports; 2) independently monitoring ANSA compliance by obtaining “information from a range of third-party actors present on the ground (such as media, international and local organisations)”; and 3) monitoring through field missions, which are “undertaken by Geneva Call on a routine basis to follow up on implementation of the *Deeds of Commitment* or to verify compliance in the event of allegations of violations.”²⁰⁰ Although these monitoring mechanisms are in place, it is foundational and essential that Geneva Call engage ANSAs with the intent to sign and comply.

In summary, a Deed of Commitment is a way for ANSAs to unilaterally pledge compliance to international norms.²⁰¹ The previous success of Geneva Call’s Deed of Commitment banning landmines indicates a likelihood for success in later Deeds, including the Deed of

195. Somer, *supra* note 53, at 109.

196. *Id.* at 115–16.

197. GENEVA CALL, *Who We Are, History*, <http://www.genevacall.org/who-we-are/history/> (last visited Sept. 29, 2016).

198. GENEVA CALL, *Who We Are, FAQs*, *supra* note 20.

199. *Id.* The Deed “has been developed in cooperation with [ANSAs,]” and because of that, the “chances of compliance by [ANSAs] rise considerably.” Ryngaert & Van de Meulebroucke, *supra* note 72, at 450.

200. GENEVA CALL, *Who We Are, FAQs*, *supra* note 20.

201. *See supra* Section V.B.

Commitment for the Protection of Children from the Effects of Armed Conflict.²⁰² The previously established relationship between Geneva Call and ANSAs and the incorporation of ANSA perspectives into the formation of this Deed further indicate a likelihood of its success.²⁰³ However, as the use of child soldiers has not been completely eradicated, Geneva Call should look for ways to further engage ANSAs and increase their compliance with international norms.

VI. ENGAGEMENT AND COMPLIANCE

Although the Deed of Commitment has begun implementation, Geneva Call still faces major challenges as it strives to maximize success. Most obviously, a substantial number of ANSAs have not yet become signatories to the Deed.²⁰⁴ The methodology of engaging ANSAs is one of the most important parts of the Deeds of Commitment. Geneva Call “will not engage ANSAs on the territory of concerned states if prohibited from doing so,” but “will engage ANSAs extraterritorially” without the states’ “permission if warranted by humanitarian concerns.”²⁰⁵ Further, it is central to Geneva Call’s ideals to implement the Deeds of Commitment through “an inclusive process that [seeks] the approval and support of ANSAs themselves” based on the “trust, relationships and reputation built up with the ANSAs.”²⁰⁶ Somer remarked that “[i]t is more important to get it right than to race towards a large number of signatories.”²⁰⁷

Access to many ANSA groups is difficult because some are “fragmented,” resources are not unlimited, and states sometimes refuse to allow Geneva Call to negotiate with ANSAs.²⁰⁸ Also, some

202. *Id.*

203. *Id.*

204. Ryngaert & Van de Meulebroucke, *supra* note 72, at 450.

205. Somer, *supra* note 53, at 111; *see also* Bongard & Somer, *supra* note 132, at 689 (stating that although “[e]ngaging ANSAs has not been without its challenges and controversy . . . Geneva Call has won international recognition and support for its efforts, notably from state parties to the Ottawa Convention, the UN, the European Union, and the African Union.”) (footnotes omitted).

206. Somer, *supra* note 53, at 109.

207. *Id.* at 120.

208. Ryngaert & Van de Meulebroucke, *supra* note 72, at 450.

ANSAs themselves are unwilling to cooperate or engage.²⁰⁹ In Somer's eyes, a "lesson not yet learned is how to influence the behaviour of the most reluctant ANSAs."²¹⁰ The Deeds of Commitment themselves are effective, which means that they currently appeal to ANSAs. However, the possibility of engaging the reluctant ANSAs demands expanding and improving the methods used to engage these groups.

A. Improving ANSA Engagement and Compliance

Since ANSAs are not bound by international law, and because the Deeds of Commitment have proven successful, it is crucially important to encourage engagement and compliance with those Deeds. Geneva Call understands that "[i]n order to engage an ANSA, it is important to understand the factors that might influence it."²¹¹ Although many mechanisms for enforcing compliance with international humanitarian norms have proven to be insufficient so far, Geneva Call's experience with Deeds of Commitment has shown that "by taking an inclusive approach, ANSAs can be engaged in changing their behaviour without the threat or use of coercive means against them."²¹² One of the first steps toward a common understanding is recognizing that ANSAs do not exist in a "political and social vacuum."²¹³

Many ANSAs "do not share, or flatly reject, the cultural views about children or childhood held by the international community,"²¹⁴ specifically in regard to international child soldier standards. Some ANSAs "believe that the applicable standards have been created in Western societies and imposed upon the rest of the world."²¹⁵ Another issue is that some ANSAs are simply terrorist organizations which have "publicly demonstrated little or no interest in observing the laws of war."²¹⁶ This ANSA disinterest in, and antagonism toward, international norms starkly highlights Geneva Call's accomplishment in creating a Deed of Commitment with which signatories continue

209. *Id.*

210. Somer, *supra* note 53, at 121.

211. Lacroix et. al., *supra* note 133, at 11.

212. *Id.* at 12.

213. *Id.* at 11.

214. Rosen, *supra* note 131, at 86.

215. *Id.* (footnote omitted).

216. *Id.* at 86–87 (footnote omitted) ("Many of these groups ignore both the domestic laws of their own countries and international law."). *Id.* at 87.

to comply even if they may not agree with every nuance of the international standards.

Geneva Call regards its Deeds as binding, “as do the signatories themselves.”²¹⁷ Thus, signing the Deed boosts ANSA legitimacy.²¹⁸ The Deed was created with “built-in provisions on implementation and monitoring.”²¹⁹ Importantly, since there is not a “one-size-fits-all solution as each ANSA operates in a unique manner” it is essential that the Deed’s language and processes are tailored to each group.²²⁰

Many of the Law of Armed Conflict violations by ANSAs might be “due to a lack of actual knowledge of the content,” and in that sense, participation in the Deed of Commitment can also educate ANSAs about international humanitarian norms.²²¹ This educational opportunity is likely already currently incentivizing some ANSAs, particularly if they would like to be legitimate political actors but only have limited options for learning international law. Geneva Call “provides ANSAs the opportunity to become part of an international humanitarian mechanism”²²² through signing a Deed of Commitment, and compliance is of the utmost importance.

Although compliance is good once ANSAs sign a Deed of Commitment, one major difficulty is enticing ANSA groups to sign in the first place. Currently, there is no foolproof mechanism for engaging ANSAs. One scholar remarked that “[t]hrowing money at passive recipients only turns them into mendicants and wastes the funds.”²²³ Gaining successful ANSA compliance likely needs improvements that progress step-by-step,²²⁴ and in regard to child soldiers, this could involve engaging ANSAs according to their own standards.²²⁵

Indeed, with a problem as complex as children in armed conflict, “[i]t is wishful thinking to expect that any single tool . . . can

217. Roberts & Sivakumaran, *supra* note 99, at 143 (footnote omitted).

218. Ryngaert & Van de Meulebroucke, *supra* note 72, at 448.

219. Somer, *supra* note 53, at 118.

220. *Id.* at 118–19.

221. Anton O. Petrov, *Non-State Actors and Law of Armed Conflict Revisited: Enforcing International Law through Domestic Engagement*, 19 J. CONFLICT & SEC. L. 279, 299 (2014).

222. Somer, *supra* note 53, at 120.

223. Panjabi, *supra* note 9, at 461.

224. Somer, *supra* note 53, at 122.

225. *Id.*

maximize protection on its own.”²²⁶ Two scholars, Hofmann and Schneckener, opined that due to past experience, flexibility is essential.²²⁷ Arrangements that are appropriately flexible will likely involve a mix of enforcements and incentives, or sticks and carrots, which “allows international organizations to apply some leverage in negotiations with non-state armed actors, either by punishing them (for example, through economic sanctions or naming and shaming) or by rewarding them.”²²⁸ Indeed, deciding which norms will interest ANSAs in compliance is a long-term process.²²⁹ In order to be sustainable, methods of engaging ANSAs to comply will likely be adjustable, and will probably involve a mixture of sticks (sanctions) and carrots (incentives).²³⁰

Although it appears that Geneva Call is more inclined to utilize carrots than sticks, the most effective methodology for engaging ANSAs may involve any number of both. At this point, Geneva Call has not shown one method to be any more successful than another. The following sections will discuss how Geneva Call and other NGOs could further use sticks and carrots to encourage ANSA compliance with international norms regarding child soldiers through signing Deeds of Commitment.

B. Sticks

Sticks are methods of enforcing behavior, and might be used as compelling ways to persuade ANSAs to sign and comply with Deeds of Commitment. One danger of engaging ANSAs is the possibility that “some [ANSAs] will attempt to take a free ride on the positive publicity generated by signing up to a Deed, without ever having had

226. *Id.*; *see also id.* at 123 (stating that Geneva Call has remarked that it is “convinced that when the stick doesn’t cut the mustard—in other words, when a punitive approach does not prove effective—it is a good thing that other methodologies exist which attempt to comprehensively protect children under the control or influence of ANSAs”); *see also* Hofmann & Schneckener, *supra* note 111, at 610 (stating that “in most instances, these strategies are not used exclusively but in combination”).

227. Hofmann & Schneckener, *supra* note 111, at 606.

228. *Id.* at 615. In the eyes of 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.” Bongard & Somer, *supra* note 132, at 686.

229. Hofmann & Schneckener, *supra* note 111, at 618–19.

230. *Id.* at 610.

the intention to genuinely respect [International Humanitarian Law].”²³¹ Although using incentives rather than enforcement might seem kinder, exclusively using carrots and disregarding sticks would likely be ineffective. In situations where carrots would come up short or appear too soft to truly be compelling, certain stick methods would add compulsion and might prove helpful, or even necessary. Further, not all ANSA groups are the same or act based on similar motivations. Having a variety of methods for enforcing or incentivizing compliance would present a greater platform for far-reaching success. The following five options provide an overview of some possible stick options for enforcing compliance with Deeds of Commitment.

1. Monitoring and reporting mechanisms (MRMs)

MRMs use reporting to put political pressure on groups who violate norms by neglecting to comply with their commitments.²³² This kind of pressure represents soft law, and could be used as a stick in compelling ANSAs to comply with Deeds of Commitment. However, because ANSAs “complain that there is no possibility of refuting allegations of violations, and that the system is not particularly accessible to them,”²³³ this may not be a particularly effective option to increase ANSA compliance with Deeds of Commitment.

2. Investigations and sanctions, or prosecution

Geneva Call typically does not use sanctions, but they might be worth investigating as a constructive possibility for enforcing compliance with Deeds of Commitment. Particularly if the idea of sanctions as a method of compliance has not yet been tried, it may prove effective for some ANSA groups to be persuaded by the threat of sanctions. In any case, the potential for expanding success due to a yet-unproven method would be worth investigating sanctions. If ANSAs prove to be non-compliant, then it may be beneficial to have that lead to “the enforcement of targeted sanctions through states.”²³⁴

231. Ryngaert & Van de Meulebroucke, *supra* note 72, at 450–51.

232. *Id.* at 459.

233. *Id.* at 460.

234. Hofmann & Schneckener, *supra* note 111, at 616.

Geneva Call currently has a mild sanctioning policy in place.²³⁵ If ANSA signatories do not comply, they “agree to cease violations immediately and to initiate appropriate investigations and sanctions in accordance with international standards.”²³⁶ If that does occur, then the only sanction that Geneva Call does potentially foresee is to possibly “publicize non-compliance in case of confirmed violations,”²³⁷ which could happen through law enforcement at a national or perhaps even international level.²³⁸ However, this could be built upon by enforcing graver sanctions. For example, “for recalcitrant [ANSAs] harsher but ‘smart’ sanctions—travel bans, arms embargoes, the freezing of assets—may perhaps have to be contemplated.”²³⁹

This “fear of prosecution could constitute an incentive for ANSA leaders and commanders to ensure that their practices are in conformity with international norms, therefore easing the work of an organisation willing to engage them.”²⁴⁰ If sanctions do incentivize ANSAs to comply with international norms and to become signatories to a Deed, then perhaps it would be worth investigating sanctions as a real possibility. Using sanctions rather than MRMs as a stick is more likely to compel ANSA groups to comply with their commitment to international norms, particularly if the sanctions are tailored specifically to their wants and needs.

3. Political pressure, and naming and shaming

Another possible stick would be reducing the freedom of ANSAs—forcing political pressure on them if they do not abide by signed Deeds of Commitment. Hofmann and Schneckener suggested implementing this pressure by putting ANSAs under “strict surveillance (by using police and intelligence measures).”²⁴¹ They continued by pointing out that ANSAs themselves “by and large remain dependent on other actors, such as international organizations and states, to provide the

235. Somer, *supra* note 53, at 119.

236. *Id.*

237. Bongard & Somer, *supra* note 132, at 688.

238. Hofmann & Schneckener, *supra* note 111, at 608.

239. Ryngaert & Van de Meulebroucke, *supra* note 72, at 459.

240. Lacroix et al., *supra* note 133, at 11.

241. Hofmann & Schneckener, *supra* note 111, at 609.

required resources and political pressure”²⁴² for them to function. Assuming that is the case, it could be very debilitating to ANSAs to have those resources and political pressure apply negatively.

Similarly, one of the most obvious sticks used to enforce compliance is naming and shaming. This is akin to putting political pressure on ANSAs, because it “organize[s] social pressure and . . . campaign[s] publicly, at the national and the international level, against certain practices of non-state armed actors in order to harm their legitimacy.”²⁴³ This stick option might prove too commonplace, especially for ANSAs who likely already feel political pressure and naming and shaming, to effectively motivate compliance with a Deed of Commitment.

4. *Delegitimization*

Deligitimizing ANSAs could also be particularly potent as a stick. The process of delegitimization generally destroys the authority of a group.²⁴⁴ For groups such as ANSAs, who are likely looking to gain political recognition, this could be extremely detrimental, and thus might prove to be very effective in enforcing compliance with a Deed of Commitment. The proper balance of delegitimizing while still engaging these groups might be hard to find, however, because at this point it is possible that ANSAs do not have much legitimacy in the eyes of states anyway. Delegitimization would not be much of a threat if ANSAs feel that they don’t have anything to lose. However, using child soldiers might push the legitimacy level of an ANSA group so far in a negative direction that it would be an effective method of enforcement. If ANSAs prioritize becoming legitimate in order to realize their aims, then delegitimization could be a heavy threat,²⁴⁵ and thus could be a very good option for a stick in terms of Deed of Commitment compliance.

242. *Id.* at 619.

243. *Id.* at 612.

244. *Definition of Delegitimize*, MERRIAM-WEBSTER.COM, <http://www.merriam-webster.com/dictionary/delegitimize> (last visited Sept. 30, 2016).

245. Hart, *supra* note 10, at 222 (stating that “[f]or the United States and its allies, the issue of child recruitment may be invoked to delegitimize state or non-state actors that are construed as enemies in the post-9/11 War on Terrorism”).

5. Political isolation

One final stick is to marginalize and politically isolate ANSAs even further than they already are in order to reduce their “political and ideological influence.”²⁴⁶ Essentially, this idea would be to “marginalize their worldviews and demands in public discourse and to isolate them—politically as well as physically—from actual or potential followers and their constituencies.”²⁴⁷ If ANSA groups aim to gain political followers, then political isolation would be extremely damaging to those goals. This could be very effective in enforcing compliance with international norms, and would likely be successful as a stick in enforcing compliance with a Deed of Commitment.

For some ANSA groups, sticks might prove more threatening, and thus more effective, than other carrot options. One or a combination of the five stick options could be successful enforcement. These options overall are likely more realistic than most carrot options, although as mentioned, other than sanctions, Geneva Call has historically gravitated toward carrots, rather than sticks. However, here again it is worth noting that the highest possible likelihood of successful compliance would be gained by a combination of sticks and carrots. By utilizing both, the reach of and lasting compliance with the Deeds of Commitment would encompass more ANSA groups who might be motivated by a variety of methods. Engaging ANSAs and continuing their compliance with Deeds of Commitment is crucial, as it is the only viable way to convince ANSAs to stop using child soldiers.

C. Carrots

Despite the potential effectiveness of some stick methodology, “[i]n some cases, [ANSAs] may be more willing to engage with a carrot-based approach.”²⁴⁸ They are not simply unbiased actors, but rather engaged ones. As with any human actor, providing attractive incentives will likely help ANSAs comply with Deeds of Commitment. Carrots, as incentives, naturally appear more enticing than sticks. It is possible that using only carrots would still gain the compliance of many ANSA groups for that reason. The following are several options of possible incentives.

246. Hofmann & Schneckener, *supra* note 111, at 609.

247. *Id.*

248. Somer, *supra* note 53, at 121.

1. Ceasefires, negotiations, and peace agreements

There is a possibility that simple ceasefires, negotiations, peace agreements, or some combination thereof will be attractive enough to ANSAs to encourage Deed of Commitment compliance.²⁴⁹ Hofmann and Schneckener point out that “many non-state armed actors are indeed driven by certain grievances and political demands, which can be addressed through negotiations and/or other means.”²⁵⁰ Even negotiating with Geneva Call could be an avenue for ANSAs to communicate better with state actors. Evidence of cooperation might glean a favorable reaction from states as well.²⁵¹ It is also plausible that better communication with state actors is a goal of ANSA groups, especially if it would further their political or social aims. If that proves true, then negotiations could be an attractive carrot. This option would also be attractive to states, because they could likewise communicate with ANSA groups, and further, their children would then not be involved in armed conflict. However, these solutions are technically already open options, and so the fact that many ANSAs continue to use child soldiers probably indicates that this carrot would not be powerful enough on its own to ensure Deed of Commitment compliance.

2. Recognition of partial compliance

Partial compliance may be a good carrot in cases where it may not be possible for ANSAs to comply with every aspect of a Deed of Commitment. In fact, ANSAs simply may not know how to comply with every component.²⁵² One Geneva Call scholar stated: “Although

249. See Hofmann & Schneckener, *supra* note 111, at 610 (arguing that “ceasefires, confidence-building measures, and peace agreements, as well as mechanisms for conflict settlement and arbitration” could prove effective).

250. *Id.* at 611; see also *id.* at 617 (“A coalition of states may act as a ‘group of friends’ or ‘contact group’, [sic] engaging in conflict management and conflict mediation in specific cases.”).

251. There would be no guarantee that cooperation would gain the approval of states. For example, even in regard to Geneva Call’s negotiations and trainings with ANSAs within state boundaries, “[s]ometimes governments are favorable, at times reluctant and very few [even] refuse access.” GENEVA CALL, *Who We Are, FAQs*, *supra* note 20.

252. Katharine Fortin, *Geneva Call Report: Perceptions of Armed Non-State Actors on Humanitarian Action*, ARMED GROUPS AND INT’L LAW (May 24, 2016),

the ANSAs consulted express support for [International Humanitarian Law], their comprehension of relevant rules on humanitarian access is limited.”²⁵³ In any situation, there will be a learning curve for the ANSA group as they begin to change their practices to comply. As a result, compliance is virtually impossible as an overnight goal, and ANSAs will need time to implement the ideals to which they agreed by becoming a signatory.

Eric Jensen suggested a system of recognizing partial compliance. He remarked, “intermediate levels of recognition for partial compliance” can prove useful in that they “provide incentives . . . to comply with international law without eroding the maximum benefits offered to those who comply with all requirements.”²⁵⁴ Rather than incentivizing *only complete* compliance, it might be beneficial to lower compliance requirements, or at least allow time for the behavioral changes to take place. However, the international community may be wary of the possibility of lessening the incentive for complete compliance.²⁵⁵ If the ANSA groups do not sign right away, “rather than opting for an ‘all-or-nothing’ approach, Geneva Call maintains dialogue with such groups,”²⁵⁶ and a lower or partial recognition of compliance could result in more signatories. In addition, if ANSAs were willing to completely comply with rules regarding child soldiers, even if they are not completely complying with all the law of armed conflict rules, then perhaps they could get partial benefits from the law of war. This carrot option might be effective in terms of initially engaging ANSAs, but would not be a long-term solution to compliance, because it would allow for partial cooperation, which might never turn into full cooperation with a Deed of Commitment. The ultimate goal should be to completely abide by international humanitarian norms regarding child soldiers.

<https://armedgroups-internationalaw.org/2016/05/24/geneva-call-report-perceptions-of-armed-non-state-actors-on-humanitarian-action/>.

253. *Id.*

254. Eric Talbot Jensen, *Combatant Status: It is Time for Intermediate Levels of Recognition for Partial Compliance*, 46 VA. J. INT’L L. 209, 213–14 (2006).

255. *Id.* at 229.

256. Lacroix et al., *supra* note 133, at 11.

3. *Economic bribery*

Economic bribery, while an appealing incentive to virtually anyone, can be both bad and good as a carrot. Money can be a powerful motivator, especially for groups such as ANSAs that lack resources. Essentially, “if one is able to put enough pressure on them and/or offer them some profits, these people will ultimately comply.”²⁵⁷ However, the danger would arise if these groups used the funds for negative purposes, or simply took the money without fully committing to comply. Some sort of safety measure could be put in place to prevent those effects, such as a tracking or reporting method for the money. That might not be effective, however, because if the money were used but not reported, then it would be difficult to track.

Similarly, but perhaps more effectively, another form of economic bribery could be to deposit the money into an escrow for post-conflict resources. Money could be released if an ANSA proved its compliance with the Deed of Commitment. It would likely not be beneficial to have a fund like this run by the state, since that could be another source of tension between the ANSAs and the states. Instead, Geneva Call, or a different reliable third party, could govern the fund, and money could be fairly distributed through them. The administering party would be restricted to releasing the funds only upon certain contractually-determined events. The idea of economic bribery makes a good carrot, but the practical application is more difficult—where would the money come from? That complication makes this carrot less enticing as an incentive for Deed of Commitment compliance.

4. *Social and community bribery*

Bribery as a carrot can also be effective in a social and community form. At this point, most ANSAs, if not all, “have some sort of constituency or derive support from the communities where they originate.”²⁵⁸ Indeed, many ANSAs indicated that children live with their families in combatant communities that are a part of the groups.²⁵⁹ These groups are likely the primary provider of social structure and community support. Because of this, one scholar has

257. Hofmann & Schneckener, *supra* note 111, at 610.

258. Lacroix et al., *supra* note 133, at 11.

259. *See generally*, GENEVA CALL, *supra* note 1.

said that “sensitisation of such . . . communities has proven instrumental in bringing pressure on ANSAs, and consequently bringing about positive change in their behaviour.”²⁶⁰ Gaining the support of the community to pressure the ANSA group to comply might prove difficult, but would ultimately be pivotal.²⁶¹ In fact, it might also be possible that the community is “supportive” in the same way that some children “volunteer”—only due to the ANSAs threat of force. In that case, it might be easier than expected to utilize the community’s support to motivate ANSA groups, and might also be a sort of rescue to those community members as well as to the child soldiers. However, as with many actions that require support of the community, the drawback of this carrot would be that it might be difficult to gain enough support. This would certainly deter this method of incentivizing compliance with a Deed of Commitment.

5. *Immunity*

Immunity in international court proceedings could also be a carrot. If they should ever be prosecuted, ANSA groups could gain immunity through compliance. Immunity is a powerful incentive, and can be instrumental in bringing about complete compliance.²⁶² Partial compliance, while a good step, “does not merit complete privilege,”²⁶³ and so as a general rule, immunity should not be granted as a complete benefit to ANSAs who only partially comply.²⁶⁴ If ANSAs are concerned that signing a Deed of Commitment would result in prosecution for not previously abiding by international norms, then this option could be appealing as an incentive. Offering immunity would require extensive coordination with domestic governments and the international community, though, so it may not be feasible without a considerable amount of work. The extensive political coordination needed to arrange immunity would likely be reserved for very large ANSAs. Alternatively, because there are so many discrete

260. Lacroix et al., *supra* note 133, at 11.

261. One challenge to gaining support would be if the community had antagonistic views toward ANSAs, and would just as soon outcast those groups as help with their compliance. Another difficulty might be that the community would simply prefer to watch passively rather than make an effort to act, which would not provide any positive community motivation for the ANSAs to comply. Antagonism and indifference could both be very detrimental.

262. Jensen, *supra* note 254, at 234.

263. *Id.*

264. *Id.*

ANSAs, the transaction costs of arranging immunity for such small groups may ultimately be prohibitive. This would be a carrot that would be very effective for some groups, but hardly effective for others in considering Deed of Commitment compliance.

6. *Amnesty*

Similar to the idea of immunity is the possibility of amnesty. Where immunity would allow the ANSAs to be unsusceptible to prosecution, amnesty would grant a pardon. Some scholars have remarked that “tools for reconciliation processes and transitional justice . . . may be linked with amnesty provisions for leaders and members of armed groups if they participate in the investigation of war crimes and human rights violations, regret their past actions believably, and want to change their behaviour.”²⁶⁵ Although amnesty might contradict demands for justice, it also may “serve as an incentive to end violence and to refrain from using violence in the future.”²⁶⁶ It can be difficult for child soldiers to see their former leaders on trial because of lasting emotional and psychological effects of their involvement with the ANSA group, and thus their freedom from being forced to participate in armed conflict could justify using amnesty as a carrot. Although this carrot sounds ideal in helping to increase compliance with Deeds of Commitment, it might be more difficult in actual application if states were reluctant to grant it.

7. *Self-monitoring privileges*

Another potentially effective carrot to incentivize Deed of Commitment compliance would be to offer ANSAs the privilege of monitoring themselves. Since one major concern for ANSAs is privacy and avoiding a breach of trust,²⁶⁷ incentivizing compliance by offering ANSAs the privilege of monitoring themselves may be an attractive option. Indeed, “[w]hile no one should be naïve enough to accept

265. Hofmann & Schneckener, *supra* note 111, at 613.

266. *Id.*

267. Lacroix et al., *supra* note 129, at 11–12 (“[I]t may be that ANSAs would be less likely to accept dialogue, or to negotiate in good faith with such an organisation, fearing that they might share the information obtained (either voluntarily or following a summons by the court or tribunal), which could then be used to take action against members of the ANSA or the ANSA itself.”).

that self-monitoring would be adequate on its own, its virtues should not be ignored.”²⁶⁸ One scholar remarked, “[Self-monitoring] can strengthen a sense of ownership towards the implementation process—[which is] especially important for ANSAs, who generally are excluded from formation of norms—and the process of self-critical reflection, including the sharing of good practice, can result in new measures to improve compliance with substantive obligations.”²⁶⁹ Raising international expectations of ANSAs by treating them as groups capable of monitoring themselves could be a good option. ANSAs groups would likely find self-monitoring attractive due to the appeal of privacy and the opportunity to act autonomously. However, one potential problem with this is that ANSA groups may give false reports, which might deter the international community from being inclined to use this option. Ultimately, however, self-monitoring should be an attractive idea—if the international community cannot trust ANSAs to comply with a unilateral statement such as a Deed of Commitment, how can it expect ANSAs to take the next, and much larger step, of abiding by international humanitarian norms? Self-monitoring as a means of incentivizing compliance is an option worth exploring.

8. Training through Geneva Call

To remedy the potential problem that ANSAs simply do not know how to comply, and also as a possible carrot, NGOs such as Geneva Call could offer training to these groups.²⁷⁰ Because “[a]rmed actors will undergo processes of collective learning, which will alter strategies and, eventually, their self-conception,”²⁷¹ it is important to provide ways for them to successfully rebuild their groups. If Geneva Call could provide a framework for ANSAs to “accept basic norms and critically reflect their self-image and their actions,” which could be done through encompassing “empathy for victims, the confession of guilt, and public remorse,” then this carrot could be a very effective method of compliance.²⁷² Moreover, Geneva Call’s success in

268. Somer, *supra* note 53, at 119.

269. *Id.*

270. See Bongard & Somer, *supra* note 73, at 686.

271. Hofmann & Schneckener, *supra* note 111, at 612.

272. *Id.* at 613.

engaging²⁷³ and commitment to training ANSAs already²⁷⁴ point toward the success of this carrot in initially engaging them.

9. NGOs as mediators

Further, NGOs could not only provide training, but could act as a vehicle for ANSAs to prove their compliance. The use of NGOs as mediators could be an attractive carrot for increasing Deed of Commitment compliance. For example, ANSAs could piggy-back on the good reputation of Geneva Call, making Geneva Call a placeholder or mediator in the international community. One of the biggest sources of leverage for NGOs such as Geneva Call is their influence on local and international public opinion.²⁷⁵ Because of their ability to affect public opinion, Geneva Call could help ANSAs establish an improved international reputation.

Generally, “ANSAs often lack the necessary resources, capacity and equipment to implement their obligations under the [Deeds of Commitment].”²⁷⁶ Geneva Call, on the other hand, has a strong international reputation. It is already in a good position to act as a mediator, could educate external actors on how to best comply, and, in turn, could educate the states about non-state armed actors. This could be a good incentive for ANSAs to work with Geneva Call and agree to a Deed of Commitment. Using Geneva Call as a mediator would necessitate that Geneva Call keep a virtually flawless reputation. However, because helping child soldiers is one of its aims, it would presumably be keeping a good reputation in the eyes of the international community already in order to further that goal,²⁷⁷ and would also likely be eager to help by acting as a mediator. This carrot could be fairly easy to implement, which would make it an effective way to increase compliance with Deeds of Commitment.

273. See *supra* Section V.B.

274. GENEVA CALL, *Who We Are, FAQs*, *supra* note 20.

275. See Hofmann & Schneckener, *supra* note 111, at 619.

276. Lacroix et al., *supra* note 129, at 11.

277. Geneva Call's clean reputation is evidenced by the way that they operate as an organization. They operate in a way that gains the trust of not only ANSA groups but also state actors. For example, their attitude toward the governments on whose territory they are interacting with ANSAs is one of transparency and communicating information. Governments, particularly those of countries dealing with armed conflict, would not likely trust or allow access to an organization with a negative reputation. The fact that very few governments refuse Geneva Call access indicates the favorability of their reputation. GENEVA CALL, *Who We Are, FAQs*, *supra* note 20.

10. Increasing ANSA legitimacy

Signing the Deed of Commitment protecting children from armed conflict would allow ANSAs to prove to the international community that they can contribute in a humane and sophisticated way to public international forums and abide by international humanitarian norms. In other words, legitimizing ANSA groups could be a very attractive carrot. Compliance would be an opportunity for ANSA groups to build their own accountability in the international community. The assumption that “non-state armed actors can be affected by norms and arguments because many of them are concerned with their public image . . . and their sources of legitimacy”²⁷⁸ supports the idea that this would be an effective incentive. One scholar even suggested that a higher measure of success can be obtained when “local populations,” or in this case ANSAs, “will have to invest a great deal of themselves in this plan to prove their worth before the rest of the world commits to them,”²⁷⁹ because that investment will bring good international returns. ANSAs, if nothing else, surely would comply to gain legitimacy, since that often appears to be a primary aim.²⁸⁰ However, since states are so resolute in keeping that aim from them, there is also the risk that this incentive might be difficult to offer. Thus, this carrot would be somewhat effective for enforcing compliance with Deeds of Commitment but might prove difficult to implement.

11. Similar treatment to states

In the eyes of ANSAs, “legitimacy” could simply mean receiving the same treatment as states. This could be an extremely effective carrot as well. Though Somer stated that “[f]urther norms of customary [International Humanitarian Law] require all parties to conflict to provide children with the aid and care they require,”²⁸¹ one potential problem is that these norms are “convoluted and inconsistent . . .

278. Hofmann & Schneckener, *supra* note 111, at 613.

279. Panjabi, *supra* note 9, at 461.

280. See AOIFE MCCULLOUGH, THE LEGITIMACY OF STATES AND ARMED NON-STATE ACTORS 2 (2015), <http://www.gsdc.org/wp-content/uploads/2015/08/Legitimacy.pdf> (stating that non-state actors seek to “gain legitimacy through a range of strategies”).

281. Somer, *supra* note 53, at 110.

especially the way in which they treat ANSAs differently than states with regard to use and recruitment.”²⁸²

There is a basic idea that “non-state armed actors, and in particular their respective leaderships, can be . . . slowly integrated into a political setting, [perhaps] by distributing resources and sharing political responsibility.”²⁸³ This approach would “impl[y] a certain degree of informal or formal power-sharing, be it at national or local level, which would involve leaders of armed groups in day-to-day politics.”²⁸⁴ If reciprocity were guaranteed, ANSAs might be more likely to abide by international norms.²⁸⁵ To the credit of ANSAs, “Geneva Call’s experience shows that there are indeed cases where ANSAs commit to humanitarian norms without reciprocity by states.”²⁸⁶ Because ANSAs would prefer to have the same privileges as states, but are willing to sign a Deed of Commitment even without those privileges, offering this incentive could cause a significant increase in signatories to the Deed. However, similar to the risks of offering legitimacy, there is certainly a risk that domestic governments and the international community would not be willing to extend this as an incentive. Despite the potential positive effects regarding child soldiers, states might fear that giving ANSAs too much political power would cause of further political unrest and armed conflict. This carrot might not be the most effective for encouraging compliance with a Deed of Commitment.

12. Helping with law-making and rebuilding the state

Another carrot would be to allow ANSAs to help with law-making. Many of those fighting groups “do not participate in international lawmaking because [it] is still the exclusive domain of sovereign states.”²⁸⁷ Many of the states in which ANSAs reside have governments that are arguably corrupt or non-functional.²⁸⁸ Assuming

282. *Id.*

283. Hofmann & Schneckener, *supra* note 111, at 611.

284. *Id.*

285. Lacroix et al., *supra* note 129, at 11.

286. *Id.*

287. Rosen, *supra* note 13, at 7.

288. See GENEVA CALL, *Armed Non-State Actors*, <http://genevacall.org/how-we-work/armed-non-state-actors/> (last visited Sep. 30, 2016).

that those states would need to be rebuilt anyway, perhaps there would be merit in letting ANSAs participate in the rebuilding and the creation of norms.

As one scholar stated, “The concept is that the objects of obligations should be the subjects of the norm-creation. As international law traditionally addressed only States, it was justified that only States were law-makers.”²⁸⁹ At this point, “contemporary international law increasingly obliges private actors[, which] would call for participation of these actors in the norm-creation,” and further, the law of armed conflict imposes obligations directly on ANSAs, which would suggest that they should be involved in making international laws,²⁹⁰ or at least laws affecting them. Is it just to require ANSAs to abide by rules in which they have no say?²⁹¹ Because of the nature of sovereignty, however, the opportunity to participate in the rebuilding of the state would likely need to be awarded by the state itself, which could prove extremely difficult.

Even if ANSAs could not directly create laws, it could be enough to simply award them an advisory role in international processes.²⁹² If an ANSA desired such a role, it would need to abide by the Deed of Commitment and humanitarian norms, because otherwise it would be highly unlikely, perhaps impossible, that states would allow it to take on an advisory role, much less participate in the actual law-making.

One scholar points out two advantages to this method of engaging ANSAs in compliance: first, by allowing them to help make the laws, they will *be aware* of the laws. “Knowledge,” he asserts, “remains a factor of compliance.”²⁹³ In addition, “giving [ANSAs] a voice in the creation process can help produce rules better-tailored to the

289. Petrov, *supra* note 221, at 296.

290. *Id.*

291. Claudia Hofmann and Ulrich Schneckener present the troubling dilemma: “On the one hand, peace-building and state-building activities have to be implemented against the vested interests of armed actors in order to achieve positive results in the long run.” They continued, “On the other hand, progress regarding a secure environment is often only possible if at least the most powerful of the non-state armed actors involved can be included in a political process that grants them some kind of political influence (for example, posts in an interim government) and/or economic and financial privileges, which may in turn undermine the whole process of state-building.” Hofmann & Schneckener, *supra* note 111, at 605.

292. Petrov, *supra* note 221, at 297.

293. *Id.* at 293, 299 (stating that being “part of the process, ensures awareness and knowledge of existing rules”).

situation.”²⁹⁴ He even argues that there seems to be support and a “current trend” to involve these ANSA groups in “making . . . international law with universal application.”²⁹⁵ If enough community support could be gleaned within these states, then perhaps there is a possibility, however slight, that ANSAs could be recognized as groups with political *potential*. That situation would introduce the possibility of expanding their reach into rebuilding the state, as long as the political body with the power to award those types of privileges were willing to award law-making power to those groups.

Most states may see this as the riskiest of the carrot options.²⁹⁶ Although it would surely incentivize ANSAs because it would offer them both legitimacy and decision-making power, it may simply not be feasible as a method of encouraging compliance with a Deed of Commitment. Its feasibility would likely depend on the inclinations of the states in unrest and whether they felt that the benefits of giving ANSAs political influence would outweigh the risks. For example, one risk is that the governments needing to be rebuilt are so unstable that giving ANSAs political or law-making opportunities would simply make a bad situation worse, because there would be no anchor grounding and guiding the current government nor the new ANSA body.

13. *Honest concern for the children*

Finally, although there are many other external incentives to motivate ANSAs to abide by international humanitarian norms and remove children from armed conflict, there is also the possibility that ANSAs are internally motivated. Many factors may affect an ANSA’s decision to “commit to humanitarian norms,” and one is simply

294. *Id.* at 299.

295. *Id.* at 297. *But see* Hofmann & Schneckener, *supra* note 111, at 606 (At this point, there is a question “whether it is possible to use these [armed non-state actors] as temporary solutions and building blocks for reconstructing statehood, or whether this would simply increase the risk of strengthening and legitimizing armed actors so that the establishment of the state’s monopoly on the use of force becomes even less likely.” Further, “those actors who, in theory, have the greatest potential for state-building and security governance are also the ones who can mobilize the greatest spoiling power.”).

296. Giving power to groups known for their involvement in armed conflict might not be a comfortable option for many states, particularly in states where armed conflict was the cause of the political unrest and the consequent need to rebuild the state.

“concern for the well-being of the affected population,”²⁹⁷ especially in regard to children. Ultimately, this is what motivates much of the outside world, and although there often appears to be a disparity between the goals of states and those of ANSAs, it would appear that “[t]he protection of children from the effects of armed conflict can be a rallying issue for all stakeholders, including [ANSAs] themselves.”²⁹⁸ If this is true, then the internal motivation to protect children might be enough for ANSAs to become signatories of the Deed of Commitment once they realize that it aligns with their same ideals regarding child soldiers. Unfortunately, the fact that ANSAs continue to use children in their armies suggests that this might not be a likely incentive. However, there is still the possibility that these groups care for the children, as they suggest, and that improved communication with the international community would show that they have made greater strides than anticipated. Nonetheless, this carrot is highly unlikely.

The preceding thirteen carrot options range from small and easily attainable to highly idealist and large-scale. Like the sticks, the effectiveness of each carrot would likely be unique to each situation. Overall, Geneva Call appears to be more likely to use carrots than sticks (other than perhaps small sanctions), and thus some of these options could be attractive. Despite its tendency toward carrots, what will likely be most successful in enforcing compliance with Deeds of Commitment is to use a combination of sticks and carrots. Starting with the smaller and more easily attainable stick and carrot options would likely set a more attainable success threshold for ANSA compliance than starting with some of the idealist large-scale ones. Not only would the simpler sticks and carrots be easier for states to acknowledge and allow, but starting small would also leave less room for disaster resulting from failure. Further, starting with small-scale options would give ANSAs room to discover and fix errors with their compliance before implementing more substantial sticks and carrots with higher stakes and more people involved. However, choosing one particular stick or carrot option over another will still likely be extremely situational.

297. Lacroix et al., *supra* note 129, at 11.

298. GENEVA CALL, *supra* note 1, at 4.

Having flexibility allows Geneva Call to mold incentives and enforcements into whichever combination correlates best with the situation. Engaging ANSAs to abide by international norms through this Deed of Commitment is crucial, because “[i]f we fail to engage armed non-State actors, we do so at the peril of affected children.”²⁹⁹ Adjusting the combination of sticks and carrots to each unique situation will likely maximize success.

VII. CONCLUSION

In the foreword to Geneva Call’s publication *In Their Words*, Lieutenant-General the Honourable Roméo A. Dallaire, (Ret’d) stated that “[s]ituations are rarely black and white Yet each party to a conflict, State or non-State, has international obligations to ensure the protection of children.”³⁰⁰ He promoted the mindset that “strategies targeting armed actors on child protection are not contingent on the status of these actors, but rather on their sincerity.”³⁰¹

Ultimately, although the community mentioned in the introduction does not intentionally use children as soldiers, the reality is that many children live in an ANSA community that is in the middle of armed conflict. Further, these children, whether or not they volunteer or are forced to act as soldiers by the leadership of their social group, are involved in the warfare, no matter how indirectly.

Although there are some international treaties governing this area of the law, most scholars agree that they are not binding on ANSAs, or at least have little impact on the day-to-day operations of ANSAs with respect to child soldiers. While Geneva Call’s Deed of Commitment protecting children from armed conflict is not binding, it still holds significant potential as a method for ANSAs to commit to abide by international norms in a way that is analogous to a unilateral statement. Based on the success of the Deed of Commitment banning anti-personnel landmines, it would seem as though this Deed of

299. *Id.* It was also suggested that if the issue of child protection “particularly child soldiers, [had been put] on the table during the negotiations in Rwanda, maybe there is a chance that the outcome could have been mitigated,” which suggests that effectively using sticks and carrots could have valuable and far-reaching effects. *Id.*

300. *Id.*

301. *Id.*

Commitment, if executed in a similar fashion, would have similar success.

The international community should find ways to encourage compliance with the Deed of Commitment for the Protection of Children from the Effects of Armed Conflict in order to eradicate the use of child soldiers. Using sticks and carrots, and combining them in ways to cater to specific and unique situations, can effectively encourage ANSAs to become signatories to and abide by this Deed. Complying with this Deed will increase the likelihood that those actors will refrain from using or involving children in warfare. The international community should investigate these different methods of enforcement and incentives in order to foster a relationship of trust between state and non-state actors, which would salvage the lives, and the innocent youthful experiences, of these children.

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