

Panel discussion on
**Verifying Compliance with the Anti-Personnel Mine Ban:
Geneva Call's Experience with Armed Non-State Actors**

Speech by Chris Rush

Excellencies, ladies and gentlemen, it is a great honour to be able to speak to you today.

My remarks will focus on Geneva Call's experience of verifying compliance by armed Non State Actors with its *Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action*.

I am assuming that most people at this forum will have at least a passing familiarity with the work of Geneva Call and this instrument; shortness of time does not allow me to go into much detail here. Suffice to say that obligations that signatory Non State Actors have under this *Deed of Commitment* largely mirror those that States bring upon themselves by signing the Mine Ban Convention. Signatories formally pledge, amongst other things, to prohibit the use and the production of AP mines, to destroy the stocks of AP mines that they may have, to cooperate in mine action and to take necessary measures to enforce compliance. They also acknowledge that adhering to the Deed of Commitment shall not affect their legal status, pursuant to common Article 3 of the Geneva Conventions.

The key provision in respect of monitoring and verifying compliance with the terms of the Deed of Commitment is Article 3. This Article obliges signatories to co-operate with Geneva Call and associated organisations in respect of monitoring compliance, including providing relevant information and allowing for field visits and inspections.

Geneva Call considers that monitoring and, as necessary, verifying, compliance with the *Deed of Commitment* are key aspects of its role in relation to this instrument, and takes these tasks extremely seriously. The core element of this compliance regime is the provision of information by signatories as to their implementation of the obligations under the *Deed of Commitment*. This is provided by the signatories in several ways: through the completion of standardised compliance reports statements at Meetings of Signatories to the Deed of Commitment -the second of which took place in Geneva last year- and, as and when necessary, the provision of specific information and clarifications at the request of Geneva Call. This happens either through remote communication or. during routine field missions To date, signatory groups have in the main actively co-operated with Geneva Call in respect of monitoring. I would particularly mention that no signatory group has ever refused to receive a Geneva Call mission.

Geneva Call also gathers relevant information from other stakeholders: governments, international, non-governmental and civil society organisations and through the media. Again this information is gathered either remotely or through field missions. Allegations of a signatory group's non-compliance with the terms of the *Deed of Commitment* usually emanate from one of these sources. In such an instance Geneva Call initially seeks a response to the allegations from the signatory group.

Allegations of non-compliance have in fact been quite rare, and I would mention that, as has been the case with routine monitoring, signatory NSAs have actively co-operated with Geneva Call's enquiries.

There have only been a few occasions where it has been necessary to seek to conduct field missions specifically to verify allegations of non-compliance. In one case the concerned state has not given permission for enquiries to proceed within its territory. I will therefore concentrate my remarks on the other instances, with a particular focus on the most recent fact finding mission to the Philippines in 2009.

In 2006 the UN Monitoring Group on Somalia, a body which monitors the arms embargo, reported that the Puntland authorities, a signatory to the *Deed of Commitment*, had received from Ethiopia, a State Party to the MBT, a delivery of weapons and ordnance that included 180 anti-personnel landmines. Geneva Call sought and received a formal response from the Puntland authorities, which denied these allegations. Moreover other stakeholders consulted did not consider the allegations to be credible. Requests to the Chair of the Monitoring Group for more information elicited no response. As I understand it, enquiries to the Monitoring Group in respect of the allegations against Ethiopia by the Presidents of the 7th and 8th Meeting of State Parties were also not fruitful. Nonetheless the allegations were considered both serious and credible enough to necessitate field verification, and, in 2007, a Geneva Call Mission visited Puntland to this end. The Puntland authorities actively co-operated with this mission, including allowing the inspection of weapons stockpiles in Garowe and Galkayo. Apart from those AP mines already declared by Puntland as constituting its stockpiles pending destruction, no banned devices were identified. It was therefore concluded that no violation of the *Deed of Commitment* had occurred. Following on from these enquiries, Puntland co-operated with Geneva Call and the Mines Advisory Group (MAG) to ensure the destruction of not only the stockpiled AP mines but other unsafe ordnance that had been identified during the inspection.

The other two instances of field verification were in respect of the Moro Islamic Liberation Front (or the M.I.L.F as it is commonly known) in the Philippines. Allegations made that the M.I.L.F had used landmines in 2000 - in the immediate period after it had signed the *Deed of Commitment* – was the subject of a Fact Finding Mission in 2002 that had not been fully realised. On that occasion the Department of National Defence, citing security concerns, had withdrawn the necessary clearances to the international members of the mission to visit relevant field locations. However, other meetings did take place, including with the M.I.L.F leadership. They acknowledged utilizing ‘string-pull’ explosive devices which they did not consider to be victim activated. However, it was found that there was a risk that, in some circumstances, the activating string on such devices might effectively act as a trip wire that could be activated by a victim, and as such, they were prohibited under the *Deed of Commitment*. The M.I.L.F agreed to desist from utilizing such devices in the future.

There were no credible allegations of violations of the *Deed of Commitment* made against the M.I.L.F for the next 6 years. However, in 2008 there was a flurry of reports in the Philippine media that its military forces were using landmines. Most of the allegations emanated from Philippine government sources, particularly from within the Armed Forces and the Police. The reports varied from vague and passing references, to quite specific and detailed accounts. The alleged incidents coincided with a marked escalation in the conflict, in the wake of the aborted signing of an agreement between the Government and the M.I.L.F which had led to the ceasefire no longer holding sway in large part of Mindanao where the conflict is focussed.

Details of the allegations were compiled by Geneva Call and shared with the M.I.L.F leadership, and their response to each incident was ascertained. Geneva Call also sought information from other relevant actors with a presence ‘on the ground’. However, it was readily apparent that the

areas where the alleged incidents took place had been, and often still were, the scene of heavy fighting. As the population had largely fled to safer areas, non-military actors had not been in the vicinity of the alleged incidents since the start of the fighting and were therefore not able provide significant input.

With the Government asserting mine use and the M.I.L.F denying, and limited input from other actors, this was a situation of one side's word against the other. However, these informal enquiries did lead Geneva Call to conclude that the allegations were both serious and credible enough to seek to pursue them further, through a Fact Finding Mission. The M.I.L.F agreed to facilitate such a mission.

Of course it was necessary to get the agreement and support of the Government to conduct the enquiries. This was both in respect of the Mission being an international initiative, and, given that most of the allegations emanated from the Government itself, also to ensure that the Mission was able to have access to all relevant persons, materials and other evidence. Geneva Call suggested to the Government that, being a State party to the Ottawa Mine Ban Convention, the approval and facilitation of the Mission would serve towards meeting its obligations under Article 9 to ensure that the terms of that instrument are abided with. The Mission was approved by the then Deputy Chief of Staff for Plans on behalf of the Chief of Staff of the Armed Forces.

Geneva Call liaised closely with both the M.I.L.F and relevant Government officials - primarily from within the Department of Foreign Affairs, the Office of the Presidential Adviser on the Peace Process and the Armed Forces of the Philippines - in preparation for the Mission. The Military conducted its own detailed enquiries to establish in which of the reported incidents – and indeed other incidents that may not have previously been reported – was there an assertion of the use of devices prohibited under the *Deed of Commitment*. Eventually a much shorter list of allegations, but with more specific and detailed information - was compiled and provided to Geneva Call.

The Terms of Reference of the Mission were drawn up during this period. These, in fact, consisted of a simple 3 part test - to paraphrase:

1/ Were Anti Personnel mines utilized during the period in question?

2/ If 1 was answered in the affirmative, could their use be attributed to the M.I.L.F? And

3/ If both 1 and 2 were answered in the affirmative, whether such violations were, or should have been, known to those in the command structure of the M.I.L.F. The engagement of the M.I.L.F leadership in relation to taking the necessary remedial measures was also prescribed in such an instance.

The Mission team was assembled with these Terms of Reference very much in mind. The Mission Team was to consist of three persons: Phil Halford- then of the Mines Advisory Group- as the Mission Technical Expert, Professor Eric David here with us today, the Legal and Fact Finding Expert and myself as the Head of Mission.

Although Geneva Call sought for the Mission to take place expeditiously, and delay was caused by various external factors, it should be mentioned that for a period of nearly a year from the initial allegations the ground situation continued to be characterized by more or less

open warfare, and the conditions to carry out an investigation in such circumstances were far from conducive. Prospects for the Mission were given a significant boost in July 2009 with the Suspension of Military Operations by the Government, and the reciprocal Suspension of Military Action by the M.I.L.F that was declared almost immediately afterwards. These announcements more or less coincided with confirmation from the Government that its preparations were finalised and that it was ready to allow the Mission to proceed.

Despite of the Suspensions of Military Operations and the painstaking steps being taken towards the resumption of peace talks, the ground situation in the areas where the allegations emanated remained extremely insecure, and were still considered 'off limits' by most, if not all, humanitarian actors. In these circumstances, it was necessary to request that the full and active involvement of the Government and the M.I.L.F in ensuring that the Mission could take place safely and securely.

Whilst both the Government and the M.I.L.F agreed that their respective ceasefire committees would co-operate with the Mission, the two committees had not formally met - as the Joint Ceasefire Committee - since the escalation in conflict. A request for the convening of a formal session of this body, to plan the arrangements, was declined.

However, there was '11th hour' agreement by both the Government and M.I.L.F ceasefire committees to attend an informal co-ordination meeting, and this low profile event was arranged by Geneva Call. An agreement of accompaniment by both ceasefire committees was secured and, in this respect, a travel schedule was developed, the 'choreography' of travelling to the areas for the field enquiries was arranged, and relevant parties informed about the upcoming programme. Therefore just 3 days before the provisional programme was scheduled to commence, I was able to give the green light to proceed.

The Mission travelled to relevant locations, interviewed witnesses and inspected devices. It was able to conclude that there was the use of improvised devices that could be considered as AP mines in two incidents that were the subject of its enquiries, and probable use in another. In terms of attribution, there was not enough evidence to definitively conclude whether the M.I.L.F were responsible in any of these incidents. In this respect there were known to be a number of armed actors operating in the vicinity of the incidents. However the Mission did conclude that involvement of forces associated with the M.I.L.F was likely in respect of two incidents and possible in respect of the third.

The Mission shared its report with the M.I.L.F. Although there had not been a finding of a violation of the obligations under the *Deed of Commitment*, it was considered that the organisation could do more to ensure that the MILF forces were aware of their obligations under the mine ban. The key recommendation in this respect was that the M.I.L.F should consider incorporating the mine ban into its Code of Conduct. Furthermore, it was recommended that the M.I.L.F consider conducting dissemination on the AP mine ban within its ranks. The M.I.L.F agreed to both of these recommendations and is currently working with Geneva Call to ensure that they are actualised.

Geneva Call has now gained valuable experience in seeking to ensure compliance with its *Deed of Commitment* on AP mines. This experience has clearly indicated that not only can NSAs be convinced to make humanitarian commitments, but they can actively participate in the scrutiny of their adherence to such commitments. There have been some positive tangible direct results from these processes, such as the clarification of the scope of the *Deed of*

Commitment after the first Philippines Mission, and the subsequent agreement by the M.I.L.F to desist from using string pull devices. As has been mentioned the second Philippines Mission has led to the agreement by the M.I.L.F to amend its Code of Conduct to incorporate the AP mine ban, as well as to increase its efforts to disseminate the ban within its ranks.

There have also been some interesting spin off and side effects – the destruction of Puntland's stockpiled mines and other ammunition identified in inspections is a case in point. Geneva Call has also been informed by the ceasefire committees that accompanied it on its 2009 Mission in the Philippines that the working relationships re-established as part of this process helped resume co-operation after 15 months when this was not possible, and thus, in a modest way, may have contributed to re-establishing important relationships on the road to peace.

Field level initiatives to verify compliance can only happen with the active co-operation of relevant stakeholders, particularly concerned states; we would urge all parties to work together to co-operate in relation to future endeavours seeking to address compliance issues, both in respect of the *Deed of Commitment* and other humanitarian instruments, to ensure that civilians get the protection they both deserve and are entitled to.