

- The parameters of the term 'armed': will any form of weapon, such as machetes, be a sufficient criterion or must firearms be used?
- The size and structure of a group thus defined: a partial answer can be found within the 1949 Geneva Conventions.
- Some opposition groups are clearly outside state control, but others, as in Colombia and Northern Ireland, fight with the government or at least against the armed opposition group.

In addition, the objectives of the group need to be considered. Some groups have purely political aims, but others fund their goals through criminal activities.

The final problem is that child soldiers are increasingly recruited and employed in conflicts on all continents by non-governmental armed groups. Nevertheless, Mr. Vonivier drew the Tribunal's attention to the fact that despite being outside state control and not party to international treaties, non-governmental armed groups are still subject to certain rules of obligation and accountability.

In the first place, customary humanitarian law entails rules that are universally applicable. In addition, some parts of statutory law are applicable to non-governmental armed groups. Unlike human rights law, which is only considered to be applicable to governments, the written rules of international humanitarian law are broader, because they address all parties to a conflict and impose equal obligations on them all. Mr. Vonivier mentioned two articles in particular:

- Article 77 of Additional Protocol to the 1949 Geneva Conventions, relating to the protection of victims of international armed conflicts, which states at paragraph 2:

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. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years the Parties to the conflict shall endeavour to give priority to those who are oldest.

What is an 'Armed Group'?

...dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of [the] territory as to enable them to carry out sustained and concerted military operations and to implement [the] Protocol.

1949 Geneva Conventions, Additional Protocol II, Article 1 paragraph 1.

Non-governmental armed groups are not free to misbehave in the eyes of the law.

Raphael Vonivier: Evidence to the Tribunal

- Article 4 of Additional Protocol II to the 1949 Geneva Conventions, relating to the protection of victims of non-international armed conflicts, which states at paragraph 3:

Children shall be provided with the care and aid they require, and in particular: [...] c) children who have not attained the age of fifteen years shall neither be recruited in the armed forces nor allowed to take part in hostilities; d) the special protection provided by this Article to children who have not attained the age of fifteen years shall remain applicable to them if they take a direct part in hostilities despite the provisions of sub paragraph c) and are captured.

It is interesting, Mr. Vonivier pointed out that this Article seems to take it for granted that the minimum age stipulation will be violated. It is difficult to apply Additional Protocol II because of the need to meet six cumulative conditions.

Human rights law also makes some provision for regulating the activities of non-governmental armed groups, which are specifically mentioned in Article 4 of the Optional Protocol to the CRC. Yet two questions remain unsolved: How will States Parties cope with the disparity between recruitment at 15 years for government forces and at 18 for non-governmental armed groups and how can non-state entities be obliged by the international community to respect human rights law provisions, which apply only to states? Nevertheless, it is important that the Optional Protocol does place States Parties under obligation to take all feasible measures to prevent recruitment and use of people under 18 years of age by armed groups – not only by confronting the groups but also by establishing legal measures to prohibit and criminalise such practices. This could also prove useful in combating recruitment from an ethnic diaspora in another state as well as addressing cross-border recruitment, from refugee camps for example.

Mr. Vonivier expressed the view that it is not unrealistic to expect the international community put pressure on supporters and sponsors of non-governmental armed groups. All such groups have sponsors both inside and outside the country providing substantial political, logistical, military, intelligence and financial aid. It is also not unthinkable that non-governmental armed groups might solemnly declare that they would abide by treaties and allow NGOs or a new international body to verify their compliance. Mutual agreements between a state and a non-governmental armed group are also possible.

With respect to accountability, Mr. Vonivier drew