NEITHER TERRORISTS NOR FREEDOM FIGHTERS\textsuperscript{1}

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The problem

What constitutes an armed group? Over the past generation, armed non-state groups variously described as guerrillas, freedom fighters, warlords, militias, rebels, terrorists and bandits have grabbed the world’s attention. From Colombia to the Philippines, these groups are now widely recognized as the dominant face of modern warfare. Yet such groups are not new. As far back as the fifth century B.C. Herodotus contrasted the settled empires in the Greek islands with the warriors of the largely nomadic tribes in the Anatolian Peninsula, the Caucasus, and Central Asia. Much as present-day guerrillas, ancient rebels were often loosely organized and avoided full-scale confrontation with large standing armies, preferring instead to strike in secret or against “soft” targets, including civilians (Herodotus 1996).

While non-state armed groups have always existed, to this day there is no clear consensus on how to describe or define them, or on what should be expected from them. The confusion over the past generation is the product of two unresolved debates. First, the debate over whether given groups or individuals were “terrorists” or “freedom fighters” was largely a product of the insurgencies and counterinsurgencies of the Cold War and the end of colonialism. Depending on one’s perspective, different labels could apply to the same group, and the enduring validity of the refrain that “one person’s terrorist is another person’s freedom fighter” is a simple recognition that the debate was and remains unresolved. Yet regardless of where one stands, the terrorism versus counter-terrorism debate ultimately revolves around the use of coercive force. Terrorists challenge states, which try, through force, to crush them.

Second, beginning in the 1970s, a series of debates took place inside the humanitarian and human rights communities over how to grapple with acts of violence committed by non-state armed groups. Regardless of what they were called (whether terrorists, freedom fighters, liberation movements, militias, etc.), the question arose as to whether they should be expected to respect the same humanitarian and human rights norms as states. These norms, embodied in fundamental documents such as the Geneva Conventions and the UN’s 1948 Universal Declaration of Human Rights, were traditionally understood to apply

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2 Indeed, the label applied to some groups, such as the IRA or the PLO, could evolve: from a terrorist with whom it is impossible to negotiate, to legitimate representatives of their political constituencies.
only to states. The rationale was simple: states are expected to protect their citizens’ basic rights, and therefore by definition only states can violate these rights. Non-state groups were not expected to meet the same standard of behavior, and in the traditional framework were understood simply as a domestic political or criminal problem of the state in whose boundaries the group operated. However, the traditional paradigm began to change, especially in the 1970s, when the humanitarian and human rights communities, which operated in zones of conflict and human rights abuse, began to argue that from the perspective of people on the ground, it does not make much of a difference whether acts of violence are committed by a state or a non-state group. Moreover, the existence of such groups in the first place is a sign of an ineffective state, which is unable (or unwilling) to completely enforce the rule of law and establish a coercive monopoly. As a result, if humanitarian and human rights standards are to have any validity, they should apply to all relevant actors, not simply states.

In 1977 the Geneva Conventions were amended (through Protocol II), to apply to “all parties” in an armed conflict, as well as to “non-international” armed conflicts; and in the 1980s and 90s both Amnesty International and Human Rights Watch changed their definition of what constitutes a human rights violation, to include acts committed not only by states, but also by non-state groups. During the past decade, as more international and domestic human rights and humanitarian agencies have grappled with how to improve the behavior of armed groups, the “terrorism vs. freedom fighter” debate began to lose prominence. By the late 1990s, the labels themselves were quickly becoming anachronistic.3

The terrorist attacks of 11 September 2001 changed this, as they did so much else. From a second-order priority, terrorism became a central political concern for the leading powers – precisely at a time when the humanitarian and human rights communities had made large advances in extending their normative framework to non-state groups. As a result, today we are faced with a uniquely complex situation. Armed groups are widely recognized to be of paramount political importance, but there is far less consensus over how to deal with them than there was even a decade ago. With the onset of the “war on terror,” the humanitarian and human rights communities have lost much of the ground they had gained in previous decades, as states such as Colombia, Russia, Pakistan, Indonesia, and the Philippines, among others, place security above humanitarian concerns. Humanitarian organizations ranging from the International Committee of the Red Cross to the UN High Commission for Refugees and UN Development Program find it increasingly difficult to address their mandate by directly

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3 In some places (such as Israel, Spain, or Northern Ireland), of course, the debate never lost prominence.
engaging armed groups that states have labeled “terrorists”. The confusion over how to understand non-state groups makes a coherent international response even more difficult.

This paper is an attempt to overcome the impasse. Directed primarily at the humanitarian and human rights communities, it claims that these communities cannot hope to change the terms of the “war on terror” debate without a reasonable consensus on what constitutes an armed group. Most of the current working definitions, it argues, do not accurately reflect the kinds of groups with which humanitarian and human rights agencies are forced to contend in conflict zones around the world on a daily basis. The paper proposes an alternative, minimalist, working definition, which better reflects the diversity of groups we observe.

Why not terrorists?

The idea that armed groups should be crushed by force is not new. The history of ancient empires, from the Assyrians to the Chinese, Egyptians, Persians, Greeks, and Romans, is littered with the battles of powerful rulers against armed groups of various sorts. In the modern period, since the Treaty of Westphalia gave states official recognition as the primary political unit, a complex and long-term political experiment has been in place. The Westphalian system is premised on a simple and straightforward Hobbesian logic: creating sovereign states – with the right and the capacity to monopolize coercive force inside their territories – is the most effective way to achieve peace and order. It is far better to live under states that have the monopoly of force, in other words, than outside states and be prey to roving bands of gangsters, criminals, and rebels. The Thirty Years’ War had demonstrated all too clearly Hobbes’ contention that life outside the state is “solitary, poore, nasty, brutish, and short.”

The effort to create a world of fully sovereign states, since the 17th century, has been a complex undertaking, encompassing a wide variety of functions and institutions. It has included replacing mercenaries with standing armies, creating centralized fiscal and administrative systems, and extending the rule of law throughout the national territory (e.g. Tilly and Ardant 1975, Poggi 1990, Tilly 1992, Krasner 1993, Spruyt 1994, Ertman 1997, Krasner 1999). Yet at the core, the Hobbesian premise arguably remains the most fundamental underpinning of the state. If nothing else, states provide security and order by

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4 The recent Secretary-General’s report on the protection of civilians in armed conflict argues that the “designation of certain non-State armed groups as terrorist organizations has had an adverse impact on the opportunities for humanitarian negotiations. The prohibition on dialogue with armed groups in Colombia, for example, has resulted in severe restrictions on access to populations in need” (United Nations 2004, 13).
limiting the number of actors that can exercise force, and regulating their behavior.

This is the backdrop against which it is instructive to consider the current debate over the “war on terror.” From the bans against dueling in Tudor England, to the US Patriot Act’s injunctions against terrorist activities, punishing non-state groups is part of a long-standing effort to enforce states’ coercive monopoly. The problem, however, is that creating truly sovereign states with full coercive monopolies has been at best a partial success. Even during the 19th century, a period that has been called the apex of coercive monopolization (Holsti 2004), Westphalian states at best had a tenuous grip over much of the world, including most of Africa, as well as large parts of Asia and the Americas. Notwithstanding the importance of the Westphalian system as a guiding principle (and the validity of the Hobbesian logic it is based on), it has never been completely achieved in practice.5

One possible response to the failure to achieve fully effective coercive monopolies can be labeled the ‘sovereigntist’ alternative: to simply continue along the Westphalian path, with redoubled efforts to ensure states’ coercive monopoly. This response is based on the assumption that no better alternative to the Westphalian system exists. No sovereigns, no rule of law. Past failure to create a world of effective sovereigns should not, in the absence of an alternative, be a deterrent to continued future efforts in this direction.

There are two objections to the sovereigntist proposition. The first is the question of how long should the failure to achieve the Westphalian ideal should be allowed to stand before it is recognized as such. A political experiment that has been in place for over three centuries is long by any measure. At some point, it is reasonable to ask how long is too long and alternatives should be sought.

The second objection is that over the past couple of generations in particular the principle of sovereignty has been increasingly abrogated in the name of a growing body of international humanitarian and human rights norms, enshrined in documents such as the Geneva Conventions and the Universal Declaration of Human Rights. In such a context, Westphalian sovereignty is limited, increasingly trumped by a number of other principles.

This observation signals a second possible response to the failure to create fully sovereign states with effective coercive monopolies. At the opposite end of the spectrum from the ‘sovereigntist’ approach is the ‘globalist’ alternative. This is the idea that a much stronger international, as opposed to domestic, coercive capacity is called for. At the limit, this position envisions a true “world government,” a new coercive monopolist to replace the current state-based system. In less extreme form, this position holds that stronger international

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5 States themselves have also often honoured Westphalia more in the breach (Krasner 1999).
institutions – such as the International Criminal Court, for example – are necessary substitutes for ineffective state institutions.\textsuperscript{6}

Regardless of any merits this position may have in principle, it suffers from the fundamental problem that it is highly unrealistic. If the past three centuries have failed to bring about a world of truly sovereign Westphalian states, it is hard to visualize anything like a “world government” anytime soon. Even the weaker form of this proposition – that stronger international institutions are a necessary substitute for weak or ineffective states institutions – raises doubts. Why should international institutions be any more successful than domestic ones over the long run, particularly without an effective international coercive monopoly? Why should we expect that creating an international monopoly of coercion – even if it were desirable – would be any less difficult than building coercive monopolies at the domestic level?

In short, neither the sovereigntist nor the internationalist positions are especially realistic. The international community is increasingly and more aggressively interfering in the domestic affairs of various states. But we are a long way away from anything like a comprehensive global architecture that replaces sovereign states. As a result, when both the sovereigntist and the globalist alternatives are discounted, what remains for the foreseeable future is the need to figure out how to operate in a world of fragmented sovereignty, where a significant number of states have not obtained effective domestic, let alone international, sovereignty. In a context where no group has succeeded in fully monopolizing coercion, and where humanitarian and human rights norms calling on “all relevant actors” to respect the same standards are increasingly significant, the problem of armed groups is of central importance.

Consider the following: there are many cases where states have successfully used force to defeat armed challengers (e.g. Argentina in the 1970s). There are also cases where armed challengers have successfully defeated the incumbent state by force, and become the new rulers themselves (e.g. Cuba in 1959). And there are cases where both states and non-state parties have agreed to end their conflict through negotiations, usually after a prolonged struggle (e.g. El Salvador, Bosnia). But there are also many cases – arguably most contemporary conflicts – where neither force nor negotiations have succeeded in ending the conflict. In places like Colombia, Sri Lanka, the Philippines, Uganda, or the D.R. Congo, among many others, armed groups often have direct control over resources, territories, and people’s lives.

\textsuperscript{6} The International Commission on Intervention and State Sovereignty’s report, \textit{The Responsibility to Protect}, expresses a variant of this argument. The report advocates international intervention, according to a strict set of criteria, when states fail to uphold their basic responsibility to protect the citizens under their jurisdiction (International Commission on Intervention and State Sovereignty, 2001).
If humanitarian and human rights standards are to mean anything, they have to be applied – and enforced – in all contexts, including those of fragmented sovereignty. Doing this forces human rights and humanitarian agencies to deal with groups directly.\textsuperscript{7} This much is likely uncontroversial. The problems, however, begin when we consider what exactly constitutes an armed group.

**Definitions I: The standard approach**

If it is necessary to deal with armed groups for humanitarian and human rights reasons, it is important to have a common working understanding of what such a group is. Humanitarian and human rights organizations have tended to explicitly define, or implicitly assume, armed groups as would-be states. To qualify as an armed group, working definitions normally focus on roughly four characteristics:

1. Some level of organizational coherence or hierarchical structure;
2. The use of violence for specifically political ends;
3. At least a minimum degree of independence from state control;
4. And (usually) some degree of territorial control.

The most comprehensive (and arguably most influential), set of definitions is found in the Geneva Conventions. Protocol II, for example, stipulates that the Conventions apply to groups that have a clear organizational hierarchy that enables leaders to control subordinates, and which control sufficient territory to permit them to carry out “sustained and concerted military operations” (Part I, Art. 1(1)). This excludes short-term acts of violence, such as riots, unless carried out by an approaching belligerent force (Part I, Art. 4a(6)). Protocol I also explicitly excludes “mercenaries,” defined in part as parties driven by “the desire for private gain,” as opposed to political ends (Art. 47, 2(c)).

The most stringent requirements specifically addressing “armed groups” refer to the status of prisoners of war. To qualify for the prisoner of war protections afforded by the Geneva Conventions, an armed combatant must be commanded by someone responsible for subordinates, have a fixed distinctive sign recognizable at a distance, carry arms openly, and conduct operations in accordance with the laws and customs of war.\textsuperscript{8}

In a policy paper for the Centre for Humanitarian Dialogue, Claude Bruderlein defines “armed groups” as non-state actors with a basic command structure,

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\textsuperscript{7} A discussion of the full range of instruments outside the use of force for improving armed groups’ compliance with humanitarian and human rights standards is beyond the scope of this paper. For further information on this, see the papers prepared for the Curbing Human Rights Violations by Armed Groups conference, at http://www.armedgroups.org.

\textsuperscript{8} The relevant sections are Protocol I, Articles 43-47.
which use violence to achieve political ends, and which are independent from state control. Bruderlein also notes that contemporary conflicts, particularly in the context of collapsed states, facilitate the rise of “irregular and disorganized combatants, criminal-type gangs, bandits, and looters,” which are not included in the definition (Bruderlein 2000).

Other organizations combine specific characteristics with examples of non-state armed groups in their working definition. For example, Geneva Call, which aims to get armed groups to adopt “deeds of commitment” to stop the use of landmines, refers not to armed groups but rather to “non-state actors,” or NSAs. This term refers to “any armed actor operating outside state control that uses force to achieve its political/quasi-political objectives. Such actors include armed groups, rebel groups, liberation movements and de facto governments.”

While defining armed groups according to characteristics such as territorial control, autonomy from state control, political ends, and hierarchical organization is understandable, there are at least four basic problems with this approach:

First, many of the groups that the humanitarian and human rights communities have to deal with on a daily basis do not easily fit into these categories. Some groups do not have clearly defined political goals, do not control territory, have a diffuse command structure, and may be autonomous but not clearly independent from state control. Yet these groups nevertheless pose serious problems for humanitarian and human rights groups attempting to protect the rights of people living in areas where they operate.

Second, many states themselves do not easily fit into these categories. Many weak states have failed to create – or deliberately dismantled – cohesive bureaucratic hierarchies, and have eschewed political goals (such as the provision of security) in favor of criminal ones such as profiteering (Jackson 1990,

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9 See [http://www.genevacall.org/about/about.htm](http://www.genevacall.org/about/about.htm). There is some confusion, and even controversy, over the use of the terms “armed groups” versus “non-state actors.” The former, which more specifically refers to those non-state actors that carry weapons, is arguably the more common. The problem with the term “NSA” is that it is too general: it lumps armed groups together with other non-state actors such as the ICRC, Human Rights Watch, and Geneva Call itself. The principal rationale in favour of the Geneva Call approach is that it better captures the status of de-facto states such as Afghanistan under the Taliban, or Taiwan: not completely recognized as official states, but much more “state-like” than simple “groups” (Author’s interviews with Geneva Call officials, Geneva, July 2004).

10 The Lord’s Resistance Army in Northern Uganda, for example, does not have a clearly articulated political agenda outside of claims to ensure the implementation of the Ten Commandments. Although careful to make such statements in public, in private ICRC officials recognize the limitations of the Geneva Conventions definitions (Author’s interviews with ICRC officials, Geneva, July 2004).
Reno 1998, 2003). It seems absurd to expect armed groups to be more institutionally coherent, or “state-like,” than states.

Third, there is no clear rationale for focusing on these criteria as opposed to others that also define states. For example, states provide basic services such as health care and education. Why narrow the selection only to hierarchies, territorial control, and political ends?

And finally, arguably the most serious shortcoming of this approach is that armed groups are narrowly defined according to static nominal dichotomies: groups that have political ends count, those with criminal ends do not. Yet, as suggested above, many groups that cause widespread humanitarian problems do not easily fit into dichotomies. They may combine political with various degrees of criminal activities, may have greater or lesser degrees of territorial control, or none at all, etc. Looking for static dichotomies is bound to fail in a world where the actors and motives are fluid, dynamic and evolve over time.

Definitions II: Coercive monopolies

Notwithstanding these problems, it is reasonable to contrast non-state armed groups to states. My point is that focusing on certain characteristics of states, such hierarchical organization, territorial control, or political ends, is not the only way this contrast can be made. Such characteristics are consequences of what states have by virtue of being states. They do not define states. The standard working definition of what constitutes a state is the Weberian one: states are those institutions that successfully claim the monopoly of legitimate coercive force within a given territory.

This immediately suggests an alternative definition of what constitutes an armed group:

Non-state armed groups are challengers to the state’s monopoly of legitimate coercive force.

There are several advantages of this, much more minimal, definition over the previous list of characteristics approach.

First, it is consistent with the standard definition of what constitutes a state, and as a result there is less disagreement over the selection of certain criteria versus others.

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11 Reno argues that some armed groups better provide basic public goods, such as security, than many states. In many cases, the only significant difference between a state and an armed group is simply that one warlord group happens to occupy a capital city – and therefore enjoy the rewards of international recognition – while another has failed to do so (Reno 2003).
12 One might add “… and which are recognized as such by other states,” a criterion that is consistent with the Weberian focus on coercive monopoly.
Second, it permits, rather than restricts analysis of dynamic change and variation. Instead of a clear dichotomy, understanding armed groups as challengers to states’ coercive monopolies suggests contestation, struggle, and change. Coercive monopolies need not be set in stone. Indeed, the existence of armed groups indicates that many states have been unable to assert or consolidate the monopoly of coercion.\textsuperscript{13} Coercion is for the most part a highly contested institution, and a definition that focuses on these contests is thus more useful than one that does not. Instead of looking for groups that either do or do not meet a given list of criteria, we can analyze a range of groups that are more or less successful in challenging the state’s monopoly of legitimate coercion.\textsuperscript{14}

Third, it follows from this that instead of focusing on whether certain groups count as “armed groups” or not, this definition suggests focusing on the relationships between groups, states, and populations that determine the degrees of coercive monopolization. Such relationships are fluid, but the definition need not be.

Finally, if the definition better permits analyzing variation and change, it is reasonable to expect it to also permit taking action against a wider range of groups found in different contexts. In other words, definitions matter. If one divides the world into dichotomies – states versus non-state groups – one is more likely also to assume that policies that work for one do not work for another. Indeed, the dichotomy premise – that the world is separated into states and non-state groups – is at the core of the Westphalian idea. States have sovereign status, while armed groups do not. But if the distinctions between states and non-state groups are fuzzier than what we assume – if instead of dichotomies we find continuums – it follows that policies based on dichotomies are likely to be less effective than those that are not.\textsuperscript{15}

While this definition differs from the mainstream (reflected in the Geneva Conventions), I am by no means alone in proposing it. Petrasek (2001) proposes a similar definition in a report focusing on ways to engage armed groups to protect human rights standards. He defines armed groups as those that carry weapons and that are “not under effective state control.” This is an accurate description – most groups we are concerned with are not under effective state control – but I would argue that it places the emphasis on the wrong actor: the state, rather than the group itself. Knowing whether or not a state manages to assert “effective control” over a given group is no doubt important. But many groups will challenge states that try to control them. Indeed, many groups are formed in the first place in order to challenge a state. Defining the FARC as an

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\textsuperscript{13} The failure to consolidate coercive monopolies is a defining feature of many states in Latin America and Africa (cf. Herbst 2000, Centeno 2002).

\textsuperscript{14} Put another way: ordinal categorization of groups is more realistic than nominal categorization (Mahoney 1999).

\textsuperscript{15} Cf. \url{http://wwwarmedgroups.org}. 
armed group because it is not under the “effective control” of the Colombian state somehow misses the most important of the group’s *raisons d’être*: to challenge the state. The degree or effectiveness of state control over a given group is important, but it is not where the emphasis should be placed.

Another organization that appears to have moved in the direction of adopting a similar definition is the ICRC itself. Given that the Geneva Conventions are in essence the “constitution” of the ICRC, this is a significant development. Although not official policy, an upcoming study reviewing unilateral declarations (by warring parties to respect different humanitarian law provisions)\(^\text{16}\) proposes the following working definition:

> Armed groups are those actors that are not under the control or effective command of one or more states, and that have the power to prevent, block, or endanger humanitarian action.\(^\text{17}\)

The first part of this definition essentially follows Petrasek’s, with its focus on “control or effective command.” As such, it has the same advantages, but it is also open to the same critique, discussed above. The second part is essentially a pragmatic recognition that on the ground an organization such as the ICRC has to deal with a wide range of groups – from rebels to criminals – in order to achieve its humanitarian goals. In this sense, this working definition is a de facto recognition that the criteria outlined in the Geneva Conventions fail to provide the ICRC with a clear set of guidelines for carrying out humanitarian work. It is also recognition that the Weberian definition (with which this is consistent) is a better framework for dealing with armed groups. In the following section, I discuss how this approach may be used to deal with three types of groups that have usually fallen outside the boundaries of the standard criteria: transnational groups, criminals, and paramilitaries.

**Tough cases?**

Three tough cases have usually tripped up those attempting to devise strategies for engaging or dealing with armed groups: transnational organizations, criminal groups, and paramilitaries. There is a great deal of debate and confusion over which groups should be included in our definitions, and where precisely the dividing lines should be drawn. But as I argue in this section, this concern is misplaced. The right question is not where to draw the line, but rather how to

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\(^{16}\) Until the 1970s, the ICRC used to focus on trying to get different warring parties to sign such unilateral declarations, a type of instrument analogous to what Geneva Call labels a “deed of commitment.” In recent decades, however, UDs took a backseat to more “bottom-up” approaches, such as teaching IHL. The upcoming legal study is part of what may be a shift in approach by the ICRC. For an assessment of the effectiveness of teaching IHL, see Muñoz-Rojas (2003).

\(^{17}\) Author’s interview with ICRC officials, Geneva, July 2004.
better respond to the fluid and dynamic continuums we observe. I take up each of the three “tough cases” in turn.

First, the least problematic category, from the perspective of a clear definition, are transnational groups, such as Al Q’aeda. Humanitarian and human rights organizations have tended to focus on groups that operate inside a particular state and tend to mimic a state’s structures and goals, however minimally. It is difficult to conceive how organizations such as Amnesty International or the ICRC can operate vis-à-vis an international network such as Al Q’aeda. Yet, from the perspective I am suggesting, a group such as Al Q’aeda clearly fits the definition of an armed group, insofar as it is a clear challenger to the state’s monopoly of coercion. Indeed, it challenges not just one, but many different states’ coercive monopoly. Without minimizing the difficulties involved, it is important to separate the operational challenges that Amnesty or the ICRC might face from the conceptual limitations that particular definitions can impose. Dealing with a group such as Al Q’aeda is undoubtedly tough. But there is no a priori reason why it should be excluded from the humanitarian or human rights agenda.18

The second tough category, from the perspective of the standard definitions, is criminal organizations. One of the central features of the standard approach to defining armed groups is the distinction between groups with political versus criminal ends. The Geneva Conventions apply to rebel groups and resistance movements fighting civil wars, such as the FARC or the LTTE, but not to criminal organizations such as the Cali drug cartel, the Camorra, or the Hell’s Angels. But if the distinction between “criminal” and “political” groups is blurry on the ground, a definition premised on sharp dichotomies is less useful than one that permits analysis of such continuums and variations. Understanding armed groups as challengers to states’ coercive monopolies invites analysis of the full range of coercive challengers, from liberation movements to the Mafia. Many groups combine political with criminal ends.19 Rather than agonizing about whether this legitimately classifies them as a non-state armed group, it is more useful to ask, as the ICRC has done, whether such groups matter for the kinds of political ends we envision, such as the promotion of humanitarian or human rights standards.

The third tough case is paramilitary groups. Should they be understood as states or as non-state groups? The Geneva Conventions, for example, would apply to paramilitaries (so long as they are not driven by the motive of “material gain”). By contrast, Geneva Call and the Centre for Humanitarian Dialogue’s definitions

18 Indeed, being more explicit about including it may be one way to permit the humanitarian community to more effectively take part in the “war on terror” debate, and to regain some of the ground it has lost since 9/11.

19 As has been amply documented in the recent and growing literature on economic agendas in civil wars (e.g. Berdal and Malone 2000, Collier and Hoeffler 2000, Ballentine and Sherman 2003).
would exclude them, on the grounds that armed groups need to be “outside state control.” Are paramilitaries armed groups or agents of the state? The answer, from the perspective of who controls coercive force, is that it depends. Just as there is variation among armed groups, so there is among paramilitaries.

If the degree of state control is important, this distinction would appear to be better captured by Petrasek’s definition of armed groups, which emphasizes “effective state control” as the central element. Some paramilitaries are little different than non-state armed groups, as the state whose interests they serve may have little direct or effective control over them. Petrasek’s distinction is certainly a fundamental one: in order to promote humanitarian and human rights norms, it is important to know whether to direct one’s efforts at a particular state (for instance through the Ministry of Defense or Interior), or to attempt to engage an armed group directly, with all the complications and risks that may involve.

Yet I would suggest that even in the case of paramilitaries, the proper emphasis should be on the agency of the group itself rather than on the state. Colombian paramilitaries, for example, are fundamentally different than Central American ones, because they have their own agenda, history, and reason for being outside the interests of the state. Having grown out of local self-defense and land-protection movements, they are better understood as autonomous groups that collaborate with the state to defeat a common enemy, rather than as agents of the state tout court (Romero 2003a, 2003b). The degree of effective state control over the Colombian paramilitaries is a function of the arrangements and collaborations between the paramilitaries and the state. A focus only on state control misses a central aspect of this complex relationship.

Paramilitaries can thus challenge the state’s monopoly of coercion, without necessarily taking up arms against it. They can collaborate with the state for a common purpose. But so long as a group arms itself to pursue its interests, and so long as it keeps arms in order to exercise leverage over the state when negotiating with it, it is a challenger to the state’s coercive monopoly: such a group may collaborate with the state, but ultimately does not trust it to look after its interests, for example by providing its members with security.

Conclusion: legitimacy and legal responsibility

20 The Uribe administration in Colombia, which has made asserting the state’s coercive monopoly arguably its central policy, has found that disarming the paramilitaries is difficult (e.g. Bowcott and Brodzinsky 2004, Morris 2004). See also Dasgupta (2003).

21 Groups such as the Cossacks in Russia share some similarities to the Colombian paramilitaries, albeit with a much older history and culture. Traditionally relied on by Russian rulers to assert domestic control and to fight external enemies, they are an autonomous group with its own interests outside those of the state (cf. Ure 1999, Bondarenko, et al. 2004).
Weber defines states as monopolists of legitimate coercion, and I have argued that armed groups should be understood, accordingly, as challengers to states. So far, however, I have focused more on challenges to coercive monopoly and gingerly skirted the question of what constitutes a “legitimate” versus an “illegitimate” challenge. In the interest of full disclosure, the simple reason is that the well-known problem of what constitutes legitimacy, even for states, is a minefield. It is beyond the scope of this paper to attempt to resolve, for example, the dilemma of whether legitimacy should be understood as analogous to “what people support,” as a certain set of procedures that make rulers accountable to their citizens, or as a set of arguments that justify political domination.

I would argue, however, that as a contested terrain, legitimacy should not be understood as something that belongs purely to states. States enjoy some forms of legitimacy, such as international recognition of their status as states. But they may or may not enjoy the support of their population (cf. Krasner 1999). Indeed, some states may be less willing to build legitimacy, for example by providing public goods, than many armed groups (Reno 2003). A better understanding of the variation among armed groups requires moving beyond the dichotomy that only states can be legitimate political institutions.

Finally, one objection to the argument in favor of continuums over dichotomies, which I have presented in this paper, may be that analyzing continuums is good sociology but bad law. Dichotomies are central to legal thinking: someone either does or does not commit an act in question, and legal responsibility requires ways to hold individuals or corporations accountable according to clear and unambiguous rules.

The quick response to this objection is that the bodies of human rights, humanitarian, and criminal law are also contested territories, which are continuously adapting to changing circumstances as well as advances in our understanding of how people behave. With regard to armed groups, the trend is clearly toward holding a larger range of people and organizations accountable for a broader range of acts (Howard, et al. 1994, Zegveld 2002, Andreopoulos 2003). It is reasonable to expect the boundaries between criminal, humanitarian, and human rights responsibilities to be continuously redrawn, and readjusted. There are no sharp dichotomies. The world is a series of continuums. Our definitions, and our institutions, need to better reflect this.

22 This would be close to the Weberian (1946 (1918)) position.
23 Habermas (e.g. 1976, 1984) is arguably the classic statement.
24 This includes a long list of liberal theorists, beginning with Hobbes, passing through the utilitarians, and also including Rawls. For a good overview, see Nagel (1990).
References


