

Zuzana Kučerová: Child Soldier in International Law

Abstract

This thesis deals with child soldiers from the perspective of the international law. It is predominantly concerned with two questions: protection of children from recruiting and their possible criminal responsibility for international crimes. After a short introductory chapter, which covers a brief history of child soldiers, the second part gives an overview of international legal instruments which aim at preventing the underaged from being recruited into armed groups, as well as from taking part in hostilities. Those instruments belong to three different branches of international law: humanitarian law, human rights law and international criminal law. The author concludes that international criminal law in particular is the best instrument to protect children from becoming child soldiers. The reason is that international criminal law applies directly to individuals, including non-state actors such as commanders of paramilitary forces. It is also in force at the times when there is no armed conflict as defined by international humanitarian law.

The third part of the work focuses on criminal responsibility of children for international crimes. The major question in this field is whether we can prosecute children for those crimes at all. On the one hand, there is sometimes a clear need to deal with committed crimes and their perpetrators. On the other hand, children's intellectual abilities may be insufficient to fully comprehend the results of their actions. The author suggests that the underaged be prosecuted for crimes according to the international law at least in some cases, although it is important not to forget that the primary goal for the international community should be to stop children from taking part in armed conflicts in general. Moreover, the main purpose of the sentence should be rehabilitation.

Finally, the question is considered what the minimum age of criminal responsibility for the international crimes should be. After analyzing accessible sources, a global minimum age of criminal responsibility for international crime of 15 years seems to be the best option. This would still allow to prosecute children from 16 to 18 years of age in exceptional circumstances. It is of importance that there is one age threshold with global validity as the current situation, in which the minimum age of responsibility for international crimes is de facto set by states in accordance with their national legislation, creates huge legal insecurity for child soldiers. This insecurity is heightened by the universal jurisdiction principle for international crimes.