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## Book Reviews

Mark A. Drumbl. ***Reimagining Child Soldiers in International Law and Policy***. Oxford: Oxford University Press, 2012. Pp. 215. £55.00. ISBN: 9780199592661.

The poster child for the international movement to end child soldiering is a dark-skinned pre-pubescent boy with an AK-47 slung over his shoulder, a victim of abuse who goes on to victimize members of his community through acts of atrocity, a weapon of the adult who forcibly recruited him and completely devoid of agency. Mark A. Drumbl, professor of law and director of the Transnational Law Institute at Washington and Lee University, aims in his book to dismantle this image and asks whether it accurately informs international legal and policy responses to this practice.

His findings reveal a dark reality – an emaciated body of international law and policy that has been fed for years by an unreal monolith portraying all child soldiers<sup>1</sup> as ‘faultless passive victims’. Accordingly, adult recruiters and users of child soldiers are the exclusive targets of international criminal prosecutions, while the prosecution of child soldiers for the commission of atrocities is discouraged. Further, transitional justice mechanisms are designed in a fairly uniform manner and often encourage local communities to forgive child soldiers *en masse* and unconditionally because it is assumed that their conduct as part of an armed force or group can never be voluntary. And yet while the practice of child soldiering has declined considerably in recent years, tens of thousands of children continue to be associated with armed forces or groups. In addition, many but not all efforts to rehabilitate and reintegrate child soldiers are successful. Why is this and what can be done?

In impressive prose, Mark Drumbl critically examines the assumptions that underlie the dominant image of child soldiers to expose a vast array of subgroups. His premise is that only if international law and policy reimagine the practice of child soldiering in a manner that is more reflective of these sub-realities can more be done to respond effectively to and ultimately eradicate it. Readers learn that most child soldiers are in fact adolescents between the ages of 15 and 17; significant numbers of them in many conflicts do not commit acts of violence; many report to have voluntarily enlisted with armed forces or groups; the experiences and post-conflict needs of boy and girl soldiers can differ considerably; and the conduct of similarly situated child soldiers can vary extraordinarily, thereby evidencing their ability to exercise a degree of discretion even in the most oppressive situations.

In Chapter 1, Drumbl introduces various images of child soldiers that populate the public sphere, arguing that it is that of the ‘faultless passive victim’ that has come to dominate international discourse. In Chapter 2, the author considers *inter alia* the potential consequences of faultless passive victim imagery. These include: child soldiers choosing to present

<sup>1</sup> For his purposes, Mark Drumbl adopts the definition of ‘children associated with armed forces or armed groups’ set out in the 2007 Paris Principles: ‘[a]ny person below 18 years of age who is or who has been recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys, and girls used as fighters, cooks, porters, messengers, spies or for sexual purposes. It does not only refer to a child who is taking or has taken a direct part in hostilities’: The Paris Principles: Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (Feb. 2007), Principle 2.1, available at: [www.unicef.org/emerg/files/ParisPrinciples310107English.pdf](http://www.unicef.org/emerg/files/ParisPrinciples310107English.pdf) (last accessed 7 Jan. 2013).

themselves as victims of war, the refrain of ‘it’s not your fault’ straining credulity and local capacities in some situations, the perception of modern conflicts in the developing world being new wars, those that occur within a moribund state, and legal and policy responses to child soldiering that are both over- and under-inclusive. Drumbl goes on to examine how this imagery feeds into the universalization of childhood in international law and policy, rendering the concept artificial, rigid, and lacking in nuance (e.g., by conflating children and adolescents). The author considers the literature that currently informs international law and policy, which is authored for example by child psychologists, trauma experts, human rights and humanitarian organizations, as well as child welfare advocates. He then complements this with selected anthropological and ethnographic research, as well as scientific literature on the minds of adolescents and how adolescent capacity is viewed in other fields of law. He concludes that conceiving of all child soldiers as victims who are not responsible for their conduct is too limiting a view and fails to serve the best interests of child soldiers who have committed atrocities, the victims of these acts, and members of the communities to which they seek to return.

In Chapter 3, the author seeks to reveal the fascinating realities of child soldiering by canvassing a limited number of locality-specific studies (including Northern Uganda and Sierra Leone) with a view to gleaning some general insights that may assist international lawyers and policy-makers. One aim is to put forth evidence of the voluntary enlistment of child soldiers, a category that is, in practice, erased by the international community on the basis of children’s developmental limitations and overwhelming circumstances (e.g., poverty, the instinct to survive in the midst of a conflict, the longing to protect one’s family from harm, and so on). Drumbl’s research leads him to the following insights: (1) some but not most child soldiers commit acts of atrocity; (2) juveniles can comprehend laws and morals that are relevant to war; (3) child soldiers possess residual discretion that they can exercise; (4) this discretion may be used to commit atrocities; (5) some individuals may be delinquents during peacetime and go on to commit atrocities during a conflict; and (6) child soldiers are not all moral equals.

The author proceeds to propose alternatives to the discourse of victimhood, and draws on concepts of agency developed in feminist legal theory to do so and advance his model of circumscribed action for child soldiers:

A circumscribed actor has the ability to act, the ability not to act, and the ability to do other than what he or she actually has done. The effective range of those abilities, however, is delimited, bounded, and confined. ... Affected by conflict, they also affect others. Threatened and harmed, they may, in turn, threaten and harm others. .... [It] is a *spectrum* or *continuum* that embraces the inherent diversity among the individuals who populate its axis (at 98–99).

This model, Drumbl argues, can aid in restoring the dignity of children involved in armed conflict as well as allocate responsibility among all actors that help to sustain the practice of child soldiering, namely, ‘individual, state, organizational, commercial, and institutional’ (at 101).

Chapters 4 and 5 review the *lex lata*, *lex ferenda*, and *lex desiderata* affecting child soldiers and the adults who enlist, conscript, abduct, and use them (e.g., international human rights law, humanitarian law, international criminal law, soft law, national law for ordinary crimes, the practices of the International Criminal Court, Special Court for Sierra Leone and other internationalized tribunals, as well as refugee law). The practice of not prosecuting child soldiers before international courts is said unduly and adversely to influence other accountability mechanisms (e.g., truth commissions, local customary and traditional rituals). Drumbl supports this practice of international courts, but wants to see child soldiers participating in ‘restorative, reintegrative,

and rehabilitative justice mechanisms in a manner that dexterously investigates their multiple roles' (at 133).

He also argues in favour of international criminal justice recognizing the differences among voluntary enlistment, conscription, and abduction when assessing an adult defendant's guilt and determining a sentence, and questions the prudence of laws and policies that protect child soldiers too much and young adults too little by being strictly based on chronological age. To render the conduct of child soldiers more visible in international criminal proceedings, Drumbl proposes the introduction of notions of command responsibility in proceedings against adult recruiters, as well as liability theories such as 'perpetrator behind the perpetrator'. This could result in the ordering of child soldiers to commit atrocities or failing to prevent this being considered an aggravating factor in sentencing.

More generally, Drumbl advocates the design and use of flexible rather than uniform reintegration methods that are more tailored to the individual characteristics of child soldier subgroups and take into consideration factors such as gender, conduct, combat experience, type of armed group, and path to recruitment. Chapter 5 closes with the author examining the ability of international criminal law generally to deter adults who recruit or use child soldiers in armed conflict. Not surprisingly,<sup>2</sup> the author is sceptical and concludes that 'preventative and deterrent goals would more robustly be attained were diverse accountability mechanisms [including state responsibility] to address the multiple roots of child soldiering' (at 164).

In Chapter 6, Drumbl reviews disarmament and demobilization practices as they pertain to child soldiers, national criminal justice responses to child soldiering, how child soldiering was addressed in the work of truth and reconciliation commissions in South Africa, Sierra Leone, and Liberia, and the use of customary and traditional restoration and reintegration mechanisms for child soldiers. Faultless passive victim imagery has dissuaded the use of national trials for child soldiers but also resulted in transitional justice mechanisms inadequately rehabilitating and reintegrating certain subgroups of child soldiers post-conflict. Despite describing serious concerns, Drumbl remains optimistic that customary and traditional mechanisms of this kind can be crafted to serve the best interests of all child soldiers. One way to ensure that deference to such local practices is well-placed is to require that these practices do not offend any of six criteria (e.g., good faith motives of those enacting the practice, democratic and social legitimacy of the practice) in Drumbl's 'qualified deference test', which is set out in Chapter 7.

As much as Drumbl accomplishes in this book, he is also clear about what he does not aim to do. His focus is on child soldiers who have been or are involved in 'atrocious-producing conflicts' and so have been of interest to international criminal tribunals – in other words, male child soldiers in African states.<sup>3</sup> The experience of girl soldiers is therefore not examined in great detail, nor is the practice of child soldiering in other parts of the world. Further, the author does not attempt to generate new empirical data on the practice of child soldiering (relying mainly on locality-specific studies), review the trial of child soldiers before national criminal or military courts, or examine in detail the practice of child soldiering throughout history.<sup>4</sup>

That said, Drumbl's book is without question a fundamental contribution to the international legal discourse on child soldiering, not least because it lays bare our conceptual tunnel vision before trying to reinvigorate this discourse through the presentation of salient data from

<sup>2</sup> See M.A. Drumbl, *Atrocity, Punishment, and International Law* (2007).

<sup>3</sup> This subgroup, however, comprises only 40% of child soldiers globally (at 6).

<sup>4</sup> Drumbl does, however, offer a brief anecdotal review of this kind in Chap. 2.

previously overlooked disciplines. It is therefore essential reading for anyone seeking to prevent and respond to the practice of child soldiering.

Additionally, perhaps the mark of any game-changing book will be the debates to which it gives rise. For example, will all agree that juveniles can understand the laws and morals that are relevant to war when certain concepts are difficult even for adults without training to comprehend? Is the explanatory power of environmental circumstances on the decision of children to enlist in armed forces or groups ‘more apparent than real’ (at 63) in most or all cases?<sup>5</sup> Will everyone agree that international criminal justice has rendered the conduct of child soldiers completely invisible, or can it not be argued that the agency of child soldiers was at least indirectly recognized by the International Criminal Court when it rejected the application for victim participation status of the victims of child soldiers who were recruited by Thomas Lubanga Dyilo?<sup>6</sup> And should international policy-makers be so optimistic about the efficacy of local customary and traditional transitional justice mechanisms in light of the profound potential problems Drumbi identifies?

Ultimately, Drumbi’s work is not only an invaluable contribution to discussions about legal and policy responses to child soldiering, but more generally an important cautionary tale about the perils that can befall the international community when it does not take a truly interdisciplinary approach to understanding and responding to a global phenomenon.

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<sup>5</sup> The author writes, ‘In certain war-torn regions of the DRC, local militias and communities share strong links. Without such militias, villages may wholly lack security owing to the collapsed nature of the state. Although militia groups selfishly exploit insecurity in the region, the fact remains that families may send children to these groups and, moreover, children may join them to defend their village’ (at 65).

<sup>6</sup> *Prosecutor v. Lubanga*, Case No. ICC-01/04-01/06, Decision on “indirect victims” (ICC Trial Chamber I, 8 Apr. 2009), at para. 52 (emphasis in original): ‘[e]xcluded from the category of ‘indirect victims’, however, are those who suffered harm as a result of the (later) **conduct** of direct victims. ... Indirect victims ... are restricted to those whose harm is linked to the *harm* of the affected children when the confirmed offenses were committed, not those whose harm is linked to any subsequent conduct by the children, criminal or otherwise. ... [T]he person attacked by a child soldier is not an indirect victim for these purposes because his or her loss is not linked to the *harm* inflicted on the child when the offence was committed.’ This finding might suggest that these child soldiers possessed a degree of agency to inflict harm on the victims of their conduct even after Lubanga illegally recruited them (this being the confirmed offences and harm inflicted on the children).