

'tragedy of the commons' (though that is mentioned as well); rather, it is tragedy of the psychoanalytic variety that reference is made to, ie the internal tragedy experienced by the human rights lawyer, the international criminal lawyer, the international environmental lawyer, who is torn between their (presumptive) cosmopolitan outlook and the fact that international criminal justice seems to be at odds with peace, or that 'the world is not enough' to sustain both development and the biosphere (Pahuja 410). Perhaps it is because these fields and specialisations have developed into 'secular religions' (another recurrent term) that the specialists may experience such tragedy. Accepting their fields as just another arena for political contestation, as many chapters in the *Companion* indeed advise, might do much to help reroute their activism to more effective outlets.

The Cambridge Companion to International Law will not help the reader deal with the *prothysteron* of *opinio juris*, nor will it explain to her the difference between reservations and interpretative declarations or the quirks of attribution of conduct to a State. For that there are other books. What the *Cambridge Companion* will do is to introduce the reader to international law's underlying contradictions, to its regressive tendencies, and to its liberating potential. International law, like all law, is a tool—and as a 'science of the superstructure' it is a tool used mainly to conserve and perpetuate the *status quo*; the *Cambridge Companion* comes at it from a decidedly critical (read: progressive) bend, exposes its biases, but also demonstrates how 'small change' (see chapter 17) may realise its power to liberate and protect.

ANTONIOS TZANAKOPOULOS

UNIVERSITY OF OXFORD

doi:10.1093/bybil/brso26

Advance Access published on 9 November 2012

Reimagining Child Soldiers in International Law and Policy. By MARK A DRUMBL, Oxford University Press, Oxford, 2012. xiii + 239 pp. £55 (Hardback), £17.99 (Paperback)

With the very first conviction in March 2012 by the International Criminal Court (the ICC *Lubanga* case¹) focusing on the war crime of child soldier recruitment and use, as well as the viral Kony 2012 campaign, the issue of child soldiers has been highlighted. Mark Drumbl's comprehensive work, which urges the international community to 'reimagine' child soldiers, is thus both timely and refreshing. Unlike much of the existing literature on the child soldier issue, Drumbl challenges the conventional approach taken in international law and policy, drawing on evidence from numerous disciplines to illustrate that the approach is simplistic and fails to reflect the individual experiences of children involved in armed conflict. He puts forward a model of 'circumscribed action' as a new way in which to approach child soldiers. According to this model, the 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' but the range of these abilities is 'delimited, bounded and confined' (17 and 98). Child soldiers would thus be placed on a 'contextual continuum', which would reflect the complexities and diversity of their experiences and be capable of recognising that some are subject to overwhelming coercion and control, whilst others exercise considerable volition in joining armed groups or committing

¹ *Prosecutor v Lubanga* (Judgment) ICC-01/04-01/06-2842 (14 March 2012).

atrocities (82). Throughout the work, Drumbl takes us back to this model, suggesting that it would reinvigorate debate about essentials, provide a springboard for meaningful reform, and open up the range of responses.

After providing a brief overview of key concepts and definitions, the opening chapter of the book identifies the common stereotypes of child soldiers, namely the 'faultless passive victim', 'irreparable damaged goods', the 'hero' and the 'demon and bandit'. Whilst each of these stereotypes has had some impact on interventions and official policies, it is the 'faultless passive victim' image that has dominated international discourse and has been the prevailing influence on international law and policy. Drumbl convincingly argues that this depiction is 'unduly reductive', sensationalising child soldiers' vulnerability, and calls for a more nuanced, dynamic and flexible approach that 'vivifies' their dignity (11). He then introduces his model of circumscribed action as a contribution to this process.

In Chapters 2 and 3, Drumbl draws on contributions from diverse disciplines including anthropological and ethnographic research and adolescent developmental neurobiology to explore the ways in which children participate in conflict as well as the reasons why they become involved. He synthesises the findings from different studies to suggest a number of characteristics, often overlooked, that should be taken into account in the formulation of legal policy as it relates to child soldiers (82-94). Although Drumbl predominantly relies on research conducted by others, the wealth of material from sources traditionally neglected by lawyers enables Drumbl to provide a rich and comprehensive account of children's participation in conflict across time and space. His analysis, utilising case studies and vignettes from different regions of the world, clearly illustrates that children are not a homogenous group when it comes to the circumstances of their participation and that, contrary to the pervasive view that all child soldiers are forcibly recruited, many in fact voluntarily join armed forces or groups, and for various reasons. An important point highlighted by Drumbl, and that is frequently absent from other literature within this area, is that many children demonstrate resistance against pressures to join armed forces or groups and to commit atrocities, or where abducted, manage to escape. Conversely, others remain with armed groups for extended periods of time, rising in their ranks, and some exercise discretion to go beyond orders and commit horrendous acts (86-89). As Drumbl's title of Chapter 3 indicates, child soldiering is 'not so simple'. Yet, as Drumbl illustrates through his examination of the campaign against child soldier recruitment, global civil society and UN agencies portray *all* child soldiers (defined as those under the age of 18 based on a questionable universal construct of childhood), as vulnerable victims of conflict, and the line between voluntary and forcible recruitment is all but erased. Whilst acknowledging that this approach has had some positive results by, for example, mobilising funding and coordinating public condemnation of the child soldier phenomenon, Drumbl asserts that it limits the range of both legal and programmatic responses.

In the following two chapters, Drumbl explores the impact of the faultless passive victim imagery on law and policy. Chapter 4 provides an overview of both hard and soft law at the international level as it relates to the controversial issue of accountability of the child soldier him or herself, whilst the focus of Chapter 5 is the responsibility of adults for unlawful child recruitment under international law. In both chapters, Drumbl draws out the influence of global civil society and activists, as well as UN agencies, on the content and evolution of international law. For example, in his survey of international law as it relates to the prosecution of children, Drumbl points to influence exerted by activists during the drafting of key instruments, such as the Rome Statute establishing the ICC (120), and in the context of unlawful recruitment, he refers to the 'Straight 18'

position gaining ground: whilst the age of 18 may not yet be the minimum age for lawful recruitment in settled international humanitarian or human rights law, he argues that this is the way the law is developing (134-135, 143). Drumbl's analysis of international criminal law in both chapters comprehensively takes us through the substantive and procedural frameworks, as well as relevant jurisprudence, of international and internationalised tribunals. He notes that, in the context of unlawful recruitment, the victimhood of child soldiers has taken centre stage, and that the trend is now to treat forced recruitment and voluntary enlistment as legal equivalents. Of particular interest in relation to the unlawful recruitment of child soldiers is Drumbl's proposal to make changes to the crime so as to reflect the varied involvement of children in armed forces and groups and to comply with his model of circumscribed action. Thus he suggests that the crime be expanded so as to include birth into armed forces and groups. He also proposes that the criminalisation of all forms of child recruitment (including voluntary enlistment) be retained, but that account be taken of the form of participation when assessing the defendant's culpability and determining sentence (148-149). Evidently, this could only come about if the current prevailing view of victimhood were displaced by a more dynamic conceptualisation of child soldiers. Interestingly, in the recent ICC *Lubanga* case, the manner of a child's recruitment was taken into consideration in the assessment of culpability for the purposes of sentence, differentiated sentences being passed down for the crime of conscription and the crime of enlistment.² Another novel approach suggested by Drumbl is to expand accountability mechanisms beyond solely targeting adult recruiters so as to address the multiple roots of child soldiering. Drumbl provides an extensive list of such roots, including the children themselves, local officials, the state and the small arms trade to name just a few (164). He argues that this may do more to prevent and deter child soldiering than focusing on just a small subset of rebel leaders.

In the penultimate chapter, Drumbl evaluates post-conflict measures taken at the national level to address the issue of former child soldiers. He highlights the influence of the faultless passive victim image on these approaches, which include disarmament, demobilisation and reintegration (DDR) programmes, domestic prosecutions, truth and reconciliation commissions and 'endogenous' mechanisms. One conclusion he draws is that DDR and truth and reconciliation commissions frequently fail to reflect the diversity of child soldiers and the specific circumstances and needs of subgroups: thus those who suffered the most or who exercised residual discretion to resist are often neglected, whilst those who committed acts of atrocity may be exculpated and thus face obstacles during reintegration. Drumbl argues that his model of circumscribed action would expand not only the range of responses available at the national level, but also the approaches within these responses: thus, for example, he proposes the incorporation of transitional justice into DDR programmes and the linking of benefits with reciprocal obligations where appropriate (173-175, 202). Swimming against the tide, Drumbl acknowledges the value of accountability for children implicated in acts of atrocity. Whilst he considers criminal trials to be an inappropriate response for all but the highest-level perpetrators (an argument expounded in his earlier publication, *Atrocity, Punishment, and International Law* (CUP, Cambridge 2007)), he does not reject holding child perpetrators accountable through mechanisms such as truth commissions or customary/traditional ceremonies or rituals, and indeed suggests that this may facilitate reintegration and rehabilitation. In this vein, he recommends greater engagement with local communities and a greater emphasis on local justice (200-205). Drumbl does not provide a 'blueprint'

² *Prosecutor v Lubanga* (Sentencing) ICC-01/04-01/06-2901 (10 July 2012) para 98.

for his proposals, but this was not his intention; rather, it was to stimulate debate so as to open up the policy options (210). There thus remains scope for further exploration of the practical implications of his 'reimaginative exercise'.

Anticipating the concern that his suggested approach might lead to 'retributive creep', Drumbl's final chapter proposes the introduction of 'qualified deference' as a standard against which to measure national or local responses. Pursuant to this test, responses would benefit from a presumption of deference provided they respect a number of guidelines, and harsh, punitive measures for former child soldiers would thus be excluded (210-212). He emphasises that, if his book were to succeed in its aims, the outcome would be in the form of restorative justice rather than criminal trials.

By drawing on different methodologies and research from diverse disciplines, Drumbl goes beyond the traditional approach adopted by international lawyers and thus offers a broader and more detailed examination of child soldiering than other works in this area. Additionally, his willingness to confront the often uncomfortable reality of children's voluntary participation both in armed conflict and, to a much smaller degree, in atrocities, is to be welcomed. As such, this study is an invaluable source for academics and students interested in this highly topical and controversial issue as well as for law and policy-makers involved in initiatives addressing the child soldier phenomenon.

JASTINE BARRETT
UNIVERSITY OF CAMBRIDGE
doi:10.1093/bybil/brso36

The Law and Politics of WTO Waivers: Stability and Flexibility in Public International Law. By ISABEL FEICHTNER, Cambridge University Press, Cambridge, 2011. 408 pp. £80.00.

The WTO waiver power has been associated with several high profile international debates in recent years. Article IX:3 of the WTO Agreement empowers the Ministerial Conference to waive obligations imposed on Members by the WTO Agreement itself or any of the other covered agreements. To date, the TRIPS waiver on access to essential medicines, waivers on trade preferences for developing countries, and the Kimberley waiver on conflict diamonds have all received a fair amount of attention in the scholarly literature. What has been missing, however, is a sustained analysis of the operation of the waiver power in WTO law and practice more generally.

This book is thus both welcome and overdue. It is adapted from Feichtner's prize-winning doctoral dissertation, written largely while she was a research fellow at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg. Feichtner here sets herself two aims: to provide 'a systematic doctrinal analysis of the waiver power and waiver decisions' and, more broadly, 'to clarify the relationship between law and politics as well as the waiver's potential and limits for addressing the need for flexibility and adaptability in public international law and WTO law in particular' (3). This meticulously researched and clearly written book meets both aims admirably, providing a valuable contribution to the literature.

In Part I, Feichtner sets up the 'stability/flexibility challenge' as a general problem for public international law. The challenge lies in the tension between the rigidity of international law and the need for it to adapt to domestic, intra-regime, and inter-regime