

BOOK REVIEW

Mark A. Drumbl, *Reimagining Child Soldiers in International Law and Policy* (Oxford University Press, 2012) 239 pp. £55.00 (Hardback) ISBN 978-0-19-959265-4

It is estimated that military recruitment of children by armed forces and armed groups and their use in hostilities continues to occur in at least 87 countries and territories worldwide. Despite the increasing number of legal instruments adopted to reduce this global phenomenon, tens of thousands of children continue to be associated with armed forces and groups and be involved in armed conflicts. In his book, Mark A. Drumbl — Professor at Washington and Lee University School of Law and Director of the Transnational Law Institute — presents a new theoretical reflection on law and policy governing this issue.

In his creative and refreshing contribution to the literature on child soldiers, which entwines with his own experience in international justice, Drumbl undertakes to *reimagine* the topic. The author draws attention to the need for a new understanding in the conceptualization of child soldiers and suggests a more nuanced and less judgmental approach. This reimaginative exercise calls into question habits and expectations that pervade contemporary humanitarianism, the universality of human rights, strategies for juvenile civic engagement, and post-conflict justice.¹

The international legal imagination — defined as the 'normative, aspirational, and operational mix of international law, policy, and practice — constituted as it is directly and indirectly by a broad constellation of actors' — generally tends to portray child soldiers as 'faultless passive victims'.² It cannot be denied that these children first and foremost suffer from the consequences of armed conflicts and are victims of violence, but they also, in some

circumstances, may become themselves perpetrators and commit atrocities. This leads to the debate on how to deal with these children and juveniles when the war is over: should they be seen as 'faultless passive victims' without the capacity of being held responsible for their acts? Or should the international legal imagination adopt a more tailored position on the contextual situation of these children, for them to actively participate in reconciliation and peacebuilding processes? The book is divided into seven chapters discussing these issues and providing an in-depth analysis of current legal and policy responses to child soldiering.

In Chapter 1, Drumbl attempts to define the notion of child soldiers.³ While presenting the various images of child soldiers, the author argues that conventional wisdom is based on incomplete knowledge of this phenomenon, leading to stereotypes and clichés, and an altered judgment on child soldiers:

Notwithstanding accuracy in many individual cases, the portrayal of the child soldier as a faultless passive victim is unduly reductive. ... This image ... occludes, flattens, and conceals details. ... In the end, I urge the interna-

3 For the purposes of the book, the author uses the term child soldiers, but understands the notion as defined in the 2007 Paris Principles, at Principle 2.1: "A child associated with an armed force or armed group" refers to any 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 (2007), available online at <http://www.unicef.org/emerg/files/ParisPrinciples310107English.pdf> (visited 26 January 2014).

1 M.A. Drumbl, *Reimagining Child Soldiers in International Law and Policy* (Oxford University Press, 2012), at 2.

2 *Ibid.*, at 9.

tional legal imagination to adopt a supple, empathetic, and dexterous approach to child soldiers that vivifies their dignity.⁴

Although the image of the faultless passive victim reveals the experiences of many child soldiers, its transposition into law amounts to a *legal fiction*. This legal fiction — categorized as *neglective* or *abstractive* fiction — constitutes the ‘most obvious example of the process by which our minds simplify reality.’⁵ Hence, in the case of children joining armed forces or groups for social, economic or political reasons, the author doubts that treating them as passive or incompetent properly addresses their grievances.

In Chapter 2, Drumbl discusses the historical and modern political and legal practices of child soldiering. Drawing on contributions from diverse disciplines including ethnographic and anthropological research, the author concludes that what is regarded to be common knowledge on child soldiers, is actually only partial and incomplete. The international legal imagination can do better and must ‘take a second — and more even handed — look at the realities of child soldiering.’⁶

The author considers that ‘[s]o long as the discourse about child soldiers retains its proclivity for parsimony rather than nuance, however, the risk persists that the discursive field becomes flooded with essentialized imagery that ... masks the reality that child soldiering is not so simple.’⁷ Utilizing case studies from different regions of the world, Drumbl explores, in Chapter 3, the ways in which and the reasons why children come to be associated with armed forces or belligerent groups in armed conflicts. Children generally become involved in one of three ways: they are abducted or conscripted through force or severe threats; they present themselves (whether independently or through recruitment programmes) and become enlisted/enrolled; or they are born into forces or groups. The author notes that many children — notably older adolescents — come forward intentionally to join armed

forces or groups and that environmental factors and personal situation constraints, such as poverty, insecurity, lack of education, socialization into violence and broken families can inform this decision. The international legal imagination largely considers children who commit acts of atrocity in one of two ways: either they do not possess the capacity or maturity to comprehend their acts or ‘evil adult commanders’ coerce them. Nonetheless, according to the author, immaturity and coercion are not the only reasons for children to commit atrocities: ‘the will to survive, obedience, the normalization of violence, the satisfaction derived from killing, and ideology’ could equally be seen as psychological processes explaining why some child soldiers become perpetrators of atrocities.⁸

Drumbl then identifies six characteristics to be taken into consideration by lawmakers when it comes to formulating legal policy: first, significant numbers of child soldiers are not implicated in committing acts of violence, while even fewer are implicated in perpetrating extraordinary international crimes, such as war crimes, crimes against humanity and genocide proscribed by international criminal law; secondly, juveniles can understand the laws and morals of war; thirdly, child soldiers can exercise a residual discretion; fourthly, some child soldiers can, over time, become active perpetrators; fifthly, delinquency in peace may transition into atrocity in conflict; and finally, individual child soldiers are not moral equals.⁹

The author offers alternatives to the discourse of victimhood and suggests approaching individual child soldiers through a model of *circumscribed action*. In his words:

A circumscribed actor has the ability to act, the ability not to act, and the ability to do other than what he or she

⁸ *Ibid.*, at 81.

⁹ According to the author, child victims of war are not equal, nor have they experienced conflict in an equivalent manner. Child soldiers should not be seen as interchangeable equals and it would be preferable to appreciate heterogeneity within the protected group rather than assume bland homogeneity and prosaic uniformity. See *ibid.*, at 94.

⁴ Drumbl, *supra* note 1, at 11.

⁵ *Ibid.*, at 19.

⁶ *Ibid.*, at 60.

⁷ *Ibid.*, at 79.

actually had done. The effective range of these abilities, however, is delimited, bounded, and confined. Circumscribed actors exercise some discretion in navigating and mediating the constraints around them. ... Although encircled, circumscribed actors are not flattened. Affected by conflict, they also affect others. Threatened and harmed, they may, in turn, threaten and harm others.¹⁰

In Chapters 4 and 5, the author analyses the current legal framework under international humanitarian law, international human rights and criminal law, and explores the impact of the faultless passive victim imagery on law and policy. These chapters review the *lex lata* (current law), *lex ferenda* (law as it should be) and *lex desiderata*, and provide an overview of both hard and soft law on the issue of the criminal accountability of child soldiers in Chapter 4, and on accountability of adults for unlawful child recruitment under international law in Chapter 5.

Although international criminal law does not prohibit the prosecution of persons under the age of 18 years for alleged involvement in acts of atrocity, a number of influential actors firmly discourage such prosecutions. Child soldiers and their role as perpetrators are 'counterproductively unexplored' and, despite recognizing the delicacy of the task, the author argues that this aspect should be given greater attention.¹¹ Either in the case of child perpetrators, or in the case of adults who recruit children in armed conflict, the author remains sceptical with regard to the deterrent effect and transformative function of criminal prosecutions.¹² An appropriate response instead of retributive justice in post-conflict societies would be to consider the establishment of restorative and rehabilitative justice mechanisms, which include children in reconciliation and peace processes. As Drumbl

notes, 'preventative and deterrent goals would more robustly be attained were diverse accountability mechanisms to address the multiple roots of child soldiering'.¹³

Chapter 6 directs specific attention towards transitional justice mechanisms and explores arguments in favour of restorative justice approaches, including disarmament, demobilization and reintegration programmes, national criminal law, truth and reconciliation commissions, endogenous restoration and reintegration mechanisms, and restorative ceremonies. The author gives priority to restorative, rehabilitative, and remedial measures as alternative responses to criminal proceedings, but expresses concern over the ability of such mechanisms to reintegrate and rehabilitate certain subgroups of child soldiers.¹⁴ Drumbl believes that policymakers should not 'content themselves with programmatic architecture that fails to protect a definable subgroup of children formerly associated with armed forces or groups from suffering reprisals, stigmatization, or ostracism [and that they] should [not] minimize the estrangement that some former child soldiers face'.¹⁵

In Chapter 7, the author sets out a 'qualified deference test' as a standard to guide the establishment and functioning of national and local transitional justice mechanisms in post-conflict societies that would at least allow the possibility of reintegration and rehabilitation of former child soldiers. Drumbl outlines six interpretive guidelines: good faith; democratic and social legitimacy of the deployed mechanisms; specific characteristics of the violence and of the current political context; avoidance of gratuitous or iterated punishment; the effect of the procedure on the universal substance; and the preclusion of the infliction of evils upon anyone.¹⁶

Reimagining Child Soldiers in International Law and Policy represents an excellent contribution to the literature on child soldiering. The topic is debated and explored through clear and creative arguments, offering an empirical synthesis to law and policy. Drumbl's

¹⁰ *Ibid.*, at 98.

¹¹ *Ibid.*, at 126–128.

¹² See also M.A. Drumbl, *Atrocity, Punishment and International Law* (Cambridge University Press, 2007).

¹³ Drumbl, *supra* note 1, at 164.

¹⁴ *Ibid.*, at 197–200.

¹⁵ *Ibid.*, at 200.

¹⁶ *Ibid.*, at 210–212.

interdisciplinary approach highlights the need for the international legal imagination to link anthropology, ethnography, psychology of child development, criminal law, international human rights and humanitarian law, in order to formulate more tailored and contextualized responses to this global issue. Drumbl advises that the legal fiction of faultless passive victimhood should be dismantled and draws attention to the issue of accountability of child soldiers, which should rather focus on restorative justice, reintegration and rehabilitation processes than on retributive goals. The participation of former child soldiers in transitional justice mechanisms should be seen as part of post-conflict peacebuilding efforts to strengthen national reconciliation: '[c]oming

to terms with the participation of child soldiers... is key to postwar reconciliation and peace building'.¹⁷ To this extent, the proposals made by Drumbl in his book dovetail with this author's vision of what post-conflict justice ideally ought to look like.

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doi:10.1093/jicj/mqu016

17 S. Shepler, 'The Rites of the Child: Global Discourses of Youth and Reintegrating Child Soldiers in Sierra Leone', 4 *Journal of Human Rights* (2005) 198.