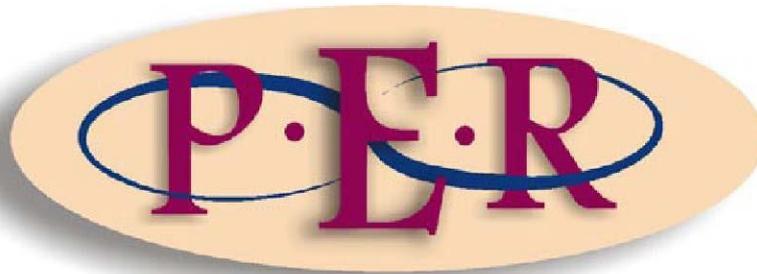


Author: JA Robinson

BOOK REVIEW

International Law and Child Soldiers by Gus Waschefort

eISSN 1727-3781



2015 VOLUME 18 No 4

<http://dx.doi.org/10.4314/pej.v18i4.15>

BOOK REVIEW**International Law and Child Soldiers by Gus Waschefort¹****JA Robinson***

Long gone are the days that the law pertaining to children essentially dealt with the position of children within the parent-child relationship. On the contrary it has become a highly specialised legal discipline in which international and regional conventions progressively establish norms and standards to be adhered to. This book by Waschefort, the 53rd volume in the series *Studies in International Law*, bears ample testimony to this. It reviews all of the international instruments containing proscriptive norms to prohibit the use and recruitment of child soldiers. It commences with an analysis of the current state of child soldiering internationally, after which relevant international instruments are comprehensively discussed with a clear focus on the question of whether or not the prohibitive norms are optimally enforced – are they capable of better enforcement?

The author adopts an “issues-based approach” in terms of which no specific regime of law, for instance International Humanitarian Law, is considered dominant. He assesses universal and regional human rights law together with International Human Rights Law and International Criminal Law to establish a mutually reinforcing web of protection for children. He also critically assesses the international judicial, quasi-judicial and non-judicial entities most relevant to child soldier prevention. He argues that the effective implementation of child soldier prohibitive norms does not require fundamental changes to any entity or functionary engaged in such prevention. In fact, what is required according to the author is the constant reassessment and refinement of all such entities and functionaries. The conclusions which are reached are ultimately tested against the background of a comprehensive case study on the use and recruitment of child soldiers in the Democratic Republic of the Congo.

¹ C A Waschefort *International Law and Child Soldiers* (Hart Publishing Oxford 2015).

* JA (Robbie) Robinson. B Iur LLB (PU for CHE) LLM (NWU) LLD (PU for CHE). Professor in the Faculty of Law, North-West University (Potchefstroom). Email: robbie.robinson@nwu.ac.za.

International Law and Child Soldiers is to be welcomed as a timely contribution to the evaluation of the various international instruments containing proscriptive norms that aim to eradicate the use and recruitment of child soldiers. Chapter One illustrates that uncertainty exists regarding the use and recruitment of child soldiers – what should the parameters of such prohibition be? In Chapter Two the distribution, use and causes of child soldiering in armed conflict currently are discussed. *Qua* social reality, the distribution of child soldiers is of particular importance to the prevention of child soldiering, in the sense that reliance is placed on international machinery on a geo-specific basis. In similar vein the author illustrates that the capacity in which child soldiers are used also applies to the prevention of child soldiering, as different legal instruments prohibit only specific degrees of such participation in armed conflict. Of particular relevance is the argument conveyed by the author that the root causes for child soldiering must be understood because such understanding allows for the identification of strategies aimed at the prevention of child soldiering.

Chapters Three and Four comprise a discussion of child soldiering in the context of International Humanitarian Law and International Human Rights Law. More particularly, an analysis of the relationship between these two disciplines is provided. This relation, the author emphatically argues, is of specific importance in the context of the prevention of child soldiering, as there is probably a larger degree of overlap between the prohibitive norms of the International Humanitarian Law and International Human Rights Law in this regard than in any other proscribed conduct. He points out in Chapter Four that substantive norms prohibiting child soldiering display certain weaknesses, but suggests that customary international law may present an avenue through which child soldier prevention can be further refined.

Chapter Five is directed at the war crime of the use and recruitment of child soldiers. Particular attention is paid to an analysis of this war crime as formulated under the Rome Statute and the scope for prosecution by the International Criminal Court. An interesting argument is further developed for the Court as a deterrent to the use and recruitment of child soldiers. Little attention is paid to the criminal responsibility of child soldiers. This is to be expected, though, as the focus of the book is indeed aimed at the effectiveness of international instruments.

The relevance of the mechanisms established by the United Nations and African Union to prevent child soldiering is discussed in Chapter Six. The United Nations mechanisms represent the core of the international communities' response to child soldiering. The chapter consequently analyses the United Nations mechanisms and pays attention to the improvement of such mechanisms. A descriptive account of mechanisms established by the AU is also presented. These mechanisms have never been used in response to child soldiering but do have the potential to contribute to the prevention of the use and recruitment of child soldiers.

Chapter Seven contains a case study of the Democratic Republic of the Congo. In this chapter the conclusions reached in the previous chapters of the book are measured against the *de facto* situation in that country in order to establish the accuracy of those conclusions in relation to a real situation.

In conclusion, this book is a *sine qua non* for studies of children in International Law. It enriches the reader's understanding of the various international instruments containing proscriptive norms to prohibit the use and recruitment of child soldiers, and the excellent reference materials which are provided will definitely play an instrumental role in the research of both students and academics.