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"Sytuacja dziecka w konflikcie zbrojnym : studium prawnomiędzynarodowe", Joanna Nowakowska-Małusecka, Bydgoszcz-Katowice 2012 : [recenzja]

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Tekst jest udostępniony do wykorzystania w ramach dozwolonego użytku.

**Joanna Nowakowska-Małusecka: *Sytuacja dziecka w konflikcie zbrojnym. Studium prawnomiędzynarodowe*
[*The situation of a child in an armed conflict. An international legal study*], Uniwersytet Śląski
[University of Silesia], Oficyna Wydawnicza Branta
[Branta Publishing House], Bydgoszcz–Katowice 2012,
pp. 421**

Today, the international community is profoundly concerned about the fate of children during armed conflicts. International governmental and non-governmental organizations, governments, civil society and academics are making enormous efforts to inform the world about their difficult fate but also about the necessity of undertaking determined, concerted measures in order to allow these children to have the opportunity of a real childhood and a normal standard of everyday living. International law is also not remaining silent about their problems. Both the international humanitarian law of armed conflicts (IHL) and the human rights law (HRL) include norms to deal with the situation of children during a war. Apparently, the primary aim of these norms is to protect children against the consequences of armed conflicts as well as to provide them with assistance and safeguards against any violations of their rights.

This is a great opportunity that a wide range of important legal and practical issues relating to the impact of armed conflicts on children is compiled in one, comprehensive book. This is the very first, essential advantage of the monograph that was reviewed.

The book is organized into three major parts dealing with diverse but interrelated matters, which are: the international normative framework relating to children in armed conflicts, an assessment of how the norms established in international law work in practice and what is their actual efficiency; and finally, the third part is devoted to the fundamental question of individual criminal responsibility.

At the very beginning, the author explains the key terms like a child, child soldier and armed conflict. This is very helpful, especially for readers who are not familiar with the specifics of international law. It also makes the monograph accessible not only to international lawyers but to a wide range of persons who may be interested in the topic.

The first part comprises a complete, exhaustive analysis of the relevant legal provisions in IHL, HRL and international criminal law (ICL) that have been adopted on universal and regional levels. Within the sphere of IHL, the author circumspcctly discusses the applicable norms of the Geneva Conventions of 1949, the Additional Protocols of 1977 and customary law relating to the particular situation of children in international and non-international armed conflicts. Further, in the same vain, the norms included in HRL are identified; not only those specifically devoted to the protection of children but also the relevant norms that are included in general HRL treaties. Importantly, the legal analysis is not limited to *'hard law'* but it also comprises many *'soft law'* documents. This is especially significant in relation to those aspects that are not covered by binding sources of international law such as the definition of a child soldier or

situations where children are internally displaced. The author then examines the norms of substantive ICL by presenting the international crimes that can and are committed against children. Here, it should be emphasised that the author does not offer a mere presentation of relevant legal provisions; she also presents critical views on their content and does not avoid their innovative interpretation.

The second part provides a detailed overview of the situations that result in breaching children's rights. The presentation of the appalling violations: child killings and mutilations, recruiting and using child soldiers, child sexual abuse, trafficking in children, depriving the youngest of medical care and access to education and denying them humanitarian aid serves as the platform on which the effectiveness of the norms of international law is analysed. The result of this analysis is not encouraging; the monograph contains a multitude of examples that prove the author's final conclusion on the weakness and inadequacy of existing international law.

The last part of the study concentrates predominantly on the problem of individual criminal responsibility. On the one hand, it presents the issue of holding those who commit crimes against children responsible and, consequently, the position of children as victims and witnesses in international criminal proceedings. On the other, it deals with the dilemma of the responsibility for the heinous crimes that are committed by the children themselves. The author's perspective on the latter may be characterised as 'faultless passive victim imaginary' (using the term introduced by Mark B. Drumbl in his recent book "*Reimagining Child Soldiers in International Law and Policy*"). Although such a point of view seems to be equitable and the author backs it by convincing arguments, there is still some doubt as to whether it is entirely justifiable. Is it fair that a 15- or 16-year old minor committing a 'regular' murder may be brought to justice before national courts in many states while in general such an option is excluded in cases of the crimes of child soldiers? It is not easy to answer to that complex question. In dealing with the responsibility of children for international crimes, the author proposes turning to a different type of institution – truth and reconciliation commissions as a suitable avenue to solve this dilemma.

The reviewed monograph is comprehensive and detailed; it presents existing regulations, their positive aspects as well as their shortcomings. Legal analysis and description are interlinked and together create a coherent study of the international status of children during armed conflicts. Importantly, the author does not avoid forming courageous postulates *de lege ferenda*, including the proposal to adopt a new, separate convention related to children in armed conflicts. Being aware of states' scepticism for any new restrictive obligations, she optimistically reminds readers that it is only within the last twenty years that the international community has directed its attention to children in armed conflicts and has realised that the crimes committed against them have a great impact on international peace and security.

Departing for a moment from a purely legalistic and academic assessment of the monograph, I must highlight one particularly noticeable characteristic that is visible throughout the whole book. It is rather uncommon in legal publications that an author demonstrates their emotional attitude towards the issues being discussed. However, Dr. J. Nowakowska-Małusecka reveals her authentic commitment and deep empathy for the children, which helps to better understand her position on problems being examined.

Another great advantage of the study is the method employed for presenting specific, often complicated legal provisions. The author does not bore readers with the her-

metic language of law. On the contrary, by placing the norms in a practical context and illustrating them with factual situations, she makes the publication reachable to anyone who is interested in the problems of children in armed conflicts. Therefore, it can be recommended to a wide range of readers including: international lawyers because of its normative content and thorough analysis of the relevant international law, specialists in international relations and political sciences due to its wide-ranging outline of the national, regional and global policies related to children during a war and, last but not least, anyone who cannot sit by and ignore the difficult fate of the youngest, especially in the times of war.

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