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war, soldiers, children

The vulnerability of children drawn into military conflict – Iraq, the Sudan (Darfur), and Russia (Chechnya and Beslan) – was brought shockingly home to the world this year. Around the world, children are growing up knowing more about soldiers and fighting than many of us would like to acknowledge. **Jenny Kuper's** work addresses this topical and sometimes controversial issue.

Imagine you are a government soldier fighting an armed opposition group, and you are confronted by a child soldier pointing his gun at you. Or you, as an officer, have led your troops to encircle an area in which there are a large number of civilians, including children. You have to decide whether to allow the children, among other 'vulnerable' people, to leave this area. What would you do? What guidance is there, in law, or policy, or practice? Would – or does – such guidance make any difference?

There are, of course, flippant answers to these questions – but there is room for a more considered response, as argued in my new book. In situations of armed conflict, it is never simple to 'play it by the rules' – and a key challenge is to try and bridge the gap between theory (law and policy) and practice (what happens on the ground). To take the easier

one of the examples mentioned earlier: there is clear guidance in international law that children and 'maternity cases', among others, should, where possible, be allowed to leave encircled areas. Well-trained officers, and particularly those who are advised by military lawyers, would know this and are therefore legally bound to act accordingly. Failure to do so could result in trial before national or international courts, although of course many – but not all – situations of armed conflict are completely beyond the reach of law, and violations such as this are committed with impunity.

My book describes the child-related international law on which soldiers should be trained, and the international law that obliges governments to provide such training. It considers issues such as the responsibility of officers for the conduct of their troops, and recent judgements of international

tribunals that take specific account of violations against children committed by the military. It also queries the effectiveness of much of the relevant law, discussing various implementation mechanisms, including the role of the UN, and stressing the importance of the actual training methods used. It looks at military training in 11 different countries (including the US and the UK), and finds major differences in both style and content.

Similar issues are also addressed in new training materials for UN peace support personnel, specifically regarding children. Although these two projects, the book and the training materials, have somewhat different aims, they both attempt to clarify international law and policy on military training regarding the treatment of children, and to influence military conduct in this sphere. The book focuses on the training of national armed forces, while the

training materials focus on UN peace support forces. However, the former is clearly relevant to the latter, as troops that are well-trained in a national context are more likely to conduct themselves ethically in any of the many undertakings that are classified as 'peace support' operations.

There was a time when these issues seemed remote from the everyday lives of those of us fortunate enough to live in countries that have been at peace (at least within our own borders) for many decades. However, in this increasingly globalised world, nothing is as remote as it once may have been or seemed. Among other things, troops from a wide range of countries now engage in peace support operations in distant countries – and the impact of upheavals in those distant countries may spread far beyond national borders.

Against that backdrop, the issue of military conduct and training is often in the limelight, and has certainly been topical in 2004, as it is linked to allegations of illegal killings and torture of Iraqis particularly by US but also by UK and other forces. Some of those alleged to have been tortured and unlawfully killed in Iraq have been children – generally defined in international law as those under 18.

Of course a fundamental question here is whether international law is relevant and useful in attempting to regulate the conduct of armed conflict. Certainly it is a strange contradiction to legislate for situations that one lawyer, H McCoubrey, aptly termed 'a descent into extra-legal violence'. There are those who argue that attempts to impose legal constraints on the conduct of armed conflict actually legitimise it, and that all efforts should go into the prevention of armed conflict. A pragmatic assessment, however, suggests that it is both possible and necessary to work to limit the worst excesses of conflict, while at the same time working towards its prevention. The two are not mutually exclusive.

In any event, it is accepted that as long as there is armed conflict (and only the most idealistic seriously foresee a world without this), soldiers must be trained. But trained in what? And for what? Is it enough, for example, simply to provide weapons training and training in tactics, without more? Any country aspiring to comply to any extent with international law must surely answer 'no' to the last question. Military personnel often wield the power of life and death – and they should therefore be trained in the use of judgement, ethics and legality.

This argument is valid even in the face of acts of terrorism that break every imaginable rule of international law. To maintain otherwise is ultimately to meet lawlessness with lawlessness. Do we wish our national armed forces, governments, and peace support personnel to tread that path?

That said, why focus on military training and children? Surely law, policy and training for soldiers and officers should be general and widely applicable? Those of us working in the area of child law and policy, particularly in the context of armed conflict, become accustomed to such questions and to the questioners' assumption that this work

– especially when attempting to bridge theory and practice – is unrealistic and sentimental.

So perhaps it is worth stating the obvious, which is that work on military training and children does not aspire or pretend to effect dramatic social or political transformation. Its aims are, in some ways, modest – and its achievements may be largely invisible, yet have huge significance in the lives of some individuals, in some armed conflicts.

Further, although much of the relevant international law and related training does apply to all those involved in conflict, whether adult or child, it is self-evident that children also have specific requirements, and entitlements in international law and policy, for very good reasons. These include their particular vulnerability, and their significance as the future generation – as is reflected in national law worldwide. Indeed, other groups, such as women and the elderly, are similarly – and differently – entitled in national and international law.

Moreover, children are ubiquitous in most situations of armed conflict. UNICEF recently estimated that 'in the last decade, two million children were killed by conflict, 12 million children were made homeless, six million children have been injured or disabled, at least 300,000 at any given time are actively involved in armed conflict'.

The profound impact of armed conflict on both children and adults is particularly pronounced given the changing nature of armed conflicts generally. Very few of these now conform to earlier models of 'international' and 'non-international', but instead often fluctuate between high-intensity 'small wars' and situations of instability which defy categorisation, and which can be catastrophic for civilians and combatants alike. Indeed, some argue that changes in the character of armed conflict call for the formulation of new laws, as existing international law is ill-suited to address current trends. This is a valid point, but the birth of new international law takes many years and in the meantime the existing law, while unwieldy and scattered, remains surprisingly comprehensive.

It is also worth noting that 'child' does not necessarily mean young child – it means anyone up to the age of 18, and in many countries such 'children' are already shouldering all the responsibilities of adult life. Indeed, in some countries (such as Uganda and Burkina Faso) a majority of the population is under 18. Children as currently defined in international law represent a significant proportion of the world's population.

It is of course arguable that it is unrealistic to set the age limit for a child as high as 18. The notion of 'a child' varies considerably from one society to another, and the age limit of 18 is to some extent both arbitrary and impracticable. Nonetheless, a concept of childhood pervades all cultures, although the definition varies – and international law has the unenviable task of balancing aspirations and lowest common denominators.

If we work, then, within a framework that accepts both the need for legal and policy constraints on the waging of armed conflict, and the fact that children have particular requirements

within that context, military training about children makes some sense.

Ultimately however, military training and the conduct of any particular armed force reside in, and are a reflection of, a wider social, economic and political context. There is a limit to what can be achieved by law and by military training – ideally many of the main relevant principles should be instinctive. To end with a true vignette: one small African country had a reputation for the excellence and restraint of its peace support personnel. A few years ago, one of its officers attended an international military college – the San Remo International Institute of Humanitarian Law – to study that law. After the first day of instruction, this officer said to the trainer: 'It is good to know that someone has written down what is right.' ■



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the book's main themes

International law increasingly rejects the traditional formulation that saw human rights law and the law of armed conflict as two quite separate bodies of rules applying either to peace or to war, with an unregulated area in between – and this shift in perception is relevant to military training.



Jenny Kuper proposes a new approach to military training, arguing that there are certain fundamental rules that apply in all types of conflict, no matter what their

categorisation or level of intensity. These include prohibitions on arbitrary killing and on torture, and, as regards children, their entitlement to special treatment. This approach has important implications in allowing for a simple formulation of rules that can be used in a wide range of conflict situations.