SUMMARY

Children have always been among those who are hit hardest by the effects of armed conflict. They are affected directly through the loss of life, their use in hostilities or as victims of sexual and gender-based crimes, or indirectly by the destruction of facilities that save and sustain the lives of children including schools and hospitals. In 2016, UNICEF estimated that nearly 250 million children lived in countries or territories affected by armed conflict.

In recent years, there have been a number of encounters between internationally deployed military forces and children fighting on the frontline in armed conflict. Children have become a permanent feature on the contemporary battlefield and international armed forces are increasingly coming into conflict with insurgent groups including children in their ranks or are in other ways forced to address situations involving children in the theatre of operation.

Based on these developments the purpose of this thesis is to identify and analyse the obligations under international law of internationally deployed armed forces to protect children in contemporary armed conflict in relation to the conduct of hostilities and the deprivation of liberty and, based on these analyses, to determine to which extent there exists an extended legal obligation to protect children in those situations.

To establish the overall framework for this analysis the thesis has examined the fundamental questions of the extraterritorial application of international human rights law as well as the general application of human rights law in armed conflict. While it is relatively straightforward to determine that human rights law in general is extraterritorially applicable also in situations of armed conflict, it is a rather complex task to determine the precise implications of the resulting co-application of international humanitarian law and international human rights law. This is in particular the case if a potential enemy fighter is a child since international human rights law has a special role to play in the protection of children due to near-universal application of the Convention on the Rights of the Child and its Optional Protocol on the Involvement of Children in Armed Conflict.

The thesis seeks to address this legal complexity stemming from the interplay between international humanitarian law and international human rights law – and the uncertainty it entails. Firstly, by establishing that the principle of *lex favorabilis* (the ‘principle of the most favourable’) applies when determining the relevant rules of international law in situations where children are encountered in an armed conflict (Part II). And secondly, by identifying and analysing a selected
number of obligations under international law of internationally deployed armed forces concerning the protection of children focusing specifically on the issues of a) determining who is considered a child in armed conflict, b) conduct of hostilities involving children, and c) the deprivation of liberty of children (Part III).

Based on the analyses of the identified obligations under international law and the conclusions reached in relation to these three specific issues, the thesis offers five overall conclusions for the protection of children in armed conflict:

1. That the principle of *lex favorabilis* is a more nuanced approach to resolving norm conflicts than the traditional approach of *lex specialis* presenting the decision-maker with a more precise, comprehensive and consolidated analysis of the underlying legal considerations and the political norms on which these are based.

2. That adopting – also in the conduct of hostilities and in relation to deprivation of liberty – a general age limit of 18 years for the definition of the child would both have a distinct legal foundation and provide important practical and operative advantages in the establishment of clear obligations for deployed armed forces encountering children in armed conflicts.

3. That international human rights law does not fundamentally affect the test of what constitutes an arbitrary deprivation of a child’s life in neither international nor non-international armed conflict, but that deployed armed forces must observe explicit obligations under international humanitarian law and international human rights law to take precautionary protective measures in favour of children in armed conflict, *e.g.* by way of demobilisation.

4. That the provisions of international human rights law developed specifically for the protection of children deprived of their liberty must be applied as the *lex favorabilis* to inform and to fill the legal lacunae in the protection offered by international humanitarian law in a complementary manner.

5. That there exists an extended legal obligation to protect children in armed conflict and that this extended legal obligation can be derived from the principle of *lex favorabilis* which, should form part of any complete legal analysis in the context of children affected by armed conflict.