

Reviewing the protection offered to schools under international humanitarian law

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Just like health centres – and the professionals who work there and the patients they treat – schools and their teachers and pupils are not spared from conflict or acts of terrorism. Here, Brenda Huaman outlines the rules that are supposed to apply, the gap with reality and consequences of the distorted situation.

Recent armed conflicts have shown that schools are frequently attacked or used for military confrontation, with serious consequences for children, their education and the reconstruction of post-conflict societies. This happens despite the fact that these are civilian objects for which international humanitarian law (IHL) recognises general protection against attacks or military use. In light of this, this paper argues for the need to provide a reinforced standard of protection to schools in response to the harsh realities of armed conflict and the importance of education for the effective protection of children and the recovery of post-conflict societies.

A legal framework for the protection of schools during armed conflict

The four Geneva Conventions of 1949 and their Additional Protocols as well as customary law lack a rule that deals expressly and exclusively with the protection of schools. However, it is derived from general norms protecting civilian objects and children. Thus, all conventional and customary IHL rules on civilian objects and the principles of humanity, distinction, proportionality and precaution frame the protection of schools. In addition, there is special protection granted to children and adolescents¹ as well as rules of international human rights law applicable to this matter.

As civilian objects, schools cannot be the target of attacks.² However, they may still be affected, as collateral damage, by non-direct attacks. In such cases, according to the principle of proportionality,³ the damage caused must be weighed against the concrete and direct military advantage expected, and the belligerents must take all possible precautions to avoid or minimise such collateral damage to civilian objects.⁴

¹ In line with the Secretary-General's report of 23 June 2022, *Children and armed conflict*, for the purposes of this paper, children and adolescents are considered to be all persons under the age of 18.

² Additional Protocol (AP) I art. 48 and 52(1), customary rule 7.

³ AP I art. 51(5b), customary rule 14.

⁴ AP I art. 57, customary law 15.

Consequently, the protection of schools under IHL is not absolute. Indeed, in certain circumstances, schools may lose their civilian status and thus their protection. This happens when, and as long as, by their nature, use, location or purpose, they contribute to an effective military advantage for one of the belligerent parties.⁵

The importance of protecting schools in the context of armed conflict stems from the need to guarantee the right to education of children and adolescents, who are particularly vulnerable in situations of armed conflict, as they suffer disproportionately and to a greater extent from its consequences. Precisely one of these consequences is that they end up being deprived of their right to education for prolonged periods of time or permanently, which has repercussions on the enjoyment of their other rights as well as on the reconstruction of post-conflict societies.

Despite this, IHL lacks norms that regulate this issue in detail, as there are only two specific norms in this regard: firstly, Article 4(3a) of Additional Protocol II which mentions the right to provide an education in accordance with the wishes of the parents or guardians of the children, which is questionable; then Article 50(1) of the Fourth Geneva Convention which states that the occupying power shall take measures to ensure the education of children, orphans or children separated from their parents because of war, with the cooperation of national and local authorities. However, this rule is limited to situations of occupation and is subject to local institutions “proving inadequate”.⁶

Consequences of attacking schools

The legal framework outlined above is not consistent with the short- and long-term consequences of military use and attacks on schools, both for children and their teachers and for society in general. Thus, the most direct consequence is the risk to which children and educational personnel are exposed. Not only can they lose their lives in their educational centres, but if they survive, they do so with damage to their physical and/or psychological integrity. As such, places that are supposed to be safe places for children are associated with acts of war. In this context, although IHL provides for the need to educate on the importance of recognising that educational establishments are civilian objects, it is not effective to impart such teachings while schools are under attack or used for military purposes.⁷ Hence, it is difficult to ensure non-repetition of these acts by the children themselves.

Another frequent consequence is the suspension or indefinite closure of schools as well as the forced displacement of students and teachers in order to continue education in a safe environment. This generates a high dropout rate, which opens the way for serious violations of children’s rights,⁸ such as sexual violence, child prostitution or their integration into armed groups.⁹ The situation in Yemen exemplifies the above, as the United Nations (UN) confirmed 842 cases of child recruitment and

⁵ AP I art. 52(2), customary rules 8 and 10.

⁶ Art. 4(3a) of Additional Protocol II and Art. 50(1) of the Fourth Geneva Convention.

⁷ Global Coalition to Protect Education from Attack, *Commentary on the “Guidelines for Preventing Military Use of Schools and Universities during Armed Conflict”*, <https://protectingeducation.org/publication/commentary-on-the-guidelines-for-protecting-schools-and-universities-from-military-use-during-armed-conflict>

⁸ United Nations Children’s Fund (UNICEF), *Paris Principles. Principles and Guidelines on Children Associated with Armed Forces or Armed Groups*, February 2007, Para. 6.3.

⁹ Flor Alba Romero Medina, « Impacto del conflicto armado en la escuela colombiana. Caso departamento de Antioquía, 1985 a 2005 », PhD thesis, Universidad Distrital Francisco José de Caldas, 2011, p. 62.

reported that 25% of these children are not in school and 11% of schools are destroyed or used for other purposes.¹⁰

In addition, armed conflicts often last for many years and post-conflict recovery is not quick either. The reconstruction of affected or destroyed schools can take many more years as it is not a priority for states, since involvement in armed conflict seriously compromises the economy of the belligerent parties. Thus, attacks on schools are not examples of momentary damage but the beginning of a chain of long-lasting consequences, such as several generations without access to education and the consequent increase in illiteracy. In this regard, it is useful to recall that in 2020 United Nations Children's Fund's representative (UNICEF) in Yemen expressed concern about the start of the school year, noting that 3.7 million children will be deprived of their right to education due to the conflict.¹¹

Furthermore, it is worth emphasising that the right to education is an “enabling right”, as it allows for the enjoyment of other human rights and enables people to have a meaningful participation in society, contributing to the promotion of universal respect for the dignity of all.¹² In this vein, the importance of the realisation of the right to education for the achievement of international peace and security has been highlighted.¹³

The need for enhanced protection: a reflection in the light of current conflicts

Despite the serious short- and long-term consequences of attacking schools, an overview of recent armed conflicts shows that warring parties underestimate the damage caused by their attack and/or destruction. According to the UN, in 2019, 494 attacks were perpetrated against schools¹⁴ and in 2021 that number continued to grow.¹⁵ In 2016, Human Rights Watch reported that in at least twenty-six states with active armed conflicts in the last decade, schools have been used as military targets by both armed groups and armed forces. These include Colombia, Afghanistan, Syria, Ukraine and South Sudan.¹⁶ Regarding Yemen, the UNICEF reported that one-third of schools in the port city of Hudaydah have been closed, due to destruction or damage or because they are being used for military purposes.¹⁷

It is in this context that the *Safe Schools Declaration* (hereafter “Declaration”) was opened for adoption on 29 May 2015, highlighting the major impact of armed conflict on education and outlining a set of commitments to strengthen the protection of education and ensure its continuity during armed conflict. The first of these commitments is the implementation of the *Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict* (hereafter “Guidelines”). These Guidelines

¹⁰ UN News, “Yemen”, <https://news.un.org/en/focus/yemen>

¹¹ UNICEF, “The number of children facing education disruption in Yemen could rise to 6 million, UNICEF warns”, 5 July 2021, <https://www.unicef.org/mena/press-releases/number-children-facing-education-disruption-yemen-could-rise-6-million-unicef-warns>

¹² Kristin Hausler, Nicole Urban, Robert McCorquodale *et al.*, *Protecting Education in Insecurity and Armed Conflict. An International Law Handbook*, British Institute of International and Comparative Law, 2020, p. 20.

¹³ UN Security Council, *Security Council Presidential Statement*, 10 September 2020, S/PRST/2020/8, p. 2; Resolution 2601, 29 October 2021, S/RES/2601, p. 2.

¹⁴ UN, *Children and Armed Conflict*, Report of the Secretary-General, 9 June 2020, A/74/845-S/2020/525, para. 8.

¹⁵ UN, *Children and Armed Conflict*, Report of the Secretary-General, 23 June 2022, A/76/871-S/2022/493, para. 10.

¹⁶ Zama Neff, “The right to education: regulating the conduct of armed forces under international law”, *Harvard International Review*, 25 February 2016, <https://www.hrw.org/news/2016/02/25/right-education-regulating-conduct-armed-forces-under-international-law>

¹⁷ UNICEF, *The number of children facing education disruption...*, *op. cit.*

propose a set of actions that belligerents can take to reduce military use of schools and universities and to minimise the negative impact that such use can have on the safety and education of students.

Although the Declaration and its Guidelines are not legally binding *per se*, it can be seen that they reflect the concern of states about the violation of the right to education of children who are victims of armed conflict. It is also presented as a response to the apparently insufficient protection afforded to schools by IHL. Indeed, and to date, 111 States have signed this Declaration, including those that have or have had active and worryingly drawn-out armed conflicts. For instance, Yemen, Afghanistan, Mali, Palestine, Iraq and Somalia have signed up to it.

In this regard, it is important to highlight the statements and work of the UN Security Council on the issue of children and armed conflict. Indeed, in its latest resolutions it has reaffirmed the importance of the right to education and its contribution to the achievement of international peace and security. It has also called on belligerent States to cease threats and attacks on schools and all actions that prevent children from having access to education.¹⁸ It stressed that all parties to armed conflict must strictly comply with their obligations regarding the protection of children in armed conflict and welcomed all ongoing international and regional initiatives in this regard. It also urged member states to develop effective preventive measures to address threats and attacks against educational facilities.¹⁹

Thus, these non-binding international instruments could be the forerunner to the creation of binding legal norms that provide a higher standard of protection for schools. In this respect, authors such as Bart propose to provide schools with special protection similar to that existing for medical objects, even if they are of a different nature.²⁰ On the other hand, the aforementioned Guidelines do not adopt Bart's proposal, but they do provide for enhanced protection. In any case, today it is clear that the preservation of schools is important for the effective protection of children and adolescents so that they can truly exercise their right to education.

IHL provides schools and education personnel with general *prima facie* protection as civilians or civilian objects respectively. However, children are entitled to special protection and respect, in the light of which the need to raise the standard of protection of schools must be read.

Indeed, current armed conflicts have as a common denominator a significant practice of attacking schools or using them for military purposes. As a result, the short- and long-term consequences for children and society in general can be observed today. Hence it has been argued that the increasing development of soft law instruments that respond to the need to provide a higher standard of protection for schools could lead to the adoption of legally binding norms for this purpose.

¹⁸ UN Security Council, *Security Council Presidential Statement...*, *op. cit.*

¹⁹ UN Security Council, *Resolution 2601*, *op. cit.*, p. 4

²⁰ Gregory Raymond Bart, "The ambiguous protection of schools under the law of war – Time for parity with hospitals and religious buildings", *Georgetown Journal of International Law*, vol. 40, no. 2, 2009, p. 405,

https://inee.org/sites/default/files/resources/Bart_Ambiguous_Protection_of_Schools_-_Time_for_Parity_2009.pdf

Biography

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In her professional career, Brenda has been involved with mechanisms within the inter-American human rights system, working with migrants, refugees and children and adolescents. Previously, she has worked as a refugee status determination officer at the Special Commission for Refugees of the Peruvian Ministry of Foreign Affairs and as a human rights consultant for the Inter-American Commission on Human Rights.

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