# Protecting Education in Insecurity and Armed Conflict

## An International Law Handbook

Second Edition


# A Summary

التعليم فوق الجميع | education above all

BICL
British Institute of International and Comparative Law

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# PREFACE

This document serves two purposes: first, it acts as a Summary of the second edition of Protecting Education in Insecurity and Armed Conflict: An International Law Handbook ('Handbook'); second, it is written to be readily accessible to a non-legal audience and so to provide a stand-alone insight into the three relevant areas international law, and the potential of that law, in protecting education during insecurity and armed conflict.

The Handbook has been authored by Kristin Hausler, Nicole Urban, Robert McCorquodale and Siobhan Smith. For the second edition, we are grateful to Abdul Aziz Al Thani, Aliya Fakhroo, Peter Klanduch, and Maleiha Malik, of Education Above All Foundation, and the British Institute of International and Comparative Law (BIICL) Research Assistant, Héctor Tejero Tobed for their insightful comments and inputs. The publication is part of a larger series of legal research documents commissioned by the Education Above All Foundation (EAA) on the protection of education during insecurity and armed conflict.

EAA is an independent non-profit organisation chaired by Her Highness Sheikha Moza Bint Nasser of Qatar, UNESCO Special Envoy for Basic and Higher Education and a United Nations SDG Advocate. Protect Education in Insecurity and Conflict (PEIC), a policy, research and advocacy programme of EAA, is concerned with the protection of education during insecurity and armed conflict. PEIC focuses on policy research, thought leadership and strategic global advocacy as well as grassroots mobilisation in support of its vision to protect education in conflict and insecurity. Its law and policy research papers are authored by international legal academics, practising lawyers and policy practitioners. They are aimed at a varied audience, including international and national lawyers, non-legally trained education experts, and policy-makers within governments, political, social and

cultural bodies, and civil society. PEIC is also committed to the accurate collection and dissemination of data and evidence in the public sphere as the foundation of its advocacy.

BIICL is one of the leading independent research centres for international and comparative law in the world, and is the only organisation of its type in the United Kingdom. Since its foundation in 1958, the Institute has brought together a diverse community of researchers, practitioners and policymakers who are committed to the understanding, development and practical application of international and comparative law. Its high quality research projects and events encompass almost all areas of international law (both public and private) and comparative law, and it is at the forefront of discussions on many contemporary issues. Further information on the Institute and its activities can be found at www.biicl.org.

An electronic version of the Handbook is available at:
https://educationaboveall.org
https://www.biicl.org/projects/protecting-education

Further information and research material are also available on the above-mentioned webpages, including teaching material (notes and presentation slides), which can be used by law professors as well as law and policy practitioners who want to teach and examine the protection of education through the lens of international law.

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# 1 INTRODUCTION

Education is at particular risk in contexts where there is a high level of insecurity, and even more so when there is a fully blown armed conflict and in humanitarian situations. Students and education staff can be and, too often, are threatened or physically harmed on their way to school or within it. Entire populations can be forcibly displaced both within and outside the boundaries of their respective States, leading to disruption in the provision of education. Children are sometimes recruited into the armed forces of States or non-State armed groups, and educational facilities are frequently destroyed or used for military purposes, such as for training grounds. Education itself is also affected when it is used as a tool for war propaganda or a vehicle for discrimination or incitement to hatred. Education may, and frequently is, discontinued entirely in times of insecurity or armed conflict.

Since the publication of the first edition of Protecting Education in Insecurity and Armed Conflict: An International Law Handbook ('Handbook') in 2012, attacks on education have continued worldwide, underlining the persistent relevance of this publication. On 9 October 2012, a school bus was stopped in Pakistan and fifteen year old schoolgirl Malala Yousafzai was shot in the head and critically wounded, because she had spoken out against the Taliban banning girls from attending classes and their bombing of schools. Between 2013 and 2017, attacks against students, education personnel, and educational facilities, were reported in 74 States. In Pakistan, on 16 December 2014, one of the deadliest attacks on educational institutions occurred. The Taliban stormed the Army Public School in Peshawar, killing at least 141 people, including 132 children, as well as teachers and education staff. At least another 133 were injured, the vast majority of whom were children. As a result of the attack, the government closed all educational institutions

across Pakistan for three to four weeks. On 14 April 2014, a group of Boko Haram fighters abducted more than 270 girls from a secondary school in Chibok, Nigeria. They also destroyed the school. More than two hundred girls remained captive for years. While approximately one hundred girls were released in 2016 and 2017, many remain missing at the time of writing. It was also reported that schools or universities have been used militarily in 29 States between 2013 and 2017. In South Sudan, between December 2013 and 2016, armed forces and non-State armed groups are reported to have used at least 161 schools for military purposes. The military use of 31 schools occurred in the Philippines between the end of 2012 and the end of 2016. During the same period, child recruitment at, or on the way to or from, school, was also documented in at least 16 States. In addition, sexual violence occurred at, or on the way to or from, schools or universities in at least 17 States. Mass displacement caused by insecurity and armed conflict is another factor that continues to negatively impact access to education. For example, in 2015, it was estimated that approximately 708,000 Syrian refugee children were residing in Turkey, more than 400,000 of whom were not attending schools.

If education is damaged in these ways, its role in supporting sustained recovery can be lost or diminished substantially. Such damage can also restrict the awareness of societies of the need to protect and ensure human rights. Given the crucial need to ensure education to all, including in insecurity and armed conflict contexts, and the potential preventive and protective role of law at such times, the British Institute of International and Comparative Law (BIICL) and the Education Above All Foundation (EAA) have developed an innovative publication, which presents the current protection of education under different international law regimes. Given the continued attacks on education committed worldwide, and the importance of education, the protection of education in insecurity and armed conflict continues to deserve global attention, including from the legal community. The second edition of the Handbook incorporates all of the relevant developments which have occurred since 2012, including

the Safe Schools Declaration (adopted in 2015), but also steps taken in the development sector such as the adoption of the 2030 Agenda for Sustainable Development including the Sustainable Development Goal (SDG) 4 on education. The second edition also includes relevant case law like the Lubanga case at the ICC, which led to a recognition of missed educational opportunities for those children that were recruited into armed forces. The second edition of the Handbook, therefore, supports the further advancement of the protection of education in insecurity and armed conflict by international law, building on the steps already taken since 2012.

## SCOPE

It is established under international law that education at the primary level has to be offered to everyone for free and made compulsory. However, international law does not limit its protection to primary education. Education must be understood - in both law and in policy responses - as a broad concept, which includes all types and levels of education, including adult education and vocational training.

In the same manner, terms such as students and education staff must also be understood in a broad sense. Students include those persons who benefit from education regardless of age or institution. Education staff refers to teachers and other non-teaching staff (including maintenance and technical staff) involved in the provision of both public and private education.

Educational facilities includes not only schools, classrooms and other structural facilities directly related to the provision of education but also facilities at places of education, including facilities for sanitation, drinking water, libraries, computers and other information technology.

The Handbook considers education-related violations occurring in situations of insecurity and armed conflict.

- Education-related violations refer to the *legal* aspects of attacks against

education during situations of insecurity and armed conflict. An attack on education refers to an act against education, students and education staff, or educational facilities.

- Insecurity is a non-legal term, which describes situations of internal disturbance, tension and fragility within a State that disrupt the normal functioning of political, social, and legal institutions, including those that are used to facilitate education. Natural disasters and terrorism are examples of situations of insecurity that negatively impact education. 'Insecurity' does not include situations of intense violence that reach the threshold of armed conflict.
- Armed Conflict is a term referring to the legal concepts of 'international armed conflict' and 'non-international armed conflict', which are different from situations of insecurity.
- International armed conflict describes situations of violence which involve the use of armed force between States. This includes where States use force against each other by 'proxy' through a non-State armed group. Some armed conflicts involving non-State actors have been deemed to be examples of international armed conflict by treaty law. International armed conflict also includes situations of belligerent occupation, where the armed forces of one State have effective control over the territory of another.
- Non-international armed conflict is a situation of violence between a State and a non-State armed group on its territory or a situation of violence between non-State armed groups on the territory of a State. In both situations the violence used must be 'protracted'. This means that the violence must reach a level of intensity in order for the situation to be one of non-international armed conflict - as opposed to a situation of internal disturbance or tension that amounts to insecurity, to which international humanitarian law does not apply.

There has been very little examination of the different regimes of international law and their intersection on issues concerning education-related violations during insecurity and armed conflict. Such examination is essential to understand how international law protects education itself

and the benefits that derive from it, as well as how this protection can be increased. The Handbook explores the international legal protection afforded to both the right to education, as a human right, and education more generally under:

- International human rights law (IHRL);
- International humanitarian law (IHL); and
- International criminal law (ICL).

The Handbook's examination of IHRL, IHL and ICL reveals a considerable amount of similarities in their protective role and demonstrates how they can work together as a strong framework of protection for education. This examination in the Handbook also clarifies the extent and type of legal obligations to which States - and sometimes other entities - should comply. It also highlights the need for increased attention to such obligations by States, non-State groups, civil society and others to ensure their appropriate and effective implementation within States.

# 2 THE INTERNATIONAL LEGAL FRAMEWORK

The three legal regimes considered by the Handbook are distinct. They each contain rules that protect education directly, or protect the conditions necessary for education to exist, such as the protection of the lives of students and education staff, and the protection of educational facilities.

## International Human Rights Law

IHRL protects the rights to which all individuals are entitled, regardless of their race, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. In general, IHRL applies to *all situations* and at *all times* – including during insecurity and armed conflict. This broad application means that IHRL has the most general scope of the three regimes. States are bound to IHRL either through their agreement to and ratification of a human rights treaty, or, in some instances, through customary international human rights law or when a norm has reached the status of *jus cogens* (which applies to all States regardless of whether they have ratified or acceded to a relevant treaty). Non-State actors, particularly non-State armed groups, are often responsible for violations of human rights, including the right to education, in peacetime as well as situations of insecurity and armed conflict. The difficulty in making non-State actors legally responsible for violations of international human rights law is that human rights treaties are so drafted that the State is the only entity directly responsible for compliance with the treaty. There is, however, growing acceptance that non-State actors should also have the obligation (at least) to respect the human rights applicable on the territory of which they operate.

Most human rights became binding obligations with the adoption of the following two treaties and their subsequent ratification by a large number of States:

- International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR) and its Optional Protocol; and
- International Covenant on Civil and Political Rights 1966 (ICCPR) and its Optional Protocols.

Their Optional Protocols have allowed individuals (or groups of individuals) to complain of alleged breaches of treaty obligations by States that have ratified the Protocols in question. The OP-ICESCR, which came into force in 2013, thus allows complaints regarding alleged violations of the right to education.

There are also human rights treaties which focus on the protection against a particular form of human rights violation. These include the Convention against Discrimination in Education 1960, as well as the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT) 1984 and its Optional Protocol, and the Convention for the Protection of All Persons from Enforced Disappearance 2006. Other human rights treaties protect particular groups, such as the Convention on the Elimination of All Forms of Racial Discrimination (CERD) 1966 and its Optional Protocol, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) 1979 and its Optional Protocol, the Convention on the Rights of the Child (CRC) 1989 and its Optional Protocols, and the Convention on the Rights of People with Disabilities 2006 and its Optional Protocol.

All of the regions, except for the Asia/Pacific region, have adopted binding human rights treaties. In Europe, the main treaties are the European Convention on Human Rightsand Fundamental Freedoms 1950 and the European Social Charter 1961 (revised 1996). The main human rights treaty in the Americas is the American Convention on Human Rights 1969. In Africa, it is the African Charter on Human and People's Rights 1981. In addition, a number of African States are also members of the Arab League which has adopted the Arab Charter on

Human Rights 1994, which protects the human rights in Arab States throughout the world. Every State is party to at least one of the major global human rights treaties. Each of these treaties require States to give effect to the treaty in national law.

Treaty bodies have been established in order to monitor and supervise the compliance of States with their treaty obligations. For example, the ICESCR has a committee of independent experts, called the Committee on Economic, Social and Cultural Rights, which considers States' compliance with their obligation to realise the right to education, as well as communications alleging breaches of the right to education.

In addition, as mentioned, States may be bound to IHRL through customary international law. The Universal Declaration of Human Rights 1948 (UDHR) is not a treaty (and, therefore, not legally binding on States) but many of its Articles are considered to have become customary international law, either through their inclusion in treaties, State practice or other applications. For example, States are now subject to a regular Universal Periodic Review by the UN Human Rights Council (UNHRC), in which the basis for review includes compliance with the UDHR.

## International Humanitarian Law

IHL is a body of law that regulates the conduct of parties to an armed conflict. It is sometimes referred to as 'the law of war' or 'the international law of armed conflict'. IHL aims to make war more humane, and its rules and restrictions embody the international ideal that military victory should not to be achieved at any cost. IHL applies to all parties to a conflict, including both States and non-State armed groups. A number of non-State armed groups have also pledged to respect IHL through other, non-legally binding, means, including on protecting children in armed conflict and on prohibiting sexual violence and gender discrimination.
IHL is now largely codified in the following international treaties:

- The four Geneva Conventions for the Protection of War Victims of 1949 (the Geneva Conventions);
- The three protocols additional to the Geneva Conventions (Additional Protocols): Additional Protocol I of 1977 applicable in international armed conflict; Additional Protocol II of 1977 applicable in non-international armed conflict; and Additional Protocol 3 relating to the adoption of a new distinctive emblem (the 'Red Crystal');

In addition to the above, IHL is comprised of customary international law. In 2005, the International Committee of the Red Cross published its study on customary international humanitarian law which examined relevant State practice and identified rules of IHL which have attained customary international legal status, including those applicable in non-international armed conflict.

Each of these treaties and the relevant customary international law embody the central protection afforded by IHL. This is the principle of *distinction:* that parties to a conflict must at all times distinguish between civilians and those persons taking a direct part in hostilities; and between civilian objects and military objectives. Civilian objects are all those objects that have not become military objects. Typical civilian objects include school buildings; school grounds; university buildings; public or personal transportation; and private property. Parties are prohibited from attacking civilians and civilian objects.

## International Criminal Law

ICL is a regime which identifies the circumstances that attract *individual* criminal responsibility. ICL refers to the set of rules proscribing conduct that is considered criminal by the international community and shocks the conscience of humanity. It also establishes the procedures by which these criminal violations are enforced. International crimes include the crimes of aggression, genocide, crimes against humanity, transnational terrorism, war crimes, torture and enforced disappearance. Various weapons are also prohibited under the Rome Statute, which was last

amended in 2017 to prohibit the use of additional weapons, though these amendments are not in force yet.

ICL is a relatively new discipline. In the last decade of the twentieth century and first decade of the twenty-first, a number of *ad hoc* regional courts and tribunals were created, to investigate and prosecute individuals for international crimes within a particular geographical area over a particular time-frame. The most important recent development in the field of ICL has been the creation of the International Criminal Court, being a permanent court with jurisdiction over international crimes committed by individuals. ICL is therefore particularly relevant in terms of individual criminal justice for education-related violations in insecurity and armed conflict. Conduct deemed criminal under ICL can, of course, have a direct or indirect impact on the full and effective realisation of the right to education.

## Interaction between International Legal Regimes

Although IHRL, IHL, and ICL are different legal regimes, they often apply at the same time to the same situations. The way that they interact can affect the overall protection of education in insecurity and armed conflict. The three regimes have substantive similarities: for example, IHL and ICL share common sources of substantive law (including the Geneva Conventions and Additional Protocols) and are mutually reinforcing regimes. Many of the crimes set out in ICL are based on, or identical too, the prohibitions of IHL. Some ICL courts have also identified the substantive overlap between ICL and IHRL and have sought to rely on IHRL jurisprudence in interpreting particular crimes or to supplement gaps in their own jurisprudence.

Despite this substantive overlap, the three regimes remain distinct from each other, particularly in their object and purpose. A finding of responsibility for a violation under one regime does not necessarily give rise to responsibility under another. IHRL addresses the conduct of States and State responsibility whereas ICL is concerned with the

criminal liability of individuals. Similarly, notwithstanding the obvious relationship between ICL and IHL, they have overlapping but distinct objects and purposes. IHL regulates the conduct of parties to an armed conflict and aims to alleviate the conditions of victims. IHL achieves this through a diverse number of ways, including through its focus on reciprocity and practicality, and the text of IHL itself seeks to represent the balance between humanity and military necessity. The enforcement of its provisions, through the processes of ICL, is only one of the ways in which IHL has the potential to improve the humanity in conflict.

The relationship between the three regimes is complex and examined in detail in the Handbook. Understanding the interactions between these international legal regimes is vital to identifying and addressing international law's response to education-related violations in situations of insecurity and armed conflict.

# 3 PROTECTION OF EDUCATION

All human rights are interrelated and interdependent, which means that the enjoyment of one particular human right often relies in part or substantially on the enjoyment of other right(s). This means that the right to education is often necessary for the fulfillment and realization of other human rights, such as the right to work, rights to freedom of expression and of association, and to access health services. Similarly, in order for the right to education to be realized, other human rights must also be realized. This includes the protection of children from economic and social exploitation, and the right to an adequate standard of living (including housing, food and water). Like other human rights, the right to education is applicable to all - without discrimination - and it is also applicable at all times, including in insecurity and armed conflict.

## The Protection of Education by International Human Rights Law

As a legally binding right, the right to education must be respected by the State parties to both international and regional treaties. States must take the necessary, concrete steps to achieve the full realisation of the right to education. Even in situations of insecurity and armed conflict, every effort to satisfy, at the very least, the minimum core obligations associated with the realisation of the right to education must be made by States. When necessary, a State must make use of international assistance and cooperation to achieve the realisation of the right to education.

Under the right to education, States have both positive obligations towards individuals, such as the provision of free and compulsory primary education, and negative obligations, such as the prohibition of impeding

access to education. States also have immediate obligations, including non-discrimination in the provision of education, and obligations for which they must take steps to realise the right progressively, such as access to higher education. Thus States have a continuous obligation with regard to the right to education as soon as they are party to a treaty protecting it, which entails taking all necessary measures to achieve the full realisation of this right as expeditiously as possible.

The core components of the right to education may be identified through what is often referred to as the 'four As' framework. According to this framework, the core components of the right to education consist of:

- Availability
- Accessibility
- Acceptability
- Adaptability

'Availability' refers to the general obligation of States to establish schools or allow the establishment of schools. For example, States must ensure that free and compulsory education is available to all at the primary level. As a minimum, the Committee on Economic, Social and Cultural Rights identifies that the right to education requires States to provide basic amenities at educational institutions, including protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, as well as teaching materials. Such requirements are not obviated in times of insecurity and armed conflict.

'Accessibility' requires States to make education affordable and physically accessible. Accessibility also includes the obligation to provide education within safe reach of students or virtually, via modern technology. Physical accessibility may be particularly challenged during periods of insecurity and armed conflict. Not only can violence and attacks destroy schools but they may also render the travel of students and education staff to and from educational facilities more hazardous.

Another aspect of accessibility means that education shall support the principle of equality and not discriminate against any group, including persons with disabilities or foreign nationals. For example, accessibility for displaced and refugee children in particular may be affected by provisions that restrict access only to those who fulfil certain legal status requirements.

'Acceptability' refers to the relevance, cultural appropriateness and quality of the curricula and teaching methods. The acceptability requirements need to be set and enforced by States. States must ensure that the standards set, and their protection, relate not only to education curricula but also to teaching methods. In situations of insecurity and armed conflict, there is a high risk of neglecting the vigilant oversight of acceptability standards. Although oversight may not be able to reach usual or normalised standards, it does not mean that no oversight is required. This oversight (but not the State's international legal obligations) might be assumed by actors other than those traditionally carrying such tasks.

'Adaptability' refers to the need for schools to adapt to each child. It refers to the flexibility of education to respond to the changing needs of societies, including the need to adapt to current knowledge and the latest scientific standards, and to the needs of students in relation to their diverse social and cultural backgrounds. In accordance with the Convention on the Rights of the Child, the best interests of each child are paramount. In a situation of insecurity, adaptability would require, for example, a rapid resumption of educational activities and reintegration of children after an attack on the school or other security-related school closure. Adaptive programmes in such contexts may also include education about conflict resolution, disaster risk reduction and civic education. These would give students tools with which to handle the different challenges that arise in insecurity and conflict situations.
A number of additional non-binding international instruments are helpful in defining further the relevance and scope of the right to

education, in particular with regard to provision of education by private actors, development, and human rights education. These may assist in interpreting the legal obligations attached to the right to education, such as the *Abidjan Principles on the human rights obligations of States to provide public education and to regulate private involvement in education,* as well as give directions for the evolution of the law or for law reform. Such instruments include the *World Declaration on Education for All, the Dakar Framework for Action*, the Sustainable Development Goals which replaced the Millennium Development Goals, and the *Incheon Declaration*. Other instruments mention education in relation to education about, and of, human rights, such as the *Vienna Declaration and Programme of Action, Plan of Action for the United Nations Decade for Human Rights Education, World Programme for Human Rights Education,* and the *United Nations Declaration on Human Rights Education and Training*.

## The Protection of Education by International Humanitarian Law

In armed conflict the human right to education applies alongside the rules of IHL. IHL strengthens the IHRL legal framework for the protection of education in international and non-international armed conflict and seeks to ensure that, where education was provided before an armed conflict, it continues uninterrupted.

The Geneva Conventions address education specifically in relation to four situations common in armed conflict:

- Parties to an international armed conflict must take 'the necessary measures' to ensure the education of children under 15, who have been orphaned or separated from their families as a result of armed conflict.
- In situations of civilian internment in international armed conflict, the detaining power must encourage educational pursuits among internees and provide facilities to ensure education, especially for children and young people.
- Occupying powers must cooperate with the national and local

authorities to ensure facilitation of educational institutions for children.

- Parties to a non-international armed conflict must ensure that children receive the care and aid they require, including education.

In each of these four instances, basic and physical education, as well as moral and religious education is protected. Each rule of IHL applies in accordance with the principle of 'no adverse distinction'. This means that the rules must apply equally to all persons regardless of their race, colour, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or sex. Any education provided under these provisions must apply equally to male and female students. Further, under IHL education should, wherever possible, be provided in a culturally sensitive way. However, with few exceptions, there is no clear requirement under IHL to ensure appropriate education for people with disabilities. Nevertheless, IHRL continues to apply during armed conflict, including the Convention on the Rights of Persons with Disabilities which contains provisions seeking to ensure the protection and safety of people with disabilities that are specifically applicable during armed conflict.

## The Protection of Education by International Criminal Law

So far there are no ICL provisions or case law dealing with the protection of education itself. Education is only mentioned within the targeting and/or destruction of 'educational property', listed as a war crime in the Rome Statute. This significantly undermines the need, at an international level, to recognize the effect of insecurity and armed conflict on education. Further, it emphasizes that many violations of ICL which affect the protection of education, need to be recognized as education-related violations.

However, certain provisions of ICL have the potential to be used to protect education and this possibility needs to be considered by those with the

power to hear or to bring such cases. For example, the widespread and systemic discriminatory denial of education to a group of people with a particular political, racial, national, ethnic, cultural, religious, or gender identity, may amount to the crime against humanity of persecution. Furthermore, the application of the crime of incitement of genocide to educational content needs to be considered. The full protective power of ICL has not yet been realised in relation to education.

## Improving the Protection of the Right to Education

The right to education benefits from comprehensive legal protection under IHRL at both the international and regional levels. However, the global protection of education under IHRL, in both insecurity and armed conflict, is only effective where States have ratified the relevant treaties and taken national measures to implement their provisions. Such measures must be designed to ensure:

- The full realisation of the right to education;
- The most comprehensive expression of the right to education is protected, respected and fulfilled; and
- Fulfilment of those civil, political, economic, social and cultural rights which create the conditions necessary to ensure education.

For example, States must develop and implement national policies to ensure the provision of basic education, education that can be accessed equally by all, including across gender and disabilities, and to protect the content of education from discriminatory material, hate-speech, and war propaganda. All States should ensure not only the full realisation of the right to education but also ensure that it is justifiable within national, regional or international legal frameworks and that education specific remedies are available. The adoption of the Sustainable Development Goals and the Incheon Declaration are key developments since the first

edition of this Handbook, in respect of their value in assisting States in working towards the full realization of the right to education.

On an international level, States can ensure that the legal framework of protection against education-related violations operates effectively and comprehensively through:

- Participating in the monitoring mechanisms of education-related components of treaties to which they are parties;
- Complying with decisions of such bodies; and
- Encouraging compliance with such mechanism by other States.

Similarly, in order for education to receive the full protection of IHL, violations that adversely impact on education need to be recognised as *education-related violations* by the parties to armed conflict. This is because improved awareness of the education-related application of IHL, and the impact on education of its violations, are key elements to ensuring protection of education in all situations. This can be achieved in a number of ways including:

- The development and dissemination of international guidelines addressing the scope of these education-related IHL provisions and clarification of their applicability to issues such as non-discriminatory provision of education in the four situations identified above.
- The use of education itself is a vital tool for improving awareness of the education-related consequences of violations of IHL. The inclusion of IHL rules in general human rights education of populations, as well as emphasising the protection of education in training of national armed forces and associated State and non-State actors, would drastically improve awareness of the impact of education-related violations of IHL.

There is also great scope for the three legal regimes, IHRL, IHL, and

ICL, to co-ordinate their provisions to ensure a more comprehensive response to education-related violations. Clarification of their interaction, beginning with the Handbook, should significantly improve the international legal protection of education in situations of insecurity and armed conflict.

# 4 PROTECTION OF STUDENTS AND EDUCATION STAFF

The protection of students and education staff is essential to ensuring the protection of education. Situations of insecurity and armed conflict present grave challenges to the life and well-being of students and education staff. If their lives or well-being are directly and/or indirectly threatened, students may not be able to exercise their right to education and, in turn, education staff may not be able to provide education to their students.

There is increasing recognition of the increase in specific practices during insecurity and armed conflict, such as enforced disappearances, child military recruitment, trafficking, and economic exploitation, and sexual violence and other gender based violence, and the impact of such practices on students and education staff.

## Protection of the Lives and Well-Being of Students and Education Staff

Each of the three legal regimes contains rules protecting the lives and well-being of students and education staff. For example, IHRL, which applies in insecurity and armed conflict, sets out the right to life and the right to be free from torture and inhuman or degrading treatment. These rights protect the lives and well-being of students and education staff in all circumstances. Protecting the physical well-being of students and education staff is an essential precondition to ensuring education in insecurity and armed conflict.

Protection and fulfilment of other rights is also essential to ensuring the protection of students and educational staff in insecurity and armed conflict. Violations of the following human rights, among others, adversely affect education:

- the right to life;
- the right to liberty and security of person;
- the right to freedom from torture and ill-treatment;
- the right to freedom from discrimination;
- the right to freedom of thought and conscience;
- the right to freedom of expression;
- the right to freedom of assembly and association;
- the right to work and to form and join trade unions;
- the right to an adequate standard of living, including the right to food and water; and
- the right to cultural life.

The overlap between the three regimes results in strong legal protection for students and education staff from deliberate or indiscriminate attacks against their lives and well-being across all situations of insecurity and armed conflict.

In situations of armed conflict the concurrent application of IHRL, IHL, and ICL provide complementary protection of some of the rights of students and education staff. For example, all three regimes prohibit the use of torture and other inhuman and degrading treatment, without exception. In armed conflict, IHL protects civilian students and education staff through the principle of distinction. The principle sets out two main rules for parties to an international or non-international armed conflict: the prohibition of deliberate attacks on civilians and the civilian population; and the prohibition on indiscriminate attacks. The rules of ICL also establish individual criminal liability for violation of this principle of distinction, and contain several provisions which protect the lives of students and education staff, such the direct prohibition on willful killing of civilians.

However, some practices common in armed conflict, including the arming of education staff to prevent illegal attacks on educational facilities, have serious risks. The use of self-defensive force by armed education

staff could be mistakenly interpreted by any party to a conflict as a direct participation in hostilities. This exposes education staff, and the students around them, to potential attack. Increased awareness of these consequences is necessary to improve the overall physical protection of students and education staff in armed conflict.

## Special Protection for Vulnerable Groups

Each regime also sets out special protection for particularly vulnerable groups and each regime contains strong, mutually reinforcing, provisions that emphasise the importance of such protection. As outlined above, where discrimination against a particular group reaches wide-spread and systemic proportions, ICL may protect against this through the crime of persecution. Since the publication of the first edition, there has been an increasing recognition of a general negative impact of insecurity and armed conflict on education, particularly in respect to its disproportionate effect on certain vulnerable groups.

### *Children*

Children are particularly vulnerable in situations of insecurity and armed conflict, especially when they are unaccompanied or separated from their caretakers. The Convention on the Rights of the Child (CRC) constitutes the standard in the promotion and protection of the rights of the child, and the CRC and its Optional Protocols should be universally ratified and effectively implemented. The Committee on Economic Social and Cultural Rights has specifically expressed concern over the impact of armed conflict on the ability of adolescents to access education and transition into secondary education. Situations of insecurity and armed conflict may not only lead to an increased risk of violence towards children but may lead to the economic exploitation of children, who then also miss out on education opportunities. The CRC provides protection against all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment, including sexual abuse, as well as economic exploitation and any form of labour that might interfere

with a child's education. The International Labour Organization has also adopted instruments to protect children from forced labour, including the worst forms of child labour, such as slavery, prostitution, drug trafficking, dangerous activities and the use of children in armed conflict. The participation of children in armed conflict is a significant education-related violation. Recruitment of children into conflict places them at serious physical and psychological risk, prevents them from attending educational facilities, and can lead to many of them missing out on education entirely. Education is itself also essential for halting and preventing recruitment and re-recruitment of children. Street children have been recognised as particularly vulnerable to recruitment, while armed conflict itself can lead to children ending up in street situations. Adolescent boys and girls are also particularly vulnerable. Notably, the use of child soldiers in international and non-international armed conflict is directly prohibited by all three legal regimes. The 'Children, Not Soldiers' campaign, launched in 2014, calls for a global consensus that child soldiers should not be used in conflict.

### *Women and Girls*

Gender-based discrimination is prohibited under IHRL. States have to establish policies and take measures to eliminate discrimination against women, including in education. Equal treatment with students and between education staff also requires equal opportunities to attend the first levels of school and all subsequent levels without any form of discrimination. Armed conflict and insecurity are factors that further constrain women and girls' access to education, with girls being more likely to be out of schools than boys in these contexts. In such situations, women and girls are particularly at risk of gender-based violence and harmful practices such as sexual violence, abductions, and trafficking. The risk of such violence is especially high for those fleeing conflict to refugee and internally displaced persons camps, for indigenous women and girls, and rural women and girls. In 2013, the non-binding 'Declaration of Commitment to end Sexual Violence in Conflict' was adopted to address the widespread issue of sexual violence.

Similarly, IHL requires that its rules have to be implemented by parties in accordance with the principle of 'no adverse distinction'. This principle means that in some cases, preferential treatment under IHL is afforded to particularly vulnerable groups. Although IHL contains several provisions which seek to protect women in armed conflict, they predominantly focus on protecting pregnant mothers and protecting women from violence. The special protection of IHL for women does not address the implementation of broader social-equality measures and policies. Nevertheless, there is scope for the argument that the principle of 'no-adverse distinction' is broad enough to incorporate issues of direct and indirect discrimination in the application of IHL rules. This means that, potentially, IHL can at least take into account (although it cannot seek to remedy) wider issues of social inequality in relation to, for example, the allocation of humanitarian aid, or the provision of education.

### *Persons with Disabilities*

Persons with disabilities are also more vulnerable to human rights violations in situations of insecurity and armed conflict. Moreover, these situations are often the cause of disabilities, both physical and mental, which impacts a person's education. In situations of armed conflict and insecurity, women and girls with disabilities in particular not only face additional barriers to accessing formal and non-formal education, but are also at an increased risk of sexual violence and violence, especially women and girls with disabilities who are refugees, asylum seekers, migrants or internally displaced persons, or those who are homeless or living in poverty. In order to ensure that persons with disabilities benefit from the same educational opportunities as others, the Convention on the Rights of Persons with Disabilities provides specific protection and seeks to ensure that the needs of persons with disabilities are met in both insecurity and armed conflict. Improved recognition of the vulnerability and needs of persons with disability is necessary in IHL. While all the rules of IHL are to be applied in accordance with the principle of 'no adverse distinction' (which may include disability), and IHL set outs out

special protection for the sick and wounded and those in need of medical care, it does not specifically address the needs of persons with disability.

### *Minorities and Indigenous Peoples*

An individual who belongs to a minority or Indigenous group within a society benefits from the general principle of equality and non-discrimination. Individuals belonging to a minority must be able to exercise their right to education. In addition, the non-binding Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities provides that States should take measures in the field of education to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. It is crucial for the survival of their cultures that minority groups have the opportunity to be taught in accordance with their own traditions, including their own language.

Indigenous peoples have often become minority groups within their own territories or, where in a majority, often do not have equal access to power. A number of treaties have been developed to protect Indigenous peoples, such as the International Labour Organization Convention 169 on Indigenous and Tribal Peoples 1989, which makes the improvement of the levels of education of indigenous peoples a matter of priority. This requires the participation and co-operation of the peoples concerned and with a view to transferring responsibility for educational programs to these peoples. It also requires that Indigenous children have to be taught in their own language "wherever practicable" and, if not practicable, States must take measures to make this possible. Other international instruments, such as the UN Declaration on the Rights of Indigenous Peoples, also emphasize the relationship between education and culture and seek to ensure that Indigenous peoples are not forced to assimilate or destroy their cultures, such as through forced attendance at a school which does not respect their cultures.

### *Internally Displaced Persons*

States parties have to protect, respect and fulfill the right to education of everyone, no matter their nationality or lack thereof, as long as they are within the State in question. Situations of insecurity and armed conflict are likely to result in individuals being forced to move away from their homes and sometimes away from their own State. Displaced persons are particularly vulnerable to discrimination, violence and sexual violence and exploitation, with women, older persons, and persons with disabilities being particularly vulnerable, and with children being even more vulnerable than adults. Many internally displaced children, in particular girls, lack access to education. It is important that internally displaced unaccompanied children and the children of internally displaced persons do not miss out on education in order for them not to suffer even further from their vulnerable status. The Guiding Principles on Internal Displacement, although not legally binding, reiterate the right to free and compulsory education for all, including internally displaced children, and provides that such education should respect their "cultural identity, language and religion".

### *Refugees, Asylum Seekers, Migrants, and Stateless Persons*

It is important that the children of non-nationals do not miss out on education in order for them not to suffer even further from their vulnerable status. The right to education under the ICESCR 'applies to everyone, including non-nationals such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation'. Therefore States Parties have to respect, protect and fulfil the right to education of everyone, no matter their nationality or lack thereof, as long as they are under the jurisdiction of the State in question.

Further, the right to education of refugees and stateless persons is protected under specific provisions of the Convention Relating to the

Status of Refugees and the Convention relating to the Status of Stateless Persons respectively. The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families also contains a number of provisions protecting the right to education of the children of migrant workers, who must be treated in the same way as the children of nationals with regard to education. Additional guidance can also be obtained in the non-binding *New York Declaration for Refugees and Migrants,* adopted in 2016, and the two Global Compacts of 2018: the *Global Compact for Safe, Orderly and Regular Migration,* and the final draft of the *Global Compact on Refugees*.

## Improving Protection of Students and Education Staff

The protection of students and education staff under the three legal regimes is strong and complementary. However, implementation is weak. The potential effectiveness of these provisions must be improved through increased implementation and enforcement of the relevant IHRL, IHL and ICL rules at an international, regional, and national level. Equally, the interactions of these three separate regimes need to be clarified by the mechanisms charged with enforcing them.

# 5 PROTECTION OF EDUCATIONAL FACILITIES

The destruction and disruption of schools and other educational facilities is a notable, significant and increasing trend affecting education in insecurity and armed conflict.

## Protection under International Human Rights Law

As the function of IHRL is to protect and promote the rights of individuals, its provisions do not directly protect buildings such as educational facilities. However, as the realisation of a number of human rights requires the existence and maintenance of buildings, the protection of physical structures is sometimes implied within IHRL provisions, such as the right to education and the prohibition of discrimination.

Other rights can also provide protection for educational facilities. For example:

- The prohibition of discrimination entails the right of everyone to be treated in an equal manner. As a result, educational facilities must be physically accessible to all students and education staff. In particular, reasonable accommodation measures must be taken by States in order to ensure access to educational facilities to persons with disabilities.
- Situations of insecurity and armed conflict may result in the destruction or confiscation of private property or educational facilities. The right to property, although not in all IHRL treaties, can be an important source of protection for educational facilities and materials, as it protects against the confiscation (and destruction) of private property without adequate compensation.
- Situations of insecurity and armed conflict may impair infrastructure, such as water pipes, which, if not repaired by the State,

may result in a violation of the right to health. This could constitute an education-related violation where the infrastructure is necessary for the functioning of educational facilities. The right to both physical and mental health, which is protected under IHRL, requires that students and education staff have access, among other things, to safe and portable water and adequate sanitation at educational facilities.

## Protection under International Humanitarian Law

IHL provides protection to all property, including educational facilities, from direct and deliberate attack where such property is civilian and is not a military objective. Further, IHL prohibits destruction or seizure of an enemy's property where this is not justified by military necessity.

However, the legal protection from direct attack offered by the IHL principle of distinction does not apply where an educational facility has become a military object. This occurs when an educational facility is used (or occupied) for a military purpose and its destruction offers a definite military advantage. Under IHL the definition of military object is broad and fluid. Thus an educational facility may become a military object at any time depending on its utility to military operations and the advantage offered by attacking it. As such, where it is militarily necessary to do so, educational facilities may be used by armed forces in a way that exposes such facilities to lawful attack by the enemy. Some objects, such as cultural objects and medical facilities, are entitled to special protection under IHL which means it is illegal for armed forces to occupy these objects. However, educational facilities do not benefit from this protection unless they also happen to qualify as a cultural object or medical facility – for example a teaching hospital. A significant development since the publication of the first edition of the Handbook has been the adoption by 95 States of the Safe Schools Declaration, which contains a commitment to not using schools and universities for military purposes. Albeit non-legally binding, the Guidelines for Protecting Schools and Universities from Military

Use during Armed Conflict go beyond the current protection given to educational facilities under IHL. States are encouraged to endorse and implement them by signing the Safe Schools Declaration which they are annexed to.

IHL also contains provisions for establishing special zones of neutrality in which military operations are prohibited. These zones can provide additional protection from attack for educational facilities located within them. These provisions have not been used so far to protect educational facilities in armed conflict but they have the potential to provide additional protection to education where all parties to a conflict agree to comply with their terms.

## Protection under International Criminal Law

ICL contains provisions which establish individual criminal liability for violations of the principle of distinction, including the wanton destruction or seizure of enemy property (including educational facilities) in international armed conflict. It also contains similar prohibitions in relation to particular objects (including education facilities) during non-international armed conflicts. These complement and are based on, in part, the protection set out under IHL.

## Improving Protection of Educational Facilities

The protection of educational facilities under IHRL would benefit from clarification as to how educational facilities are protected within existing rights. There needs also to be better recognition of the impact on education of particular violations of civil, political, economic, social and cultural rights which result in the destruction or damage of educational facilities.

Under IHL, given the adverse impact of military use of educational facilities on ensuring education in armed conflict, consideration ought to

be given to the possibility of establishing special protection for educational facilities - similar to that of medical facilities - during armed conflict. This should include an outright ban or more restrictive rules relating to their use. Such additional rules would greatly improve the protection of educational facilities under IHL and would prevent parties from using educational facilities in a way that makes them military objectives, and therefore, vulnerable to lawful attack. This protection would, overall, significantly reduce the vulnerability of education in armed conflict.

The interaction between IHRL, and IHL and ICL, in relation to the protection of educational facilities is unclear. It is not possible to say to what extent the provisions of IHRL, IHL and ICL might diverge in relation to, for example, incidental damage to a public educational facility for primary age students during an armed conflict. Such ambiguity means that the exact obligations imposed on a State or an individual in relation to this situation are difficult to ascertain and impossible to predict in advance. This leaves little guidance for those making operational decisions during armed conflict as to the legality of their conduct. Where such potential gaps in protection exist, there is a serious risk of education-related violations. There is considerable scope for clarification in this area through, for example, pressure for international legal protection of educational facilities.

# 6 REMEDIES AND MECHANISMS

International law makes clear that there is an obligation on a State to provide for effective remedies, including making reparation in respect of harm where the responsibility for the action can be attributed to the State. Violation of the right to education, and of other related rights and protections affecting education, is a breach of an international obligation of a State. Given the frequent absence of meaningful social assistance programmers in many situations of insecurity and armed conflict (and post-conflict), some form of appropriately designed reparations programme provides one of the few avenues by which the harm inflicted by education-related violations can be addressed.

According to the Basic Principles on the Right to Reparation victims of gross violations of IHRL and serious violations of IHL have a right to adequate, effective, and prompt reparation for the harm they have suffered. This means all States should ensure victims have 'available adequate, effective, prompt and appropriate remedies, including reparation'. Reparation may include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. There have been considerable advancements at the International Criminal Court since 2012 on the issue of reparations, flowing from the decisions on reparations in respect of *Lubanga, Katanga,* and *Al Mahdi*.

Remedies are available at an international and regional level in addition to those required at the national level. For example, in order to bring a claim under IHRL before an international monitoring body:

- The specific requirements of the relevant treaty must be complied with; and

- The complainant must have exhausted all effective domestic remedies. This means that a claim must have been first considered appropriately within the national legal system, including available appeal procedures.

The international monitoring bodies can recommend a variety of remedies, including a range of reparation measures, to deal with the consequences to the victim of the human rights violation by the State, including education-related violations. Another key development has been the entering into force of the Third Optional Protocol on the Convention of the Rights of the Child, as well as the entering into force of the Optional Protocol to the ICESCR, which provide communications procedures allowing the respective committees to consider individual complaints of violations.

While there are some regional human rights mechanisms, there are still regions where these mechanisms are not in place or contain no complaint process. It is desirable that all people in all regions have access to appropriate and effective regional mechanisms to enable remedies for human rights violations.

There are only a few mechanisms under IHL which hold perpetrators accountable to victims of education-related violations. The ICRC and ad hoc claims commissions can provide individuals with resolution of particular violations of IHL and, in the case of claims commissions, potentially access to a remedy. However, none of these mechanisms establishes a permanent or a judicial process by which individuals have a clear entitlement to hold violators to account. Nevertheless, victims of violations of IHL, including education-related violations, in both international and non-international armed conflict, can benefit from the IHRL and ICL mechanisms and remedies.

ICL is a regime where a number of its crimes involve serious or grave breaches of IHL and, as such, has the potential to have preventive and

protection functions for victims of armed conflict. Yet the primary purpose of ICL mechanisms is the punishment of individuals - not States - and these mechanisms are not focused on the rights of victims or their access to remedies. Although, in respect of the latter, there have been attempts to address this issue. An individual does not have an automatic right to remedy under ICL but rather, may have access to reparation if they are the victim of a successfully prosecuted crime.

### *Improving Protection of Education through Remedies and Mechanisms*

The ability to seek a remedy for an education-related violation is a significant element of protecting education in situations of insecurity and armed conflict. For this reason, it is essential that States ensure that mechanisms for seeking remedies (including reparation) for education-related violations are available and effective. This includes:

- Ensuring the effective and fair functioning of the mechanisms; and
- Providing assistance to those victims seeking to access such mechanisms.

Victims should have access to these mechanisms and associated remedies. Further, these mechanisms should recognize when violations of international law, including those of education-related rights, are education-related violations, and make orders which address the damage to education. In this respect, reparations are of particular significance. Greater clarification and analysis is needed to identify the most effective and appropriate reparations for addressing education-related violations.

# 7 CONCLUSIONS

Education is an enabling human right and a humanitarian need because it is a key concern of communities, including children and their caretakers, in crisis situations. Education can provide a sense of normality for those living in situations of insecurity or armed conflict. Education is the single most vital element in combating poverty, empowering women and promoting human rights and democracy. It can contribute to increasing people's income, lifting entire societies out of poverty, while the education of women and girls has been linked to substantially lower rates of child mortality. Education also 'has an important role in promoting the rule of law and a culture of lawfulness', and it 'provides an important protective function by strengthening learners' abilities to face and overcome difficult life situations'. Underpinning the Handbook, and noting the complex legal and practical issues it tackles, is the foundational view that education is not only an important end in itself. It is an enabling right, empowering access to other human rights, to meaningful participation in society, and to the promotion of universal respect for the dignity of all. It is a right deserving of all our protection.

States must improve their recognition of the international and universal importance of education at all times. To this end States must ratify and implement all relevant treaties at the international and regional levels. Since the publication of the first edition of the Handbook, there has generally been an increase in the number of States that have ratified the relevant IHRL, IHL, and ICL instruments that protect education in insecurity and armed conflict. Though greater ratification and effective implementation is still needed. They should engage fully and cooperatively with all relevant treaty monitoring bodies and procedures. In turn, relevant treaty monitoring bodies and other supervisory bodies should demonstrate their combined and co-ordinated will to offer

coherent guidance to States as to the measures required to implement their education-related obligations and, where breached, the measures required to remedy such breach.

States and non-State armed groups must demonstrate a shared commitment to upholding IHL and recognising more fully, and giving effect to, the protection of education inherent within its rules. There needs to be improved compliance with the rules protecting students, educational staff, and educational facilities from direct and deliberate attack; and the rules relating to incidental damage. The special protection afforded to particular categories of people and objects also needs to be respected by parties to an armed conflict. These changes would significantly improve the overall protection of education in armed conflict.

International criminal courts and tribunals should acknowledge and respond to education-related violations within their mandates. They should seek ways of recognising the effect of violations of ICL on education at all stages in their processes, including initial investigation, selection of cases, sentencing, and awards of reparation.

Given the need to improve the protection of education during times of insecurity and armed conflict, the second edition of this Handbook is an important publication which expands on the prior edition in respect of how the different international legal regimes protect education. It is also a particularly valuable resource to identify how the protection currently afforded to education can be further improved. Finally, it indicates the avenues available to seek reparation following the violation of the right to education and other related rights, highlighting the key developments made by courts in identifying education harm and providing reparations for the victims of education-related violations.

**Education is not only an important end in itself; it enables access to other human rights, to meaningful participation in society, and to the promotion of universal respect for the dignity of all.**

**Situations of insecurity and armed conflict affect education in many ways, such as through threats or physical harm inflicted on students and education staff, the forced displacement of populations whether within or outside the boundaries of their respective states, the recruitment of children in to the armed forces of states and non-state armed groups, and the destruction of education facilities or their use as training grounds. Education itself is affected when it is used as a tool for war propaganda or a vehicle for discrimination or incitement to hatred between various groups. Education may also be discontinued entirely as a result of insecurity or armed conflict.**

**This International Law Handbook on Protecting Education in Insecurity and Armed Conflict explains how key international law regimes (international human rights law, international humanitarian law, and international criminal law) protect education, students, teachers, and schools. It also considers the mechanisms that can be used to obtain reparation for education-related violations. Such examination is essential for both the protection of education itself and for the benefits that derive from it. This Second Edition of the Handbook has been fully revised and updated, including the latest legal developments and case-law.**




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