

Protecting Education in Insecurity and Armed Conflict

An International Law Handbook

A SUMMARY



**British Institute of
International and
Comparative Law**



**EDUCATION
ABOVE ALL**

Preface

This document serves two purposes: first, it acts as a Summary of **Protection of Education in Insecurity and Armed Conflict – an International Law 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 of international law, and the potential of that law, to protect education during insecurity and armed conflict.

The Handbook has been authored by Kristin Hausler, Nicole Urban and Robert McCorquodale of the British Institute of International and Comparative Law. It is the first in a series of legal research documents commissioned by Education Above All (EAA) on the protection of education during insecurity and armed conflict.

EAA is an independent non-governmental organization chaired by Her Highness Sheikha Moza Bint Nasser of Qatar, UNESCO Special Envoy for Basic and Higher Education. A policy, research and advocacy organization, EAA is concerned with the protection of education during insecurity and armed conflict. EAA's Legal Program contributes to such protection through the strategic utilization of international and regional law. Its objective legal research papers are authored by international legal academics and/or practising lawyers. 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.

The British Institute of International and Comparative Law, which has authored the Handbook, is one of the leading independent research centres for international and comparative law in the world. Since its foundation over 50 years ago, the Institute has brought together a diverse community of researchers, practitioners and policymakers from around the world 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 both:

www.educationaboveall.org/legalresources

www.biicl.org/research/education

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1 Introduction

Education is affected in many ways during insecurity and armed conflict. Students and education staff can be, and are, threatened or physically harmed and populations forcibly displaced both within and outside the boundaries of their respective States. Children are often recruited into the armed forces of States or non-State armed groups and educational facilities are frequently destroyed or used as training grounds by both groups. Education itself is also affected when it is used as a tool for war propaganda or a vehicle for discrimination or incitement to hatred. It may be, and frequently is, discontinued entirely at such times.

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 even in times of insecurity and armed conflict and the potential preventive and protective role of law at such times, the British Institute of International and Comparative Law (BIICL) and Education Above All (EAA) have developed an innovative Handbook, which presents the current protection of education under different international law regimes, and highlights their limitations, tensions, and possibilities.

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, and educational facilities.
- **Insecurity** is a non-legal term, which describes situations of disturbance and tension within a State that disrupt the normal functioning of political, social, and legal institutions, including those that are used to facilitate education. This includes internal disturbances, tensions and situations of fragility. ‘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 certain 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 considerable similarities in their protective role and demonstrates how they can work together as a strong framework of protection. Yet there are also gaps where protection is lacking, there is confusion or inconsistency, or the mechanisms for remedies are unavailable.

This examination in the Handbook also clarifies the extent and type of legal obligations with 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.

THE THREE LEGAL REGIMES

The three legal regimes considered by the Handbook are distinct, however, 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 (which applies to all States regardless of whether they have ratified a relevant treaty).

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.

There are also human rights treaties which focus on the protection against a particular form of human right violation. These include the Convention Against Discrimination in Education 1960 and the Convention on the Elimination of all Forms of Discrimination against Women 1979, as well as the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment 1984 and its Optional Protocol. Other human rights treaties protect particular groups, such the Convention on the Rights of the Child 1989 and the Convention on the Rights of People with Disabilities 2006.

All of the regions, except for the Asia/Pacific region, have adopted human rights treaties. In Europe the main treaties are the European Convention on Human Rights and 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, the main treaty 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.

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.

Every State is party to at least one of the major global human rights treaties. Each of these treaties includes legal obligations on States to give effect to the treaty in national law (although many States frequently fail to comply with these obligations).

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 be achieved at any cost. IHL applies to all parties to a conflict, including both States and non-State armed groups.

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.

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: 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 to, 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 in a number of ways, including through its focus on reciprocity and practicality, and combined with the text of IHL itself, represent the balance between humanity and 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 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.

2 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, immediately or, where the treaty permits, within a reasonable time period. Even in situations of insecurity and armed conflict, every effort to satisfy 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 on 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, and 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 out 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 programs 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.

The Protection of Education by International Humanitarian Law

In armed conflict the right to education under IHRL 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 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 justiciable within national, regional or international legal frameworks and that education specific remedies are available.

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 mechanisms 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.

3 Protection of Students and Education Staff

The protection of students and education staff is essential in 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.

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 education 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 the person;
- the right to freedom from torture and ill-treatment;
- the right to freedom of thought and conscience;
- the right to freedom of expression;
- the right to freedom from discrimination;
- the right to work 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 provides 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 wilful 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 widespread and systemic proportions, ICL may protect against this through the crime of persecution.

Children

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. Thus the Convention on the Rights of the Child provides protection against 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. Notably, the use of child soldiers in international and non-international armed conflict is directly prohibited by all three legal regimes.

Women

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.

Similarly, IHL require 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. 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 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 a disability.

Minorities and Indigenous Peoples

An individual who belongs to a minority group within a society benefits from the general protection against discrimination mentioned above. Individuals belonging to a minority must be able to exercise their right to education. Of particular relevance to any minority group is the general principle of equality and non-discrimination. In addition, 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 Organisation 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 and Non-Nationals

States parties have to protect, respect and fulfil 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. It is important that the children of non-nationals and internally displaced persons 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.” 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”. Further, the right to education of refugees is protected under specific provisions of the Convention Relating to the Status of 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.

4 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 IHLR 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 potable 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.

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 also needs 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, the development of guidelines and pressure for international legal protection of educational facilities.

5 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 programmes 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. 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.

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 a 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 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 protective 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. However, 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.

6 Conclusions

Education is not only an objective in itself. It is also 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 do this States must ratify and implement all relevant IHRL treaties at the international and regional levels. 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, education 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, sentencing, and awards of reparation.

Given the need to improve the protection of education during times of insecurity and armed conflict, the Handbook is an important publication which explains 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 improved. Finally, it indicates the avenues available to seek reparation following the violation of the right to education and other related rights.