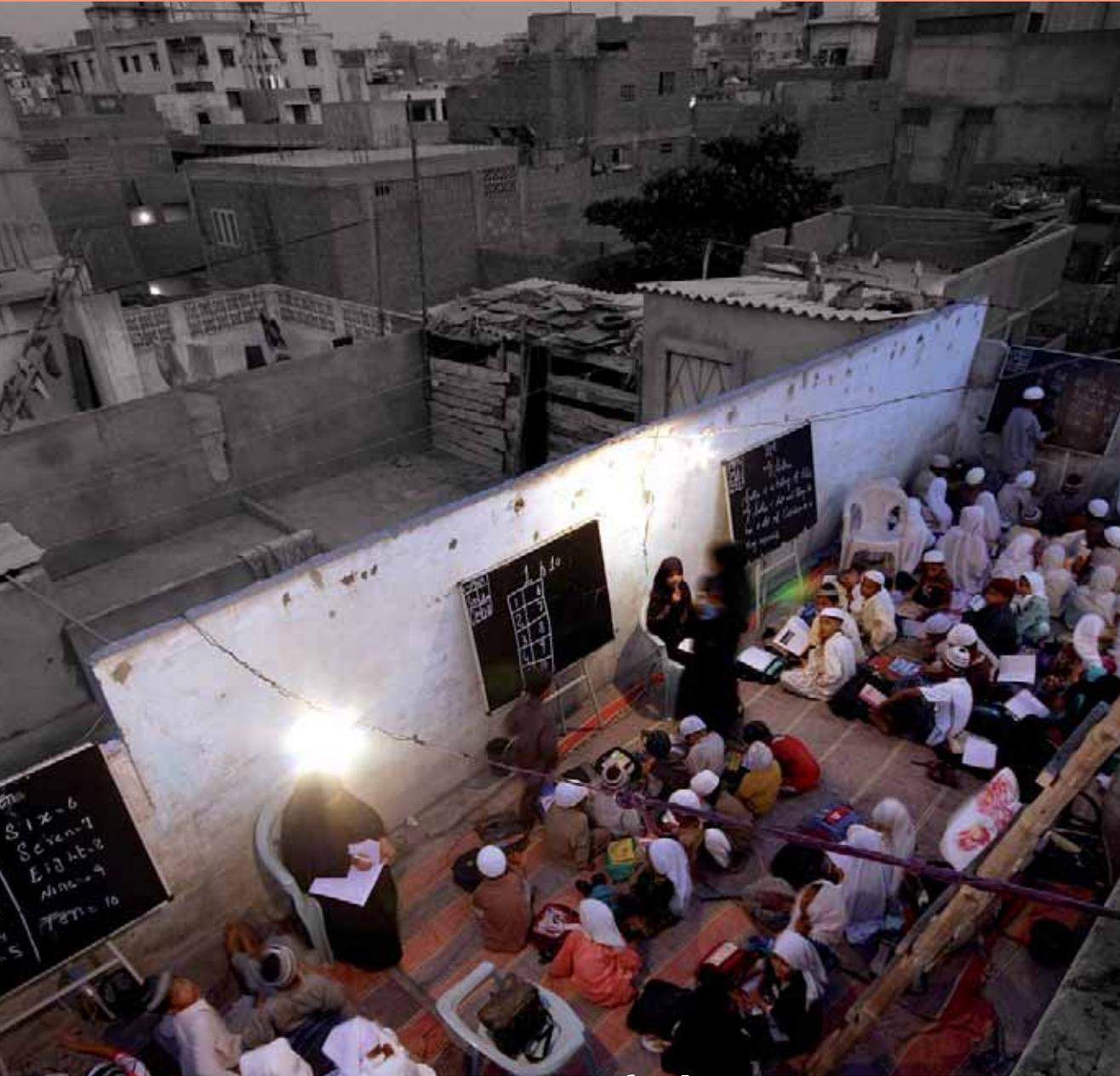




United Nations
Educational, Scientific and
Cultural Organization

Protecting Education from Attack



A State-of-the-Art Review

Protecting Education from Attack

A State-of-the-Art Review

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Cover photo: 'Students' free education centre', established some 13 years ago to promote the education of poor children of the area. Now more than 300 students in two shifts study here. Non-stop firing in their neighbourhoods and gang wars in the area forced them to hold classes on the rooftop of a building. Karachi, Pakistan.

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A great debt is owed to all the participants in the seminar who diligently contributed, through presentations and discussion, to the richness of the findings outlined in this publication. The seminar's work and process were excellently facilitated by Michael Gibbons.

The authors of the background papers published here deserve special commendation for their hard work, under the pressure of tight deadlines, to document the experience of protecting education from attack through different disciplinary lenses. Those authors are: Jessica Alexander; Gregory Bart; Neil Boothby; Dana Burde; Zama Coursen-Neff; Christine Groneman; Mario Novelli; Brendan O'Malley; Planning and Programming Directorate, HHO; Rob Quinn; Peter Rowe; Bede Sheppard; Margaret Sinclair; Melinda Smith; and Mike Wessells.

Managing this project between two partners on two continents has provided opportunities and challenges to which staff members of both institutions have responded with great commitment. From the Office of Her Highness, Abdullatif Al-Shayef, John Gregg and Margaret Sinclair made major contributions to the substance and editing of this review. For UNESCO, the project was directed and guided by Mark Richmond and shaped by the efforts of a dedicated team of staff and consultants, including Christopher Talbot, Jane Kalista, Pam Vimommas Vachatimanont, Samba Yaya Wane, Christine Groneman, Aurelia Mazoyer, Mary de Sousa and Saname Oftadeh. The shared vision and close collaboration between our teams have been a highlight of this process and a major source of the quality of the output, which will help to advance this vital global agenda.

Foreword to the series

In situations of armed conflict and insecurity, deliberate attacks on and threats against learners, academics, teachers and education facilities are both a barrier to the right to education and a serious protection issue. These violent incidents involve the use of force in ways that disrupt and deter educational provision, putting educators and learners at risk in environments that should be safe, secure and protective.

The international community has made a commitment to achieving the Education for All (EFA) goals by 2015; wherever they occur, attacks on education threaten the realization of those goals. UNESCO, tasked with the global coordination of EFA, has a mandate to promote full and equal opportunities for education for all, and this includes those whose access to education is threatened or prevented by targeted violence.

In order to protect and promote the right to education whenever learners, education personnel and educational facilities come under violent attack, greater knowledge and deeper understanding are required. Precise and detailed information about the extent of attacks, both current and over time, is needed but by itself is insufficient. More research must be conducted in order to generate better analysis and understanding of the causes, means and impacts of attacks on education. Moreover, there is a need for more investigation not only of possible mechanisms to undertake rigorous monitoring and reporting in this area but also of prevention and response strategies and their effectiveness.

In view of the gaps in knowledge and information about attacks on education and about how education can be protected from attack, UNESCO has commissioned a series of publications to research and analyse these issues. Its aim is to enhance global understanding of the nature, scope, motives and impact of attacks on education and of the work that is being done by communities, organizations and governments to prevent and respond to such violence. When appropriate, the publications also provide recommendations for action by a variety of stakeholders at local, national and international levels.

Part of a sustained global campaign to prevent and respond to attacks on education, this series is aimed at supporting and strengthening the work of practitioners, researchers, policy-makers and all those concerned with securing the full range of quality educational opportunities for all.

Mark Richmond
Director, Division for the Coordination of UN Priorities in Education
Education Sector
UNESCO

Foreword by the Office of Her Highness Sheikha Mozah Bint Nasser Al-Missned

The Office of Her Highness Sheikha Mozah Bint Nasser al-Missned would like to thank UNESCO and all its partners for bringing this state-of-the-art review to its successful conclusion. Her Highness has worked hard to raise awareness of the devastating impact of armed conflict and insecurity on education in the modern world. She provided leadership in the renewal of higher education in Iraq, damaged by the conflict of 2003. Since that time she has spoken repeatedly with world leaders, and within the UN system, to advocate for stronger protective measures for students in school and college, their staff and their institutions.

In November 2008, the Office of Her Highness partnered with UNESCO to convene a Conference on the Right to Education in Crisis-Affected Countries, while in March 2009 Her Highness addressed the General Assembly Thematic Debate on Education in Emergencies, highlighting that the right to education involves protection from violent attack. Her Highness was of the view that a vital first step for the international community was to develop a greater understanding of the issues in this field, which include interpretation and development of international law and child protection mechanisms as well as protection measures by educational actors. To this end, the Office of Her Highness and UNESCO worked together to convene an international expert seminar on the subject of Protecting Education from Attack, leading to the preparation of the present state-of-the-art review.

Her Highness will continue to engage with international partners in this field, notably through the activities of the new Qatar-based international NGO Education Above All. Education Above All aims to collaborate with international and national actors worldwide to prevent attacks on education, to strengthen legal accountability and diminish impunity for attacks, to strengthen monitoring and reporting of attacks and to respond more effectively to those attacks that do occur.

In October 2009, Her Highness addressed the 35th UNESCO General Conference on this theme, noting that “Depriving children of the right [to education] is depriving them of the right to live”, that curricula should support a culture of peace, and that we should “wipe the dust off” the legal arsenal that provides the right to education and its protection. She further stressed the importance of accountability, asking “Whenever the sanctity of the education system is

violated by any party willfully and with premeditation, should we fail to take the required firm and appropriate action?"

I commend the authors of this report and the seminar participants for their commitment to this new field of endeavour and encourage them to form a strong international partnership to offer students and their teachers safe access to quality education.

Abdullah Al-Kubaisi
Executive Director
Office of Her Highness Sheikha Mozah Bint Nasser Al-Missned

Part I.

Introduction and overview

Chapter 1.

Introduction

Attacks on education occur in many countries that face armed conflict and insecurity. Carried out for political, military, ideological, sectarian, ethnic, religious and criminal reasons by state and non-state actors alike, these incidents involve the intentional use of force in ways that disrupt and deter educational provision. Such attacks are directed against learners, educators, education aid workers, education trade unionists and educational institutions at all levels. They include targeted killings, disappearances, kidnapping, forced exile, imprisonment, torture, maiming, rape by soldiers and security forces, recruitment of child soldiers, harassment and intimidation, and occupation and destruction of educational facilities.

Education is a fundamental right – both an end in itself and an enabling right; access to quality education enables people to secure and enjoy other rights. When provided in safe learning environments, education can also play a vital role in the physical, cognitive and psychosocial protection of individuals affected by conflict and insecurity – particularly children and young people – and in the long-term recovery of communities. Yet targeted attacks on learners, educators and infrastructure undermine the likelihood of delivering the life-saving and life-sustaining supports that education can afford. Failure to provide adequate protection of education exacerbates other existing threats to wellbeing. Given that countries affected by conflict are home to a significant proportion of those who are not able to receive an education, the impact of such attacks must be addressed if sustainable progress is to be made towards the achievement of education for all (EFA).

Reducing the incidence of education-related attacks and ending impunity are critical to the safety and development of individuals and communities affected by conflict and insecurity. While some progress has been made, particularly in raising awareness of the nature and scale of targeted violence, attacks continue and impunity persists.

Since 2000, considerable work has been done by the Inter-Agency Network for Education in Emergencies (INEE) and its members to develop good practice standards for the delivery of educational services in various crisis situations. There has been less attention, however, focused on the legal, practical and advocacy dimensions of protecting education systems, infrastructure, staff and students in times of armed conflict and insecurity. In 2007, UNESCO commissioned and published a study entitled *Education under Attack*, written by Brendan O'Malley.¹ Discussions during three international meetings held in 2007 to publicize the findings of *Education under*

¹ Brendan O'Malley, *Education under Attack: A Global Study on Targeted Political and Military Violence Against Education Staff, Students, Teachers, Union and Government Officials, and Institutions* (Paris: UNESCO, 2007).

Attack and to mobilize collaboration, partnership and action around this issue pointed to several gaps:

- An information gap: Knowledge of the incidence and prevalence of attacks on education is insufficient;
- A research gap: Too little research has been conducted, leading to insufficient analysis and limited understanding of the causes, triggers and mechanisms of violence against teachers, learners and educational facilities, as well as limited investigation of prevention and response strategies and their effectiveness;
- A policy gap: There is insufficient policy dialogue and policy development at government and inter-governmental levels on how to reduce attacks and better protect education infrastructure, students and personnel through improved programmatic prevention and response, and strengthened monitoring, reporting and accountability;
- An advocacy gap: The advocacy messages and vehicles required to reduce attacks on students, teachers and educational institutions need to be defined and fine-tuned to different circumstances, with particular emphasis on mobilizing international support for prevention and response, ending impunity and protecting humanitarian and development workers who deliver educational services.

Similar concerns were raised in 2008 by the UN Special Rapporteur on the Right to Education² and in the Day of Discussion on Education in Emergencies convened by the Committee on the Rights of the Child.³ These issues were highlighted again during the UN General Assembly Thematic Debate on Education in Emergencies, held on 18 March 2009, where numerous senior government leaders and speakers from the United Nations, human rights and development agencies specifically demanded action to prevent and reduce impunity for attacks on education.⁴

Building on the momentum from this event, with support from the Office of Her Highness Sheikha Mozah Bint Nasser Al-Missned of Qatar, UNESCO Special Envoy for Basic and Higher Education, UNESCO convened an international expert seminar, 'Protecting Education from Attack', in Paris, from 28 September to 1 October 2009. This seminar was ground-breaking in that it brought together a wide range of actors with backgrounds in education, child protection, international humanitarian and human rights law, including representatives from international and national NGOs, UN agencies, networks, governments, academia and media.

The purpose of the seminar was to provide highly engaged specialists from all over the world, who have been working on this theme within different professional disciplines and political contexts,

2 *Right to Education in Emergency Situations: Report of the Special Rapporteur on the Right to Education, Vernor Munoz* (A/HRC/8/10; UN Human Rights Council, 20 May 2008). <http://daccessdds.un.org/doc/UNDOC/GEN/G08/135/33/PDF/G0813533.pdf?OpenElement>

3 *Day of Discussion "The Right of the Child to Education in Emergency Situations: Recommendations"*, UN Committee on the Rights of the Child, 19 September 2008. <http://www2.ohchr.org/english/bodies/crc/docs/discussion/RecommendationsDGD2008.doc>

4 For more information about the UN General Assembly Thematic Debate on Education in Emergencies, see the following websites: <http://www.un.org/ga/president/63/interactive/eie.shtml>; and http://www.ineesite.org/index.php/post/ga_debate/.

with the opportunity to probe the information, research, policy and advocacy gaps identified above and to generate solutions jointly. Together, these specialists took critical stock of existing research, effective practices and lessons learned; identified opportunities for strengthening monitoring and reporting of attacks and increasing accountability; and generated next steps for action and research. Seminar participants committed themselves to work together and within their own organizations to prevent and respond to attacks on education, and to advocate for enhanced international action.

Some of the key recommendations emerging from the seminar are presented below. They draw on the international expert seminar's presentations, plenary discussions and working group discussions. A more detailed review of the seminar's principal findings and discussion points is presented in Chapter 2. Many of the seminar speakers also authored background papers, commissioned to document the rich experiences and varied viewpoints of researchers and practitioners active in the field of protecting education from attack (see Part II, Chapters 3 to 15). The papers, together with the discussions and findings of the seminar, provide insight into the state of knowledge on this theme and offer direction towards an agenda for action.

Key recommendations

Improve research, monitoring and reporting by:

- Deepening knowledge of the nature, scope and motives of attacks; the long-term impact of such attacks on individuals, communities, education systems, and the right to good quality education for all; and the relationship between attacks on education and development, conflict and fragility;
- Contributing to efforts to establish a system of global surveillance of the full range of attacks on education, which would comprise several key information components, including incidence, prevalence, coverage and evaluation, and use baselines and globally-established indicators in capturing and analyzing data;
- Committing to strengthen the collection and use of data on attacks on education via the Monitoring and Reporting Mechanism on Children and Armed Conflict and other relevant monitoring and reporting mechanisms;
- Engaging with the media to raise public awareness of the nature, scope, motives and impact of attacks.

Improve accountability of state and non-state actors by:

- Assisting and encouraging states to ensure they have the legal, law enforcement and judicial frameworks, resources, and capacity as well as the political will to investigate attacks on education, identify perpetrators, and hold them accountable through just and viable judicial systems;
- Developing guidelines on the use of human rights law and international humanitarian law to protect education in situations of conflict and insecurity;

- Working with the full range of existing accountability mechanisms internationally and domestically to hold perpetrators to account for attacks on education;
- Exploring avenues for increasing the protection of education facilities in human rights and international humanitarian law;
- Encouraging and assisting the provision of relevant human rights and international humanitarian law training among armed forces and armed groups;
- Strengthening the protection of higher education in international humanitarian and human rights law;
- Engaging with the media to influence political will at local, national and international levels to increase accountability, both for attacking education and failing to protect it.

Improve prevention and response by:

- Rigorously evaluating interventions aimed at preventing and responding to attacks on education;
- Analyzing further the effectiveness and risks of increasing community involvement in the provision of education as a protective measure during conflict and insecurity;
- Exploring ways to address the motives of attackers and negotiate an end to attacks;
- Assisting states and other actors to provide credible protection for learners, educators, academics, education trade unionists and education aid workers;
- Using data collected to inform early warning, rapid response and programme design;
- Engaging with the media to strengthen its role in prevention and response at local, national and international levels.

At the close of the seminar, strong consensus emerged that a sustained campaign must be mounted to prevent and respond to attacks on education. The 75 participants, working for many agencies and governments, called for concerted action to work towards the achievement of the recommendations detailed above. Such action will require a deepening of existing partnerships in field locations and globally, information-sharing, joint advocacy and collaboration between specialists in the fields of international law, protection and education in emergencies, devoted to enhancing the protection of education from attack. The seminar ended with a strong and hopeful sense of progress towards a shared agenda of action for enhancing the wellbeing of learners, educators and communities affected by violence.

Chapter 2.

Key findings and discussion points

The expert seminar provided the opportunity for an unusual gathering of specialists, many of whom were new to each others' disciplines. Practitioners from education in emergencies sat side by side with experts in international humanitarian and human rights law and in child protection. The seminar began with an intensive exchange of knowledge and experience in each of these areas, and progressed into discussion of areas of convergence and how future collaboration might help protect children, young people, education staff and infrastructure in times of conflict and insecurity. Chapter 2 of this state of the art review aims to give readers a taste of the range of issues which were discussed. For the most part these discussions were conducted in an exploratory way rather than seeking to achieve definitive conclusions during the seminar in the limited time available. The chapter provides a tentative synthesis of current thinking, while pointing towards the need for deeper understanding and future action.

Some of the plenary presentations were supported by commissioned background papers, which are reproduced in Part II. Reference is made to these papers as appropriate, and some of the other seminar presentations are likewise represented in the text that follows. Discussions following the presentations and outputs of the various working groups are reflected throughout.

Chapter 2 follows the structure of the seminar agenda (see Appendix 1), which was centred on four themes:

- 2.1: Education under attack: The problem
- 2.2: Monitoring and reporting
- 2.3: Working to strengthen accountability, diminish impunity and deter attack
- 2.4: Programmatic prevention and response

2.1 Education under attack: The problem

Attacks on education are a grave and rising concern. They include violations of multiple provisions of international humanitarian and human rights law, including the rights to life and liberty, the right to education, the protection of civilians and civilian objects during conflict, and the rights to freedom of expression and association, among others. Attacks on education occur most often in conflict-affected areas and involve use or threat of force in ways that disrupt and deter provision of good quality education and are actively harmful to well-being. Worldwide over 40 million children are missing out on primary school in conflict-affected fragile states, many due to direct attacks on their learning spaces, their teachers or even on themselves as learners.¹ Many more academics, older learners, trade unionists, ministry of education staff and humanitarian personnel are also directly or indirectly affected by these abhorrent actions. Attacks on education also occur widely outside of situations of armed conflict, in countries experiencing political instability, insecurity and repression.

In 2007, UNESCO commissioned *Education under Attack*, the first global study of targeted political and military violence against students, teachers, academics, education workers and facilities.² UNESCO is now issuing a second volume, *Education under Attack 2010*.³ The initial findings of this second study were presented at the seminar and are summarised in Chapter 3. They suggest forcefully that attacks constitute a major international problem for local communities, national governments, international donors, policymakers and all those concerned with promoting educational opportunities.⁴

Seminar presentations and ensuing discussions illustrated the wide range of targets and the types of attacks – see Tables 1 and 2, respectively.

Table 1. Targets of attacks on education

- All types of schools, colleges and other educational institutions
- Educational buildings and facilities (public and private)
- Students at all levels of education
- Teachers at all levels of education, including those fully-accredited and those not
- Academics of varied disciplines in higher education
- Education officials, administrators and support staff of all types
- Education trade union members
- Education aid workers

1 Save the Children, *Last in Line, Last in School* (London: International Save the Children Alliance, 2009).

2 Brendan O'Malley, *Education under Attack* (2007).

3 Brendan O'Malley, *Education under Attack 2010: A Global Study on Targeted Political and Military Violence Against Education Staff, Students, Teachers, Union and Government Officials and Aid Workers* (Paris: UNESCO, 2010).

4 See also Save the Children Alliance, *Policy Brief: Preventing Attacks on Schools* (London: 2009); Education International, *Schools Shall be Safe Sanctuaries: A Guide to the Declaration by Education International* (Brussels: 2009).

Table 2. Types of attacks on education

- Multiple and targeted killings/injury
- Disappearance
- Abduction
- Kidnapping
- Imprisonment
- Torture
- Harassment (including surveillance, arbitrary denial of access or permissions, confiscation of notes and computer files, professional or personal slander or defamation, physical or sexual intimidations)
- Silencing and/or denial of academic freedom
- Arbitrary dismissal threatening economic survival
- Exile (internal and external)
- Arrest on false charges
- Trial and imprisonment, and detention without trial
- Attacks on the life or liberty of family members and friends
- Sexual violence/rape by armed groups, troops and security forces
- Unlawful recruitment and use of children in armed conflict
- Destruction/damage of buildings, resources, materials and facilities
- Assault on vehicles in which students, educators or aid workers are travelling
- Use of educational buildings as military/security bases, outposts or areas from which to launch attacks
- Politicization of educational institutions
- Occupation of or attacks on university campuses by armed groups

The following additional types of attacks are documented in *Education under Attack 2010* as compared to the 2007 volume:

- Direct targeting of school children for multiple killings or maiming
- Abduction of children for use as child suicide bombers
- Kidnappings for ransom by armed groups
- Occupation of education facilities by drug cartels and forces fighting drug cartels
- Targeting of education aid workers
- Attacks on examinations
- Threats of violence if parents do not send children to school

There has been no systematic global reporting of attacks on education. Even in individual contexts, data on the frequency of attacks and number of people and buildings targeted is often incomplete. Caution is therefore required before drawing conclusions about the scale of attacks or recent trends. Apparent reductions in reported numbers of attacks on teachers, for example, may not reflect so much a decrease in violence but a shrinking of the educational space and

reduction of activity within it. Furthermore, reported reductions in attacks may also be due to gaps in data collection. Similarly, reported increases in attacks on education may reflect enhanced data collection as opposed to a real increase in the number of attacks. Nevertheless, it is clear that attacks on schools have increased in some locations during recent years, e.g. in Afghanistan (670 attacks recorded in 2008 compared with 241 in 2006).

Attacks on individual academics and professionals in higher education were highlighted in the seminar. The Executive Director of the Scholars at Risk Network presented an overview of the problems reported by endangered scholars applying for support from the Scholar Rescue Fund, from 2002 to 2007.⁵ He noted the large numbers at risk in terms of life and liberty in countries experiencing open conflict – in the case of Iraq, totalling hundreds of scholars killed and thousands exiled or displaced, as well as severe degradation of university infrastructure. He reported also that targeted attacks occur in as many as 115 countries not experiencing armed conflict.

Another dimension of the problem highlighted in the seminar was the issue of attacks on education aid workers, which gained prominence with attacks on international staff in Afghanistan and Pakistan in 2008 and 2009 respectively. In recent years, the distinctive ‘humanitarian space’ characterized by its neutrality, impartiality and immunity from attack has shrunk, especially in areas of conflict. The convergence of military, humanitarian and development spheres can blur the boundaries between them, thereby intensifying the risks of humanitarian work. The number of incidents of attacks on humanitarian workers in general and the number of victims have increased since 1997 with as many as 80 per cent of the victims of these attacks reported to be national staff.⁶ As education becomes more prominent in this blurred humanitarian space, it becomes more vulnerable.

Motives and context of attacks

Participants emphasised the politically charged perception of education within society. Schooling plays a key role in identity formation and for this reason may become a target for attack, through attacks on infrastructure, teachers or students. This is especially true when the content of education is disputed between factions or because the provision of education is associated with the state. Depending on the context there are many different motivations for attacking education, and these must be understood correctly in order to develop appropriate preventive and protective measures.⁷

Participants in the seminar identified some of the motives of those attacking education (see Table 3).

5 See Chapter 6 and also Henry Jarecki and Daniela Kaisth, *Scholar Rescue in the Modern World* (New York: Institute of International Education, 2009).

6 See Chapter 5.

7 For a discussion of motivation for attacks on schools, see Chapter 3 and Brendan O’Malley (2010, *op. cit.*).

Table 3. Common motivations for attacks

- To oppose the government, where education might be perceived as a symbol of the state
- To create instability
- To prevent the education of girls
- To resist education imposed by force
- To resist the perceived imposition of alien or different culture, language, religion, ideology, or political framework
- To access a free supply of labour or sexual services, including unlawful recruitment of children for armed conflict
- To obtain money via ransom and extortion, perhaps to fund armed groups
- To silence opposing groups or to exact revenge
- To react against or snuff out intellectualism

Academics and higher education leaders are often vulnerable to harassment, sometimes building over prolonged periods, prior to violent attack. This may offer opportunities for protective intervention. Academics unable to speak the major world languages may be more easily isolated from international monitoring, making them even more vulnerable to attack. General public anti-intellectualism may also be used to isolate higher education staff or the sector generally, reducing social and political costs of later attacks. Specifically, targeted attacks on senior academics and university personnel indicate a degree of knowledge of the educational system on the part of the attackers, and send broadly chilling messages throughout the sector. Higher education professionals may also be squeezed between opposing sides in international and national conflicts and attacked by each side – demonstrating combatants' desires to either 'capture' the university space for their purpose or to deny it to their opponents. Academics constitute important human and intellectual resources for their country, representing decades of academic and professional training and experience. Unfortunately, this often makes them more prominent in society and therefore more attractive targets.⁸

It was suggested that researchers might analyse the motives for attacks on educators and infrastructure using a decision-making framework, whereby the capacity of the perpetrator and calculations of opportunity are also taken into consideration. Some questions to consider include: What is the target and why is it selected? What is to be gained? What is the capacity of the perpetrator to strike? Under what circumstances is an attack on a preferred target within the attackers' capacity to complete successfully? Understanding this decision-making system would help inform risk management protocols and design of prevention and response efforts.

8 For the range of political, ethnic, religious and other motives underlying persecution of academics and violation of the neutrality of the 'academic space', see Chapter 6, and Jarecki and Kaisth, *op. cit.*, pp. 40-45.

Impact of attacks

Seminar participants reviewed the short-term consequences (see Table 4) and longer-term systemic effects (see Table 5) of attacks. Generally, attacks on education impact the right to good quality education for all and profoundly affect the well-being of individuals and communities. The psychosocial impact of attacks on students and teachers⁹ and the longer-term impact on state fragility¹⁰ were among the issues raised.

Table 4. Immediate impacts of attacks on education

- Loss of life and injury
- Damage to property, facilities, and resources
- Closure of sets of schools and universities and parts of or whole local education systems
- Minor and major psychosocial impact on students, staff, and local communities
- Hindrance to students' learning or enrolment and attendance, due to inaccessibility of facilities, and/or distraction and de-motivation
- Adverse effects on teaching, including teacher absenteeism and attrition, and other degradation of quality
- Limitations to the building of and sharing of knowledge, including the suppression of research and publications
- Disruption of examinations, sometimes affecting only particular groups, thereby furthering marginalization
- Disruption of flows of resources, supplies and support from central education authorities to local educational facilities
- Isolation of schools and colleges from support and supervision, and isolation of academics from professional communities
- Suspension of aid programmes
- Increased vulnerability of children and young people to unlawful or voluntary recruitment into armed groups

9 See Chapter 4.

10 Reference was made to the work of the Inter-Agency Network on Education in Emergencies' Working Group on Education and Fragility, represented at the seminar, with the suggestion that the Group might benefit from and contribute to research on the impact of attacks and preventive action.

Table 5. Long-term systemic impacts of attacks on education

- Involuntary brain drain and loss of academic expertise through the flight of teachers, academics, and education officials
- Teacher recruitment difficulties due to insecurity, rural-urban migration, etc.
- Degradation of teacher training institutions and processes
- Exacerbation of state fragility (fragility can also lead to or facilitate attacks)
- Disruption in education/employment cycles, contributing to creation of a generation of undereducated and frustrated young people with limited access to employment opportunities
- Degradation in socio-economic investments via dilution of the value of present investments and the halting of new investment resources
- Silencing of teachers' voices by attacks on trade unionists, which may in turn negatively affect quality
- Degradation of the quality and relevance of higher education and curtailing of the research, invention, and innovation, resulting from reductions of academic freedom
- Ideological, cultural, social effects of banning or restricting education, notably for girls and marginalized groups, creating social, political and economic isolation and insecurity
- Disruptions of the development of new cohorts of graduates and educated citizens, future academics, and human resources for development

Attacks on academics in higher education including higher education system leaders were seen as having a special impact because of academics' distinct role in society. Higher education – in the ideal – provides a neutral space within society for debate and disagreement; 'neutral' in the sense that violence and force are rejected as the basis for deciding outcomes, in favour of quality, reason and understanding. This quality-promoting function allows the higher education sector to serve as an engine for development, knowledge-production and public good. Attacks squander the investment in the capacity of these individuals and institutions to the detriment of the entire society.

Needs going forward

The knowledge base regarding attacks was seen as lacking in two dimensions – better information on what is happening at country level and globally, and depth of understanding of the phenomenon. In terms of enhanced information flows, there was widespread support for the idea of a system of global surveillance. This would comprise information and globally-recognised indicators on incidence of attacks, prevalence, coverage and quality of programming. This data would be generated through improved systems of monitoring and reporting, as discussed in the next section, as well as through specially commissioned studies.¹¹

Regarding depth of understanding, there were calls for research into the underlying causes, motives, nature and impact of attacks, applicable national and international law, and accountability. A shared strategic research agenda is needed, linked to but going beyond the

11 Data on the adequacy of education provision in humanitarian crises will also be generated through the ongoing activities of the recently established UN Inter-Agency Standing Committee (IASC) Education Cluster.

Strategic Research Agenda of the Inter-Agency Network for Education in Emergencies, and commissioned by governments, donors and agencies, with the results widely disseminated. Agencies and governments should feed the fruits of the research into better programming for prevention of and response to attacks, and use the evidence generated to inform advocacy in favour of ending attacks and impunity for them.

Participants suggested a wide range of issues for research¹², for example:

- How are particular types of attacks associated with particular types of targets, geographic locations, perpetrators, motives, political and legal frameworks or conflict dynamics? Are there patterns of escalation of attacks from 'mild' threats to extreme violence? How is attackers' strategy affected by opportunity and capacity?
- What are the long-term trends in the incidence and prevalence of attacks on different levels and types of education in different places? How can sampling, data collection and data analysis about the scope of attacks on education institutions, staff and students be improved?
- What are the motives of young people who do and do not volunteer to join rebel groups and government military? Are they aware of national and international norms regarding the conduct of warfare?
- What are the impacts of attacks on education in different settings upon:
 - Learners' and educators' psychosocial wellbeing?
 - Educational quality?
 - Enrolment and attendance?
 - Learning outcomes?
 - School and education system management?
 - Knowledge production and dissemination?
 - Confidence in national education systems?
 - Political stability and social cohesion?
 - Social and economic development?

12 Tools for research cited by participants include development of an Academic Oppression Index (see Jarecki and Kaisth, *op. cit.*, 65); the IASC Education Cluster and Protection Cluster Rapid Assessment Tools; and resources available at the website of the Inter-Agency Network for Education in Emergencies (www.ineesite.org). Important research studies cited include the CARE study *Knowledge on Fire: Attacks on Education in Afghanistan* (Atlanta, 2009); Jarecki and Kaisth, *op. cit.*; Hester Paanakker's study *Higher Education in Iraq under Attack* (University of Amsterdam, 2009) and Human Rights Watch reports including *Lessons in Terror: Attacks on Education in Afghanistan* (Washington: Human Rights Watch, 2006) and *Sabotaged Schooling: Naxalite Attacks and Police Occupation of Schools in India's Bihar and Jharkhand States* (Washington: Human Rights Watch, 2009).

2.2 Monitoring and reporting

Seminar discussions indicated widespread support for comprehensive monitoring and reporting of attacks on education, as well as response and prevention. Benefits would include:

- *Positive modelling.* In the best case, monitoring gathers and circulates information concerning positive reforms and good practices that can be adapted to reduce attacks and strengthen education in other areas;
- *Prevention/early warning.* Monitoring should ideally be involved with providing early warning to prevent attacks, knowing why schools and education facilities are targeted, and what puts them at risk; and discerning patterns of attacks, such as seasons and times of day; and to inform prevention and protection e.g. protection of travel to and from school.
- *Rapid response.* Rapid response helps mitigate the effects of the attack. Authorities need to know about attacks so as to be able to respond, e.g. with school materials and temporary shelter or building repairs. They need to determine which students are not returning to school/classes and why, so that these disruptions can be responded to and addressed.
- *Accountability.* Accountability for past attacks is important for bringing justice for the victims and deterring future attacks. While this might be difficult in time of conflict, it is important to put pressure on the attackers and the supporters of attacks, even though some might be in leadership positions in government or military. Data collection is essential for prosecution of violations of international and/or national law.
- *Advocacy.* Awareness-raising, mobilization, rule-making and enforcement of law all require a new sense of urgency, political will and prioritization of action to limit attacks on education. Data and information are needed to persuade decision-makers at every level that this is an urgent matter and a high priority; information should be used to spur media attention to the issue at international and national level, and to mobilize local awareness campaigns.
- *Programme design.* Monitoring and reporting mechanisms should be integrated into regular programming, where gathered data is regularly used to measure progress and improve programme design.

The seminar recognized the significant logistical and ethical challenges involved in monitoring attacks on education, which should be appropriately addressed:

- *Access.* Attacks often happen in remote, isolated regions or in societies which are fragmented or polarized, which may contribute to attacks; sustained accessibility may be difficult to maintain.
- *Security risks.* In situations where attacks on education occur, monitors may be at risk due to the real dangers present in the general environment, but the nature of their work may also make them specific targets.
- *Language and culture differences.* The use of external monitors, whether from a different region, country or community, may increase the perceived neutrality of the work and may

provide additional technical expertise, but may pose barriers between outside monitors and local people, hampering necessary communication and establishment of trust.

- *Confidentiality.* Reporting attacks on education, given the severity of the crime and the sensitive nature of the issue, could place both the monitor and the providers of information in danger. The threat and reality of repercussions and reprisals to both parties are a major consideration. Thus, any monitoring and reporting work should consider the unintended effects of releasing information, whether through formal reports or informal communication. Risk assessments should be conducted, with the 'do-no-harm' principle in mind, where the likelihood of reprisal and retaliation is calculated, and so that impartiality, neutrality, informed consent and confidentiality are maintained.
- *Methodology of monitoring.* First-hand data collection and fact-checking through direct interviews with victims, as well as with suspected perpetrators is the most thorough method, but may not always be feasible. This leads to concerns about the accuracy of and usefulness of second-hand data. However, limitations of access and use of second-hand data do not justify the elimination of monitoring. When it is safe, transparency about the limits of available data and the conclusions drawn can also strengthen the quality reputation of reports.

The question of who undertakes the role of monitoring and reporting was seen as a key concern. Monitoring and reporting on human rights and/or humanitarian law violations implicating education attacks involve risks of perceived violations of neutrality and targeting for reprisal, which make data collection more difficult. Monitoring is often a multi-lateral exercise, meaning that roles and responsibilities need to be mapped out; in contrast, monitoring may not happen at all in some countries where conflict or other restrictions make it impossible. Monitoring agencies must try to be accurate and unbiased, and must seek to balance reporting without fear or favour while maintaining a collaborative partnership with concerned government and non-state actors. Developing a reputation for consistent and unbiased monitoring in defence of the educational space can make it easier to maintain this balance.

Governments, NGOs and UN agencies each have their advantages and drawbacks in relation to monitoring and reporting attacks. Governments have the obligation to ensure the right to education for all citizens and to provide citizens safety and security. They also have representatives, in most cases, throughout the country, and have in place some form of an education management information system (EMIS) that monitors and reports on the national education system, though to date it would rarely be structured to show attacks on education. However, governments are also frequently reported to be perpetrators or complicit in attacks.¹³ Even when not the perpetrators themselves, governments may have vested interests in withholding information about attacks within their borders.

Within zones of conflict or insecurity, organisations such as NGOs, peacekeeping forces and UN bodies may have mandates and capacity to monitor. Media, trade unions and activists also engage in monitoring and reporting, in situations involving conflict and otherwise. NGOs, in particular, can draw attention to overlooked attacks where the UN or the local government cannot pay appropriate attention. But they often do not have the legitimacy of government and UN actors in reporting their findings; for example, data used in the Monitoring and Reporting Mechanism

13 See Chapters 3 and 6; Brendan O'Malley, *op. cit.*; Jarecki and Kaisth, *op. cit.*

established in Security Council Resolution 1612 must be UN-verified. Humanitarian NGOs may be well placed to gather data, and report it, but they may lack sufficient resources or may be unwilling to put their programmes at risk as a result of monitoring. Human rights organizations such as Human Rights Watch are not operational NGOs, so they do not risk jeopardizing existing programmes, but as such they do not have capacity to work comprehensively and continuously on the ground. Education-focused NGOs may have greater capacity in this regard, but are still limited compared with the scope of the sector and problem, and may not wish to place their programmes in jeopardy.

Furthermore, the entities collecting or collating data at the local level need to be independent enough to do so even if the state or other actors are not pleased with the results. Accordingly, it is important that these agencies, including especially the national entities, have appropriate protection for their staff's safety and security. Given the various constraints, which also affect the quality of the data (e.g. direct or indirect sources of data on violations), it was argued that triangulation of data is critical.

Seminar presentations¹⁴ and discussions highlighted the potential of the Monitoring and Reporting Mechanism (MRM) on Children and Armed Conflict established under Security Council Resolution 1612 (see Box 1).

Box 1: Monitoring and Reporting Mechanism (MRM) on Children and Armed conflict

Security Council Resolution 1612 (July 2005) requested the UN Secretary-General to systematically collect data on six grave violations, including attacks on schools and hospitals. In countries implementing the MRM, UN Country Teams have established inter-agency in-country Task Forces to monitor and report on the six grave violations.¹⁵ The Country Task Force is tasked with coordinating the monitoring and verifying process and the follow up activities including dialogue with parties to the conflict and programmatic response. Trends, and verified events and incidents, then feed into country reports of the Secretary-General that are presented to and reviewed by the Security Council Working Group on Children and Armed Conflict (constituted under Resolution 1612).

The strength of the MRM process is that the Security Council Working Group can recommend the Security Council to take action against specific parties and/or individuals that continuously violate its Resolutions and international norms. In the meantime, parties that have proven their commitment to the protection of children and have entered into dialogue for Action Plans with the UN to halt these violations can be removed from the 'list of shame' of the Secretary-General.

The seminar showed potential for interested parties, including the Office of the Special Representative of the Secretary-General on Children and Armed Conflict, to be more involved with attacks on schooling. Seminar participants recommended that countries' MRM efforts should feed into national as well as international actions, reports and advocacy; the information should be available for mitigating, preventing and responding to attacks at local through international levels. However, participants were conscious that the MRM should not be the only monitoring and reporting mechanism in a national context, especially since higher education,

¹⁴ See Chapters 7 and 8.

¹⁵ The MRM is triggered in a country by evidence of use of children as soldiers or killing and maiming children, or subjecting them to grave sexual violence, but not by attacks on schools or hospitals.

senior academics and education trade unionists are not covered by Resolution 1612 or any other comprehensive education sector monitoring system.

Participants discussed ways to strengthen the Resolution 1612 MRM with regard to attacks on schools, and several suggestions were put forward, including expert briefings at the Security Council, and support for more work on education violations within the Office of the Special Representative and by Country MRM Task Forces. There was a proposal to facilitate Special Representative country visits with a focus on attacks on schools. Assistance at country level could strengthen monitoring and reporting partnerships, similar to the partnership in Nepal described in Box 2. Further suggestions were to advocate for attacks on schools and hospitals to serve as triggers for a country to enter the MRM process, and assisting governments to include attacks on education within their Education Management Information Systems.

Box 2: Partnerships for the Protection of Children in Conflict (PPCC), Nepal

Partnerships for the Protection of Children in Armed Conflict (PPCC) is a network of national and international non-governmental organizations in Nepal which monitors, documents and responds to violations in school settings. PPCC is a partner of the Watchlist on Children and Armed Conflict (Watchlist).¹⁶ PPCC has many years of experience in monitoring and reporting on violations of children's rights and extensive presence in different districts of Nepal. PPCC's mandate includes safe access to schooling – monitoring, reporting and responding to attacks on school buildings, abduction and recruitment of children at school facilities, threats to teachers and students and use of schools for political purposes. The MRM Country Taskforce in Nepal has worked with and relies upon PPCC and other national NGOs. Significant challenges for NGOs involved in joint monitoring through the MRM remain, including the risk of being perceived as not neutral in a conflict zone; building and maintaining the technical capacity needed for effective monitoring and limited resources, both human and financial.

Watchlist's MRM global study¹⁷ and participants' experience in multiple countries indicate the importance of:

- NGO participation in support of MRM Country Taskforces
- Maintaining security, respect for rights and good standards of data collection¹⁸
- Leveraging networks and sharing resources¹⁹
- Strengthening response efforts at all levels, including on-the-ground interventions.

16 Watchlist is a global network of human rights and humanitarian organizations which works with local, national and international non-governmental organizations to end violations against children in armed conflicts and to protect their rights (see www.watchlist.org).

17 Watchlist, *Global Study on the Implementation of the UN-led Monitoring and Reporting Mechanism (MRM)*, (New York: Watchlist, 2008).

18 In Nepal, the Taskforce developed a code of conduct regarding confidentiality, informed consent and security protocols; and all child protection actors involved in the MRM were trained to collect data according to good standards. In addition, working through local and grassroots organizations that have access to and trust from the community has helped to mitigate some of the security risks.

19 Participants stated that in many countries, MRM Taskforces have established cooperation mechanisms and information sharing with humanitarian clusters and sub-clusters as well as peacekeeping missions and ceasefire monitoring groups. Other Taskforces have established links with service-providers to collect programme-related information, particularly information on sexual violence.

Responding to abuses is a critical part of the MRM (particularly underlined by Security Council Resolution 1882) and a variety of actions may be undertaken to address the needs of individuals or communities after a violation has occurred. Responses range from taking immediate action to providing services and support to child survivors, improving service-delivery programmes to better address the needs of children, revising existing policies to protect the rights of children, working to restore or improve judicial systems to help decrease impunity, and undertaking national and international public advocacy to improve measures of protection. In almost all cases, respondents report human rights violations or abuses to receive support or redress for the consequences of this violation. Responding to violations, however, remains a challenge for some Taskforces. To some extent, the ability of Taskforces to take action in response to individual cases depends on the structure of the Taskforce and how monitors collect and submit information. The ability to respond is also largely dependent on existing levels of coordination and referral mechanisms in place.

Box 3: Examples of programmatic responses to monitoring and reporting on children and armed conflict

- Children's diary project to monitor days of education missed due to closures
- Repainting schools that were tagged with propaganda messages
- Individual programmatic responses such as referral within the Children and Armed Conflict Working Group for Reintegration Services
- Schools as Zones of Peace national advocacy initiative
- National advocacy initiatives with the government and other actors to influence child protection policies, services and legislation
- Feeding up-to-date information into the MRM pathway
- Probing the possibility of using information for shadow NGO reports to accompany official Children and Armed Conflict reports

Needs going forward

Participants called for:

- A comprehensive system of global surveillance and reporting of the full range of attacks on education, covering situations of insecurity, conflict and post-conflict reconstruction (see also section 2.1 above);
- Strengthening the capacity of organisations at all levels of the MRM system and their partnerships;
- Establishment of an international working group to develop strategies for monitoring and reporting at the higher education level (drawing on the expertise of existing Network);
- Inclusion of attacks on education as an indicator in IASC Education and Protection Clusters' Rapid Assessment Tools, and as a general indicator in security assessments; use of conflict analysis tools and frameworks;

- Publication of a regular comprehensive global report on attacks on education;
- Deepened engagement with the media to report specific education attacks and information about the impacts of such attacks, which might involve lobbying and commissioning editors and reporters, provide briefings, figures, photos and case studies, and facilitation of field visits and interviews.

Technical issues raised by participants included:

- Agreement on core education security indicators for each level and type of education, including the types of attacks, such as physical harm, threats, isolation from the academic community, destruction of facilities, etc., as well as related standard indicators such as enrolment rates, attendance rates, teacher absenteeism, etc.;
- Distinction between an initially small set of standardized indicators that are routinely collected and those indicators requiring special effort to be collected periodically. This small set of standardized global indicators could emerge from an inter-agency collaboration between various agencies, including the UN agencies, Clusters, and (for schooling) the Office of the Special Representative of the Secretary-General for Children and Armed Conflict;
- Collection of both quantitative and qualitative data, as well as a mixture of case studies, trend analyses, and rigorous research where and when appropriate;
- Developing conflict-sensitive data-gathering methods ('do no harm');
- Full geographic coverage and situational coverage, collected through collaboration with all stakeholders and covering all types of education;
- Capacity building for national governments and NGOs to enable them to include education violations in their education reporting systems;
- Exploration of how to better integrate and involve existing protection databases and mechanisms for education;
- Possible adaptation of techniques used in child protection such as descriptive epidemiology and child protection score cards.

2.3 Strengthening the legal framework, deterring attack and improving accountability

Several presentations addressed the legal framework for protection of education from violent attack. Human rights law (HRL) provides a general framework for states' obligations to protect the right to life, the right to education and other rights related to the present discussion. International humanitarian law (IHL) provides a normative framework for actions in times of armed conflict, including importantly the protection of civilians and civilian objects not serving military purposes from direct military targeting or disproportionate collateral harm or damage. These legal frameworks and their application to education in times of conflict and insecurity are addressed in detail in Chapters 8 to 11, and will not be reproduced here. These are groundbreaking contributions since there has been little previous discussion of the intersection of education and international law in relation to contemporary conflicts.

The working group discussions at the seminar showed that there are many specific issues requiring further attention. Some of these issues are discussed below.

Strengthening the protection of education infrastructure under international law, to give parity with hospitals and religious buildings

A particular gap was identified for urgent attention, namely the lesser protection under IHL of education buildings as compared to buildings used for medical or religious purposes. Buildings used for medical or religious purposes may not be used for military purposes at any time.²⁰ This protection is needed for education buildings also, for several reasons: (a) the buildings are needed for ongoing education activities; (b) a school which is used for military purposes loses its protection as a civilian object and can legitimately be the target of military attack; (c) military use of particular education institutions may endanger all education institutions, which an adversary may fear are in military use.²¹ This issue needs to be raised within the IHL and military law communities, to reach a consensus and develop a strategy for moving forward.

A related point is the lack of a distinctive international symbol specifically for education institutions, to protect them from attack. There were divergent opinions about the appropriateness and effectiveness of designating such a symbol, the existence of which could help raise awareness of education as a protected activity. Some participants felt that a symbol might increase the risks of deliberate attack on education institutions by an opposing force. Others voiced concern about

20 For a full discussion of this issue see Gregory Bart "Ambiguous Protection of Schools under the Law of War: Time for Parity with Hospitals and Religious Buildings," *Georgetown Journal of International Law*, 40 (2009), 405-446 (chapter 11 of this publication). For progress in this direction at national level see Chapter 8, footnotes 15 to 18, and Chapter 10, footnote 66.

21 The possibility of protection for other education assets was also discussed; the term 'education facilities' might be used to include school and college buses, child care centres and playgrounds, for example.

privileging protection of one group of civilians or one set of buildings over another. This idea requires careful and highly consultative exploration, including with military planners, with NGOs interacting with non-state armed groups and with social scientists studying the motivation of actors in contemporary conflicts.

Deeper analysis of the legal issues regarding the interplay among IHL, HRL, and the Rome Statute regarding the protection of education in times of conflict and insecurity

The background papers indicate situations and instances where human rights law has been used in the context of violent conflicts – illustrating the tendency towards some convergence between IHL and HRL.²² Participants noted that the limited references to education as such in IHL²³ and the lack of specificity in HRL regarding the interpretation of the right to education in situations of conflict, have led to a lack of sufficient focus on the protection of education in conflict and insecurity. It was agreed that this area needs detailed scholarly attention as well as further discussion between practitioners working in different fields and situations. The obligations of non-state armed groups and modalities of outreach to them were also discussed (see below).

Clarification may also be useful regarding the legal status of attacks on individual educators which take place in times of conflict or insecurity, taking advantage of conditions of impunity and not necessarily having a clear link with a given conflict, as illustrated in the seminar discussions about the attacks on education trade unionists in Colombia and on academics in Iraq. Situations of low level disturbance falling short of the definition of armed conflict are also important.²⁴

Given the wide diversity of situations under which education institutions, educators and students are at risk, it was agreed that guidelines could usefully be developed, through a consultative process which would interpret existing IHL and HRL in relation to the types of problems outlined in section 2.1 above.

22 See Chapters 9 and 10. The 2008 Report of the Special Rapporteur on the Right to Education on The Right to Education in Emergency Situations, and the 2008 recommendations from the Committee on the Rights of the Child Day of Discussion on “The Right of the Child to Education under Emergency Situations” (see footnotes 2 and 3 above) emphasise the human right to education even in situations of emergency, and the former report specifies that ‘More action should be taken to put an end to impunity for persons and armed groups, including regular armies, who attack school, students and teachers.’

23 The Geneva Conventions and Additional Protocols require education provision for children during non-international conflicts or under occupation and for certain groups (orphaned or separated children, evacuated children and internees).

24 See footnote 3 of Chapter 10.

Strengthening the protection of higher education under international law

Particular stress was placed on higher education which is protected to some extent under HRL and under the Rome Statute ('education buildings') as well as by the IHL protection of civilians and civilian objects during conflict. International attention often focuses on the protection of primary and secondary schools, however, and key instruments and processes cater to minors below 18 years of age (Convention on the Rights of the Child, Security Council MRM on Children affected by Armed Conflict). It was argued that the right to education is not yet fully articulated as a means of protecting the unique role and functions of higher education professionals, including their specialized knowledge, institutional and social leadership functions and the quality of education (functions which are sometimes disrupted by interference with university instruction and learning; institutional autonomy and academic freedom). IHL and HRL regarding the protection of life, liberty, safety, freedom of speech and expression, and education facilities, should be brought to bear on attacks on academics and students, university closures, etc. The issues are complex and need scholarly analysis, as a first step towards strengthening of international norms and law in this regard.

Capacity-building at national level

At the national level, there are often gaps in government and military knowledge, capacity and resources related to protecting education from attack, gaps in civil and military law in this regard, and possibly a lack of political will to enforce compliance. States may lack the resources, capacity or will to enact national legislation giving force to international law on the protection of education, to specify clearly defined punishments for non-compliance, or to enforce the legal protections, through processes such as gathering evidence and prosecution. Lack of public awareness on international and national law and its application to education may also weaken pressure on the authorities to enforce compliance.

Compliance may thus require assisting states to ensure that they have the needed legal, law enforcement and judicial frameworks, resources and capacity, both in the civil and military legal structures. In practice, there may be possibilities to strengthen the profile of protection of education within a broader programme of assistance to strengthen the rule of law and the development of just and viable judicial systems. There may also be a need to motivate national governments and military to investigate attacks on education, identify perpetrators and hold them accountable, sending a message to others to avoid such actions in the future.

The profile of education in the training of military personnel needs to be enhanced in many countries. This can be linked where necessary to strengthening the relevant military code of conduct, with respect to education institutions, staff and students. Where appropriate, the training of military personnel in IHL undertaken by the International Committee of the Red Cross and others may provide an avenue to strengthen the focus on education protection, while in other cases the profile of education may be enhanced in military to military training programmes.

Strengthening accountability

Seminar presentations and discussions emphasised the need to utilise the full range of domestic and international accountability mechanisms to target both individual perpetrators of attacks and state/non-state perpetrators. Individual perpetrators may be prosecuted through civilian or military trials in national courts or in other national jurisdictions, or through civil suits, nationally or in other jurisdictions, with possible use of travel bans and financial freezes. International tribunals include the International Criminal Court, other international tribunals and hybrid tribunals linked to the country concerned. Truth commissions and traditional mechanisms are domestic resources that can target state and non-state actors. States are likewise accountable through mechanisms such as the Human Rights Council, the Committee on the Rights of the Child, other treaty bodies, the Security Council Working Group on Children and Armed Conflict, and possible sanctions and embargoes.²⁵

Accountability is often constrained by resourcing difficulties, and seminar participants saw the need to provide technical support in this regard, as a means of providing more focus on education violations and thereby sending out a message that education processes, participants and infrastructure must be respected.

Political leaders and the public must be persuaded that education is an essential function, that the education space must be honoured as neutral at all times – protected and set aside from violence and use of force – and violators of that neutrality must be held accountable. Thus, the issue of attacks on education needs to be better communicated and defined as a priority with humanitarian and human rights advocates, peacekeeping forces, UN agencies, military leaders and trainers, policymakers inside and outside education, education program leaders, practitioners and communities. Attacks on education need to be clearly defined as a multiple human rights violation, a violation of humanitarian law, and a violation of local/national law and then stigmatized, criminalized, and prosecuted as such.

Engagement with non-state actors

Non-state actors (NSAs) such as separatist groups lack international legal capacity to be party to international treaties. However, in light of the changing nature of conflict, participants agreed that the protection of civilians may require engagement with NSAs. NSAs vary in their configuration; some have state-like structures, and some are composed of semi-autonomous factions, often lacking a clearly delineated chain of command. Furthermore, value differences between internationally accepted norms and the religious, cultural and revolutionary norms of NSAs can be another serious consideration and may contribute to a lack of political will among both state and non-state actors to engage with one another. For example, NSAs may argue that they were not part of the drafting of the Geneva Conventions, and therefore do not favour taking part in related codes of conduct on humanitarian issues.

25 For a full treatment of these accountability mechanisms and their use in relation to education, see Chapter 8.

Seminar participants discussed ways of improving NSAs' acceptance of humanitarian norms and increasing NSA ownership of the rules. The example was given of Geneva Call, an international NGO that has developed a treaty-like instrument with NSAs that reflects international humanitarian norms, open to signature by NSAs and non- or partially-recognized states.²⁶ The instrument, coined a Deed of Commitment, was developed in relation to anti-personnel mines. Geneva Call is currently expanding its work with NSAs into concerns relating to children and armed conflict. To protect education from attack and uphold humanitarian and human rights norms, it is important to explore the variety of tools for NSAs to express their will and/or commitment to those norms, whether through codes of conduct, deeds of commitment, or other forms of special agreements.

Participants' experiences working with NSAs suggest that it is important to:

- Understand the perspective of NSAs
- Maintain neutrality
- Demonstrate to NSAs the interest for them in maintaining and respecting the rules
- Ensure NSA interlocutors have proper authority within the NSA
- Employ a comprehensive approach that includes commitment, implementation assistance, monitoring and, when necessary, verification
- Consider an incremental approach when necessary.

Training international peacekeeping forces

The United Nations Department of Peacekeeping Operations (DPKO) became actively engaged in child protection following Security Council Resolution 1216 (1999), which enumerated specific provisions for child protection in peacekeeping mandates, including the deployment of child protection advisers on peacekeeping missions. After a presentation on the lessons learned in DPKO's ongoing experience with children and armed conflict, it was agreed that there could be useful cooperation with regard to the protection of education, in relation to the training of peacekeepers. Moreover, DPKO can leverage both political and military resources for the benefit of children, and can bring high-level advocacy and attention to child protection under the political cover of the mission, including support to humanitarian actors in the field. The engagement of peacekeeping missions in the protection of education from attack is thus a valuable avenue for further exploration.

26 See www.genevacall.org

Needs going forward

Further to the actions already mentioned in this section, participants called for:

- Making protection of education in national law a theme in national development plans, Education Sector Plans, EFA plans, as well as in aid programmes where conflict may negatively affect education;
- Incorporating legal protection of education from attack within post-conflict and fragility situation analyses, international aid/assistance programmes, capacity-building initiatives and peace building strategies;
- Helping national governments to provide assistance programmes for victims of attacks on education;
- Lobbying for a resolution on protecting education to be adopted by the International Conference of the Movement of the Red Cross and Red Crescent;
- Lobbying for 'General Comments' from the Committee on the Rights of the Child, which has not addressed education in conflict in a General Comment but has done so in a 'Day of General Discussion,' and from the Committee on Economic, Social and Cultural Rights, which can address issues relating to higher education, as well as schooling;
- Engaging with the media to influence political will at local, national and international levels, to increase accountability, both for attacking education and failing to protect it.

2.4 Programmatic prevention and response

What are the implications of insecurity and armed conflict for the design of education programmes? This question has not been systematically addressed to date, and the seminar offered the opportunity to explore the issue, albeit in a preliminary way. Seminar presentations and commissioned papers explored a range of options (see Box 4).²⁷ Some cases discussed during the seminar are briefly presented in this section.

Box 4: Examples of programmatic prevention and response

Physical protection: location of schools; providing transportation and/or escorts for staff and students; assigning security guards at schools; arming teachers; reinforcing school infrastructure; building on-campus housing; organising armed community defence of schools; avoiding high risk areas or times of day; relocation of threatened teachers, students and/or schools; assistance to endangered academics

Community action: creation or strengthening of school committees/parent teacher associations and engaging them with security issues, possibly creating security committees or sub-committees; unarmed community members serving as volunteer school guards and/or escorts; negotiation with potential attackers/community pressure to end attack; identifying religious leaders to teach/support schools; advocacy by children's clubs

Negotiation for schools as conflict-free zones: government and/or community action to ensure neutrality of the school space as safe sanctuary/schools as zones of peace

Adaptation of education provision: home-based schools/community-based schools; accelerated learning and bridging programmes; distance learning; adaptation of curriculum to local contexts; meeting psychosocial needs of students and teachers; child-friendly schools; enrichment of curriculum with safety/health messages and education for human rights, child rights, peace education and humanitarian norms

The seminar provided the opportunity to identify some current practices in these areas, identify lessons learned and develop possible recommendations. These presentations complemented the background papers, providing recent field experience from specific conflict contexts.

Physical protection, Colombia

There is an on-going situation of internal armed conflict, in which education trade unionists have been subject to harassment, murder, abduction, extortion and intimidation. The protection strategy initiated by various actors, including government, NGOs and education trade union members, includes monitoring levels of threat to individual teachers; providing different levels of physical protection to as many teachers as possible (e.g. flak jackets, bodyguards, surveillance, armed escort to school); promoting human rights monitoring and accountability in-country; and encouraging national and international advocacy and support. It was suggested that both

27 For more details of some of these approaches, see Chapters 12 to 15.

government and human rights agencies could have lent more support. With the protection strategies in place, killings and injury did occur but some were also avoided.²⁸

Physical protection, Committee for Assisting Refugee Academics (CARA)

CARA focuses on senior academics who are part of the intellectual resources and human capacity of a country under attack or divided by conflict. The latest focus has been Iraq. CARA has assisted senior academics under threat to escape from Iraq to Syria, Jordan, and to a lesser extent to the UK and USA (in partnership with Scholars at Risk). The CARA protection strategy provides academics with grants to resettle in the region and the UK, and with research grants to continue their work. It helps arrange dialogue with university and government officials, and organises programmes in the region to support displaced academics and help them to rebuild Iraq's education system.²⁹

Community action/physical protection, Liberia

During the civil war, Lofa and Nimba counties in northern Liberia were entry points and routes for rebel groups from neighbouring countries. Schools in these two counties remained dangerous in post-conflict Liberia, as children were susceptible to separation from their families, rape, abduction and forced recruitment, whether on the way to or from school, or while at school. With the help of the International Rescue Committee (IRC) in Liberia, communities formed committees to protect children's education from attack. Ministry officials, representatives of aid agencies, and other education and protection stakeholders were also members of the committees. The issue of protecting education became a rallying point for community participation in education reconstruction programmes.

Through the work of the committees, community members agreed on, prepared and used duty rosters to escort their children to and from school. Provision of unarmed guards was viewed by stakeholders as a community-owned mechanism that was relatively cost-effective and sustainable. The unarmed guards helped teachers and students feel safe at school, as they seemed to help secure school facilities from attacks. However, the unarmed guards evolved into a permanent measure with costs to the school.

28 See also Mario Novelli, "Political Violence against Teachers in Colombia: Opportunities for Change in the Midst of Violence", in Susan Nicolai, *Opportunities for Change: Education Innovation and Reform During and After Conflict* (UNESCO-International Institute for Educational Planning (IIEP), 2009), pp.189-200; and Mario Novelli, *Colombia's Classroom Wars: Political Violence Against Education* (Education International, 2009).

29 See www.academic-refugees.org; see also the description of the Scholar Rescue Fund in Jarecki and Kaisth, (*op. cit.*).

Community action/physical protection/negotiation with potential attackers, Afghanistan³⁰

In Kandahar province, Save the Children helped support the set-up of community-based child protection committees (CBCPC) to address attacks such as school burnings at night, and attacks on students and teachers. With the support of NGOs, the committees encouraged imams to give Friday sermons about the importance of education, decided to place night guards at schools and selected appropriate response and prevention mechanisms for attacks. The NGOs also trained the committees on the Convention on the Rights of the Child, and issues surrounding corporal punishment, psychosocial support and school protection. The work of CBCPCs seemed to increase daily attendance at school and enrolment at the beginning of the year.

Separate from the CBCPCs, District School Protection Committees (SPCs) were also established to manage the protection of schools. SPCs negotiated with locally-based attackers to allow attendance at school, agreed to temporarily re-name their schools as madrassas for the afternoon shifts of the school day, worked out ways teachers were allowed to teach, and at times responded to threats by attackers with counter-threats within the community framework to force a stalemate or raise the potential cost of using threats.

Community action/negotiation for schools as conflict-free zones, Nepal³¹

The 'Schools as Zones of Peace' programme in Nepal illustrates the use of negotiated codes of conduct for school protection by a coalition of well-respected development and human rights NGOs. At local level, Child Protection Committees and Paralegal Committees were formed to monitor schools' and actors' behaviour; and dialogue was held with Maoist/other local leaders. At national level, dialogue on school protection was undertaken formally with government and Maoist leaders. A code of conduct to protect the school was jointly developed and adopted by all stakeholders for the participating schools.

After the national peace accord and high-level negotiations about power-sharing, excluded Terai groups began a new campaign including targeting schools. In response, the school protection coalition engaged in a national level advocacy campaign with the new government leaders and aggrieved Terai leaders, resulting in televised negotiations that renewed the conflict parties' national endorsement of the school code of conduct. The layers of negotiations were varied in focus, approach, and motivation, so the coalition had to manage a complex layered process. Forty-three of 75 districts nationwide have adopted the schools as zones of peace approach. Over 1,000 schools have participated, where incidence of delays of school opening and drops in attendance have been demonstrably reduced.

30 See also Chapter 13; also Joan Sullivan-Owomoyela and Laura Brannelly, *Promoting Participation: Community Contributions to Education in Conflict Situations* (Paris: UNESCO-IIEP, 2009).

31 See Chapter 14.

Community action/physical protection/negotiation of school as conflict-free zone, Northern Ireland

There were many reported instances of sectarian attacks on schools in Northern Ireland. The Holy Cross School incident in June 2001 occurred in Belfast at a site where Catholic school children had to pass through a Protestant neighbourhood. An incident between the two communities led to a protest involving children being denied access to school. The dispute lasted for three months. During this time parents and children were guaranteed access to school via a protective line of police and army on a daily basis and were subject to verbal abuse and threatening behaviour from protesters, including a pipe bomb attack.

Legal routes to resolve the dispute were explored, but proved to be too slow. International observers played an important role as commentators and witnesses but this often instrumentalized children and families in more abstract debates of issues outside the community. High profile media coverage locally and internationally was both praised for drawing attention to the situation and criticized for making it more difficult for the parties involved to end the confrontation. The incident ended when parents, community members and clergy negotiated that the protest be 'suspended.' Once the children's right to education was re-established, government was able to hold meetings with representatives of the protestors to address underlying grievances related to investment, security and policing. Almost half of the children involved received counselling, and tensions still exist between the communities, but there is less likelihood that schoolchildren will be targeted again.

Community action/physical protection/adaptation of education provision, Central African Republic

The Central African Republic (CAR) has one of the poorest Human Development Index ratings in the world, 80 ethnic groups with different languages/cultures, a history of political instability and many attempted coups, with fighting in difficult-to-reach areas. One tactic of conflict was to burn whole villages; internally displaced communities were forced to hide in the bush. The 'bush school' project built on the efforts of some displaced communities and teachers who organized and opened 'écoles de village' on their own. UNICEF and Cooperazione Internazionale (COOPI) teamed up to support more communities in opening a school in each temporary setting. The government recognized the value of the effort. Communities identified the 'safe space' – but it took education service providers some time to bring education to those spaces in an adapted form. CAR bush schools were not intended for institutionalization, but were a temporary solution with the intention that villagers would go back home eventually and attend regular school. Bush school teachers received only 'payment in kind.'

Adaptation of educational provision, Sudan

In situations where attacks or threats of attack have disrupted education processes, organizations may be able to draw on experiences from *accelerated learning programmes* to help affected learners resume their education. For example, community church protection networks are engaged with accelerated learning programmes for demobilized child soldiers in Southern Sudan. The networks include psychosocial support and a contextualized primary school curriculum, which are also two important considerations for areas susceptible to attacks on education. Agencies involved include Save the Children, UNICEF and the World Bank.³²

Adaptation of educational provision, Thailand

In recent years, the Thai government has made attempts to reform curriculum to meet local needs in the southern border provinces of Thailand. This includes exploring a bilingual curriculum of Thai and Jawi, a local dialect, and the promotion of Islamic studies.

Adaptation of educational provision/physical protection: distance learning

Several examples were cited of distance learning, catering to a variety of learners and contexts, including radio, computer, and television programmes, CDs, and cassettes. Organisations engaged with this work in situations where access to education by students, teachers or education supervisors can be hampered by conflict include BBC Afghanistan, BBC Occupied Palestinian Territories, and Education Development Centre (EDC) interactive radio programmes in Nepal, Mozambique, southern Sudan, and Somalia.³³

32 See also Pamela Baxter and Lynne Bethke, *Alternative Education: Filling the Gap in Emergency and Post-Conflict Situations* (UNESCO-IIEP, 2009); Eldrid Midttun, "The Teacher Emergency Package (TEP) and NRC's Emergency Education Support in Angola: 12 Years and 212,000 Children," in Susan Nicolai, *Opportunities for Change: Education Innovation and Reform During and After Conflict* (UNESCO-IIEP, 2009), pp. 115-126.

33 See Jennifer Ho and Hetal Thukral, *Tuned in to Student Success: Assessing the Impact of Interactive Radio Instruction for the Hardest-To-Reach* (Education Development Center, 2009).

Adaptation of educational provision: promotion of human rights, child rights, peace education and humanitarian norms³⁴

Programmes cited by participants included:

- Inclusion of human rights, child rights, civics and peace in curricula in post-conflict Nepal
- Initiatives by the African Union and various Ministries of Education in Africa on peace building education programmes
- The Department of Education, Antioquia, Colombia, and the World Bank programme 'En Antioquia cada Escuela Una Zona Franca de Paz' (1998-2006) initiative to promote peace among children and youth in the area, through school environments supportive of co-existence, peace and non-violence
- UNICEF's Right to Education materials, often linked to standard setting instruments such as the Convention on the Rights of the Child, as well as to the Qur'an and other religious texts
- The INEE Peace Education Programme, used with displaced and other conflict-affected populations and as a resource in developing several education ministry peace and citizenship education programmes for students and/or teachers³⁵
- The International Committee of the Red Cross's modules for secondary schools and youth on Exploring Humanitarian Law.³⁶

Needs going forward

Based on the cases reviewed and their own experiences, seminar participants identified a number of specific areas for improving programmatic response and prevention mechanisms:

- Awareness of the issue should be increased among education in emergencies practitioners, donors and policymakers as part of both needs assessments and programme evaluations. Context and conflict analyses should be undertaken to support education initiatives in times of conflict and insecurity. Contingency planning and programme design should incorporate elements of prevention and protection.
- Prevention and security/safety for staff and students should be intentionally incorporated into 'building back better', in decisions regarding placement of schools, infrastructure and equipment, role of community education committees, programmes for infrastructure, etc.

34 For an overview and examples, see GTZ, *Learning to Live Together: Design, Monitoring and Evaluation of Education for Life Skills, Citizenship, Peace and Human Rights* (Eschborn, 2008); Pamela Baxter and Lynne Bethke, *op. cit.*

35 See Chapter 15, and the core materials on www.ineesite.org.

36 See Chapter 15, and the Exploring Humanitarian Law 'Virtual Campus' on www.icrc.org.

- Stronger community involvement in education institutions and sense of ownership appears to reduce susceptibility to attack. Thus, more cooperation between local education officials and communities should be encouraged, whereby decisions about school building, funding, etc, are shared. The potential role of communities in mitigating attack should be tested more systematically through pilot programmes, strong evaluations and targeted dissemination (for example through phased introduction of assistance programmes using an experimental design).
- Engagement with armed groups/non-state actors early in the process of programme development or as a response to threats and attacks should be considered, where relevant. The wider applicability of the 'zones of peace' approach should be considered.
- The potential for protection from attack through curriculum reform that brings together safety education and education for human rights, peace, conflict resolution, and humanitarian norms should be explored through cooperation between concerned actors, as should child-friendly schools and other approaches that help model good citizenship and meet psychosocial needs.
- Guidance on protecting education from attack should be integrated into relevant documents, such as the INEE Minimum Standards and associated tools, INEE Guidance Notes or Child Protection Guidelines. The INEE Minimum Standards for community participation should be seen as, and strengthened to serve as, a protection strategy.
- Research is needed to evaluate the various interventions aimed at preventing and responding to attacks on education, including actions focused on physical protection, community action, negotiation with potential attackers, adaptation of education delivery and curriculum and other approaches; having regard to possible unintended consequences of interventions, ethical issues, and the need for qualitative as well as quantitative investigations that can help identify the contribution of education itself to observed results.
- Educators should engage with the media to strengthen its role in publicising prevention and response, including dissemination of good practice and of resource requirements, at local, national and international levels.

Part 2.

Background papers

Chapter 3.

Education under Attack 2010:

A summary

Brendan O'Malley

About the author: Brendan O'Malley is a journalist, author and documentary maker. He is author of the 2007 UNESCO publication, *Education under Attack: A global study on targeted political and military violence against education staff, students, teachers, union and government officials, and institutions*. He is a former international editor of The Times Educational Supplement and writes about education, development and conflict for newspapers around the world.

Editor's note: This summary is of the author's forthcoming UNESCO publication, *Education under Attack 2010*.



n 12 November 2008, two motorcyclists rode up to a group of schoolgirls and teachers on their way to Mirwais Nika Girls' High School in Kandahar, southern Afghanistan, and repeatedly threw battery acid over them. The attack left at least one girl blinded and two permanently disfigured. The attackers were reportedly paid 100,000 Pakistani rupees (\$1,187 for each of the 15 girls they were able to burn).¹

It was one of a growing number of attacks on students and teachers in Afghanistan – and one of thousands of incidents in countries across the world in recent years that have resulted in the kidnapping, imprisonment, beating, torture, burning alive, shooting or blowing up of students, teachers and academics, and other education staff by rebels, armies, criminal groups and repressive regimes.

The effects on education of such incidents will be felt long after the funerals through the loss of teachers and intellectuals; the flight of students and staff; grief and psychological distress and trauma among students and personnel; fear of turning up to class; damage to buildings, materials and resources; staff recruitment difficulties; shelving of investment; and degradation of the education system.

At a UN General Assembly thematic debate on Education in Emergencies in March 2009, which focused on this escalating problem, Miguel D'Escoto Brockmann, the President of the UN General Assembly, called on all states to develop policies to 'protect schools and make them safe havens'.

1 Clancy Chassay, "Acid Attacks and Rape: Growing Threat to Women Who Oppose Traditional Order," The Guardian, November 22, 2008; and United Nations Security Council (UNSC), *Children and Armed Conflict: Report of the Secretary-General A/63/785-S/2009/158* (March 26, 2009).

He demanded that governments criminalize attacks on schools as war crimes and prosecute offenders routinely and systematically.²

The first global study on this problem, *Education under Attack*, published by UNESCO in 2007, found that the number of reported attacks on education had dramatically increased in the preceding three years. Some of the worst affected countries at the time were Afghanistan, Colombia, Iraq, Nepal, the Palestinian Autonomous Territories, Thailand and Zimbabwe.

Education under Attack 2010 finds that systematic targeting of students, teachers, academics, education staff and institutions has been reported in a greater number of countries since then.

Attacks intensified dramatically in Afghanistan, Pakistan, India and Thailand, according to reports:

- The number of attacks on schools, students and staff nearly tripled in Afghanistan from 2007 to 2008, up from 242 to 670;³
- In Pakistan, 356 schools were destroyed or damaged in one small region at the centre of the battle between the Army and the Taliban;⁴
- In India, nearly 300 schools were reportedly blown up by Maoist rebels between 2006 and 2009;
- In Thailand, the number of attacks on schools quadrupled between 2006 and 2007 to 164, then fell right back in 2008, although killings of teachers, students and security escorts for teachers continued.

Very high numbers of attacks during short military operations in Georgia and Gaza were also reported:

- In Georgia, 127 education institutions were destroyed or damaged in August 2008;
- In Gaza, more than 300 kindergarten, school and university buildings were damaged or severely damaged in three weeks during Israel's Operation Cast Lead at the turn of 2008-09.

Attacks on teachers, students and teacher trade unionists continued to be a matter of grave concern in Colombia, Iraq, Nepal and Thailand. For example, in Iraq, 71 academics, two education officials and 37 students were killed in assassinations and targeted bombings between 2007 and 2009. In Colombia, 90 teachers were murdered from 2006 to 2008.

In 2008, the UN estimated that more than 250,000 children remained in the ranks of armed forces or groups. Voluntary or forced recruitment of children from school, or en route to or from school, by armed groups or security forces for combat or forced labour from 2006 to 2009 was reported in the following countries: Afghanistan, Burundi, Chad, Colombia, the Democratic Republic of the Congo, India, Iran, Iraq, Myanmar, Nepal, Pakistan, Palestinian Autonomous Territories, the

2 Miguel d'Escoto Brockmann, President of the UN General Assembly (concluding remarks, UN General Assembly Interactive Thematic Dialogue on Access to Education in Emergency, Post-Crisis and Transition Situations Caused by Man-Made Conflicts or Natural Disasters, New York, March 18, 2009).

3 Figures supplied by UNICEF.

4 Figures supplied by Executive District Office for Elementary and Secondary Education, Swat District.

Philippines, Somalia, Sri Lanka, Sudan, Thailand and Zimbabwe. Fear of recruitment deprived children of education in Sri Lanka and Venezuela.

Sexual violence against schoolgirls and women continued as a common tactic in some conflicts and reached critical levels in the Democratic Republic of the Congo, with 5,517 cases of sexual violence against children in Ituri and North and South Kivu in 2007-08.⁵ Incidents of sexual violence resulting from abduction or attacks at schools or education facilities, or on the journey to or from them, were reported in the Democratic Republic of the Congo, Haiti, Indonesia, Iraq, Myanmar and the Philippines.

Teacher trade unionists were singled out for assassination, false imprisonment or torture in Colombia, Ethiopia and Zimbabwe.

Incidents of persecution of academics continue: a survey of Scholar Rescue Fund applicants found them most common in sub-Saharan Africa, Iraq and the West Bank and Gaza over the period from 2002 to 2007.⁶

Mostly, attacks occur in conflict-affected countries or under regimes with a poor record on human rights and democratic pluralism. From 2007 to 2009, state forces or state-backed forces have either beaten, arrested, tortured, threatened with murder or shot dead students, teachers and/or academics in Argentina, Bangladesh, Brazil, China, Colombia, Ethiopia, Honduras, Iran, Myanmar, Nepal, Senegal, Somalia, Sudan, Thailand, Turkey, Zambia and Zimbabwe.

■ Data challenges and definitions

Without a global system for systematically monitoring or gathering verified data, all figures on attacks come with a statistical health warning that they are compiled from disparate information sources of varying quality – media, human rights reports and some UN monitoring. Many may not have been verified. In addition, there is no agreed common data set enabling accurate analysis of trends across countries.

Nevertheless, the types of education attacks reported over the past three years include:

- Mass or multiple killings or injuries caused by explosions, rocket and mortar attacks, gunfire or mass poisoning;
- Assassinations or attempted assassinations;
- Injury and beatings of targeted individuals;
- Abductions, kidnappings, forced disappearance, illegal imprisonment and torture;

5 United Nations Security Council (UNSC), Report of the Secretary-General on Children and Armed Conflict, A/63/785-S/2009/158 (March 26, 2009); and Human Rights Watch (HRW), "Taking the Next Step: Strengthening the Security Council's Response to Sexual Violence and Attacks on Education in Armed Conflict," April 20, 2009.

6 Henry G. Jarecki and Daniela Zane Kaisth, *Scholar Rescue in the Modern World* (New York: Institute of International Education, 2009).

- Indiscriminate and targeted violence against education protestors;
- Sexual violence by armed groups, soldiers or security forces against schoolchildren and teachers;
- Forced/unforced recruitment and use of children under 15 years old as soldiers or suicide bombers – including abduction and recruitment from, or on the way to or from, school, or recruitment that denies access to education;
- Destruction of education facilities by remotely detonated explosions, mortar and rocket fire, aerial bombing, burning, looting and ransacking;
- Occupation or use of educational facilities by the military, security forces, armed police or armed groups;
- Threats of any of the above attacks.

All attacks involve the deliberate use of force in ways that disrupt and deter provision of or access to education.

Two disturbing new tactics are the apparently increasing number of direct attacks on schoolchildren, particularly in Afghanistan and Thailand, and the alleged mass abduction of children from schools in Pakistan to become suicide bombers.

■ Motives for attack

Developing a deeper understanding of the motives for attacks on different targets is vital to any attempt to prevent education being targeted in future. Analysis is hampered by the lack of high-quality monitoring or reporting, based on large numbers of face-to-face interviews, in many conflict-affected countries and by the suppression of information in situations where the perpetrators are repressive regimes.

From the available information, the motives for attack tend to fall into the following categories:

- Attacks on schools or teachers as symbols of the imposition of an alien culture, philosophy or ethnic identity;
- Attacks on schools, teachers or students to prevent the education of girls;
- Attacks on schools, teachers, universities and academics to prevent any education;
- Attacks on schools and universities as symbols of government power opposed by rebels;
- Attacks on schools, universities, education offices, students, teachers, other staff and officials to undermine confidence in government control of an area;
- Attacks on schools, teachers or students in revenge for civilian killings;

- Attacks on exam halls and exam transport or ministry or local district offices and officials to undermine the functioning of the education system;
- Abduction of children and some adults to fill the ranks of rebel or armed forces or provide forced labour, sexual services and/or logistical support;
- Abduction for ransom;
- Sexual violence by members of armed groups, soldiers or security forces as a tactic of war or due to disrespect for gender rights;
- Attacks on students, teachers or academics for involvement in trade union activity;
- Attacks on students and academics to silence political opposition or prevent the voicing of alternative views;
- Attacks on students and academics to silence human rights campaigns;
- Attacks on academics to limit research on sensitive topics;
- Occupation of schools for security/military operations by security forces/armed forces/armed groups and attacks on such schools because they are occupied or in military use;
- Destruction of education institutions by invading forces as a tactic of defeating the enemy;
- Destruction of education buildings in revenge for, or to deter, mortar/rocket/stoning attacks launched from inside them or nearby.

Attackers may have multiple motives. In Thailand, for instance, Muslim separatists in the three southernmost provinces may attack schools and kill teachers because schools are the main symbol in a village of the power of the government they oppose, and are easier to attack than other targets. But they may also be targeting them because schools are seen as imposing an alien language of instruction (Thai), religion (Buddhism) and history (Thai national history) as part of a policy to assimilate Muslims in a previously autonomous area.

In Afghanistan and Pakistan, the gender motive behind many attacks is underlined by formal and written threats from the Taliban to close girls' schools or end classes for girls. But while 40 per cent of schools attacked in Afghanistan are girls' schools, 32 per cent are mixed schools, and 28 per cent are boys' schools, suggesting other motives are also at play.⁷ Similarly in Pakistan's Swat territory, from 2007 to March 2009, 116 girls' schools were destroyed or damaged but so too were 56 boys' schools.

In higher education there are multiple motives: students and academics may be attacked to silence criticism of government policies or behaviour, prevent promotion of human or minority rights, limit academic freedom or prevent political pluralism. In many cases, the work of persecuted scholars is seen as a threat to the government, and their international contacts and ability to influence students are seen as a source of power that needs to be curbed.

⁷ Marit Glad, *Knowledge on Fire: Attacks on Education in Afghanistan; Risks and Measures for Successful Mitigation* (CARE/World Bank/Afghan Ministry of Education, 2009).

Education aid workers may be attacked because the lines between military operations and aid work have become blurred and they are not seen as neutral, or because armed groups are specifically opposed to the type of education they are supporting. Increases in incidents may also reflect the greater emphasis on giving aid to conflict-affected or fragile contexts.

■ Short- and long-term impacts

The physical effects of the bombing, shelling, and burning of school and university buildings include loss of life and injury, as well as the loss of places in which to learn, learning materials, equipment and school furniture, research materials, computer data, management information systems, specialist laboratories and transport vehicles.

Much harder to measure are the psychological effects of the murder, disappearance and torture of students, teachers and other staff and the destruction of institutions that are supposed to be protective. Such effects can include trauma, fear, insecurity, demotivation and despondency.

Public knowledge of repeated incidents and threats of attack gleaned from word of mouth or the media can spread fear throughout a region. Typically, children will be afraid to go to school, parents will be afraid to send them and teachers will be afraid to go to work.

Where incidents occur, schools may be closed in tens or hundreds for anything from a week to months or even years, in some cases. In Afghanistan, 670 schools remained closed in March 2009, denying education to 170,000 children. In Pakistan, the Taliban's ban on girls' classes, issued in Swat District in December 2008, led to the closure of 900 state and private schools, depriving 120,000 girls of their right to education.

In the longer term, governments may be reluctant to re-open, repair or resupply schools until threats have passed. They will struggle to recruit new teachers in areas where teachers are targeted for assassination, with serious consequences for the quality and number of staff recruited.

Attacks on aid workers can lead to the removal of aid workers from a given area or even the country, with the loss of expertise and supplies that came with them. Attacks on education trade unionists undermine the development of good-quality education provision by denying teachers a say via their professional body – their collective voice – in how education is run.

Attacks on academics undermine the quality of higher education provision and restrict its contribution to economic, political and human development by inhibiting the growth of ideas, destroying intellectual capital and deterring bright minds from pursuing an academic career.

Attacks on education targets, therefore, are not just attacks on civilians and civilian buildings. They are an attack on the right to education, including the right to a good-quality education; an attack on academic freedom; an attack on stability; an attack on development; and an attack on democracy.

We already know that there are strong correlations between fragility and low access and achievement in primary education – for instance over half of children not in primary school

worldwide are found in conflict-affected countries.⁸ Just as the World Bank has argued that provision of education, particularly for girls, is the single most effective intervention that countries can make to improve human development, the reverse is also true: attacks on primary schools, particularly girls' primary schools, and the degradation of the education system that results from persistent attacks and fear of attacks, are particularly damaging for development. The prevention of attacks on education and the strengthening of the right to education at all levels, therefore, can also be viewed as important contributions to tackling conditions of fragility.

However, currently, monitoring and reporting pays too little attention to the impact of attacks on education systems, such as the negative effects on teacher retention and recruitment or the detrimental narrowing of the education vision, placing limits on the knowledge or content that can be researched, taught or applied.

■ Prevention and protection measures

Education under Attack (2007) reported on a range of measures taken to prevent or increase resilience to attacks, including posting armed guards at schools, providing armed escorts for transport to or from school, encouraging community defence of schools, providing distance learning where it is too dangerous to attend classes, relocating schools within community homes to make them less visible targets, and providing rapid repair and resupply of educational materials.

Capacity-building is needed to help countries improve their protection and recovery measures.

Since 2007, the case for involving communities in the running of and defence of schools and in negotiations over the re-opening of schools has been strengthened by research and a successful initiative in Afghanistan. Community defence initiatives have been encouraged in Afghanistan since June 2006 and involve mobilizing local people to deter or resist attacks. School protection *shura* (councils) have been established where school management committees did not exist.

The CARE study, *Knowledge on Fire*, which involved more than a thousand field interviews, found that in two provinces, Balkh and Khost, 12 per cent of people said attacks had been prevented.⁹ Some communities had negotiated with the potential attackers or gained 'permission' to continue teaching. Others had banned strangers from entering their village, hired night guards, or patrolled schools themselves when threats were issued. In some cases, they fought with attackers.

The CARE research suggests that where there is clear community involvement in the running of community affairs, the schools or their defence, schools seem less likely to be attacked and negotiated prevention seems more achievable. For instance, villages with a Community Development Council reported far fewer attacks on schools.

In the cases analyzed, measures taken by the community seem to have sent a strong message that the schools are 'for the people and not for the government', so should not be targeted as a

8 Save the Children, "In the Wake of Recent Emergencies, Save the Children Calls on the UN General Assembly to Prioritise Education for Children Affected by Conflict and Natural Disasters," March 18, 2009.

9 Glad, *Knowledge on Fire*.

symbol of government. By contrast, where schools were built without the community requesting them, or rebuilt by international forces, they were thought more likely to be attacked.

Similarly, negotiations to reopen 161 schools in southern Afghanistan that had remained closed due to the threat of attacks succeeded because they addressed the feelings shared by the community and the armed opposition, the Taliban, that schools were imposing alien (anti-Islamic) values.

Afghanistan's Minister of Education, Farooq Wardak, appointed in late 2008, first encouraged religious and village leaders to mobilize support among local people for the reopening of schools. He then invited influential local people from across the spectrum, including supporters of the opposition or anti-government elements such as the Taliban, for consultations to find out why schools have remained closed.

Some objected to using the term 'school'; others feared the curriculum or regulations were anti-Islamic. So the government allowed the word 'school' to be changed to 'madrasa'. It also permitted communities to nominate a locally trained teacher of their choice to join the school's staff and ensure that nothing anti-Islamic was taking place. Further, it challenged people to root through the curriculum or textbooks, reassuring them that anything found to be anti-Islamic would be changed. These compromises increased local people's sense of ownership of schools and the curriculum.

By March 2009, 161 schools had reopened compared to 35 in 2007-8. And in the crucial first month of term, when schools are particularly vulnerable to attack, there were no violent incidents.

Another example of successful negotiations to avoid attacking schools has taken place in Nepal. In a 'Schools as Zones of Peace' initiative, Maoist rebels and government forces and civil society groups negotiated and agreed to abide by codes of conduct for each school that prohibited attacks on, abduction from or military use of schools. It was piloted successfully during the conflict in two districts and scaled up after the ceasefire, when ethnic fighting continued.

Again, the negotiations seemed to succeed because the process was facilitated by the community, there was buy-in from the armed opposition, and there was local leadership of schools. The additional advantage in Nepal was the Maoists' public commitment to universal education. More research is needed into similar initiatives in order to establish what conditions can encourage negotiation of respect for schools as sanctuaries or zones of peace.

Further research is also needed into whether the inclusion of education in peace agreements in countries where education has been a target for attack is a useful way to encourage measures that will reduce the risk of future attack and remove education as a source of tension.

Education can become a force for peace, instead of a target for attack, if it is directed towards the promotion of tolerance, understanding and respect for local culture, language and identity, and is run in a fair and inclusive way. Giving parents a say in the running of schools is one way to achieve this. Ensuring transparency in the running of institutions and, in higher education, upholding academic freedom are critical factors.

■ Monitoring and reporting

As Nicholas Burnett, UNESCO's then Assistant Director-General for Education, argued in the UN General Assembly debate on Education in Emergencies (18 March 2009), monitoring is essential because without it the resulting silence on the issue can serve to legitimate attacks. 'Without monitoring, we cannot denounce, and without denunciation, we cannot act to protect education and to end impunity,' he said.¹⁰ In addition to assisting reporting, monitoring can act as a deterrent or be a useful tool for negotiations.¹¹ Such documentation is also vital for improving rapid response, recovery measures and efforts to prevent future attacks.

Currently, there is no global monitoring system for attacks on education. However, there is a growing international monitoring and reporting mechanism (MRM), established by Security Council Resolution 1612, for grave violations against children in situations of armed conflict. Among the six violations monitored under this resolution are attacks on schools. Until August 2009, the MRM only operated in countries where conflict parties are listed for widespread recruitment and use of child soldiers, although once listed the other five violations can be monitored. Even then, not all countries where significant levels of recruitment or use of child soldiers are reported have been listed: India is a prime example. As a result, the mechanism to monitor attacks on education via the MRM currently exists only in 14 countries, compared with 32 countries listed in this study as having experienced attacks on education between January 2007 and July 2009.

In September 2009, the grave violations of killing and maiming children or rape and other grave sexual abuses were also made triggers for listing.¹² Given that all six violations are to be monitored wherever listing is triggered, this expansion of criteria may benefit the monitoring and reporting of attacks on schools because it may widen the number of countries being looked at.

However, the reality is that the non-trigger violations, in general, and attacks on schools, in particular, seem to get far less attention. Few recommendations have been made on how to improve protection of students and schools.

Monitoring is carried out by MRM task forces at country level, comprised of willing partner organizations and coordinated by UN country teams. The resulting reports are sent to the UN Security Council Working Group on Children and Armed Conflict which makes recommendations and instructs the Secretary-General and the parties on what action should be taken by them – in time-bound action plans.

10 Nicholas Burnett, Assistant Director-General for Education, UNESCO (panel address, UN General Assembly Interactive Thematic Dialogue on Access to Education in Emergency, Post-Crisis and Transition Situations Caused by Man-Made Conflicts or Natural Disasters, New York, March 18, 2009).

11 Ibid.

12 This followed the adoption of SC Resolution 1882 on children and armed conflict. See Office of the Special Representative of the Secretary-General for Children and Armed Conflict, "UN Security Council Breaks New Ground to Protect Children in War," August 4, 2009, <http://www.un.org/children/conflict/pr/2009-08-04218.html>.

So far the action plans have only addressed the problem of child soldier recruitment and use; and of the 141 recommendations made by the Working Group between February 2008 and February 2009, only six related to attacks on education, according to Human Rights Watch.¹³

In addition, there has been serious underreporting of attacks on schools, students, teachers and other education staff in the reports of the Secretary-General to the Security Council on children and armed conflict.

In March 2009, the annexes to the Secretary-General's Annual Report on Children and Armed Conflict listed parties to conflict from the following countries: Afghanistan, Burundi, Chad, Central African Republic, Colombia, Côte D'Ivoire, the Democratic Republic of the Congo, Myanmar, Nepal, the Philippines, Somalia, Sri Lanka, Sudan and Uganda.¹⁴ Of the other countries with the most serious problem of attacks on education during its reporting period (September 2007 to December 2008), developments in Georgia, Iraq, Palestinian Autonomous Territories and Thailand were also reported; but there was no mention of India, Iran, Pakistan or Zimbabwe.

Currently the MRM Task Forces appear to be seriously underreporting the extent of attacks on education even in situations where parties are already listed for recruitment or use of child soldiers. There is little information in the Secretary-General's reports on Thailand, for instance, minimal amounts from Colombia and the Democratic Republic of the Congo, and very little on Somalia and Sudan.

An interesting finding of *Education under Attack 2010* is that this is not due to the lack of a wide definition of attacks on education in the requests for data sent out by the Office of the Special Representative for Children and Armed Conflict. These explicitly request the task forces to provide information not just on attacks on education buildings, but also on the killing and injury of teachers, students and other education staff. The Security Council Working Group instructions to task forces also tell them to include information on occupation or forced closure of schools and assaults against school personnel.

The lack of information on attacks seems instead to be due to a lack of involvement of education-oriented UN organizations and NGOs in the task forces and the absence of a community of practice of reporting on education attacks.

One way to rectify this problem is to make attacks on schools another trigger for listing countries and issuing time-bound action plans.

Even without that, 'action plans' on reducing attacks on schools can be concluded, even signed, in all but name. If education organizations were to participate in the monitoring by joining or supporting the work of MRM country task forces and to push for action, such commitments could be made under the remit set by the Security Council.

But there is also a need for programmes to support capacity development for education-oriented organizations to enable them to monitor attacks and support protection and recovery.

13 HRW, "Taking the Next Step."

14 United Nations Security Council (UNSC), *Report of the Secretary-General on Children and Armed Conflict*, A/63/785-S/2009/158 (March 26, 2009).

Attacks on trade unionists, higher education students and academics, education officials and education aid workers are not covered by the MRM because it applies only to violations against children in armed conflict. Currently there is no systematic mechanism for gathering information on attacks against these groups, many of which take place outside conflicts. International cooperation is needed to establish effective monitoring of attacks for the full range of attacks on education.

■ Tackling impunity

The problem of lack of prosecution of those responsible for attacks on education has vexed the international community since the publication of *Education under Attack* (2007). Key questions raised in the UN General Assembly debate (18 March 2009) included: What more needs to be done to ensure that perpetrators are actually investigated, tried and made to pay a heavy price? Is the lack of progress due to gaps in the coverage of attacks on education by international law or the monitoring processes that can inform investigators? If not, what can be done to ensure that the law is used to investigate such attacks and prosecute perpetrators?

The advice of legal experts is clear on this point: most attacks on education are already adequately covered by existing laws and conventions, even if there is not as much visibility in the wording as exists for attacks on hospitals.

There is, however, a strong argument that the conversion of education buildings to military use should be banned, as it is for hospitals and churches, because perceived military use is often used to justify attacks.

For most education attacks, the challenge is not how to ensure they are covered by law but how to create awareness that they are covered and how to build up pressure for the law to be respected and applied.

Possible measures to take include:

- Referring more cases concerning perpetrators and commanders (who have known or ought to have known a war crime is taking place or failed to stop it taking place) to national prosecutors and where appropriate the Office of the Prosecutor of the International Criminal Court;
- Researching and monitoring the effectiveness of accountability mechanisms in reducing impunity for education attacks;
- Training troops, officers and military lawyers in the laws of war and the conduct of troops in relation to protecting education from attack and protecting the right to education;
- Monitoring the compliance of officers and troops with national and international law in relation to protecting education from attack and protecting the right to education;
- Monitoring the disruption of the provision of education and fulfilment of the right to education by attacks on education, including the impact on the education system; and making the

international community, military lawyers and parties to conflict more aware of the impact on victims, education systems, development and fragility;

- Entering into special agreements between parties to conflict not to attack education students, staff, personnel or buildings or their vicinity, educational processes such as exams, or other aspects of provision;
- Improving recognition of the value of education and the importance of protecting it via advocacy, the development of an internationally recognizable symbol denoting safe sanctuary status, public education on the human right to education and the laws of war, and better monitoring and reporting of attacks (as above);
- Improving victim assistance and repair and recovery of buildings and facilities in line with the duty to protect the right to education.

Better monitoring and human rights and media reporting would also pave the way for more investigations.

But the onus is also on governments to criminalize attacks on education. Radhika Coomaraswamy, UN Special Representative of the Secretary-General for Children and Armed Conflict, argues that ensuring that national legislation relating to genocide, crimes against humanity and war crimes makes these crimes punishable under national law, with the same scope and definition as the Rome Statute, would be an important step towards addressing the prevailing culture of impunity on all grave violations against children.

The Rome Statute established the International Criminal Court (ICC), which is an important vehicle for encouraging prosecutions for attacks on education for two reasons:

First, because the Rome Statute classifies as war crimes the conscription, enlistment or use in hostilities of children under 15; grave acts of sexual violence; and attacks on education buildings, and the ICC is already carrying out investigations into crimes concerning attacks on education as defined by this study in six out of the eight cases it has taken up.

Second, although the ICC tries cases only when states are unwilling or unable to do so in line with their responsibility to prevent and punish atrocities, the ICC's Office of the Prosecutor takes a pro-active stance against impunity – using its influence within national and international networks to encourage and provide support for genuine national proceedings where possible.

A useful objective for those concerned with attacks on education might therefore be to encourage ICC or national court investigations in the most high-profile situations, where attacks on schools and teachers are well publicized and the perpetrators have made public their intention to attack schools via published threats and orders (as is the case in the targeting of schools in Afghanistan and Pakistan by the Taliban, and in India by the Communist Party of India-Maoist). Evidence needs to be gathered and pressure put upon international and national courts to investigate more cases.

The starting point should be a sustained international campaign of awareness-raising and advocacy to ensure that education attacks, including attacks on higher education, are effectively monitored, investigated and addressed through the courts.

While international humanitarian and criminal law outlaw the targeting of education systems, international human rights law, concerning the right to life and the right to education, contains a “duty to protect” the public from attacks by private actors, even in times of armed conflict or insecurity. The effectiveness of these laws should not be judged merely by the number of prosecutions for failing to comply with them, but also by the extent to which positive measures are taken to uphold the rights they are designed to protect.

States should be offered assistance to enforce these laws in the name of enhancing human rights. A constructive way of doing this would be to encourage collaboration on the development of internationally endorsed guidelines for protecting education systems during war and insecurity. Ultimately, adoption of such guidelines by the UN General Assembly would send a clear statement of what states individually and collectively agree they should take.

This needs to be complemented by a concerted campaign to raise awareness of how international law covers attacks on education by providing guidance on protection and risk avoidance measures and by engaging with the media.

The aim should be to generate a groundswell of informed international opinion to ensure that political, military and judicial decision-makers are required to be conscious of the need to protect education from attack and give more weight to that consideration in the decisions they take.

■ Recommendations

Attacks on education appear to be a significant and growing problem internationally, putting the lives of students, teachers and education staff at risk and undermining attempts to fulfil the right to education for all. Protecting education from attack is vital not only for the well-being of individuals but also for increasing development, reducing fragility and promoting peace and stability. Therefore, the study makes the following recommendations:

General principle

The international community should promote respect for schools and other education institutions as sanctuaries and zones of peace in order to protect the right to education.

On improving protection in law

- The UN should encourage international courts such as the ICC to provide an adequate deterrent to attacks on schools and education institutions, students, teachers, academics and other education staff including education officials, trade unionists and aid workers by actively pursuing high-profile cases relating to attacks on education.
- The Security Council Working Group on Children and Armed Conflict should help deter attacks on schools and violations against children by requesting that the Secretary-General include in

his reports the names of individual commanders who have been implicated through credible evidence in attacks on education for possible referral to relevant sanctions committees or for investigation by the International Criminal Court. This requires investigations not only of individual cases but also of patterns within a particular chain of command that can establish accountability for such violations among senior commanders or officials.

- Action at the international level must be underpinned by action at national level. Governments should criminalize attacks on education in law.
- The international community should support the use of national, regional and international courts to bring perpetrators of attacks on education to account (for example via advocacy, sponsorship of legal scholarship on relevant subjects, and monitoring trials).
- Governments and the international community should consider ways to strengthen the protection of higher education in international humanitarian and human rights law. For instance, they should consider the merits of proposing an outright ban in international humanitarian law on the conversion of schools to military use and the creation of an internationally recognized symbol to denote that schools and education facilities should be respected as safe sanctuaries.
- International support should be given to produce comprehensive guidelines on the application of humanitarian law to the protection of education buildings, students and personnel; and on the measures that states must take to protect education systems. Endorsement should be sought for such guidelines from the highest possible authority, preferably the United Nations General Assembly.
- Measures should be taken to encourage better training for military lawyers, commanders and soldiers on the application of humanitarian and human rights law to the protection of education buildings, students and personnel and inclusion of the issue in military manuals.
- The ICRC and the Inter-Agency Network for Education in Emergencies (INEE) should encourage the inclusion of learning about the right to education and other rights affected by attacks on education within school curricula, with a view to fostering the notion of schools as zones of peace and helping students to protect themselves, for example from voluntary recruitment by armed groups.
- Governments should use every opportunity to set conditions of adherence to human rights norms, with particular reference to the rights of children, the right to education, the right to academic freedom and protection of both educational institutions and the process of education when entering trade or aid agreements with parties to a conflict.

On monitoring and reporting

- Recognizing the limited attention paid to attacks on schools by the current MRM on Children and Armed Conflict, the Security Council should demonstrate its commitment to the right to education by establishing attacks on schools as a trigger violation for UN Security Council listing of parties committing violations against children in armed conflict, requiring monitoring and reporting and time-bound action plans.
- Agencies and NGOs strongly engaged in education provision should, where possible, join MRM country-level Task Forces or support their activities in order to help improve and broaden monitoring of attacks on education and to advocate with the Security Council and within other international fora for action plans to stop such attacks.
- Donor governments should provide targeted funding to improve the capacity of education-oriented UN agencies and NGOs to support the MRM.
- The international community should support the establishment of a global system of monitoring attacks on the full range of education targets (including students from early childhood to higher education, teachers, academics, other education staff, education trade unionists, education aid workers and education facilities), comprising:
 - Annual global reporting on this problem using common data sets to enable analysis across countries and over time;
 - A publicly accessible global database; and
 - The establishment of an observatory or clearing house where data, research and reports on attacks on education can be gathered and made public.
- MRM country task forces, education ministries, human rights NGOs, trade union organizations and education organizations should improve their data and information collection on attacks on education to include information about the impact on education provision and quality, such as the closure of schools, enrolment, attendance and retention rates, and recruitment rates of teachers and other education personnel; the psychosocial impact on victims and affected communities; and the rate of investigations and prosecutions for attack in order to determine progress on ending impunity.

On protection measures

- The international community, UN agencies and NGOs should work with governments of conflict-affected states and governments assisting in preventing or limiting conflict to develop:
 - Mechanisms to protect threatened students, teachers, academics, education support staff, education trade unionists, education officials and education aid workers and to assist them in relocating internally or externally where appropriate;

- Ways to rapidly reconstruct, repair and resupply attacked educational institutions in order to guarantee a zero tolerance policy towards violations of the right to education;
- Ways to support the continuation of education in alternative places or via alternative methods and media in areas under attack;
- Ways to support the continuation of the work of academics in exile for the education system under attack.
- The international community should consider providing funding to help capacity-building for local protection of education.
- UN country teams, peacekeepers and governments, where the security situation and safety concerns allow, should encourage negotiations among education and community stakeholders and parties to armed conflict to reach agreement on respect for schools as safe sanctuaries and the re-opening of closed schools.
- In situations where there is a pattern of attacks on or abduction of schoolboys or schoolgirls on the way to or from school for recruitment as child soldiers/forced labourers or for rape, governments should find ways to provide safe transport of students to and from school.

On reducing the risk of attack

- The UN Security Council should recognize the relationship of education to the peace and security agenda, i.e. the role that education can play in both contributing to tension and in promoting peace, and should offer support for strategies to ensure education is not a contributing factor to conflict.
- Governments and parties to conflict should work to ensure education is perceived as neutral by making certain that schools, colleges and universities are transparently run in an inclusive, non-sectarian, non-discriminatory way and that curricula are non-propagandist and are sensitive to local linguistic, cultural and religious specificities.
- The international community, UN agencies and NGOs should devise strategies and campaigns to promote and fund inclusive, good-quality, learner-centred education in conflict-affected countries and establish respect for schools as sanctuaries or zones of peace.
- International forces should recognize the risks for education and other aid workers of involving military personnel in education aid and reconstruction work.
- Governments should consider the merits of involving communities in the running of schools and the defence of schools as a means of reducing risk of attack.
- Governments and the international community should take into account the potential increased risk of schools and aid workers becoming targets of attack when considering whether to provide military support for education in emergencies and in post-conflict situations.

On research

- Deeper research is needed into:
 - The extent and impact of attacks on education, particularly the medium- and long-term impact on education systems, but also the impact on development, conflict and fragility;
 - The extent of forced and voluntary recruitment of children by armed forces, armed groups and security forces from, or en route to or from, school or in ways that deprive children of their right to education, as well as possible protection measures;
 - The extent of sexual violence against students, teachers and education personnel at or en route to or from schools and other education institutions and its impact on fulfilment of children's right to education, as well as possible protection measures;
 - The extent of attacks on education aid workers, the motives for them and possible protection measures;
 - Motives for attack of each type of target and the effectiveness of response strategies that address them, including the effectiveness of increasing community sense of ownership of both the education process and defence of education targets;
 - The conditions in which negotiations to respect schools as safe sanctuaries can take place during conflicts;
 - The advantages and disadvantages of including education and the protection of education in peace agreements;
 - The levels of awareness, among political leaders, military commanders, military legal advisers and soldiers, of the application of international law to the protection of education;
 - The level of response to attacks on education effected by accounting mechanisms such as the MRM on Children and Armed Conflict, the Human Rights Council and Special Rapporteurs.

On advocacy

- Further advocacy work is required to increase awareness of how attacks on education:
 - Violate existing human rights instruments;
 - Harm education systems and attempts to achieve Education for All; and
 - Undermine development, and contribute to fragility and conflict.

- UN agencies, NGOs and teacher unions should campaign for international solidarity with targeted groups and institutions and press for human rights instruments to be invoked to punish the perpetrators of attacks on education.

On media coverage

- Education organizations should engage with the media to encourage coverage of attacks and their impact in order to improve accountability and response to attacks. This should include coverage of the long-term impact of attacks on education, education systems and efforts to achieve Education for All.
- The international and national media should recognize their critical role in bringing such attacks to global attention and commit to reporting on them.
- Training and guidance should be provided to the media on how attacks on education violate human rights instruments.

Chapter 4.

Education and protection of children and youth affected by armed conflict: An essential link

Jessica Alexander, Neil Boothby and Mike Wessells

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Today's war tactics increasingly target civilians, resulting in more innocent victims of violence and atrocities. Countries at war are often host to one or more armed conflicts involving non-state actors such as rebel groups, anti-government guerrillas, or paramilitaries. Such armed conflicts exact a high human cost: unarmed populations are victimized, basic social services deteriorate, communal divisions deepen and local economies decline.¹ The violence that children either witness or experience themselves can have lifelong impacts on their physical, mental and social well-being.

Schools are a fundamental component of building a protective environment for children under normal circumstances, but this is particularly true during conflict. They provide opportunities not only for learning and cognitive development, but are also vital elements of a child's psychosocial growth and welfare. Sadly, these opportunities are in jeopardy for many children living in armed conflict. UNICEF research shows that nearly 60 million children in 33 countries affected by conflict are not attending primary school. This represents 46 per cent of the children of primary

1 United Nations Children's Fund (UNICEF), *Machel Study 10-Year Strategic Review: Children and Conflict in a Changing World* (UNICEF, 2009), <http://www.unhcr.org/refworld/docid/4a389ca92.html>.

school age living in these countries and two-thirds of the total number of children out of school globally.²

This paper examines the relationship between education and protection and argues that education and protection are richly interconnected and that it must be a high priority to protect educational environments as a means of promoting children's well-being and establishing wider protection. The paper begins with a discussion of child and youth protection in contexts of armed conflict. The second section examines how during conflict, access to education becomes an even more important mechanism for protecting children and shows how failing to protect education during conflict can expose children to further protection threats. Taking a critical perspective, it also analyzes how education is often not protective since schools themselves may be sources of exploitation, abuse, and violence. Next, the paper examines how attacks on schools damage the protective environment and create profound psychosocial problems for learners, educators and communities. The paper concludes with a consideration of how to strengthen the evidence base around the issues of attacks on schools, wider protection and education.

■ Child and youth protection in situations of armed conflict

Child and youth protection: An overview

Most protection practitioners and analysts who focus on the protection of young people work under the rubric of 'child protection,' which refers to efforts that are taken to prevent, mitigate and respond to violence, exploitation and abuse that is directed at children. Although children are defined under international law as people under 18 years of age, most practitioners focus also on young people between 18 and 24 years because they are often in a transitional period and may experience greater risks than younger and older people. To capture this wider age range and include a larger array of the people who are likely to pursue or to want education, this paper uses the composite term 'child and youth protection.' This term does not assume that children at all ages face the same protection issues. In fact, younger children and youth may have divergent protection issues and be in need of different interventions.

Definitions of child protection have evolved as the area of intervention has developed, but one recent and comprehensive definition has emerged from the Care and Protection of Children in Crisis Affected Countries Project (CPC Project). The CPC is an initiative undertaken through Columbia University's Program on Forced Migration and Health. The goal of the initiative is to improve the care and protection of children affected by armed conflict and natural disasters. It is piloting new assessment methodologies to identify critical child-care and protection needs; strengthening the evidence base for effective child-care and protection programmes; and recommending common measures to use in the design, evaluation and implementation of child-

2 Ibid.

focused programmes. In 2006, the CPC held a multi-agency review workshop where senior practitioners and policy-makers agreed upon the following components of child protection:

- Refers to actions which secure the rights and associated well-being of children;
- Guided by analysis of their risks and vulnerabilities;
- Supports the capacities and responsibilities of children, their families, their communities, the providers of services and the state;
- Involves all sectors of humanitarian response;
- Includes, but is not limited to, those addressing extreme violations of human rights.³

These components apply to youth protection as well as child protection.

The family is the first line of defence in protecting children and youth. Parents are particularly important in the protection of younger children. The family, including the extended family, is the central unit within which children develop and where their basic protections and needs are provided. Youth continue their development in families, starting their own family and retaining strong connections with extended family. Outside the family, schools and houses of religion are important social institutions and provide spheres of interaction between children and youth, their peers, and influential adults, such as teachers.⁴ These fundamental social structures contribute to what is known as a protective environment – a safety net of interconnected elements designed to safeguard children and youth from violence, exploitation and abuse, and crucial to their survival, health and well-being.

Child protection is enshrined in international law. The Convention on the Rights of the Child (CRC) (1989) outlines the fundamental rights of children including the right to be protected from economic exploitation and harmful work, from all forms of sexual exploitation and abuse, and from physical or mental violence. The CRC stipulates that children will not be separated from their families against their will. This milestone document also highlights the importance of education for children and emphasizes gender equity, inclusion of the disabled, and promotion of linguistic and cultural rights. There are numerous other international instruments which address child protection. Box 1 below lists some of the main instruments, but there are many others, particularly the African Charter and a host of regional instruments.

3 Mailman School of Public Health, *Care and Protection of Children in Crisis Affected Countries: A Good Practice Policy Change Initiative*, Program on Forced Migration and Health (New York: Columbia University, 2008), <http://www.forcedmigration.columbia.edu/research/documents/CPCSynthesisReport2008.pdf>.

4 Neil Boothby, "Political Violence and Development: An Ecological Approach to Children in War Zones," *Child and Adolescent Psychiatric Clinics of North America* 17, no. 3 (2008), 297-514.

Box 1. Legal instruments enshrining child protection

- Convention (1951) and Protocol (1967) Relating to the Status of Refugees
- Convention on the Rights of the Child, 1989
 - Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000
 - Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000
- International Covenant on Civil and Political Rights, 1966
- International Covenant on Economic, Social and Cultural Rights, 1966
- Convention on the Elimination of All Forms of Discrimination against Women, 1979
- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
- International Convention for the Protection of All Persons from Enforced Disappearance, 2005
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000
- Rome Statute of the International Criminal Court, 1998
- Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949
Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977
- Hague Convention on the Civil Aspects of International Child Abduction, 1980
- Hague Convention on the Protection of Children and Co-operation in respect of Inter- country Adoption, 1993
- ILO Convention No. 29 on Forced Labour, 1930
- ILO Convention No. 138 Concerning Minimum Age for Admission to Employment, 1973
- ILO Convention No. 138 on Minimum Age, 1973
- ILO Convention No. 182 on the Worst Forms of Child Labour, 1999

Security Council Resolutions 1539 (2004), 1612 (2005) and 1882 (2009) are other components of the United Nations' efforts to protect children from armed conflict. These have led to the development of a system-wide Monitoring and Reporting Mechanism on the six grave violations against children in armed conflict which are: killing or maiming, recruitment or use of children by armed forces and armed groups, attacks against schools or hospitals, rape and other forms of sexual violence, abduction, and denial of humanitarian access.

Yet despite this legal framework, children around the world are still subject to violence and abuse. Their vulnerability increases exponentially during times of conflict. While these measures are an important base for protecting children, programmes are needed to help strengthen community-based protection mechanisms such as families, schools and other positive institutions.

Protection risks during conflict

Crisis situations weaken or damage the support systems that normally provide protection and psychosocial support to children and youth. During times of conflict children may be exposed to terrible atrocities which can seriously undermine the foundations of their lives.⁵ Routines that provide a sense of security and normalcy cease, while threats of violence and questions about how to meet basic needs permeate day-to-day existence. For youth, many of whom lack education and are unemployed and struggling to find an appropriate place in society, the ravages of armed conflict often create a crisis of hope.

Pre-existing stresses such as chronic poverty are also exacerbated during conflict by exposure to additional risks such as multiple losses, destruction of home and assets, separation from families, orphaning, sexually transmitted infections, increased risk of disease, exploitation, unwanted pregnancy, and disability. These accumulating stresses may force individuals and families into deeper poverty, leading children and youth to drop out of school, engage in dangerous labour, live and work on the streets where they are subject to multiple threats, and/or join armed groups in hopes of obtaining basic necessities and money. The breakdown of social cohesion during times of conflict threatens all children and youth by weakening social support at the moment when they need it most. Because of this breakdown in family structures and social systems, children and youth are more susceptible to abduction or recruitment into armed forces and groups. Inside these forces and groups, children may assume a variety of roles such as porters, spies, fighters and sexual slaves. Child traffickers may take advantage of social and community disruptions to abduct children for their own purposes.⁶ As a result, children and youth in war zones may suffer physical damage, long-term psychosocial harm, or even death.

Even if children's physical survival needs are being met through short-term relief efforts, displacement, losses and insecurity interrupt optimal child development. Crises take away important opportunities that would normally serve as building blocks toward healthy adulthood. Failure to protect children and youth during these times has negative effects that continue into adult life. Further, the impact of violence and conflict on a generation of children and youth has been shown to undermine national development and post-conflict recovery.

■ Protection and education: An essential link

Education is of particular value in zones of armed conflict.⁷ It is widely recognized that education, and school in particular, provides a crucial element in the protection of children. During the chaos of conflict, schools can be a haven of security and stability that are vital to children's psychosocial,

5 Graça Machel, *The Machel Review 1996-2000: A Critical Analysis of Progress Made and Obstacles Encountered in Increasing Protection for War-Affected Children* (UN, 2000).

6 Save the Children, "Protecting Children in Emergencies: Escalating Threats to Children Must Be Addressed," Policy Brief 1, no. 1 (Spring 2005).

7 Marc Sommers, "Children, Education and War: Reaching Education For All (EFA) Objectives in Countries Affected by Conflict," Conflict Prevention and Reconstruction Unit Working Papers, Paper no. 1 (June 2002).

cognitive and physical well-being. Education offers the reassuring safety of daily routine, the confidence that comes with acquiring knowledge, and physical and social opportunities.⁸

Quality education provides children with the time, space and guidance they need to realize their personal potential. The basic outcomes of education are important for adulthood – it offers literacy, employment skills, language capacity, and cognitive competencies in problem solving that can enable effective coping behaviour.

These links have been recognized in UN Security Council Resolutions 1261, 1314 and 1379 on Children and Armed Conflict (CAC) which mandate international action to protect the security and rights of children in situations of armed conflict. Education is included in each of these resolutions. Resolution 1379 (2001) requests UN agencies to devote resources to counselling, education and vocational opportunities for children affected by armed conflict as part of their rehabilitation and reintegration programmes. Resolution 1314 (2000) mentions the importance of ensuring that children continue to have access to basic services, including education, during the conflict and post-conflict periods. Resolution 1261 (1999) stipulates 'the provision and rehabilitation of medical and educational services to respond to the needs of children, the rehabilitation of children who have been maimed or psychologically traumatized and child-focused mine-clearance and mine-awareness programmes'.

In addition, the protective role of schools is addressed in several state agreements. The 2003 Inter-Congolese agreement states that the participants 'are aware that the Congolese youth must be protected and supervised through education, sport and recreation.' The 1999 Peace Plan for Colombia views education as 'protective' in that it prevents young people from being recruited by armed groups. The 1991 Cambodia agreement mentions education as important to landmine and explosives awareness.⁹

Increasingly, education is being viewed as the 'fourth pillar', or a 'central pillar', of humanitarian response, alongside the pillars of nourishment, shelter and health services.¹⁰ The key role of education as an institutional response and means of protecting children facing emergency has gradually become globally accepted and included in the UN cluster approach, particularly in the establishment of the global Education Cluster.

It is important to note too that children and youth are not passive objects of protection – which is the way they are often presented in the literature. Many war-affected children exhibit remarkable resilience and are in a position to be agents of their own protection. Similarly, youth have political consciousness, an increasing sense of identity, and agency. One of the key findings from the child and youth development literature is that the development of intellectual competencies promotes protection. In essence, children and youth who are good problem-solvers are better able to respond in a constructive manner to the protection threats they face. Education is one of

8 Joanna Wedge, *Where Peace Begins: Education's Role in Conflict Prevention and Peace Building* (London: Save the Children, 2008), [http://www.reliefweb.int/rw/lib.nsf/db900sid/SNAA-7QA8GP/\\$file/200803_Where_Peace_Begins.pdf?openelement](http://www.reliefweb.int/rw/lib.nsf/db900sid/SNAA-7QA8GP/$file/200803_Where_Peace_Begins.pdf?openelement).

9 Ibid.

10 Margaret Sinclair, "Education in Emergencies," In *Learning for a Future: Refugee Education in Developing Countries*, edited by Jeff Crisp, Christopher Talbot, and Daiana Cipollone (Geneva: UNHCR, 2001).

the primary means of developing appropriate intellectual competencies. If done well, education and protection are mutually reinforcing.¹¹

Education during conflict: Promoting protection

Depending on the circumstances, education during armed conflict can be a source of protection or of increased risk, as occurs when schools are attacked. Before considering the implications of attacks on schools for protection, however, it is useful to consider the benefits of education when it is provided in a protective environment and is free of attacks.

1) Psychological protection

Research on children affected by armed conflict has demonstrated that children may suffer a range of psychosocial responses. The word 'psychosocial' refers to the relationship between psychological and social effects, each influencing the other. 'Psychological effects' refer to emotion, behaviour, thoughts, memory, learning ability, perceptions and understanding. 'Social effects' imply altered relationships due to death, separation, estrangement and other losses, family and community breakdown, damage to social values and customary practices and the destruction of social facilities and services.¹²

Psychosocial reactions may manifest themselves in a number of ways. Children may replicate the violence they have seen; they may have nightmares; or avoid situations, persons or thoughts that remind them of the violence. Children may be agitated and destructive toward themselves or others, or they may be passive, withdrawn or depressed.¹³ Although available evidence suggests a clear relationship between exposure to violence and the onset of traumatic symptoms, children's psychosocial responses to armed conflict will vary, and their resiliency in situations of crisis is dependent upon a variety of factors including their age, gender, personality type, personal and family history, cultural background and on the nature, severity, and duration of their exposure to violence.

The support of family and community after traumatic events will also play a significant role in their psychosocial outcomes. If children are given adequate opportunities for healthy development, research has shown that they have the capacity to bounce back in adverse settings.¹⁴ Establishing a sense of normalcy through structured activities such as school, play, and sports is crucial to the healing process and well-being of children affected by conflict. A child's sense of control over her or his environment, including opportunities for involvement in tasks such as reading, drawing or helping with chores in school or at home, promotes resiliency and coping.

11 Friedrich Lösel and Thomas Bliesener, "Resilience in Adolescence," In *Health Hazards in Adolescence*, edited by Klaus Hurrelmann and Friedrich Lösel, 101-36 (New York: Walter de Gruyter, 1990).

12 Machel, "The Machel Review 1996-2000."

13 International Rescue Committee (IRC), *Creating Healing Classrooms: Guide for Teachers and Teacher Educators* (IRC, 2006).

14 Ibid.

Ultimately, people recovering from conflict need a supportive environment, although what that consists of varies by context. The *IASC Guidelines on Mental Health and Psychosocial Support in Emergency Settings* recommend organizing mental health and psychosocial support in a layered system of complementary supports that meets the needs of different groups. These layers consist of basic services and security, community and family support, focused, non-specialized supports and more specialized services.¹⁵ As noted in the IASC Guidelines, ‘all communities contain effective, naturally occurring psychosocial supports and sources of coping and resilience. Nearly all groups of people affected by an emergency include helpers to whom people turn for psychosocial support in times of need. In families and communities, steps should be taken at the earliest opportunity to activate and strengthen local supports and to encourage a spirit of community self-help.’¹⁶

The regular routines and opportunities for self-expression offered through schools create familiar and comfortable daily schedules and provide children with the chance to engage with peers. Simply holding the status of ‘student’ can be valuable, protecting a child from forced recruitment or from engaging in other potentially damaging behaviours. It may also bolster a sense of identity, confidence and inclusion that can shield children from risks.¹⁷

The additional challenge of scale – how to reach thousands of children in need, often in the midst of ongoing conflict, and usually with insufficient human and financial resources – also makes schools effective outlets to provide psychosocial support services to many war-affected and displaced children.¹⁸ These school-based psychosocial initiatives require proper training, monitoring and supervision and must have a system of referral for children suffering more acute conditions.

2) Physical protection

Schools are a cost-effective and efficient means of providing children with physical protection as well. Safe learning environments can shield children and adolescents from ongoing insecurity, exposure to landmines, recruitment into militias and gangs, and sexual violence.¹⁹ Schools also offer an alternative to destructive behaviour, giving access to meals or providing regular adult supervision.²⁰ Schools can further be used as places where other essential services such as primary health care or training in security measures are offered.

15 Inter-Agency Standing Committee (IASC), *IASC Guidelines on Mental Health and Psychosocial Support in Emergency Settings* (Geneva: IASC, 2007).

16 Ibid.

17 Susan Nicolai and Carl Triplehorn, *The Role of Education in Protecting Children in Conflict*, HPN Paper #42 (London: Overseas Development Institute, 2003).

18 Neil Boothby and Charles Melvin, “Towards Best Practice in School-Based Psychosocial Programming: A Survey of Current Approaches,” In *Refugee Mental Health*, edited by Richard Mollica (Nashville: Vanderbilt University Press, 2008).

19 Academy for Educational Development (AED) and Women’s Commission for Refugee Women and Children, *The Education Imperative: Supporting Education in Emergencies* (AED/Women’s Commission for Refugee Women and Children, 2005).

20 Nicolai and Triplehorn, *The Role of Education*.

3) Life-saving skills and messages

Education provides skills and knowledge to survive and can be an important instrument to reduce vulnerability. School settings can deliver vital messages – concerning health, sanitation, nutrition, HIV/AIDS, and landmine dangers – to children, parents, and communities.²¹ Basic skills, such as literacy and numeracy can be essential for children to protect themselves during conflict. Reading skills enable children to gather information about their environments – whether from signs, newspapers, health brochures or medicine bottles. Children may need basic mathematical skills to manage their household's flow of money. Critical thinking, conflict resolution and problem solving skills can enable children to manage or cope with difficult protection issues and to make safe decisions.

4) Identifying at-risk children

Monitoring educational activities can provide a gauge of children's protection needs in the larger community. Coming together for educational activities may make it easier to identify those needing special help. Follow-up work to find children who do not attend school will further aid in detecting at-risk children, and education staff from the community can help identify children facing threats due to separation from their families, susceptibility to military recruitment or experience of sexual exploitation.²²

Educators can also identify children with severe physical or mental health problems that need specialist attention, as well as children subject to abuse such as harmful wage labour and exploitation of foster children for domestic labour. For children who need more specialized interventions, quality teacher training initiatives help teachers to identify and refer children to appropriate health professionals. Community-based child protection mechanisms such as child protection committees can provide strong community engagement and backing to protection efforts in school.

5) Community benefits

Re-establishment of the routine of schooling has a beneficial effect on the mental state of adults as well as of children. It also has practical benefits, in that mothers are able to concentrate on their tasks without having to worry about their children. Parents or other relatives caring for children may initially be depressed and unable to cope with children's emotional needs themselves. Education can partially substitute for poor child–adult interactions in the family, a role which is less important for most children in normal times.²³

For families, schooling provides weekly schedules and marks weekends, holidays and other breaks. A child's attendance at school provides parents with the time and space to rebuild their livelihoods, re-establish sources of income, or simply come to terms with their experiences. It also may decrease isolation and provide communal space for interaction and community building. In the longer term, education helps to build hope for children, families and communities since

21 AED and Women's Commission for Refugee Women and Children, *The Education Imperative*.

22 Nicolai and Triplehorn, *The Role of Education*.

23 Sinclair, "Education in Emergencies."

education helps prepare people to become responsible citizens who are gainfully employed and in a good position to support their families and communities.

Additionally, education programmes in emergencies protect the national educational investments by keeping teachers and educational administrators from leaving the education profession during times of crisis and by sustaining parent-teacher associations, teachers' unions, and other educational bodies.²⁴

6) Healing process

Education provides opportunities for students, families and communities to begin the process of coming to terms with difficult life experiences, to acquire useful livelihood skills, and to learn skills and values for a more peaceful future.²⁵ Trained teachers can model caring adult behaviour and help re-establish children's trust, creating a climate in the classroom that helps children heal. Teachers are in a position to help children recover through their everyday activities – teaching, sharing, and listening to and with children. To aid children's recovery and well-being, however, it is essential that teachers themselves receive appropriate psychosocial supports. The classroom can become a safe place in which curiosity and participation and empowerment can be promoted.²⁶ Psychosocial support may be provided by guidance counsellors, if any, and others in the school environment.

During protracted conflicts, children may lose the sense of what it means to live in a non-confrontational way; some will never have seen how a stable family or community functions. They may have learned to view violence as a normal means of responding to conflict. Education can respond to this need through building children's skills in listening, problem-solving and conflict resolution.²⁷ For societies affected by conflict, education should be seen as integral to building long-term peace and well-being.²⁸ Children and young people represent human resources in peace-building; education is a means to build such capacities and provides essential building blocks for social reconstruction and future economic stability.

7) Sense of hope

Education restores an element of hope in the prospect of a better future. It is forward-looking and constructive, as contrasted to talk of revenge, joining militias or participating in other harmful activities such as alcohol and drug abuse or prostitution.²⁹ Goals such as completing homework, preparing for exams or gaining a school certificate, regular assignments and tests provide children with achievable short-term and long-term objectives. Regular attendance at school or college demonstrates confidence in the future.³⁰

24 Carl Triplehorn, *Education Care and Protection of Children in Emergencies: A Field Guide* (Save the Children, 2001), <http://www.savethechildren.org/crisis/EDUCATION.pdf>.

25 Sinclair, "Education in Emergencies."

26 IRC, *Creating Healing Classrooms*.

27 Nicolai and Triplehorn, *The Role of Education*.

28 Enabling Education Network (EENET), "Enabling Education in Conflict-Affected Countries: Rebuilding for Inclusiveness and Relevance," *EENET Asia Newsletter*, Sixth Issue (2008).

29 Sinclair, "Education in Emergencies."

30 Jo Boyden and Paul Ryder, *Implementing the Right to Education in Areas of Armed Conflict* (Oxford: University of Oxford, 1996).

■ Making education protective on the inside

Schools must be safe in order to protect children. First, curricula, textbooks and teachers must not be intentionally manipulated to fuel social tensions. 'Education systems that demonize the 'enemy' or support violent school environments often serve as triggers for social violence.'³¹ For example, in Rwanda, the terminology used in schools before the genocide was critical in fuelling the ethnic divide.³² Further, education should not be manipulated to exclude certain ethnic groups as was the case when the Serbian authorities reduced the enrolment places in secondary schools reserved for Albanians in Kosovo.³³

Schools can also be sources of politicization. In the DRC, schools have been a common site of child recruitment by rebels. Propaganda teams from the Liberation Tigers of Tamil Eelam (LTTE) in Sri Lanka positioned recruitment booths near schools and used street theatre to induce children into joining the military.³⁴ In some cases, such as Nepal and Gaza, teachers have used classrooms to encourage children and youth to become involved in armed conflict and/or ethnic violence.³⁵

Further, the stress that conflict places on communities can make school environments more threatening. Corporal punishment has been shown to be more common during times of conflict as teachers take out their frustrations and stresses on their pupils. This was shown to be the case in conflict areas of West Timor, Buton and Ambon, where the use of physical punishment, ridicule and humiliation to discipline students was correlated with the stress teachers experienced due to the conflict.³⁶ In areas where there are high student to teacher ratios, the effects of stress that children experience and take out on other children may go unnoticed. Bullying, discrimination, and sexual harassment and related problems can make schools less than protective contexts. In addition, sexual exploitation by teachers (who may trade grades for sex) and other educators is rampant in many school systems. Collectively, these problems add to the invisible wounds of armed conflict and undermine psychosocial support and healing.

In some instances, schools and teachers are inflexible, with the result that harm is caused to children. For example, increasingly difficult economic circumstances may make it necessary for children to work in order to support their families. If educators do not adjust school hours to reflect this necessity, significant numbers of children may drop out of school and face the increased risks discussed above. Similarly, teachers may cling to old habits of didactic teaching and use of harsh punishment to manage classrooms at a moment when students would benefit from the use of participatory and child friendly methods.

31 Wedge, *Where Peace Begins*.

32 Ibid.

33 Kenneth Bush, and Diana Saltarelli, eds., *The Two Faces of Education in Ethnic Conflict* (Florence: UNICEF Innocenti Research Center, 2000).

34 Nicolai and Triplehorn, *The Role of Education*.

35 Neil Boothby, Alastair Ager, Les Roberts, and Mike Wessells, *Care and Protection of Children in Crisis Affected Countries: A Good Practice Policy Change Initiative*, Program on Forced Migration and Health (New York: Columbia University, 2008).

36 Ibid.

These concerns illustrate that it is vital to build capacity for educators in war zones to adopt a self-critical attitude and tailor education to meet the needs of a rapidly changing context. It is inappropriate to assume that education is automatically protective.

■ The protection implications of attacks on schools

A disturbing feature of contemporary armed conflicts is that combatants target civilians directly. Nowhere is this problem more visible than in regard to attacks on schools, which are calculated to terrorize communities, trample hope, and rob families and communities of their most precious asset – children, or their teachers. Although attacks on schools have highly visible effects in terms of damaged infrastructure and lost lives, the protection implications extend much further and warrant analysis here.

The education system

The targeting of educational institutions has profound effects. Learners who have witnessed the deaths of teachers or fellow students experience profound fear of imminent death themselves and may be overwhelmed by grief over their losses. Learners may be terrified that teachers are unable to protect them, and seeing their own teachers maimed can have a debilitating impact. Some who have survived or witnessed an attack may over time develop post-traumatic stress disorder (PTSD) or its frequent companion, depression. Although the clinical problems associated with attacks often attract the most attention, most learners do not develop clinical symptoms yet are affected strongly in other ways.³⁷

To begin with, attacks on schools shatter the sense of safety, normalcy and support for learners that schools provide. Exposure to attacks can blunt hopes of finding a safe space anywhere. The fact that children and parents expect schools to be safe only increases the shock and traumatic impact of the attacks. The attacks also create potent anxiety that there will be additional attacks and that no place is safe. This anxiety, which is antithetical to constructive coping and learning, is difficult to quiet since the attacks create the perception among children that their entire world is more dangerous than they realised and that no one – not even teachers and public officials – can protect them. Over time, this perception of the world as a dangerous place can grow and lead children and youth to be dominated by fear and to restrict their activities in ways that go beyond the objective threats in their environment.

These reactions are by no means restricted to learners whose schools have actually been attacked. An attack on one school in a region triggers the perception that any school in the area is likely to be attacked, and this perception – even if it is untrue or exaggerated – in turn unleashes a flood of anxiety and distress. Many learners will feel reluctant to go to school. Those who continue going to school may experience strong fears of attack on the way and diminished learning

37 IASC, *IASC Guidelines on Mental Health and Psychosocial Support*.

capacity once at school due to high levels of fear and anxiety. If repeated attacks occur, their fear and anxiety may increase even further, thereby creating insurmountable barriers to learning.

Yet it is not only learners who are affected – everyone who works in schools may experience similar reactions. Teachers, too, may be overcome by grief over the death or maiming of their students or of other teachers, and they are subject to the same crippling fears and anxieties that affect learners. Because teachers may be strongly affected, it is essential in war zones to provide psychosocial support for teachers. Without this support, teachers may not be in a good position to promote learning and to interact with learners in ways that promote their psychosocial well-being. Thus affected teachers may be unable to fulfil their roles as educators. Worse yet, visibly anxious or fearful teachers may send cues that heighten learners' anxieties and fears even further, thereby triggering even more anxiety on the part of teachers. In such a climate of fear and anxiety, education can become devoid of the positive developmental, psychosocial, and protective value that it is intended to have.

The costs of attacks

If the physical costs of attacks on schools are large, the human costs are enormous. As discussed above, the psychosocial burdens on everyone in the school environment, not to mention distraught parents and communities, undermine education, and the presence of teachers and learners in a place they perceive as dangerous causes extensive fear, distress, anxiety, and suffering.

However, additional problems arise as fear leads children to avoid school. Denial or even delay of access to education can result in severe developmental problems. The consequences of distressing events, such as lack of access to education, may have a more damaging and lasting impact on a child's well-being and development than the events themselves.³⁸ If displaced children and youth are refused their right to education, they may lose the opportunity forever. Even if access is restricted for a relatively short period of time, these children run the risk of never returning to school or completing their education. Once a child falls out of the education system, he or she may not feel fully empowered to participate in community programmes or civil society. This will ultimately prove costly for everyone, since developing the thinking skills of children and youth constitutes a contribution to post-war reconstruction.³⁹

For older children and adolescents, the sudden ending of their studies represents an additional trauma in itself, perpetuating hopelessness. In fact, young people in war zones frequently identify the loss of education as their single greatest concern. Young people may end up idle, with little to do. They may be consequently at risk of forced military recruitment, or may voluntarily join the military or armed group as a means of earning money or obtaining prestige or power. They may be driven to become a destabilizing and destructive force, continuing cycles of violence and vulnerability and finding few options for escaping poverty.⁴⁰ In other cases, adolescents may be forced to take on adult obligations before they are ready, such as becoming the head of the

38 UNICEF, *Machel Study 10-Year Strategic Review*.

39 AED and the Women's Commission for Refugee Women and Children, *The Education Imperative*.

40 Women's Commission for Refugee Women and Children, *Untapped Potential: Adolescents Affected by Armed Conflict: A Review of Programs and Policies* (Women's Commission for Refugee Women and Children, 2000).

household. In all cases, without access to meaningful education, these adolescents are at risk of entering adulthood illiterate or poorly trained. Their potential for personal growth and economic sustenance is thereby significantly diminished.⁴¹

Lack of education is one of the greatest threats to any hope for a peaceful recovery of a war-torn society. In countries where families invest in the education of their children as protection against future uncertainty, non-completion of school causes the loss of a huge cumulative investment. Achievements in improving access to education for marginalized groups are particularly jeopardized, as these groups – minorities, girls, disabled children or certain age groups – may be cut off from schooling.⁴²

Finally, in many areas, attending school is an expected role for children, and they often find considerable meaning in fulfilling that role. They perceive it as their means of having hope and positive life options for the future. Attacks on schools disrupt this role and set of meaning structures and often lead to hopelessness or alternately desire for revenge on the attackers. Attacks on schools harm children's development not only by depriving them of safety and learning opportunities but also by shattering meaning and smashing hope.

Protection implications

Attacks on schools and colleges weaken access to education, undermine the quality of education, and exact a heavy toll of suffering on learners, teachers, other educational staff, and of course, parents and communities. Such attacks raise a host of disturbing questions about protection: Is it appropriate to place large numbers of children in a single space that may become a target and where attacks and abductions can have mass effects? Do not only governments but also civil societies and the international community have a responsibility to protect against attacks on schools? How can they fulfil that responsibility? If schools are subject to attack with impunity, what are the implications for other public sites that house vulnerable people? Are attacks on education institutions like any other attacks or do they cause special harm to wider protection systems? Have adequate steps been taken internationally and with the warring parties to advocate for strong prohibitions against attacks on education?

Too often, these and related questions are either not asked or are considered in a cursory manner that is wholly disproportionate to the magnitude of the problem. What is needed is nothing less than a concerted international campaign to criminalize attacks on schools and other education institutions, hold perpetrators accountable for attacks, and to organize education in ways that prevent or minimize the risks of attacks on learning environments.

41 Ibid.

42 Triplehorn, *Education Care and Protection of Children in Emergencies*.

Moving forward: Promoting evidence-based programming and policy action

The Care and Protection of Children Learning Network (CPC Network) has recently identified the lack of accurate and timely data on children affected by armed conflict as a major barrier to effective protection responses.⁴³ The Network found that the conceptual approaches adopted to justify protection interventions – from addressing individual psychological concerns to strengthening community care and support networks – are loosely connected and poorly – a coordinated in implementation and evaluation. Furthermore, little evidence actually exists to support the efficacy of these approaches and how they might be employed to better reinforce one another.⁴⁴

The development of a stronger evidence base for good practice is a key CPC Learning Network objective. Different approaches to protection programming – including school-based initiatives – are being examined for efficacy based on agreed-upon outcomes, indicators and impact measures. Common programme principles – scalability, gender equality, and community empowerment – also are employed to examine efficacy from a humanitarian response perspective.

Moving this field of practice forward will require that programme outcome and impact evaluations maintain higher standards of evidence than in the past, and are better able to take into account counterfactuals – the impact had the project not been implemented. Indeed, determining counterfactuals needs to be at the core of future evaluation design. There are different ways to do this – ranging from experimental designs with treatment and control groups (using randomization) to non-and-quasi-experimental design. In addition, other methodological issues such as selection bias and integration of quantitative and qualitative methods for evaluating programme impact need to be addressed in a more comprehensive fashion.

Consistent and rigorous programme impact evaluations will be at the heart of efforts to professionalize this field of practice. Children affected by conflict and displacement would benefit from further insights into the following concerns:

- How might the application of epidemiological assessment approaches result in more timely and accurate identification of child protection concerns?
- What are the essential elements of effective programmes of child protection in schools?
- What are the most efficacious ways to address the psychological and social needs of child soldiers and other groups of exploited girls and boys, and what contribution can be made by education?

43 The CPC Network is committed to professionalizing the field of child protection in emergencies. It is comprised of over 75 operational organizations, universities and donor agencies around the world. Columbia University serves as the Network's Secretariat, and provides technical support as needed.

44 Boothby et al., *Care and Protection of Children in Crisis-Affected Countries*.

- Which social support and education mechanisms are instrumental in strengthening resilience and well-being?
- Which child protection approaches are able to go to scale, especially in the education sector?

Initiatives such as this can help to guide policy and programming decisions around best practices. They can demonstrate the importance of ensuring that schools are places that protect children from additional harm and where their cognitive, psychosocial and physical development is fostered.

Chapter 5.

Political violence against education sector aid workers in conflict zones: A preliminary investigation into the possible link between attacks and the increased merging of security and development policy

Mario Novelli

About the author: Mario Novelli is a Senior Lecturer in International Development Studies at the University of Amsterdam. His broad field of interest explores the relationship between Globalization and International Development with a particular focus on education. He is particularly interested in the relationship between education and violent conflict and recently carried out research on political violence against educators in Colombia.

■ Introduction

On 13 August 2008, International Rescue Committee (IRC) education sector aid workers Shirley Case, Nicole Dial and Jackie Kirk and their driver Mohammad Aimal were murdered by Taliban militants in Afghanistan. They were attacked whilst travelling on the road to Kabul in a car clearly marked 'IRC'. They had spent the previous two days meeting with local community members consulting on a project that aided children with disabilities in the province of Paktia, in eastern Afghanistan. Jackie was an experienced gender, education and conflict specialist, working as an education adviser to the IRC. She was also a leading member of the Inter-Agency Network for Education in Emergencies (INEE). Shirley Case had worked with the IRC in Afghanistan since the previous June, overseeing a project that gives children with disabilities equal access to education. Before that she had coordinated and supported programmes for CARE in Banda Aceh and Chad. Nicole Dial had worked for several years supporting programmes that help vulnerable children: child soldiers, landmine survivors and marginalized children. For the IRC, she provided leadership in the organization's education and child protection programmes. Mohammad Aimal was an IRC driver who had worked for the organization for the previous six years.

This brutal attack, which took just seconds to carry out, had a wide-ranging effect well beyond the pain felt by the families and friends that were close to the victims. The education community had lost three talented education sector aid workers¹ with a wealth of accumulated knowledge and experience. As it sought to take stock of these tragic events, the IRC suspended all its operations in Afghanistan, after having worked in the country continuously for twenty years. The murders would also lead the IRC and other organizations operating in the country to rethink their security measures, the way that they deliver services and the sustainability and viability of their projects. The attack also threatened the longevity and nature of the many projects in which the IRC was involved in conflict zones elsewhere in the world as they re-examined their security strategies. In a world where half of the estimated 72 million out of school children live in conflict-affected countries,² it also placed further pressure on the possibilities for achieving the broader Education for All international development targets.

Sadly, they were neither the first nor the last education workers to be attacked whilst carrying out their education work in some of the world's worst conflict zones. Here is a list of a few such attacks this decade:³

On 6 December 2002 in the Occupied Palestinian Territories: two Palestinian UN education workers were killed in Bureij Camp, Gaza Strip during a raid by the Israeli Defence Force.

In July 2003 in Chechnya: Vakhayev, a national staff member of an international NGO schools programme, was shot dead in his home by unknown assailants dressed in civilian clothes.

On 21 May 2006 in Afghanistan: a national staff member of an NGO was shot dead by two unknown perpetrators in front of his house. The victim was working as a teacher in one of the NGO's educational projects.

On 6 November 2006 in Afghanistan: four UN national staff were kidnapped in Zormat district of the eastern Paktia province while on their way to visit a new school.

On 30 October 2007 in Battagram, Pakistan: eight people were injured, two critically, when an explosive device went off outside the office and residential compound of the Strengthening Participatory Organization (SPO), a national NGO running health and education projects. The staff were asleep inside.

In March 2008 in South Sudan, Sudan: two U.S. aid workers, a husband and wife, were attacked and beaten by a group of students in a predominantly Christian part of southern Sudan. The reasons for the attack were unclear, but the aid organization for which they work said the two Americans were targeted during a student protest against a local school. The students attacked the aid workers and ransacked their office.

1 In this piece, 'Education Aid Worker' refers to any personnel working wholly or partly in the education sector for humanitarian or development organizations, including United Nations organizations, bi-lateral and regional organizations and international and national non-governmental organizations.

2 Janice Dolan, *Last in Line, Last in School 2008: How Donors Can Support Education for Children Affected by Conflict and Emergencies* (London: International Save the Children Alliance, 2008).

3 Aid Worker Security Data Base, 2009. See n. 4 below.

On 8 May 2008 in the Occupied Palestinian Territories: Wafa Shaker El-Daghma, a school teacher serving with the UN, was killed in her home in Gaza during a raid conducted by the Israel Defence Force.

On 6 January 2009 in Gedo, Somalia: three masked gunmen shot and killed 44-year-old Somali national, Ibrahim Hussein Duale, while he was monitoring a school feeding programme in a UN-supported school in Yubsan village six kilometres from the Gedo region capital of Garbahare.

On 6 April 2009, in Mansehra, Pakistan: three female aid workers and their male driver were kidnapped and killed after they left Mansehra town to inspect a school for possible funding by the US Government's development agency, USAID.

While the above cases are illustrative (rather than a representative sample)⁴ of the nature of attacks on education aid workers around the world, they suggest that education aid workers might be attacked by state and non-state actors for a wide range of possible reasons: for their education work, for their nationality, for economic reasons, by accident, by being in the wrong place at the wrong time, etc. This range of possible motives necessitates analysis of the particular cases and contexts within which the violence takes place. However, the sharp increase in the number of attacks on humanitarian aid workers more generally leads us at least to raise some preliminary questions about whether there are more structural reasons underlying this increase. Furthermore, it leads us to raise questions about the consequences of these attacks on the lives of education aid workers, the practices of the institutions they work for, the impact on the communities they serve and the educational objectives that they have set themselves.

This report is intended as an initial investigation into the phenomena of attacks on education aid workers. In the context of a growing recognition of the importance of the delivery of education services in conflict and post-conflict situations and recent advocacy work on the widespread and systematic practice of attacking education infrastructure and personnel around the world,⁵ this paper seeks to address the particularities of targeted attacks against a vital layer of educators – education aid workers – who carry out their vocation in some of the most dangerous contexts in the world. It is hoped that this document and future research can contribute to ensuring that their interests and specific circumstances are taken into account in any of the future legislative, advocacy and advisory activities that might emerge in response to attacks on education.

In the next section I will review the emerging literature on attacks on aid workers to provide an overview of the nature, extent, and geography of attacks and explore the ways increased attacks on humanitarian workers have affected their organizations' activities and security strategies. This will be followed by a discussion of the changing nature of the relationship between security and development and its implications – drawing on education sector examples where possible. I will also focus on the increased politicization of aid to education and the merging of security and development policy, particularly in the context of rising tension between radical Islamic oppositional movements and the blurring of the lines between US-led military interventions and

4 The list was generated through a search kindly carried out by the administrators of the Aid Worker Security Database (AWSD) managed by the Overseas Development Institute, London and the Centre on International Cooperation, New York. It does not categorize attacks according to the sector aid workers are operating in. The results were generated through the keywords: 'school', 'teacher', and 'education'.

5 Brendan O'Malley, *Education under Attack: A Global Study on Targeted Political and Military Violence Against Education Staff, Students, Teachers, Union and Government Officials, and Institutions* (Paris: UNESCO, 2007).

hearts-and-minds counterinsurgency strategies, and the work of international humanitarian and development organizations, especially, though not exclusively, in Afghanistan and Iraq. While the securitization of development is certainly not the only explanation for the increase in attacks on aid workers it will be argued that it appears as an important part of a more complex picture. Finally, I will summarise some of the key findings of this report and provide a series of preliminary recommendations for both policy and further research.

■ Attacks on education aid workers

Unfortunately, there has been no systematic research to date on the number of education sector aid workers that have been victims of political violence in its range of forms. The research that exists does not differentiate by service delivery sector and thus it is unclear how many aid workers that were victims of attacks during the period of study were in fact working within the education sector. Furthermore, it can also not definitively tell us of the motives for the attacks and whether aid workers were attacked because of their sectoral work, because they were working for western agencies, or whether they were merely caught up by chance in an attack. However, based on the initial assumption that education sector aid workers are likely to be at least as subject to violent attacks as other aid workers, in the section below we will explore the research findings.

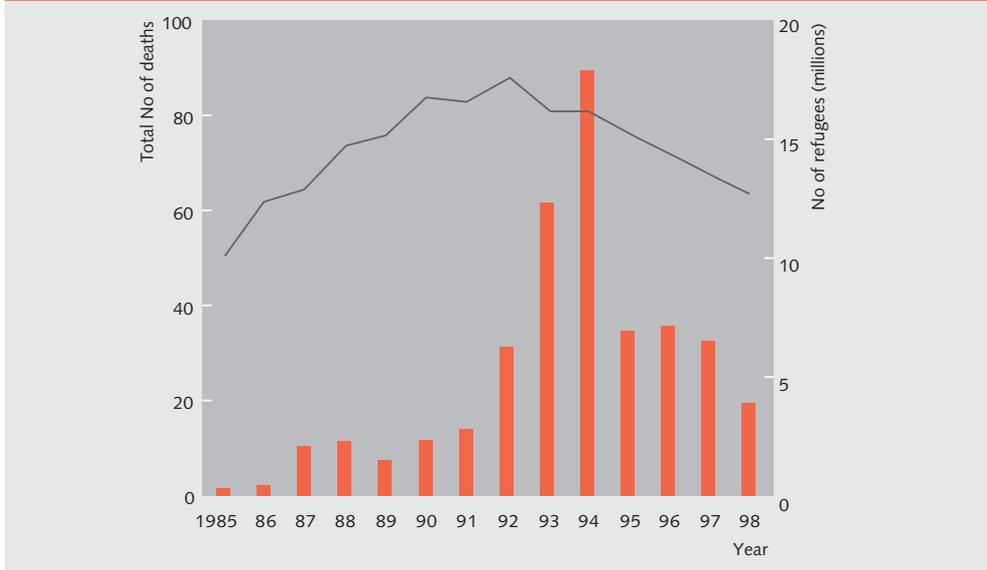
What is clear from the literature is that even in the absence of comprehensive statistical evidence there is a general perception that violent attacks on aid workers have increased markedly since the 1990s and particularly during the last ten years. Attacks on aid workers in the 1990s Balkan conflicts, the killings of six International Committee of the Red Cross (ICRC) workers in Chechnya in 17 December 1996, the attack on the UN Headquarters in Baghdad on 19 August 2003 (resulting in the deaths of 22 people) and the subsequent attack on the headquarters of the ICRC in Baghdad on 27 October (leaving 12 people dead), the killing of 17 aid workers from the NGO Action Against Hunger in Sri Lanka in December 2006; all appear as brutal watershed moments, signifying that humanitarian organizations and their employees can no longer presume they will not be targeted directly by warring factions in the conflict zones in which they operate. It should be noted that, within international humanitarian law, aid workers are civilians and therefore attacks on them constitute war crimes (see appendix 1 for a list of international conventions, frameworks and resolutions on aid worker security). Before turning to the possible reasons why humanitarian and development organizations and their employees have increasingly become targets, I will first review some of the empirical evidence.

An early study on attacks on aid workers, which analysed data between 1985 and 1998, was conducted by Sheik et al. They found a total of 375 deaths during the period, which included peacekeepers and accidental deaths.⁶ Excluding peacekeepers and accidental deaths gives a figure of 208 aid workers killed, or an average of 12 deaths per year for the years 1985–1998. Of the 375 total deaths reported, 58 were among staff of NGOs, 52 from the Red Cross or Red Crescent societies, 177 from UN programme workers, and 88 UN peacekeepers. The study found that over half of all the deaths reported took place in the Great Lakes and the Horn of Africa, with the largest number occurring in Rwanda. This was followed by Somalia, Cambodia,

6 Maria Sheik et al., "Deaths Among Humanitarian Workers," *British Medical Journal* 321 (July 2000), 166-168.

Angola and Afghanistan. The authors noted that deaths peaked in Rwanda in 1994 and from then on declined (see Figure 1).

Figure 1: Number of deaths among humanitarian workers, 1985-98. Line shows numbers of refugees and asylum seekers (US Committee for Refugees, as seen in Sheik et al., 2000, 167).⁷



The major and most comprehensive research to date on attacks on aid workers was carried out by a research partnership between the Humanitarian Policy Group based at the Overseas Development Institute (ODI), London and the Centre on International Cooperation (CIC), New York. The report followed up many of the findings of the Sheik et al. report. The Aid Worker Security Database (AWSD) that was developed during the research provides a rich source of evidence on the volume, geographical distribution and nature of attacks on aid workers between 1998 and 2008. According to their initial findings, the number of attacks on aid workers almost doubled between 1997 and 2005, with a total of 408 reported incidents, involving 904 victims and leading to the loss of 434 lives.⁸ However, during that period the number of aid workers operating in the field increased by 77 per cent (from 136,204 in 1997 to 241,654 in 2005). Thus, while the numbers of attacks increased massively in absolute terms, the increase is much smaller when related to the number of aid workers in the field. Deaths also show a marked increase with the annual average rising from 38 (1997–2001) to 61 (2002–2005). Of the victims of attacks, their findings suggest that 79 per cent were national staff and 21 per cent internationals; the risk to national staff vis-à-vis international staff appeared to be increasing over the years.⁹ Figure 2

7 Reproduced from "Deaths Among Humanitarian Workers," Maria Sheik et al., vol. 321, pgs 166-168, 2000 with permission from BMJ Publishing Group Ltd.

8 Abby Stoddard, Adele Harmer, and Katherine Haver, *Providing Aid in Insecure Environments: Trends in Policy and Operations*, Humanitarian Policy Group (HPG) Report 23 (London: Overseas Development Institute, 2006).

9 Ibid., 1.

below demonstrates both the rise in attacks overall, and the absolute distribution between national and international staff. Figure 3 shows the long-term trends, relative to field presence, demonstrating that while attacks on international staff appear to be falling recently, attacks on national staff are rising. However, while national staff were most likely to be subject to attacks overall, international aid workers were ten times more likely to be targeted for kidnapping.

Figure 2: Absolute number of national and international staff victims globally (Stoddard, Harmer, and Haver, 2006, 18).

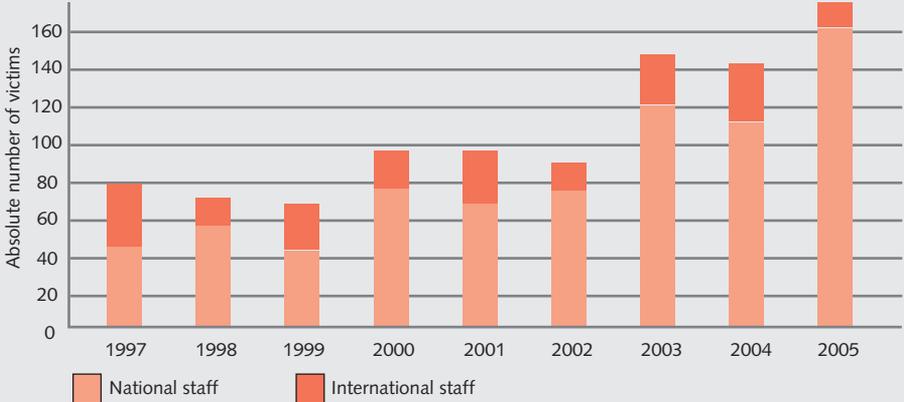
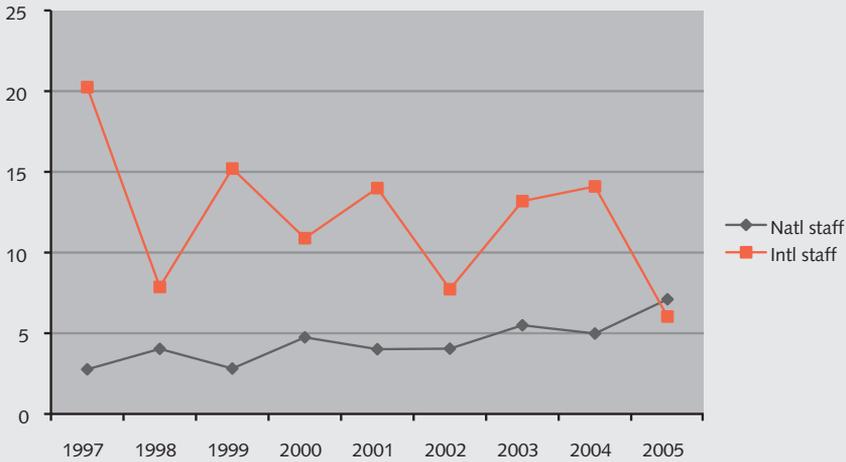
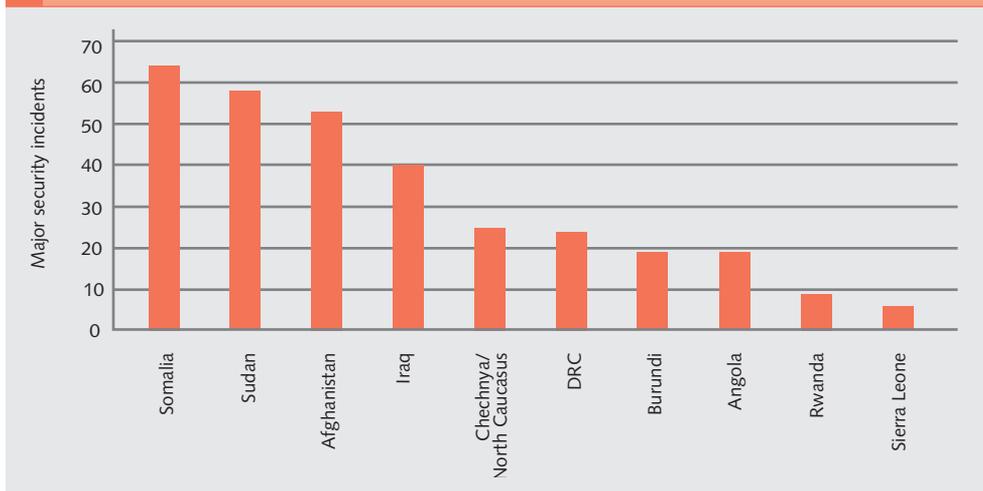


Figure 3: National and international staff victims globally relative to their presence in the field (Stoddard, Harmer, and Haver, 2006, 18).



The most dangerous places to be an aid worker during the period 1997-2005 were Somalia and Somaliland, Sudan, Afghanistan, Iraq, the Democratic Republic of Congo (DRC) and Chechnya and the North Caucasus. While the list of countries is perhaps not too surprising, the research did not find a clear correlation between levels of in-country violence and attacks on aid workers. They suggest that attacks were 'no more or less likely to occur in relation to a range of factors, such as the presence of a UN 'integrated mission', interventions by the US or other great power forces, or the presence of global terrorist cells.'¹⁰

Figure 4: Countries/regions with the highest number of major security incidents, 1997–2005 (Stoddard, Harmer, and Haver, 2006, 17).



However, their study did find that the vast majority of attacks on aid workers (70 per cent) were not random but directly targeted for economic and/or political reasons. They suggested that politically inspired attacks had increased by 208 per cent during the period and that: 'taken together...while there is no correlation between the level of violence against aid workers and the specific politico-military factors examined, international military interventions are often a feature of (and can contribute to) extremely volatile environments for aid work, where political targeting is increasingly a tactic of choice.'¹¹ Importantly, the earlier study by Sheik et al. found a similar incidence of direct targeting, suggesting a long-term pattern.¹²

In terms of the type of attack chosen, their research found that road-related attacks (ambushes at road blocks, firing on vehicles, banditry, carjacking and other targeting of staff on the road) were by far the most prevalent.¹³ They represented nearly half of all attacks, and their prevalence increased by over 100 per cent between 1998-2001 and 2002-2006.

10 Ibid.

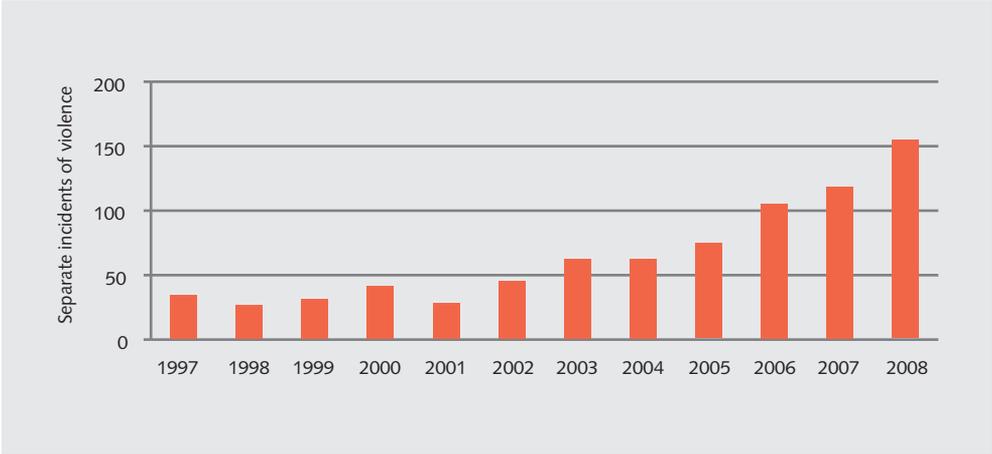
11 Ibid.

12 Sheik et al., "Deaths Among Humanitarian Aid Workers".

13 Stoddard, Harmer, and Haver, *Providing Aid in Insecure Environments*.

In a subsequent report in 2009, Stoddard et al. updated their findings and noted a massive increase in attacks on aid workers in the three years between 2006 and 2008.¹⁴ In 2006, 86 aid workers were killed. In 2007, 79 were killed, and in 2008, 122 aid workers were killed. This death toll is also the highest of the 12 years that the AWSD database covers and reflects a sharp increase in attacks on aid workers over the previous three-year period, a relative increase of 61 per cent (in relation to the number of aid workers) and an absolute increase of 300 per cent.¹⁵

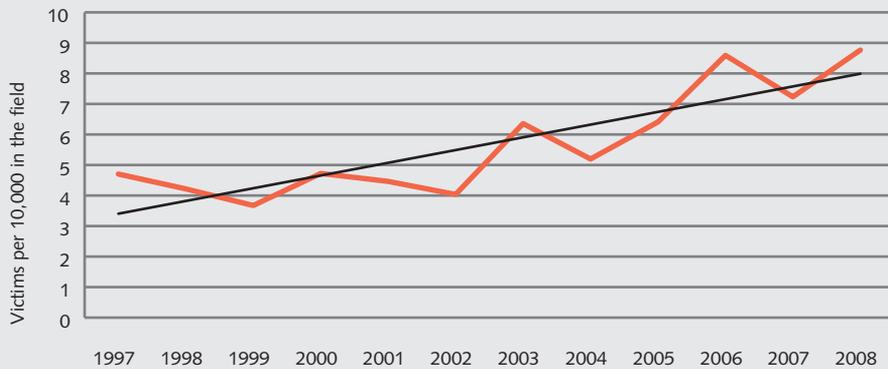
Figure 5: Absolute numbers of violent incidents affecting aid workers (Stoddard, Harmer, and DiDomenico, 2009, 2).



14 Abby Stoddard, Adele Harmer, and Victoria DiDomenico, "Providing Aid in Insecure Environments: 2009 Update; Trends in Violence Against Aid Workers and the Operational Response," *HPG Policy Brief 34* (April 2009), <http://www.odi.org.uk/resources/download/3250.pdf>.

15 Ibid., 1.

Figure 6: Relative number of aid worker victims (Stoddard, Harmer, and DiDomenico, 2009, 3).



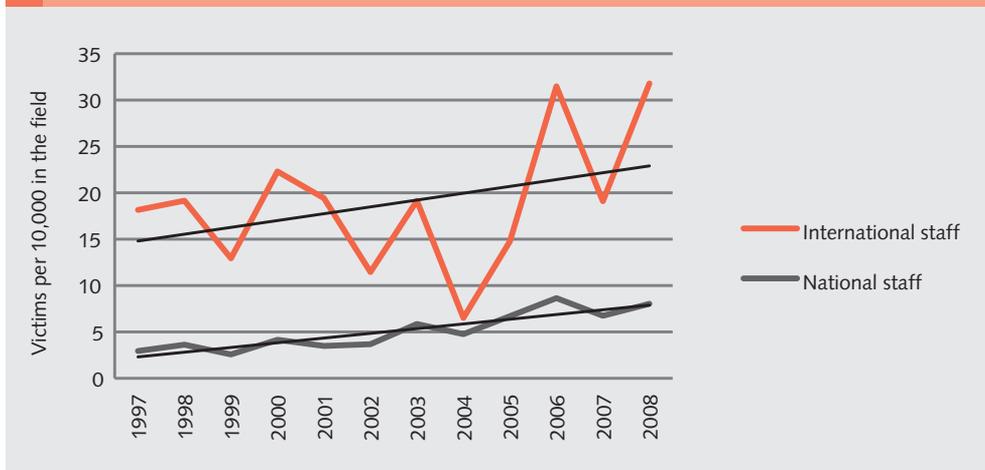
As figures 5 and 6 demonstrate, both the actual and relative number of attacks on aid workers has more than doubled since 1997, with 2008 marking a grim peak. The 2009 update also found an absolute increase of 350 per cent during the last three years in kidnapping of aid workers and a reversal in the declining tendency of attacks on international aid workers – evidence, they argue, 'of a growing politicization of violence against aid operations in a small number of highly insecure contexts.'¹⁶(see figure 7)

Similar to their earlier findings, Stoddard et al. note an extreme concentration of attacks in a few highly dangerous locations: Sudan, Afghanistan, Somalia, Sri Lanka, Chad, Iraq and Pakistan. They further posit that 'the spike over the past three years was driven by violence in just three contexts: Sudan (Darfur), Afghanistan and Somalia.'¹⁷

16 Ibid., 3.

17 Ibid., 4.

Figure 7: Breakdown of national and international staff victim rates (Stoddard, Harmer, and DiDomenico, 2009, 3).



To summarize, the evidence suggests that attacks on aid workers have increased in both absolute and relative terms, that the majority of attacks are on national staff of humanitarian and development organizations and that such attacks have been increasing at a relatively higher rate than those targeting international staff (apart from the last three years). Roads appear to constitute the most dangerous location for aid workers. Finally, there appears to be a strong and growing concentration of attacks on aid workers in a small range of majority Islamic countries (Sudan, Afghanistan, Somalia, Chad, Iraq and Pakistan).

■ Protecting aid workers

Much of the literature on security measures talks of three core strategic approaches adopted by humanitarian and development organizations to address the insecurity they face: protection (seeking to reduce vulnerability to attacks), deterrence (seeking to develop a counter-threat to deter attacks) and acceptance (ensuring that the organization is trusted in the locations where it operates).¹⁸ In this section, I will explore these different strategies and conclude with some key issues that emerge.

Protection: Protection mechanisms seem to have taken a wide range of forms. Humanitarian and development organizations are much more likely now to have an in-country permanent security office, which gathers data, briefs staff and develops annually-revised training and security protocols. Many of the bigger organizations, such as Save the Children and Médecins Sans Frontières, now have an international common security framework through which national

¹⁸ Robert Macpherson, *CARE International Safety and Security Handbook* (CARE, 2004); and European Commission Humanitarian Aid (ECHO), *Generic Security Guide for Humanitarian Organisations* (Brussels: ECHO, 2004).

affiliates operate. All field operations for the United Nations are now supposed to follow Minimum Operating Security Standards (MOSS), a set of core guidelines and strategies managed by the Office of the United Nations Security Coordinator (UNSECOORD).

Furthermore, new security coordination mechanisms have also been developed in some of the most insecure countries. Institutions such as the Afghanistan Non-Governmental Organization Safety Office (ANSO) in Kabul, the NGO Coordination Committee in Iraq (NCCI), and the Centre de Communication (CDC) in the eastern part of the Democratic Republic of the Congo are all good examples of these emergent security coordinating mechanisms which pool resources, gather data and provide security training for humanitarian and development organizations.¹⁹

One widespread institutional response to the increase in security concerns has been the practice of 'remote management', whereby international staff work at a distance from the conflict area and rely on national staff and local NGOs to maintain the operations. This practice has allowed for the delivery of services in highly dangerous environments; however, it is not without criticism. Stoddard et al. suggest that:

Humanitarian organizations have largely failed to fully consider the ethics of transferring security risks from expatriate staff to national staff or local NGOs. One of the core assumptions of remote management approaches is that national workers are at less risk than their international counterparts. But this assumption is often unfounded, and nationals may find it exceedingly difficult to decline the work for economic and/or altruistic reasons.²⁰

Despite criticisms, it is clearly a common strategy amongst the major international organizations to set up remote management systems to avoid withdrawing completely from dangerous environments. Withdrawing services does, however, remain a strategy. This shifting practice is perhaps reflected most sharply in Iraq. Following the US invasion in 2003, it is estimated that within four months there were 4,200 national and 650 international staff working for the United Nations, and over 200 international NGOs operating in Iraq within six months. After the bombing of the UN headquarters in Baghdad in August 2003, the number of UN international staff in Baghdad fell to 40, with another 44 in the safer northern governorates.²¹ Many of the other organizations moved to Jordan and other remote management locations.

Deterrence: The alternative to 'remote management', low profile delivery of services, or withdrawal is to create a deterrent to potential attackers by strengthening the armed protection of organizations, either by coordinating with the occupying military forces in Iraq and Afghanistan and/or employing private security contractors to present a visible armed presence. In this respect Afghanistan and Iraq represent again extreme examples where, as one ex-INGO Country Director noted: 'Most agencies operate like turtles: they roll up in as hard a shell as possible, and keep moving.'²²

While increasing the security of the delivery of their services, this poses serious problems for the way humanitarian and development organizations are perceived, both by warring factions and

19 ECHO, *NGO Security Collaboration Guide* (Brussels: ECHO, 2006).

20 Stoddard, Harmer, and Haver, *Providing Aid in Insecure Environments*, 2.

21 Alexandre Carle and Hakim Chkam, *Humanitarian Action in the New Security Environment: Policy and Operational Implications in Iraq*, HPG Background Paper (Overseas Development Institute, 2006), iii, <http://www.odi.org.uk/resources/download/294.pdf>.

22 As quoted in Stoddard, Harmer, and Haver, *Providing Aid in Insecure Environments*, 29.

by local communities, raising questions about both neutrality and objectives. Furthermore, it also throws into question the relationship between the aid workers and the communities they serve. This is perhaps the extreme end of a more general effect of increased concern with security: the more secure one is, the further away one becomes from the people that one serves; decreasing the credibility of organizations in local eyes and threatening the third common security strategy, which relies heavily on local acceptance as a means of security.

Acceptance: The third approach to security, which has been the classical approach, is to ensure that humanitarian and development organizations become trusted by the local communities with whom they work and that they have lines of communication with the warring factions to ensure they are treated as neutrals in the conflict. This strategy also relies on the capacity of local communities to influence the warring factions, and depends upon clear lines of command within insurgent organizations whereby agreements made can be enforced. While complex and increasingly difficult, this approach, when coupled with protection measures, appears to remain the favoured one by a majority of organizations, reflecting the traditions of the humanitarian and development sector. In this approach, particularly in conflicts where western nations are direct belligerents, organizations seek to distance themselves from occupying military forces, making clear their independence and neutrality. However, in a situation such as Iraq, with large numbers of different insurgent organizations, this appears virtually impossible. Similarly, the rationale of acceptance also presumes that aid workers are being targeted as a direct result of their work (a direct political target) rather than being seen as representative of, for example, Western occupying forces (an associative political target). It remains unclear how far these assertions are true.

Ultimately, it appears that none of the security strategies are without their downsides and risks, reflecting an increasingly difficult terrain under which humanitarian and development organizations now operate.

■ Aid, international development and conflict: A new and dangerous terrain

The data presented in the last section allows us to state fairly confidently that, since the end of the Cold War, the absolute numbers of aid workers operating in conflict-affected zones has increased considerably and therefore it is likely that the rise in attacks is related to this general expansion. However, it can also be observed that, despite an overall increase in the number of aid workers, there has also been a disproportionate escalation of attacks on aid workers, most sharply in the last three years. The question then arises: are there underlying causes that can assist us in understanding this phenomenon?

The increased attacks on aid workers appear to mirror an increased capacity and interest by Western states since the end of the Cold War to engage and intervene in a wide range of high profile conflicts from the Balkans to Rwanda, Somalia, Sudan, Iraq and Afghanistan. These interventions were also discursively framed as 'humanitarian interventions'²³ that claimed and

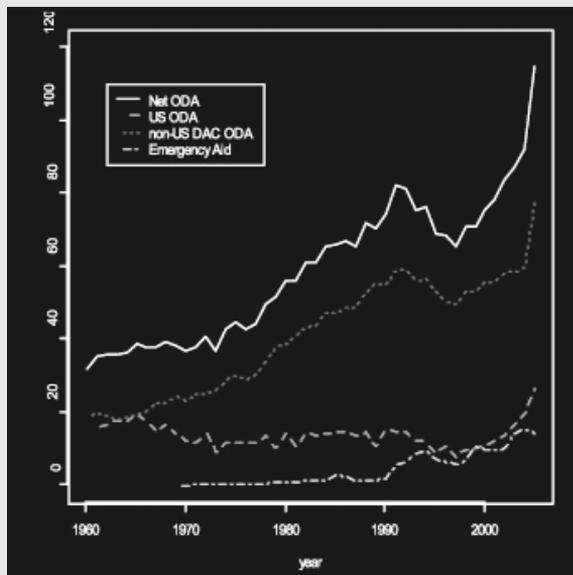
23 James D. Fearon, "The Rise Of Emergency Relief Aid," in *Humanitarianism in Question: Politics, Power and Ethics*, edited by Michael Barnett and Thomas G. Weiss (Ithaca: Cornell University Press, 2008), 52.

drew on issues of human rights, democracy and freedom for their justification, paralleling the intentions and objectives and discourses of many of the international humanitarian and development organizations. On occasions they were also preceded by calls from some humanitarian organizations themselves for armed intervention.²⁴

This new humanitarian interventionism was accompanied by a massive increase in the number of humanitarian and development actors operating in conflict situations. By 1995, humanitarian agencies were responding to a total of 28 complex emergencies around the world, increasing from just five in 1985.²⁵ Although killings and attacks on aid workers had happened prior to the 1990s, during that decade, they became more widespread as development and humanitarian organizations began to engage more directly in conflict situations.

The increased financial flows to conflict-affected countries provide us with a proxy to indicate the sharp increase in Western interest and activity in conflict zones. By the mid-1990s emergency spending had increased by over 600 per cent since the 1980s, reaching over \$3.5 billion, and has continued to rise, as Figure 8 demonstrates.

Figure 8: Total ODA, US ODA, and emergency aid (Fearon, 2008, 53).



According to the 2008 Reality of Aid Report, 'aid allocations to the most severely conflict-affected countries... increased from 9.3 per cent of total ODA in 2000 (for 12 countries) to

24 Adam Roberts, "Humanitarian Issues and Agencies as Triggers for International Military Action," *International Review of the Red Cross* 839 (2000), 673-698.

25 Hugo Slim, "Planning Between Danger and Opportunity: NGO Situation Analysis in Conflict-Related Emergencies," *Journal of Humanitarian Assistance* (1996).

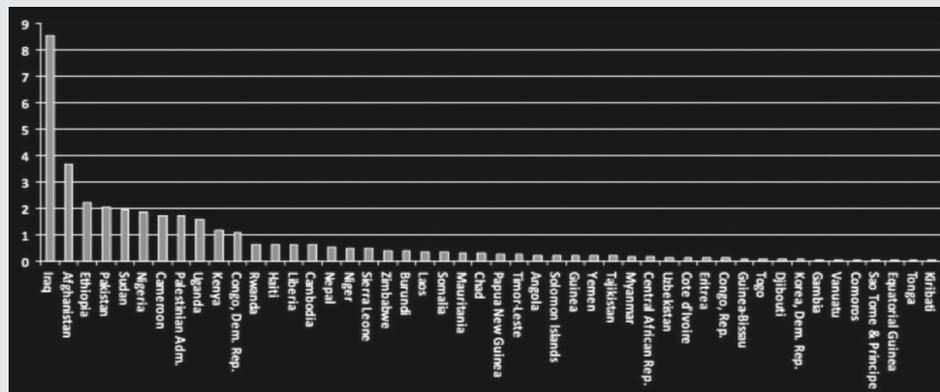
20.4 per cent (for 10 countries) in 2006.²⁶ Coupled with the general increase in ODA during the same period, aid to conflict-affected countries has nearly tripled in real terms between 2000 and 2006. According to a recent OECD-DAC report, 38.4 per cent of total ODA (USD 37.2 billion) went to conflict-affected and fragile states in 2007.²⁷

Similarly, military peacekeeping, which comes under a different non-DAC budget, has increased exponentially over the last two decades. By 1994, total UN peacekeeping expenditure was estimated to be in the region of USD 3.2 billion per year.²⁸ In its recent report, the OECD-DAC stated that UN peacekeeping expenditures were at a historic high with 20 ongoing missions.²⁹ They also noted that personnel had increased by over 700 per cent since 1999 to 110,000 personnel, with a budget of USD 7 billion.

What is also clear from the literature is that the distribution of aid among severely conflict-affected countries was, and remains, highly unequal. In 2006 Iraq and Afghanistan accounted for over 60 per cent of all aid to severely conflict-affected countries. The other eight countries shared the remaining 36.7 per cent.³⁰ In 2007, of the 38.4 per cent of total ODA (USD 37.2 billion) that went to conflict and fragile states, over half was directed to just five countries: Iraq (23 per cent), Afghanistan (9.9 per cent), and Ethiopia, Pakistan and Sudan (sharing 17 per cent of the total).³¹ Most strikingly, the almost USD 50 billion of new resources for Iraq, Afghanistan and Pakistan since 2000 'represent the largest ever donor country commitments for aid.'³²

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- 26 Reality of Aid Management Committee, *The Reality of Aid 2008: Aid Effectiveness: Democratic Ownership and Human Rights*, (Quezon City, Philippines: IBON Books, 2008), 8, http://realityofaid.org/downloads/RoAReports2008_full.pdf.
- 27 Organization for Economic Cooperation and Development-Development Assistance Committee (OECD-DAC), *Resource Flows to Fragile and Conflict-Affected States: Annual Report 2008* (OECD, 2008), 8.
- 28 Mark Duffield, "NGO Relief in War Zones: Towards an Analysis of the New Aid Paradigm," *Third World Quarterly* 18, no. 3 (September 1997), 539.
- 29 OECD-DAC, *Resource Flows to Fragile and Conflict-Affected States*, 11.
- 30 Reality of Aid Management Committee, *The Reality of Aid 2008*, 217.
- 31 OECD-DAC, *Resource Flows to Fragile and Conflict-Affected States*, 9.
- 32 Reality of Aid Management Committee, *The Reality of Aid 2008*, 207.

Figure 9: Fifty per cent of net ODA has benefited just five out of 48 fragile and conflict-affected countries (OECD-DAC, 2008, 9).³³



In conclusion to this section we can thus say that post-Cold War Western interventionism has led to a massive increase in both peacekeeping and development assistance directed to conflict and post-conflict countries, resulting in a significant expansion of humanitarian and development personnel and of the range of activities in which these personnel engage.

Aid to education in conflict zones

Since the late 1990s and in tandem with the expansion of development and humanitarian intervention in conflict zones, there has been a parallel increase of interest in and recognition of the importance of education delivery in conflict and post-conflict zones. Education, like food and shelter, has come to be seen as one of the core building blocks of human development, and thus, a necessary and vital part of humanitarian response in conflict situations.³⁴ The UN Office for the Coordination of Humanitarian Affairs (OCHA) now includes education both in the Common Humanitarian Action Plans (CHAPs) that lay out a strategic plan for humanitarian response in a given country or region, and in the Consolidated Appeals Process (CAP), the UN mechanism to raise funds for humanitarian action. In 2006, the Inter-Agency Standing Committee (IASC) established a Global Education Cluster, headed by UNICEF and the International Save the Children Alliance, to coordinate and support educational responses in emergency situations, as well as to contribute to humanitarian policy development.

33 Reproduced from OECD (2008), *Ressource Flows to Fragile and Conflict-Affected States Annual Report 2008*, p.9, with permission of the OECD.

34 Janice Dolan, *Last in Line, Last in School: How Donors Are Failing Children in Conflict-Affected Fragile States* (London: International Save the Children Alliance, 2007); Dolan, *Last in Line, Last in School 2008*; and Kersten Tebbe, "Global Trends for Education to Support Stability and Resilience: Research, Programming and Finance," *Journal of Education for International Development* 4, no. 1 (April 2009), 1-12, <http://www.equip123.net/JEID/current.htm>.

As with the more general increases in development aid to conflict-affected zones,³⁵ increases in aid to education, and as a result increases in numbers of education aid workers, are at least partly due to the success of organizations like Save the Children, UNICEF and the Inter-Agency Network for Education in Emergencies (INEE) in lobbying for education service delivery to be at the heart of humanitarian and development responses to conflict and post-conflict situations. The success of these linked organizations and practitioners in placing education and conflict firmly on the international development agenda has been aided, at least in part, by a general recognition from donors that at least half of the world's out-of-school children are located in conflict-affected and post-conflict countries;³⁶ if the international community is serious about achieving the educational Millennium Development Goals, conflict-affected and post-conflict educational delivery need to be addressed.³⁷

The general push for attention to the Education for All objectives appears to have increased markedly the material and human resources that the international community now directs towards basic education. The Reality of Aid 2008 report notes that aid to basic education increased from US\$747 million in 2000 to US\$2.8 billion by 2006.³⁸ However, there is debate as to whether conflict-affected countries are receiving their fair share of educational resources. In the recent series of reports Last in Line, Last in School by Save the Children,³⁹ the author argues that despite progress in ensuring more resources for education in conflict-affected states, there is a great deal more that needs to be done.

Despite the above caveat, what remains clear is that aid to conflict zones generally, and aid to education as a sub-component of overall assistance, have increased substantially over the last decade and more. This expansion signifies that international development organisations, rather than working around wars and conflicts, have learnt how to work within them, and alongside them. As Duffield notes:

During the Cold War, although UN intervention was relatively uncommon, when it did take place it was on the basis of agreed ceasefire or clear peacekeeping arrangements. UN agencies did not attempt to operate in the context of an ongoing conflict. The *ad hoc* UN resolutions that have made negotiated access possible, however, send a different signal. The new paradigm, while not condoning conflict, now appears to accept that political instability is an unfortunate reality in the South. Unable to prevent internal war, the West has resigned itself to finding ways of working within ongoing crises and managing their symptoms.⁴⁰

This is not to say that the international community accepts the normality of war, but that increasingly it has come to some kind of accommodation with conflict and instability and to attempting to provide certain basic goods and services therein. By doing so, it has by default

35 Fearon, "The Rise Of Emergency Relief Aid," 72.

36 Dolan, *Last in Line, Last in School 2007*.

37 Frances Stewart, "Conflict and the Millennium Development Goals," *Journal of Human Development and Capabilities* 4, no. 3 (November 2003), 325-51; and Mario Novelli and Mieke T. A. Lopes Cardozo, "Conflict, Education and the Global South: New Critical Directions," *International Journal of Educational Development* 28, no. 4 (July 2008), 473-488.

38 Reality of Aid Management Committee, *The Reality of Aid 2008*, 209.

39 Dolan, *Last in Line, Last in School 2007*; and Dolan, *Last in Line, Last in School 2008*.

40 Duffield, "NGO Relief in War Zones," 534.

increased the risk of attacks on those people that deliver these services. Operating amidst violent conflicts is, by its very nature, more dangerous than operating in places where violent conflict is absent, thus placing more employees at risk. In the next section however, I want to go beyond this numerical causation argument to ask what it is about contemporary humanitarian and development operations in conflict zones that has led to a rise in attacks on humanitarian aid workers that far outpaces the growth in the number of aid workers operating in the field. In doing so I will suggest that it is the increased merging of security and development in conflict and post-conflict zones that is disproportionately increasing the vulnerability of attacks of international aid workers and that education aid workers appear particularly at risk.

■ The merging of security and development in conflict and post-conflict zones

As I speak, just as surely as our diplomats and military, American NGOs are out there serving and sacrificing on the front lines of freedom...I am serious about making sure we have the best relationship with the NGOs who are such a force multiplier for us, such an important part of our combat team. [We are] all committed to the same, singular purpose to help every man and woman in the world who is in need, who is hungry, who is without hope, to help every one of them fill a belly, get a roof over their heads, educate their children, have hope.⁴¹

The speech by Colin Powell has become an oft-cited example of the growing concern of many within the development community that the last decades have seen the increasing militarization of development. The agendas of humanitarian and development organizations have been taken over, for some hijacked, for others in willing complicity. The price for increased funding for humanitarian and development operations in conflict and post-conflict zones has been a political one. Furthermore, this political price – to line up policy and practice with the security objectives of western powers – has been at least partly to blame for the increased attacks on aid workers in conflict zones.

Aid has always been political, and in many ways the 'politicization of development' should be expected. During the post-World War II period aid appears to have been allotted on the basis of where a country stood in the great Cold War confrontation.⁴² Both Lundborg and Wang note the close relationship between the volumes and direction of foreign aid and voting patterns within the United Nations during the Cold War era.⁴³ Crucially, the geography of aid was based less on perceived humanitarian need and more on political alliances that often led to a blind eye being turned to human rights violations and repression in 'friendly' states. The post-Cold

41 Colin L. Powell, "Remarks by Secretary of State Colin L. Powell to the National Foreign Policy Conference for Leaders of Non-Governmental Organizations," October 26, 2001.

42 Christian Aid, *The Politics of Poverty: Aid in the New Cold War* (London: Christian Aid, 2004), 1.

43 Per Lundborg, "Foreign Aid and International Support as a Gift Exchange," *Economics and Politics* 10, no. 2 (July 1998), 127-141; and T.Y. Wang, "US Foreign Aid and UN Voting: An Analysis of Important Issues," *International Studies Quarterly* 43 (1999), 199-210.

War capacity of Western states to intervene for humanitarian objectives, outlined above, was for many a welcome advance. However, its application in practice was highly selective, with the West intervening in some conflicts whilst turning away from others. It also brought with it its own dangers and risks. Hilhorst notes that:

In the past decade, the foreign policy of many countries is increasingly expressed in terms of international humanitarian law and human rights. ... Although some welcome the fact that foreign policy increasingly coincides with NGO values, there are strong concerns, too. NGOs fear the abuse of values for foreign policy reasons, criticize the selective application of values by governments, such as addressing human rights abuses in some but not other parts of the world, and find it difficult to define their own identity and approach in relation to the political powers. ...The politicization of aid has significant implications for programming and coordination, such as current concerns pertaining to strategically embedding aid (Afghanistan) or interacting with the military within the framework of civil-military cooperation (CIMIC).⁴⁴

The post-9/11 environment increased this process of politicization, as the US and other Western powers prioritised concerns about 'terrorism' and sought to integrate all other aspects of government policy under this overarching objective. During the Bush administration, development and humanitarian organizations were often simplistically treated as 'force multipliers', and while the language has softened under the Obama administration, the central thrust of linking development aid to national security objectives has remained intact. In June 2008, USAID released their new 'civil military cooperation policy', explaining their 3-D approach, incorporating Defence, Diplomacy and Development and stating that: 'Development is also recognized as a key element of any successful whole-of-government counterterrorism and counter-insurgency effort.'⁴⁵

While the US, in the wake of 9/11, was the most active in initially promoting this merging of security interest and development, the EU quickly followed suit. Javier Solana, the EU's head of common foreign and security policy (CFSP), speaking to heads of state at the European Council in 2003, argued for much more security-centred EU politics:

The challenge now is to bring together the different instruments and capabilities: European assistance programmes and the European Development Fund, military and civilian capabilities from Member States and other instruments. All of these can have an impact on our security and on that of third countries. Security is the first condition for development.⁴⁶

For both the US and Europe, national security and international development have become increasingly intertwined. As Duffield notes:

The security concerns of metropolitan states have merged with the social concerns of aid agencies; they have become one and the same thing. If poverty and institutional

44 Dorothea Hilhorst, "Dead Letter or Living Document? Ten Years of the Code of Conduct for Disaster Relief," *Disasters* 29, no. 4 (December 2005), 357.

45 United States Agency for International Development (USAID), *Civilian-Military Cooperation Policy* (Washington, DC: USAID, 2008).

46 Christian Aid, *The Politics of Poverty*, 14.

malaise in the borderlands encourage conflict and undermine international stability, then the promotion of development to eliminate these problems serves a security function; in the transition to a post-Cold War international system, aid and politics have been reunited.⁴⁷ The link between development and security is now a declaratory position within mainstream aid policy.⁴⁸ Even humanitarian assistance has been drawn in and subordinated to the rationale that development reduces the risk of conflict.⁴⁹

While the renewed commitment of Western governments to the importance of development might be welcomed, this 'joined up' whole-of-government approach brings with it dangers for the development and humanitarian community. How do these organizations working in conflict and post-conflict zones separate the 'military' and security 'interest' and their 'development' and 'humanitarian' activities?⁵⁰ What might be the cost for these organizations of being seen as too close to certain belligerent forces? Amongst humanitarian organizations this has provoked heated debate with some announcing the end of humanitarianism. One researcher from Médecins Sans Frontières raised the difficult issue of carrying out humanitarian and development activities under the overarching rule of an occupying power, arguing that whether they directly engage with the occupying forces or not:

Over time, the resentment that often builds up within a population against foreign rule can lead to an equally violent rejection of all changes brought about by outside actors, their claimed neutrality notwithstanding.⁵¹

As Stoddard et al. note, 'Although some observers maintain that, on the whole, the relationship between humanitarian actors and conflict and insecurity remains unchanged, the general consensus holds that some combination of these developments has directly contributed to deterioration in the security environment for aid work.'⁵²

47 International Development Committee (IDC), *Sixth Report, Conflict Prevention and Post-Conflict Reconstruction*, Vol. I, Report and Proceeding to the Committee (London: The Stationery Office, IDC, 1999), as cited in Duffield, "Social Reconstruction and Radicalization of Development: Aid as a Relation of Global Liberal Governance," *Development and Change* 33, no. 5 (November 2002), 1067.

48 Department for International Development (DFID), *Eliminating World Poverty: A Challenge for the 21st Century*, White Paper on International Development (London: The Stationery Office for International Development Department, 1997); IDC, *Sixth Report*; and Organization for Economic Co-operation and Development (OECD), *Conflict, Peace and Development Co-operation on the Threshold of the 21st Century* (Paris: OECD, 1998), as cited in Duffield, "Social Reconstruction and Radicalization of Development," 1067.

49 Duffield, "Social Reconstruction and Radicalization of Development," 1067.

50 Ngaire Woods, "The Shifting Politics of Foreign Aid," *International Affairs* 81, no. 2 (March 2005), 393-409.

51 Xavier Crombe, "Humanitarian Action in Situations of Occupation: The View from MSF," *Humanitarian Exchange Magazine* 33 (April 2006), <http://www.odihpn.org/report.asp?id=2794>.

52 Stoddard, Harmer, and Haver, *Providing Aid in Insecure Environments*, 2.

■ Development as counterinsurgency: Iraq and Afghanistan

The merging of security and development is also a process of reinterpreting the purposes of development – seeing activities as having potential ‘security benefits’. As this process continues, education activities become seen as mechanisms of ‘pacification’ and ‘counterinsurgency’. An illustration of this is the prevalence of references to the role of education in the US’s counterterrorism strategies elaborated in the Patterns of Global Terrorism annual reports (since 2004 renamed Country Reports on Terrorism). As an example, the 2007 report, in Chapter 5, Terrorist Safe Havens, sub-section 7 focuses on ‘Basic Education in Muslim Countries.’ In the section it notes that:

The Department of State, USAID, and other U.S. agencies continued to support an increased focus on education in predominantly Muslim countries and those with significant Muslim populations. The United States’ approach stresses mobilizing public and private resources as partners to improve access, quality, and the relevance of education, with a specific emphasis on developing civic-mindedness in young people. In many Muslim-majority countries, such as Afghanistan and Yemen, the challenge was to increase country capacity to provide universal access to primary education and literacy.⁵³

Similarly, as part of the US military’s counterinsurgency strategy in places such as Iraq and Afghanistan ‘humanitarian and civic assistance’ can include such non-emergency services as constructing schools, performing dental procedures, and even vaccinating the livestock of farmers.⁵⁴

Educational provision (particularly for girls) became a key discursive justification for the military intervention in Afghanistan. Educational progress was seen as demonstrating the success of the occupation, while attacking education was and is a key strategy of the Taliban. For these reasons, attacks on education have been widespread and are increasing. According to Human Rights Watch, education systems and personnel are attacked for three overlapping reasons:

First, opposition to the government and its international supporters by Taliban or other armed groups ... second, ideological opposition to education other than that offered in madrassas (Islamic schools), and in particular opposition to girls’ education; and third, opposition to the authority of the central government and the rule of law by criminal groups.⁵⁵

Clearly in the case of Afghanistan, education has become a central battleground in the war, intensifying dangers that all education personnel and students face there. Most problematically, education provision is increasingly becoming interpreted in this polarized context as a battle

53 United States Department of State, *Country Reports on Terrorism 2007* (Washington, DC: United States Department of State, Office of the Coordinator for Counterterrorism, 2008).

54 Reuben Brigety, *Humanity as a Weapon of War: Sustainable Security and the Role of the U.S. Military* (Washington, DC: Center for American Progress, 2008).

55 Human Rights Watch (HRW), *Lessons in Terror: Attacks on Education in Afghanistan*, Vol. 8, no. 6(C), 33, New York: HRW, 2006, <http://www.hrw.org/sites/default/files/reports/afghanistan0706.pdf>.

between Western secular education and Islamic madrasa education, heightening the potential dangers. This also appears to be occurring in Somalia (UN 2008) and Iraq.⁵⁶

The dilemma for education aid workers is that counterinsurgency and counter-terrorism strategies of the Western powers become the perceived major rationale for educational interventions. While activities may remain largely the same, their discursive representation means that they can be interpreted as part of the 'war effort': civilian modes of counterinsurgency, aimed at winning hearts and minds and producing certain types of behaviour and outcomes. In doing so they increase the danger for all involved.

In situations such as Iraq and Afghanistan it appears that humanitarian and development organizations are becoming overwhelmed by the counterinsurgency agenda, making it almost impossible to present a picture of neutrality. As Torrente notes:

The U.S. government failed to preserve space for the politically independent and principled role of humanitarian organizations. Instead, the United States sought to bring humanitarian aid efforts under its control and claimed that all assistance supports its cause. ...The U.S. efforts to associate assistance with its political objectives have jeopardized the ability of humanitarian organizations to distinguish themselves from all parties and to provide aid based solely on need during times of crisis.⁵⁷

Brendan Cox, an Oxfam spokesman, stated that: 'The boundary between the occupying force and the UN and the humanitarian community in Iraq is the most blurred it's ever been, anywhere we've worked.'⁵⁸

A factor exacerbating the risks for humanitarian and development workers is the prevalence in both Iraq and Afghanistan, but also other parts of the world of a large number of civilian contractors carrying out work funded by the Western powers, and private security contractors, who dress in civilian attire. This massive presence of both civilian contractors and non-military yet security-oriented contractors makes it increasingly difficult for aid organizations to argue for the distinctiveness of their 'civilian' and humanitarian activities.

The situation has been worsened by the establishment in both Iraq and Afghanistan of Provisional Reconstruction Teams (PRTs), under the control of the military, which carry out development-like activities, such as the construction of schools. In 2009, an alliance of NGOs operating in Afghanistan produced a strong report condemning the behaviour of the Western occupying forces.⁵⁹ They alleged that the military (particularly the US and France) were continuing to use 'unmarked, white vehicles...conventionally used by the UN and aid agencies' and were carrying out infrastructure work traditionally done by development organizations as part of

56 Rachel Bonham Carter, "Five Girls Killed in Mortar Attack on School in Baghdad," *UNICEF Iraq Newswire*, January 27, 2007, http://www.unicef.org/infobycountry/iraq_38180.html; and O'Malley, *Education under Attack*.

57 Nicolas de Torrente, "Humanitarian Action Under Attack: Reflections on the Iraq War," *Harvard Human Rights Journal* 17 (2004), 3.

58 Brenda Cox, as cited in Ruth Gidley, "NGOs Say Blurred Lines Make Iraq Dangerous," *Reuters Alertnet*, August 25, 2003, <http://www.alertnet.org/thefacts/reliefresources/securityanalysis.htm>.

59 Matt Waldman, *Caught in the Conflict: Civilians and the International Security Strategy in Afghanistan; A Briefing Paper by Eleven NGOs Operating in Afghanistan for the NATO Heads of State and Government Summit, 3-4 April 2009* (Oxfam, 2009).

their counterinsurgency 'hearts and minds' strategies.⁶⁰ All this, they argued, was increasing the 'blurring of the civil-military distinction...[and] contributed to a diminution in the perceived independence of NGOs, increased the risk for aid workers, and reduced the areas in which NGOs can safely operate.'⁶¹

They alleged that these activities were contributing to:

A marked increase in violence against aid workers globally, which has a range of causes, however one important factor is military engagement in assistance activities. In Afghanistan, such engagement is extensive and wide-ranging, and has blurred the line between military and humanitarian actors. This has adversely affected NGO security, endangered the lives of NGO workers, and restricted their ability to operate. NGOs are being increasingly subject to direct threats and attacks, and in 2008, 31 NGO workers were killed, twice as many as in 2007. This is significantly decreasing humanitarian operating space: currently, large parts of the country are inaccessible to humanitarian actors, leaving many communities deprived of humanitarian assistance. NGOs regularly receive warnings that any perceived association with military forces will make them a target. In many areas, NGO offices and staff have been searched for links to the military, and threatened with severe consequences if such links are established. Likewise, NGO projects have been forced to close due to visits from PRTs or foreign donor agencies in heavily armed escorts. In the aftermath of such visits, communities have informed NGOs that they can no longer guarantee the safety of project staff.⁶²

In a further report, Stoddard et al. noted that in Afghanistan locals were no longer making a distinction between those organizations working with the military and those that were not. They suggested that for Afghan locals 'all Western-based international humanitarian organizations are judged as partisan.'⁶³ This breakdown in trust in humanitarian and development organizations can only increase the dangers that aid workers face.

While the cases of Iraq and Afghanistan are extreme, it does appear that there is a growing tendency for humanitarian and development organizations – because of their largely 'Western' nature, home location, and political orientation – to be targeted in locations where the 'West' is seen as the enemy. Aid workers are not just being targeted because they are somehow collaborating with the occupying forces, but more so that they are seen as an integral part of that force. As Hyder notes: 'The humanitarian community is caught up in the middle of an extreme dislike of the West, built on an elaborate critique of the latter's moral and social failures, and the perceived dangers of associating with it.'⁶⁴

While attacks on aid workers are a war crime and can never be justified, what seems clear is that the increasing blurring of the lines between Western military objectives and the practices of humanitarian and development organizations seem to be increasing the danger for these organizations:

60 Ibid., 9.

61 Ibid.

62 Ibid., 16.

63 Stoddard, Harmer, and DiDomenico, "Providing Aid in Insecure Environments," 6.

64 Masood Hyder, "Humanitarianism and the Muslim World," *Journal of Humanitarian Assistance* (August 22, 2007), <http://jha.ac/2007/08/22/humanitarianism-and-the-muslim-world/>.

When governments drape their military and political actions in the cloak of humanitarian concerns, they undermine humanitarian action's essential purpose: the unconditional provision of assistance to those in need. When all aid efforts are presented and perceived as being at the service of political and military objectives, it is more difficult and dangerous for independent humanitarian organizations to carry out their work.⁶⁵

■ Conclusions and recommendations

Due to a lack of detailed research on specific attacks on education sector aid workers there is a great deal that we do not know; the findings of this paper demonstrate the need for further research. However, we can make some assertions based on the more general literature. Thus, this also provides some strong recommendations for further research and policy action.

Firstly, it seems that the biggest single driving force behind increased numbers of attacks on aid workers is the massive increase in the number of aid workers operating in complex emergencies, and this includes a sharp increase in education aid workers. The post-Cold War reorganization of the geopolitical landscape appears to have reoriented the rules of the game of humanitarian intervention, with an increasing number of organizations and individuals operating within conflict situations. Recently, recognition that education provision should be a central component of humanitarian and disaster relief, and emphasis on achieving the Education for All objectives have resulted in higher proportions of education aid workers operating within conflict-affected contexts.

However, there is a lack of research on the particular extent of targeting of education aid workers, at a time when the provision of education during emergencies is becoming increasingly prominent and contentious. Further research therefore needs to be conducted to better understand:

- The scope and nature of attacks against education sector aid workers;
- The motives for attacks on education sector aid workers;
- The impact of attacks on development and humanitarian operations.

In line with the above, when gathering data on human rights violations against aid workers, the different agencies involved should provide details of the particular sector (education, health, etc.) involved.

Secondly, a major effect of this shift of working within, rather than on the borders, of conflict zones has also led to increased pressure on development and humanitarian organizations to become more politicized and/or become perceived as being partisan, thus threatening their immunity from attack. This is a serious problem because the actions of just a few organizations can have ramifications for the rest. Clearly, depending on the conflict, this can take very different forms and thus it is necessary to have in mind the specific circumstances of different conflicts. In Afghanistan and Iraq, two countries under foreign occupation, it seems that many agencies

65 Torrente, "Humanitarian Action Under Attack," 29.

have found it increasingly difficult to separate themselves from the Western occupying military forces. More research needs to be carried out on the increasing influence of military and foreign policy activities of the major Western powers on education and development activities in conflict and post-conflict states in order to develop better humanitarian and development agency policy responses.

Thirdly, in terms of the architecture of contemporary international involvement in complex emergencies, there has been a massive increase in private security and service providers, and a mushrooming of NGO actors. From the outside, these actors appear indistinguishable, thus blurring the perception, real or imagined, of what aid workers are doing and how they are involved with different international players.

Fourthly, in Iraq and Afghanistan there is now a direct overlap between 'military' activity and 'development' work with the creation of Provincial Reconstruction Teams. This overlap – fighting the Taliban and constructing schools – provides justification for the insurgency to accuse development organizations of being enemy combatants. Because school building has become a central plank in the new strategy, this appears particularly dangerous for education sector aid workers.

Fifthly, there do appear to be many commonalities between the objectives of the US-led occupation forces in both Iraq and Afghanistan and many development and humanitarian agencies operating in these countries; this needs better clarification and analysis. There needs to be a broader discussion within the development community on what unites and separates their agendas from those of military forces and to have better strategies for establishing their neutrality.

Sixthly, when services are provided by 'remote management' there is a danger that security risk is passed on from internationals to nationals and from large organizations to smaller organizations, with less capacity to protect themselves from attack and, as the evidence suggests, no reduced level of threat. The premise that 'national' aid workers are less vulnerable to attacks than 'international' does not appear to be validated by the statistics and thus a more cautious approach to this issue should be explored. Remote management and other mechanisms that pass security risks on to other agencies should recognise the ethical and moral issues of doing so. More research needs to be carried out on the effects of these policies in the education sector.

Seventhly, increased security measures, whether remote management, armed protection, or more personal security protection practices, all tend to distance the development and humanitarian organizations from the populations they serve. The danger is that, by doing so, they lose credibility with beneficiaries, and misunderstandings and tensions cannot be resolved for lack of direct humanitarian contact. In the end, this may well turn out to be the most serious consequence of increased security concerns among humanitarian organizations. The effects of distancing should be thought through and taken into account in programming. More research needs to be conducted to better understand the perceptions of recipients of education services towards the international organisations and their staff.

Finally we should also not forget that attacks on education aid workers are part of the broader contemporary problem of the increased attacks on civilians during conflicts, by all warring factions. The tragic attacks on the IRC staff members on 13 August 2008 are illustrative of the

importance of this. One week after those murders, in Azizabad, a village in Western Afghanistan, a joint US-Afghan mission bombed the village, killing an estimated 90 civilians, including 60 children. The slain villagers were attending a funeral when the bombing began. In the aftermath of both attacks, the Taliban and the US spokesperson respectively said that those killed were combatants. The Taliban argued that the IRC staff were part of the 'illegal occupation forces' and the US spokesman said that the bombing was directed at 'Taliban terrorists'. The IRC staff and the innocent civilians and children killed the following week deserved much better than this. Both acts could be considered as war crimes and in neither case were the victims proven to be enemy combatants. While working towards the improvement of the security situation of education aid workers we must also ensure that we do not forget the broader humanitarian struggle to protect all civilian communities from violent attack in war zones and elsewhere.

■ Appendix 1

Key conventions, frameworks and resolutions on aid worker security

- Convention on the Safety of United Nations and Associated Personnel (1994) and its Optional Protocol (2005).
- Security Council Presidential Statement on the Protection of UN Personnel in Conflict Zones (2000).
- Safety and Security of United Nations Personnel – Report of the Secretary-General (October 2000).
- Security Council Resolution 1502, which condemned all forms of violence against those participating in humanitarian operations and urged states to ensure that crimes against such personnel did not go unpunished (2003).
- General Assembly Resolutions 59/211 (2004) and 60/123 (2006) on the safety and security of humanitarian personnel and the protection of UN personnel.

Appendix 2

Summary table: Aid worker attacks, 1997–2008
(Stoddard, Harmer, and DiDomenico, 2009, 11).

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Number of incidents	35	27	32	42	29	46	63	63	75	106	119	155
Total aid worker victims	73	69	65	91	90	85	143	125	172	239	206	260
Total killed	39	36	30	57	27	38	87	56	54	86	79	122
Total injured	6	15	15	23	20	23	49	46	95	87	84	76
Total kidnapped	28	18	20	11	43	24	7	23	23	66	43	62
Total nat'l staff victims	40	52	40	70	62	68	116	101	158	213	171	211
Total int'l staff victims	33	17	25	21	28	17	27	24	14	26	35	49
Nat'l staff killed	31	32	24	46	21	30	65	47	49	82	71	104
Nat'l staff injured	4	14	14	20	17	22	45	40	91	75	74	63
Nat'l staff kidnapped	5	6	2	4	24	16	6	14	18	56	26	44
Int'l staff killed	8	4	6	11	6	8	22	9	5	4	8	18
Int'l staff injured	2	1	1	3	3	1	4	6	4	12	10	13
Int'l staff kidnapped	23	12	18	7	19	8	1	9	5	10	17	18
UN victims	22	24	17	31	28	18	31	11	28	61	38	65
ICRC victims	9	26	7	9	11	7	8	1	3	10	4	4
IFRC victims	10	5	4		3	5	20	11	5	17	8	1
NGO victims	31	14	37	49	48	54	84	98	134	145	143	185
Donor/other victims	1			2		1		4	2	6	11	4

Chapter 6.

Attacks on higher education communities: A holistic, human rights approach to protection

Robert Quinn¹

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A holistic, human rights-based approach to protecting education from attack offers the most opportunities for effective action. Such an approach recognizes both the interdependence of all levels of education – from pre-formal through higher education and vocational training – and the inherent dignity-promoting function of education. Recognizing both these features anchors protection work within established legal, human rights and moral frameworks, and reduces potentially negative fragmenting of the education-protection community.

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- 1 This essay is based on remarks delivered at the Protecting Education from Attack, International Expert Seminar held 28 September to 1 October 2009 in Paris, France. Many thanks to everyone at UNESCO involved in organizing the event, including Mark Richmond, Christopher Talbot, Jane Kalista, Pam Vimommas Vachatimanont and Samba Yaya Wane. Very special thanks to Her Highness Sheikha Mozah Bint Nasser Al-Missned of Qatar and to her representatives at the event Abdullatif Ali Al-Shayef, Abduljalil Lahmanate, and John Gregg, for so generously supporting this important work of protecting education communities under attack.
 - 2 Scholars at Risk is a network of universities, scholars and individuals in 28 countries working to promote university values and to protect the human rights of scholars and their communities. Scholars at Risk is privileged to partner with a number of other organizations including the Institute of International Education's Scholar Rescue Fund, the Council for Assisting Refugee Academics, the Network for Education and Academic Rights, the Arab Society for Academic Freedom and the African Academic Freedom Network. Together these and other partners have worked with thousands of threatened scholars from higher education communities in over 115 countries. This essay reflects perspective gained through these partnerships, although any opinions, conclusions or errors are the author's alone.

■ Introduction

This essay recognizes that the UNESCO expert seminar grew out of the work of the Inter-Agency Network for Education in Emergencies (INEE), the Office of the Special Representative of the Secretary-General on Children and Armed Conflict (CAAC), several particularly supportive governments and a number of key organizations, all sharing a special interest in children and in primary and secondary levels of education. Broadening the discussion to include higher education is not intended to distract from this important work; the numbers of children suffering grave violations is appalling and there is much still to do. Rather, this essay argues that adopting a holistic approach to education – including not only primary and secondary education but tertiary or higher education, vocational and technical education – increases opportunities for and effectiveness of protection work.

This is in part a matter of practicality. The interdependence within the education sector is undeniable. In the most immediate sense, primary and secondary schools depend on qualified teachers prepared in tertiary institutions. Modes of teaching and curriculum are, in the best situations at least, informed by the findings of scholars at the university level. When higher education professionals are intimidated and targeted for violence or elimination, it has ripple effects through the whole sector and society. Teachers, content and modes of learning are lost. Quality, effectiveness and availability of education at all levels diminish. Interdependence impacts higher education institutions also. They depend on the adequate preparation of students graduating from lower levels, both as students and as future academic staff who will in time replenish the academic community.

Recognizing interdependence is also a matter of essential principle. In their essence, all levels of education depend to greater or lesser degree on building up the popular belief that investment in education leads to something 'better' – to better material prospects, certainly; better social standing and personal fulfilment ideally. Indeed, this belief is behind the success that some education-protection advocates have had by enlisting local stakeholder support for education centres in their communities. It may also be behind some attacks on education communities, inasmuch as the attacks are intended to deny the provider of education the 'credit' for providing whatever 'better' would otherwise be obtained. Belief in education is strengthened when a fully functioning, holistic system of education is in place; when primary education holds some possibility of passage to secondary, vocational or technical levels, or even to university. The belief in education is strengthened when young people and adults alike have hopes of advancing their interests through learning, for themselves or for family or community members. It may be as much the existence of this pathway that matters as one's particular place on it, or even one's chance to ever be on the path. It is the existence of the path – a meaningful, holistic system of education and training – that recognizes the inherent dignity of each person. It recognizes the right and capacity of every human being, of whatever age or ability, to think and to contribute meaningfully to their society. In this it represents not only a holistic approach but a human rights approach.

■ Conflicting visions

When considering the challenge of protecting education from attack it is important to consider this dignity-promoting function of education. This is because if we are to reduce or mitigate attacks on education we must first understand them. How one understands them depends very much on one's vision of the purpose of education.

In my experience – here I am addressing primarily higher education, although the discussion applies to all education – there are two dominant visions of the purpose of education: *education-as-training* and *education-for-learning*. As I will describe these below, they may seem to some too starkly defined, especially the former. Admittedly actors at all levels and in all forms of education may be inspired by both visions, to greater or lesser degree, and may make every good effort to satisfy both. Indeed, *within* the education-protection community and *among* education providers, there may be few or none who would adopt the education-as-training view exclusively. Outside of these communities, however, there are most certainly those who would, if they subscribe to a vision of education at all. And to the extent that they have the capacity, they play a significant part in attacks on education professionals and institutions. Understanding their vision is therefore essential to both education provision and to education-protection strategies.³

The first vision is that of *education-as-training*. According to this vision education is primarily for training members of society to perform those skills and services which are necessary to the preservation of an existing status quo – social, political, or in some cases economic. In pure form, this is an explicitly elitist vision of education, as the determination of what skills and services are necessary, and who will have access to education, is left to the dominant elite. Again in pure form, this is also an implicitly minimalist view – where education should be provided for the minimum number of persons and with the minimum content necessary to maintain the status quo; providing anything more creates excess ability that may be destabilizing. This vision of education-as-training is one that aims – at best – at maintaining existing levels of human fulfilment and respect for human rights. It offers little promise of progressive realization of rights, let alone of tapping into the genuinely transformative promise of education as an engine for full enjoyment of rights by everyone.

To be very clear – one should not confuse this restrictive vision of education with a limited *provision* of basic levels of education and training that too often accompanies emergencies and conflict. The provision of education in a given time and place necessarily takes into account real

3 This may be particularly true at the higher education level, where the tensions between these visions – and the consequences of favouring one or the other – may be more acutely felt than at lower levels or in other forms of education. This is because the providers (faculty) and learners (students) at the higher education level have presumably attained levels of ability and maturity that would warrant greater emphasis on the broader vision of *education-for-learning*, and because they are also presumably closer to having acquired the skills, knowledge and opportunities that would enable them to be fully engaged, contributing – and questioning – members of a rights-respecting society. Limits on the *education-for-learning* vision would inhibit their capacity to do so. With this in mind, although the discussion is intended to cover all forms of education, those readers uncomfortable with the labelling of two dominant visions of *education-as-training* and *education-for-learning*, especially those focused on basic, primary or vocational education, are invited to read into the discussion an emphasis on higher education – that is, two dominant visions of the purpose of *higher* education as *higher* education-as-training and *higher* education-for-learning.

limits on conditions and resources. Basic education and training might be the best that one is *able to* provide under a given set of conditions. But this is not the same as believing that this is all that *should be* provided.⁴ In pure form, the education-as-training vision limits the understanding of what should be provided, even if the limiting conditions were not present. In doing so, it relieves any responsibility or pressure for changing limiting conditions. As discussed below, it also legitimizes – in the minds of some – actions, including violent actions, against those holding an alternate vision.

The second vision is *education-for-learning*. According to this vision education is not only for training members of society to perform necessary skills and services, but to maximize their capacity to think and to make informed, creative contributions. This is an explicitly popular vision of education, based on the inherent dignity and capacity of each person. This is also an explicitly maximalist view – education should be provided for the maximum number of persons and with the widest range of content available. Limits on the number of persons or content provided may result from genuine limits on time and resources, but these represent a failure to realize the full vision.

This vision of education-for-learning aims at increasing levels of respect for human rights and human fulfilment. It offers the greatest promise of progressive realization of rights and of tapping into the transformative promise of education. Within this expansive vision, a limited *provision* of basic levels of education and training might still be the best that one is *able to* provide under a given set of conditions. But in this case the limited provision is acknowledged as falling short of what *should be* provided if the limiting conditions were not present. Moreover, the education-for-learning vision encourages responsibility and increases pressure for removing limiting conditions. It delegitimizes an imperfect status quo as well as actions taken to maintain the status quo, especially violence.

These two visions of the purpose of education play a significant part in attacks on higher education professionals and institutions. This manifests in conflict over who should be teaching; who should be taught; what should be taught, and how, when and where it should be taught. This conflict is best understood as a competition over space in society: conceptual space in the minds of policy-makers, religious and social leaders, academics, parents and students, as manifested in physical spaces of the pages of textbooks, course offerings in the curriculum, conversations in classrooms, corridors and courtyards of the academic campus and, most acutely, in the physical bodies of scholars, students and other members of education communities. Seen in this way, attacks on education can be understood as attempts to shrink the space for *education-for-learning*, for development of personal capacity, and for full realization of human rights of everyone in society.

4 This is also not to say that in practice *training* and *learning* do not occur together, or that one cannot emphasize training in a restrictive context with the hope that it will have spillover benefits in service of a wider learning vision. For example, in the implementation of literacy training one may be forced by context to accept a compromised text, while maintaining the hope that the skills obtained will open opportunities to a broader, learning vision.

■ Scope of the problem in higher education

How big is the problem of attacks on higher education? It is difficult to give a precise answer. The *Education under Attack* report provided an important introduction to the scope of the problem at all levels.⁵ As the report recognized, despite a decade of increasing direct-action advocacy by Scholars at Risk and our partners, there remain critical gaps in information and research on attacks on higher education communities. Ten years ago we had to rely almost exclusively on irregular, anecdotal reports and a few brief mentions in international media. The latter consisted in most instances of a sentence at the end of a longer story on political or social unrest saying something like ‘...others were also detained, including X professors (or students).’ Today the situation is better. Scholars at Risk now has thousands of entries in our programme database and our partner organizations do as well. From these we can discern patterns and areas of concern. But we still lack a systematic means of capturing, monitoring and tracking attacks, let alone the full means to redress attacks and end impunity.

Reports like *Education under Attack* help. It should be annual. The education-protection community should develop, perhaps with UNESCO’s help, standardization for coding data about attacks on education communities, so that the information already gathered in our respective, independent work might be shared and compiled for more regular, comprehensive analysis.⁶ Beyond simply capturing more data, we also lack good metrics for measuring both the problem and the effectiveness of responses. Incident-reporting only goes so far. At Scholars at Risk we have been working to address this problem by developing a set of indicators of the health of higher education systems. In this effort we have focused on measuring respect for university values – access, accountability, academic freedom, institutional autonomy and social responsibility – rather than on incidents, inputs and outputs. We hope to produce a survey/index of national level conditions worldwide. This will redress the current information gap, and help both to identify opportunities for intervention and to suggest specific strategies.

Of course recognizing the limits of what we know does not mean we know nothing. From our work already we know a lot. We know that the scope of attacks on higher education institutions and professionals is immense. In the last decade alone, thousands of scholars have been directly targeted. Tens of thousands have been secondary targets, intentionally intimidated by direct attacks on others. Hundreds of thousands – if not more – have been indirectly impacted, deterred or obstructed from pursuing their work. And there is every reason to believe we are still undercounting. Large sub-sectors remain under-recorded. At the global level, most information on attacks on higher education professionals is received and produced in English, Spanish and French. Broadening capacity to report, monitor and respond in other languages – Arabic, Chinese and Russian especially but others also – should be expected to expose problem areas that are currently omitted. Similarly, cultural and technological barriers may contribute to under-recording.

5 Brendan O’Malley, *Education under Attack: A Global Study on Targeted Political and Military Violence against Education Staff, Students, Teachers, Union and Government Officials, and Institutions* (Paris: UNESCO, 2007).

6 Of course there would be certain difficulties, not least being how to secure the data and ensure confidentiality of individuals while preventing double-reporting of incidents, but the benefits of comprehensive reporting would make finding solutions worthwhile.

These may be intentional – such as censorship or surveillance of electronic communications – or systemic – such as low bandwidth and lack of secure access to internet or other communications. This is particularly true as to date most monitors are based in highly developed Western or Northern countries, while the worst of attacks are most often experienced in developing countries in the South and East. Cultural barriers may also make reporting outside of the country or region difficult or undesirable. Sub-cultures especially – who generally experience greater obstacles in entering higher education in the first place – may be especially unlikely to self-report or to be otherwise recorded.

■ Nature of attacks

Beyond the immense scope of the problem, we know from our experience that attacks can be divided into two broad classes, grossly labelled physical versus nonphysical or preferably attacks on *life or liberty*⁷ versus attacks on the *provision or quality*⁸ of education. Like most education-protection advocates, Scholars at Risk focuses on life/liberty attacks, not as a matter of principle, but of limited resources. A scholar whose life or liberty is at stake should take priority over one who is physically safe and working but experiencing non-immediate threats to his or her career.⁹

Still, attacks on quality are real and important. In terms of sheer numbers of persons harmed, attacks on quality are far more common and destructive to the health of higher education communities. We have long recognized the need to develop activities which address these threats, and any monitoring, measuring and reporting activities should take these into account.

Focusing on attacks on life/liberty, we have seen that they are experienced in two types of situations: emergencies and open conflict on the one hand, and pre-conflict and isolated, targeted attacks on the other. Emergencies and open conflict produce the largest *numbers* of attacks. In the last decade, countries experiencing these attacks would of course most especially include Iraq, where hundreds of scholars have been killed, thousands exiled or displaced and university infrastructures severely degraded.¹⁰ In Iraq attacks have been aimed at narrowing the

7 Life/liberty attacks against higher education professionals include harassment (including surveillance, denial of accesses or permissions, confiscation of notes and computers files, professional or personal slander or defamation, physical or sexual intimidation), arbitrary dismissal threatening economic survival, exile (internal and external), arrest on false charges, detention without trial, trial and imprisonment, torture, disappearance, and extra-judicial killing (murder). These may be enhanced during emergencies, wars and armed conflicts, when members of higher education communities not only suffer the risk and violations suffered by the population generally but may also be specifically targeted because of their status or role in the community.

8 Attacks on quality include, among many others, obstructions on hiring and promotion, interference with or undermining of teaching or research; restrictions on travel or collaborations; and limitations on access to information, materials, equipment or advanced training.

9 We also reason that, to the extent that providing help to an individual scholar has any symbolic power either as a deterrent or a catalyst for positive engagement with the source of the threat, the symbolic effect of a case involving life/liberty attacks would be greater and therefore would have a greater chance of impact on conditions generally.

10 Scholars at Risk Network confidential case files. For inquiries contact scholarsatrisk@nyu.edu. See also Henry G. Jarecki and Daniela Zane Kaisth, *Scholar Rescue in the Modern World* (New York: Institute of International Education, 2009), 27, 63; O'Malley, *Education under Attack*, 15-16; and The Brussels Tribunal website, <http://www.brusselstribunal.org/> (accessed November 9, 2009).

space for education – that is, conscious efforts to control who would be teaching, who would be taught, what is taught, and how, when and where it is taught. At first these attacks seemed focused on scholars with Western affiliations – direct collaboration with Western military or political offices – but quickly devolved to attacks along sectarian divisions, on academic content, and ultimately for purely criminal objectives such as extortion for better grades or kidnapping for ransom. Similar conflict within and over the university space has been experienced recently in Afghanistan, although not as much as might be expected (perhaps because of attrition in the higher education community after decades of conflict and neglect), as well as Burma/Myanmar, Zimbabwe and the Democratic Republic of Congo, among others.

Beyond attacking the personnel or content of higher education, some attacks target the concept of the neutrality of the university space.¹¹ Some elements of such attacks were also experienced in Iraq, in particular when various political parties, particularly with opposing religious affiliations, competed to control the university space.¹² Attacks on neutrality have been experienced recently also in, for example, Sri Lanka, Colombia, and Indonesia (Aceh and West Papua). In these situations militants on competing sides of a conflict deny the neutral option to members of the university community, threatening or attacking those who refuse to adhere. Take for example the case of Professor Dayan Dawood, the former Rector of Syiah Kuala University of Banda Aceh, Indonesia. On September 10th, 2001, at a celebration marking the 40th anniversary of the university, Professor Dawood offered remarks in which he praised efforts to seek a peaceful dialogue in the regional conflict between the Indonesian government forces and the guerrilla Free Aceh Movement. He suggested that the university could provide a safe, neutral space for finding a new concept for peace in the region. Four days later, he was assassinated in broad daylight by two gunmen while on his way to campus; a clear message denying the neutral option.¹³ Similar attacks were made on professors in Colombia after they urged respect for the neutrality of the campus, such as at the University of Antioquia and elsewhere.¹⁴

The recent conflicts in Georgia and Gaza resulted in serious damage to many education facilities.¹⁵ These situations may be somewhat different, however, in their allegations of intentional targeting of facilities on the one hand and allegations of use of the facilities to shelter combatant activity

11 By 'neutrality' I do not mean to suggest that higher education communities are or should be removed from active engagement with contemporary social, political or cultural issues. This 'ivory tower' approach is harmful to both the higher education sector and to society. The former because it marginalizes and therefore undermines public support for higher education, the latter because it denies society its return on investment in higher education in the form of qualified, expert contributors on important questions. Nor do I mean to suggest that higher education – or any education for that matter – is entirely 'neutral' in content or impact. This is clearly not the case, as there are value choices in the content and provision of education. As indicated previously, I would favour those choices consistent with a human rights-based vision of *education-for-learning*. By 'neutrality' I mean only the basic, core principle – too often neglected – that the university space is defined by an abandonment of violence as the basis for deliberation and decision-making. Conflict within the university space is, in principle at least, limited to competition of ideas, evidence and persuasion falling short of coercion or violence. Entry into and good standing within the university space is conditioned on the surrender of the resort to violence and in this sense acceptance of neutrality.

12 Zvika Krieger, "Iraqi Universities Near Collapse," *The Chronicle of Higher Education*, May 18, 2007, 1.

13 Burton Bollag, "Indonesian Rector Assassinated in Aceh," *The Chronicle of Higher Education*, September 21, 2001, A40.

14 Larry Rohter, "A Terrorized University Fights to Be True to Itself," *New York Times*, December 28, 1999, A4.

15 Human Rights Watch (HRW), *Up in Flames: Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia* (New York: HRW, 2009), 41; and United Nations Human Rights Council (UNHRC), *Human Rights in Palestine and Other Occupied Arab Territories: Report of the United Nations Fact Finding Mission on the Gaza Conflict*, A/HRC/12/48 (2009), paras. 1268-1274.

on the other. Clearly both sets of allegations represent a serious violation of the neutrality of the university space. Similarly we see violations of the principles of university neutrality and autonomy in places where military, security or political personnel are temporarily or permanently stationed within the university campus, with recent examples in Bangladesh, Egypt, Venezuela and elsewhere.¹⁶ In some cases it is difficult to determine whether attacks aim to harm the university in its education function, or merely to undermine the governing authority and control resources or territory. For example, raids by militants effecting members of the university community in Gulu in Northern Uganda could not be clearly said to be aimed at the education function. Nevertheless they impeded that function.¹⁷

In all of these situations, large numbers of persons inside and outside the higher education community are affected. Even if not directly targeted, the effects of attacks inside and outside the community impair the education function. Transit to or from campus becomes hazardous. Working or meeting with students or others alone raises risks. As a result, teaching and research capacity degrade, even more so when attacks trigger involuntary brain drain as higher education personnel seek greater security for themselves and their families elsewhere.

While these emergencies and open conflict situations impact larger numbers of *persons*, pre-conflict and isolated, targeted attacks occur in a larger number of countries; over 115 in our experience so far. Of these, perhaps one third involved isolated attacks against only one or two persons of particular note in a community. These are almost always content-driven, directly related to the actual or perceived content of a scholar's work. Examples include the Spanish historian who suffered an assassination attempt after his writing criticized ultra-nationalist terrorist organizations;¹⁸ the Israeli historian who received threats after publishing articles charging Israeli troops with massacres of Palestinians;¹⁹ the Thai political scientist threatened with imprisonment for his book examining a recent political uprising;²⁰ researchers into election irregularities in Egypt, Russia and elsewhere who have had their research centres closed, been detained and interrogated and in some cases imprisoned pending prosecution;²¹ and more.

Although there is little risk that these targeted attacks will spread violence to the wider population, they are nevertheless serious in that they represent a conscious attempt to narrow the space for

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- 16 HRW, *Reading Between the 'Red Lines': The Repression of Academic Freedom in Egyptian Universities* (New York: HRW, 2005), 26-46; BBC News, "Bangladesh Moves to Quell Unrest," August 24, 2007, http://news.bbc.co.uk/2/hi/south_asia/6961543.stm (last accessed November 30, 2009); and Jeremy Morgan, "Chávez, Citing Revolting Students, Seen Taking Over Venezuela Universities," *Latin American Herald Tribune*, August 7, 2009, <http://www.laht.com/article.asp?CategoryId=10717&ArticleId=335659> (last accessed November 30, 2009).
 - 17 Irin News, "Uganda: Concerns Over Renewed LRA Attacks on Civilians," October, 5, 2005, <http://www.irinnews.org/Report.aspx?ReportId=56599> (last accessed November 30, 2009).
 - 18 Wendi A. Maloney, "Academic Rebels Far from Home," *AAUP Academe* (September-October 2004), <http://www.aaup.org/AAUP/pubsres/academe/2004/SO/Feat/malo.htm> (last accessed November 30, 2009).
 - 19 Helena Flusfeder and David Jobbins, "Historian Fears for Academic Freedom in Israel," *Times Higher Education Supplement*, May 17, 2002, <http://www.timeshighereducation.co.uk/story.asp?sectioncode=26&storycode=169182> (last accessed November 30, 2009).
 - 20 Duncan Campbell, "British Professor Flees Thailand after Charge of Insulting King," *The Guardian*, February 9, 2009, <http://www.guardian.co.uk/world/2009/feb/09/professor-thailand-charged-king> (last accessed November 30, 2009).
 - 21 Susan Sachs, "Egypt Clears Rights Activist Whose Jailing Drew World Protest," *New York Times*, March 19, 2003, A8, <http://www.nytimes.com/2003/03/19/world/egypt-clears-rights-activist-whose-jailing-drew-world-protest.html> (last accessed November 30, 2009); and Kommersant, "St. Petersburg European University Closed for Training Observers," February 11, 2008, http://www.kommersant.com/p851415/Vote_observer_university/ (last accessed November 30, 2009).

education and thought; that is to define areas which are, to the attacker's view, 'off limits' from inquiry and discourse. As such these are among the clearest attempts to define education and knowledge by force, and are in clear conflict with a human-dignity promoting, human rights approach to education.

While many of these attacks ultimately are violent, in the initial stages targeted, content-based attacks more generally aim to *isolate* the target from colleagues, peers, family and other supporters. It is this isolation that makes higher education professionals – and likely all education professionals – more susceptible to later, more violent attacks. Efforts in protection and prevention work would do well therefore to focus on preventing isolation, including through registering threats against education professionals with local and international monitors, communicating wider awareness of the threats to suspected attackers to deter further aggression, and putting in place emergency action plans in case threats escalate suddenly, including plans for protective services in place or emergency relocation when necessary.

Unlike these isolated attacks, what may be called 'pre-conflict' situations are marked by widespread repression or polarization of the education community and perhaps society generally, where state or non-state actors regularly resort to intimidation, harassment and violence to maintain the status quo. Such situations are marked by restrictions on or loss of rights and the future possibility – although not certainty – of open armed conflict. In these situations, attacks on higher education sector should be seen as part of a complex orchestration – one that presents an appearance of openness for international and some domestic audiences, while tightly restricting discourse and dissent, particularly through targeted attacks on potentially troublesome groups, including not only higher education professionals, but teachers, defence lawyers, journalists, writers, artists and others engaged in knowledge production and expression. These attacks may sometimes be content-driven in that they may be in response to the specific content of the educator's teaching or research work. But more often they are conduct-driven, aimed at activities which are threatening to the established order including publishing (both in print and electronic formats), organizing discussions and meetings, and demonstrating, whether on campus or on the streets.²²

Pre-conflict types of attacks are experienced widely. For example, in the aftermath of the recent Iranian elections reports emerged about attacks on student protests and dormitories, including several fatalities and multiple arrests.²³ In China, police used force to break up students

22 Frequently student or teacher conduct triggering such attacks is labelled by authorities as 'political.' To this view, expressive activity outside of the exclusive training function is by definition outside of the educative function. It is therefore disruptive and subject to sanction, even by violence. But seen through the lens of education-as-learning, expressive activity outside of the classroom, or even outside the campus, is a natural extension of the development of human intellectual, social and political capacity and progress in the full expression of human rights, at least so long as the conduct remains non-violent and rights-respecting. This is not to say that *partisan* activities cannot be regulated through generally applicable legal guidelines that conform with rights standards, or that such activities might not be appropriately restricted or even banned within the educational space, only that such conduct is not entirely outside of the education function.

23 Tehran Times, "Iran Probes Tehran University Dorm Attacks," September 9, 2009, http://www.tehrantimes.com/index_View.asp?code=202891 (last accessed November 30, 2009).

demonstrating against the arrest of a lecturer²⁴ or changes in government education policies.²⁵ In Ethiopia ethnic-minority students were detained without charge following anti-government demonstrations.²⁶ In Venezuela, military personnel violated university autonomy to break up student and faculty protests in opposition to changes in governance and education budgets.²⁷ Many scholars and writers in Turkey face prosecution for publishing articles and essays which challenge status quo perceptions of the national history or identity.²⁸ The list could easily go on. In these situations harm to the higher education institutions may be manifested in a decrease in resources, degradation of facilities, restrictions on academic areas/departments, reductions in autonomy and the presence of military, security or political personnel on campus. More often, however, they are directed against individuals or groups of individuals, starting again with isolation, leading to loss of position, loss of liberty or exile, violence or death. Again, efforts in protection and prevention work would do well therefore to focus on preventing isolation.

Although these pre-conflict situations may not involve the same scope of violence or loss of individual life as in emergencies or open conflict, this is not to say that they warrant any lesser attention or resources. On the contrary, these situations may present better opportunities to intervene before the eruption of social disorder or open conflict. More effective use of traditional human rights and humanitarian law mechanisms may provide less costly opportunities to ease tensions and avoid wider violations of rights. In this sense, these pre-conflict attacks may be seen as a form of early warning system that the education-protection community would do well to heed.

■ Impact and possible responses

Before suggesting several responses aimed at deterring or mitigating attacks, it is worth detailing the impacts of attacks on higher education. Recognizing again the interdependence of all levels of education, it should first be noted that attacks on higher education impact all sectors. The killing of professors undermines the academic and teaching professions, contributing to shortages of qualified teachers at the primary and secondary levels. Restrictions on curriculum and closing of universities for extended periods undermine quality and general levels of respect for education which are built up slowly over many years.

Widespread attacks in emergency and open conflict situations degrade education facilities, slowing down and increasing the costs of recovery periods. They also trigger involuntary brain drain, as trained education professionals seek safety for themselves and their families outside

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- 24 Clifford Coonan, "Chinese Students Protest after Lecturer Arrested," *The Irish Times*, September 22, 2009, <http://www.irishtimes.com/newspaper/world/2009/0922/1224254988279.html> (last accessed November 30, 2009).
 - 25 BBC News, "Student 'Riot' at Chinese College," June 20, 2006, <http://news.bbc.co.uk/2/hi/5098204.stm> (last accessed November 30, 2009).
 - 26 HRW, *Suppressing Dissent: Human Rights Abuses and Political Repression in Ethiopia's Oromia Region* (New York: HRW, 2005), 22.
 - 27 BBC News, "New Education Clash in Venezuela," August 23, 2009, <http://news.bbc.co.uk/2/hi/8216588.stm> (last accessed November 30, 2009).
 - 28 Article 19 (Global Campaign for Free Expression), "ARTICLE 19 Concerned about Continuous Threats to Freedom of Expression in Turkey," October 16, 2009, <http://www.article19.org/pdfs/press/turkey-article-19-concerned-about-continuous-threats-to-freedom-of-expressio.pdf> (last accessed November 30, 2009).

of conflict zones. The good news is that among the exiled scholars we work with, all express a desire to return to their home countries. This means that greater attention to restoring facilities and resources for higher education, increasing protection and ending impunity during and after emergency and conflict periods has a good chance of reversing brain drain.

Pre-conflict and isolated attacks similarly contribute to involuntary brain drain, by driving away both those professionals who are the targets of intimidation or violence, as well as the much wider numbers of professionals who may not be direct targets but are secondary targets of restrictions on the space for inquiry, discourse and professional development. These professionals leave to pursue their work in more open, free environments. The clients of education lose out, current and future students and the society generally. Civil society is weakened, both by the loss of those silenced or exiled, and by the conscious and unconscious self-censoring of those who remain. The function of education as an engine of positive change is lost, not only for promoting human dignity and fundamental rights but even in the most practical terms of providing technological and industrial competencies. Society becomes risk-averse, creation-averse, discovery-averse. It atrophies, making future development and recovery much more difficult.

Recognizing these negative consequences both in near and long terms, we would do well to develop strategies for responding to attacks on higher education communities not only in emergencies and conflict situations but in pre-conflict conditions as well. In the latter especially, strategies for prevention of wider violations may be most helpful. In all cases, more work is needed to generate and standardize reliable data, especially from those areas traditionally isolated by language, culture and technology. Metrics for measuring and evaluating conditions across borders and across time should be developed – such as Scholars at Risk’s attempt to develop indicators of the health of the higher education sector,²⁹ or indicators of respect for the right to education more generally.

Legal standards on the right to education generally, and on university values in particular, are in place although to a lesser degree for university values. Both need to be better articulated, developed and implemented. Standards in the areas of institutional autonomy and individual academic freedom should be further developed and more widely incorporated into international and national law and practice. At the international level, the UNESCO Recommendation on the Status of Higher Education Teaching Personnel provides a starting point.³⁰ Respect for the autonomy of higher education institutions in particular, including limits on the stationing of military, security or political personnel on campus and in classrooms, should be more broadly recognized and adhered to. The same is true as to the freedoms of higher education personnel to produce content and engage in expressive conduct as part of the fullest articulation of an educational vision.

29 Scholars at Risk’s World Academic Freedom Survey project seeks to develop a set of common indicators enabling researchers, advocates and policy-makers to develop a comprehensive, comparative understanding of the health of the higher education sector as regards core university values of access, autonomy, accountability, academic freedom and social responsibility. Scholars at Risk is currently seeking funding and research partners for the project and invites inquiries to scholarsatrisk@nyu.edu.

30 United Nations Educational, Scientific and Cultural Organization (UNESCO), *Records of the 29th Session of the General Conference: Volume I (Recommendations)* (Paris: UNESCO, November 11, 1997), http://portal.unesco.org/en/ev.php-URL_ID=13144&URL_DO=DO_TOPIC&URL_SECTION=201.html (last accessed November 10, 2009).

All of these – data gathering, metrics and measurement, development and implementation of standards – need to be applied more effectively to protect higher education communities and prevent attacks. Monitoring, reporting and long-term tracking will all help with this, and Scholars at Risk is ready to cooperate on these. But credible deterrence must be established also. Efforts must be made to raise the political costs and to end impunity for attacks on education communities. Better means are needed for combating involuntary brain drain, including increasing protection services for higher education personnel (and all education personnel) before they are forced to flee their country, and better services are required to encourage reintegration of higher education professionals in exile, including security provisions after their return. Emergency and post-conflict responses should include higher education as an important component of recovery and in particular an important step in ending the cycle of violence. This will also help to reverse involuntary brain drain. Increased transparency and solidarity with institutions and individuals experiencing threats and attacks in pre-conflict situations, will help to combat isolation and decrease vulnerability to future attack.

Finally, further attention to attacks on education by the UN General Assembly and Security Council will help with all of these. Such action should recognize a holistic approach to education, including not only primary and secondary education but all levels, including higher education. Such action should also recognize a human rights approach, including the responsibility not only of states but of the education sector; the responsibility of higher education institutions and professionals themselves and the need for greater solidarity in protecting fellow institutions and professionals most at risk. Such action should be grounded in a vision of education-as-learning. With that vision we can imagine a future where attacks on education are reduced and perhaps eventually eliminated. With that vision, and continued cooperation like this expert seminar, we can not only imagine but achieve a future where education is practiced in its fullest, transformative, dignity-promoting, rights-respecting form, for the benefit of all.

Chapter 7.

Attacks on education: Monitoring and reporting for prevention, early warning, rapid response, and accountability

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Introduction

Ensuring children's and young people's access to education is increasingly recognized as an important part of emergency humanitarian response, particularly during mass displacement and natural disasters.¹ Quality education in emergencies can provide lifesaving information, protect children physically, for example, from trafficking and recruitment by armed groups, and mitigate psychosocial trauma. In the long term it can promote peace and post-conflict reconstruction and help young people develop skills and qualifications to avoid poverty.² Education is also a basic right.³

Although closely related to emergency response, the actual protection of education from attack in areas of ongoing conflict – especially when schools or universities, teachers, and students are

- 1 United Nations Children's Fund (UNICEF), *Core Commitments for Children in Emergencies* (New York: UNICEF, 2005), http://www.unicef.org/publications/files/CCC_EMERG_E_revised7.pdf (accessed October 7, 2009); and Margaret Sinclair, *Planning Education In and After Emergencies* (Paris: UNESCO-IIEP, 2002).
- 2 Save the Children, *Rewrite the Future: Education in Emergencies*, Policy Brief (Save the Children, 2009), http://www.savethechildren.org.uk/en/docs/Education_in_emergencies_brief_final.pdf (accessed October 7, 2009); and Inter-Agency Network for Education in Emergencies (INEE), "About Education in Emergencies," http://www.ineesite.org/index.php/post/about_education_in_emergencies1/ (accessed September 25, 2009).
- 3 United Nations General Assembly (UNGA), *Convention on the Rights of the Child*, UNTS vol.1577, art. 28 (November 20, 1989), 3; and UNGA, *International Covenant on Economic, Social and Cultural Rights*, UNTS vol. 993, art.13 (December 16, 1966), 3. The right to education is set out in the Convention on the Rights of the Child, ratified by every country in the world except the United States and Somalia, and the International Covenant on Economic, Social and Cultural Rights.

targeted – is only now receiving more systematic attention. Attacks on education in Afghanistan, Colombia, the Democratic Republic of Congo, Gaza, India, Sudan, southern Thailand and elsewhere highlight the urgent need to protect education in conflict.⁴ Accurate information about both individual attacks and national patterns is critical to providing effective protection. But such information is often lacking. Attacks may occur in remote or insecure areas where observers are unable or unwilling to go, ongoing conflict or other acts of violence may eclipse the pattern of education-related attacks, and state governments may be unable or unwilling to monitor. As a result, the real nature of who and what is targeted, the reasons behind attacks, and trends over time are often not well understood.

A number of international and country-level mechanisms do capture some attacks on education. But many attacks fall outside the scope or current focus of these structures. Moreover, the act of monitoring may not ensure that appropriate information is collected or that it is shared in a way that facilitates an effective response.

This paper will argue that well-designed and effective monitoring is crucial for at least three purposes: 1) for developing early warning systems and other measures to prevent attacks from taking place; 2) for implementing a rapid response capacity to minimize the impact of attacks, keep students and educators safe, and preserve children's access to education; and 3) for holding those responsible for attacks accountable. For monitoring to assist these goals, it must be designed with them in mind and the information reported accurately and efficiently to actors who can respond.

In examining these issues, this paper first describes existing monitoring and reporting mechanisms. Second, the relationship of monitoring and reporting to each of the three goals – prevention/early warning, rapid response, and accountability – is examined. Around each goal, a few key indicators are suggested. Third, challenges – both logistical and ethical – are discussed that should be anticipated when designing monitoring systems. Finally, gaps in existing monitoring and reporting mechanisms in relation to these goals are highlighted and several proposals advanced for closing these gaps.

As used in this paper, monitoring refers to the systematic collection of information about incidents and the analysis of that information. This form of monitoring would complement but differ from the monitoring of education service provision.

Although there is no single agreed-upon definition of 'attacks on education,' the phrase is used here consistent with the April 2009 Presidential Statement of the UN Security Council on children and armed conflict regarding 'attacks or threats of attacks on school children or teachers as such, the use of schools for military operations, and attacks on schools that are prohibited

4 Save the Children, *Rewrite the Future: Preventing Attacks on Schools*, Policy Brief (Save the Children, 2009), [http://www.savethechildren.org.uk/en/docs/Attacks_on_schools_brief_final_\(2\).pdf](http://www.savethechildren.org.uk/en/docs/Attacks_on_schools_brief_final_(2).pdf) (accessed October 7, 2009); Brendan O'Malley, *Education under Attack: A Global Study on Targeted Political and Military Violence Against Education Staff, Students, Teachers, Union and Government Officials, and Institutions* (Paris: UNESCO, 2007); Human Rights Watch (HRW), "Letter to President Barack Obama on Afghanistan," March 26, 2009, <http://www.hrw.org/en/news/2009/03/26/human-rights-watch-letter-president-barack-obama-afghanistan> (accessed October 7, 2009); and HRW, "Thailand: Insurgents Target Teachers in the South," June 18, 2009, <http://www.hrw.org/en/news/2009/06/18/thailand-insurgents-target-teachers-south> (accessed October 8, 2009).

by applicable international law'.⁵ The lack of agreement over what constitutes an attack on education corresponds with the lack of an agreed-upon set of indicators for attacks. (A set of such indicators for the UN-led Monitoring and Reporting Mechanism (MRM) on Children and Armed Conflict, discussed below, has been in draft form for several years.) The indicators proposed in this paper draw upon the experience of the author and colleagues at Human Rights Watch in documenting attacks on education in Afghanistan and elsewhere; conversations with practitioners, including at the 2009 UNESCO-hosted international expert seminar on 'Protecting Education from Attack'; and review of relevant documents.⁶

■ Existing monitoring and reporting mechanisms and their limits

Governments, various UN bodies, certain NGOs, and others have mandates that should lead them to monitor and respond to attacks on education. While governments and the UN-led Monitoring and Reporting Mechanism (MRM) on Children and Armed Conflict have the most explicit mandate, their coverage is far from comprehensive and other bodies are important, particularly where the government lacks the will or capacity or where the MRM is not present or is not covering attacks on education.

Governments

Governments, which are obligated to ensure the right to education, should be in the best position to monitor attacks, given their presence throughout the country. Education ministries should as a matter of course collect basic education information, monitor fluctuation in attendance, and track violence and threats in state-run schools; their local employees may also be well-placed to learn of attacks on non-government schools. Police, prosecutors, and criminal courts, in turn, should investigate and prosecute attacks. Where established, national human rights commissions could also take up school attacks. In Colombia the early warning system of the Ombudsman's office monitors the human rights situation in many areas with the goal of preventing abuses. It has played a key role in reporting threats to communities and individuals, including trade unionists among whom are teachers. However, other Colombian government authorities have at times ignored the risk reports, failing to take necessary measures to prevent abuses.⁷

However, governments in conflict may lack the capacity or will to monitor. Education departments may not be in regular communication with or even paying some staff, and governments may

5 United Nations Security Council (UNSC), *Presidential Statement on Children and Armed Conflict*, S/PRST/2009/9 (UNSC, April 29, 2009).

6 Human Rights Watch's previous monitoring of attacks on education differs from that proposed here: the organization's reporting has intended to expose the problem and reasons behind it and to promote accountability. It has not been designed specifically for the purpose of informing a programmatic response, and it has occurred over a defined period of time. However, practical lessons learned from Human Rights Watch's experience conducting field-based monitoring, maintaining databases of events, verifying and analyzing information, and addressing logistical and ethical challenges were drawn upon in developing this paper.

7 HRW, *World Report 2010* (New York: HRW, forthcoming 2010).

not have security services stationed in certain areas. For example, in 2005 the Afghan Ministry of Education was not only prevented by security threats from visiting many areas where schools were attacked, it also intentionally did not collect information about attacks. One explanation came from a deputy minister: 'It will have a negative effect on our morale'.⁸ (The ministry has since begun tracking attacks on schools, teachers, and students and resulting school closures.) In contrast, the government of Thailand issues intermittent press reports on numbers of insurgent killings of teachers and school burnings in the country's southern provinces, suggesting that it is tracking these events centrally.⁹

In some instances, governments or their local affiliates may be implicated in attacks. For example, Human Rights Watch documented attacks on schools in Afghanistan in areas dominated by forces allied with warlords with a history of abuse and hostility to girls' education who were then serving in the Afghan Parliament.¹⁰ In Thailand the army has raided private Islamic schools while militants have attacked government schools and killed teachers and students.¹¹ In several states in India, police and paramilitary police forces are taking over and occupying schools as part of their counter-insurgency efforts against the Naxalites, who are in turn directly targeting and blowing up government schools.¹²

Even when governments do monitor, the quality of information may be inadequate. For example, the Afghan education ministry's database suffers from both under-reporting and double counting, and in some cases lacks critical information such as school name or date of attack.¹³ Government bodies, including security services, may also be subject to political influence or unwilling to release information publicly or quickly enough for NGOs and other service providers to respond. Government monitoring is thus both critical and often insufficient.

UN bodies

Various UN bodies with mandates related to human rights, children's development and survival, and children in armed conflict should monitor and report on attacks on education. UNICEF is mandated to advocate for the protection of children's rights and plays a critical role in promoting education. Yet its monitoring and reporting are inconsistent: in Afghanistan, for example, the country office was slow to embrace monitoring but at the time of writing was supporting the government in its education protection strategy; in India UNICEF is not monitoring school attacks

8 HRW, *Lessons in Terror*.

9 UNICEF, *Everyday Fears: A Study of Children's Perceptions of Living in the Southern Border Areas of Thailand* (Bangkok: UNICEF, 2008), http://www.unicef.org/thailand/Everyday_fears.pdf (accessed October 26, 2009), 1.

10 HRW, *Lessons in Terror*; and HRW, *'Killing You Is a Very Easy Thing for Us': Human Rights Abuses in Southeast Afghanistan* (New York: HRW, 2003), <http://www.hrw.org/sites/default/files/reports/afghanistan0703.pdf> (accessed October 6, 2009).

11 HRW, "Thailand: Insurgents Target Teachers"; and HRW, *No One Is Safe: Insurgent Attacks on Civilians in Thailand's Southern Border Provinces* (New York: HRW, 2007).

12 HRW, *Sabotaged Schooling: Naxalite Attacks and Police Occupation of Schools in India's Bihar and Jharkhand States* (New York: HRW, forthcoming).

13 Glad, Marit, *Knowledge on Fire: Attacks on Education in Afghanistan; Risks and Measures for Successful Mitigation*, section 3.5 (CARE/World Bank/Afghan Ministry of Education, 2009); and Dana Burde, "Preventing Violent Attacks on Education in Afghanistan: Considering the Role of Community-Based Schools," in *Protecting Education from Attack: A State-of-the-Art Review* (Paris: UNESCO, 2010), 245-260.

in the Naxal conflict. UNESCO, whose mandate covers education at all levels, maintains an education and conflict desk, has published a report on attacks (with another in process for 2010), and runs field offices in some conflict settings; its field presence is far smaller than UNICEF's and these offices rarely take up the issue.

In emergencies, the Interagency Standing Committee (IASC) Protection and Education Clusters coordinate humanitarian response at the field level and in Geneva; there is the potential for one or both of these clusters to take up this issue explicitly. The INEE Minimum Standards, which were under revision at the time of writing, also hold potential for promoting more consistent assessment and monitoring.¹⁴ The revised standards handbook will incorporate strengthened indicators and guidance notes for the protection of education. Additionally, the human rights and child protection components of peacekeeping operations may also collect information about attacks and intervene with authorities. The United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), which often plays a coordinating role in the field, reports that while UN and humanitarian agencies may monitor attacks to the extent that they affect humanitarian access, reporting on school attacks is typically anecdotal and information is not collected consistently over time.¹⁵

The UN-led Monitoring and Reporting Mechanism (MRM) on Children and Armed Conflict, established by Security Council Resolution 1612 in 2005, now has an explicit mandate to monitor attacks on schools, teachers, and students.¹⁶ The MRM is established only in countries named by the Secretary-General in the annexes of his annual reports to the Security Council on children and armed conflict where, in situations of armed conflict, children are recruited and used as soldiers or, since August 2009, killed and maimed or subjected to grave sexual violence.¹⁷ Once established, the MRM monitors six grave violations against children in armed conflict, including attacks on schools. Information is fed into the MRM through interagency task forces at the field level who report to a headquarters-level task force chaired by the Special Representative of the Secretary-General (SRSG) on Children and Armed Conflict. The Special Representative, in turn, reports to the UN Secretary-General, who reports to the Security Council Working Group on Children and Armed Conflict, which makes recommendations for action to the Security Council. The MRM has given far less attention to education than to other violations against children, and countries such as Thailand and India, each of which suffers attacks on education, are not presently covered.¹⁸ The mechanism is also restricted to children: attacks on tertiary and other forms of adult education are not covered. Nevertheless, the MRM's successes around the recruitment

14 INEE, *INEE Minimum Standards for Education in Emergencies, Chronic Crisis and Early Reconstruction* (INEE, 2004).

15 United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA) and Policy Development and Studies Branch (PDSB), "Humanitarian Access" (presentation, September, 2009).

16 UNSC, *Resolution 1612*, S/RES/1612 (2005); and UNSC, *Resolution 1882*, S/RES/1882 (2009).

17 Ibid.

18 Alec Wargo, "Overview of the MRM in Monitoring and Reporting of Attacks on Education through the Monitoring and Reporting Mechanism (MRM) on Children and Armed Conflict" (presentation, UNESCO International Expert Seminar *Protecting Education from Attack*, Paris, September 28, 2009). The office of the SRSG requires that information be 'UN-verified' to be listed by the Secretary-General. In conflicts in India and Thailand, the UN has not itself verified the extensive evidence of the use of children as soldiers (and attacks on schools, teachers, and students).

and use of children as soldiers demonstrate its significant value for addressing violations against children in armed conflict.¹⁹

The SRSG on Children and Armed Conflict, in addition to her role with the monitoring and reporting mechanism, can collect information on attacks, conduct country visits, and intervene publicly or privately with governments.²⁰

The Committee on the Rights of the Child, through its periodic review of country compliance with the Convention on the Rights of the Child, reviews violations of the right to education, including attacks on schools, teachers, and students, and makes recommendations to states.²¹ In 2008 the Committee held a day of general discussion on education in emergencies at the conclusion of which it urged states parties: 'to ensure that schools are protected from military attacks or seizure by militants; or use as centres for recruitment[;]...to criminalize attacks on schools as war crimes in accordance with article 8(2)(b) (ix) of the Rome Statute of the International Criminal Court and to prevent and combat impunity'.²² The UN Human Rights Council through the universal periodic review process could request information and report on attacks on education. The Special Rapporteur on the Right to Education, who dedicated his 2008 annual report to education in emergencies, can monitor and report on such attacks through country visits, individual urgent complaints, letters to governments, and annual reports.²³

Non-governmental organizations and others

Domestic and international non-governmental organizations (NGOs) play a particularly important role in drawing attention to overlooked attacks, including where the government is implicated or unwilling to respond and the UN is either not present or not monitoring. A distinction should be made, however, between purely human rights NGOs and service providers that may also have a protection mandate. NGOs dedicated to running education programmes may be the main education providers in conflict areas and thus may have good access to information. However, they may lack the mandate and skills to monitor, compile, analyze, and report information, especially information that goes beyond the scope of programme operation. Moreover, publicly

19 HRW, "Taking the Next Step: Strengthening the Security Council's Response to Sexual Violence and Attacks on Education in Armed Conflict," April 20, 2009, <http://www.hrw.org/en/news/2009/04/20/taking-next-step> (accessed 6 October 6, 2009); and Katy Barnett and Anna Jefferys, *Full of Promise: How the UN's Monitoring and Reporting Mechanism Can Better Protect Children*, HPN Paper #62 (London: Overseas Development Institute, 2008).

20 Alec Wargo, "Opportunities to Strengthen Monitoring and Reporting of Education-Related Violations" (presentation, UNESCO International Expert Seminar *Protecting Education from Attack*, Paris, September 28, 2009).

21 This process not only involves monitoring by the Committee itself and governments that report to it but also encourages monitoring by NGOs, which can independently submit information to the Committee. The Committee has commented on attacks on education or military use of schools in at least four countries, including Burundi, Colombia, Ethiopia and Moldova.

22 Committee on the Rights of the Child (CRC), "Day of General Discussion on 'The Right of the Child to Education in Emergency Situations': Recommendations" (CRC, 49th Session, unedited version, October 3, 2008), <http://www2.ohchr.org/english/bodies/crc/docs/discussion/RecommendationsDGD2008.doc> (accessed October 26, 2009).

23 Vernor, Muñoz. *Right to Education in Emergency Situations: Report of the Special Rapporteur on the Right to Education*, A/HRC/8/10 (UN, 2008), <http://www2.ohchr.org/english/issues/education/rapporteur/annual.htm> (accessed October 22, 2009).

monitoring and reporting may put their programmes and staff at risk. But where these risks are managed, education NGOs may be well-placed to use the information they collect to respond.

Human rights NGOs, although they may lack the resources to monitor attacks indefinitely or respond programmatically, may enjoy the mandate and greater freedom to speak openly and draw attention to the problem, pressing others to act and advocating around particular cases. Staff should also be trained in collecting information accurately and ethically.

Working together, human rights and humanitarian organizations may be especially effective. For example, the Partnerships for Protecting Children in Armed Conflict (PPCC), established in 2005, is a network of Nepali and international organizations that not only monitors violations of children's right to education, including conflict-related violations, but also uses the information for programming and advocacy. In addition, the network supplies its information to the national MRM task force on children and armed conflict (explained above).²⁴

Additionally, the International Committee of the Red Cross (ICRC) is charged with monitoring the application of international humanitarian law, or the 'laws of war.' These laws prohibit military attacks that target civilian objects, including schools, or civilians, including educational personnel and students, in both international and non-international armed conflicts.²⁵ While the ICRC only rarely makes its findings public and is not present in all areas, it did, for example, express concern about the use of health facilities for voter registration and polling in the run up to the 2009 Afghan elections, a concern that it could have similarly raised around the use of schools.²⁶

Other valuable sources of information include the media, academic reports, and research institutes or think tanks that track incidents of terrorism, including attacks on education.

■ Monitoring and reporting for prevention/early warning

An important part of addressing attacks on educational institutions, teachers, and students is preventing them from occurring in the first place. Prevention may include enhancing community participation, improving the physical protection of school buildings and routes to school, exploring alternative schools sites and schedules, prohibiting the use of schools for any military or police

24 Nepal Partnerships for Protecting Children in Armed Conflict (PPCC), *Nepal Partnerships for Protecting Children in Armed Conflict* (n.d.).

25 This is provided that none have become legal military objectives through military usage or directly participating in the hostilities. See ICRC, *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 1125 UNTS 609, art. 13 (June 8, 1977), 3; and ICRC, *Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 75 UNTS 287 (August 12, 1949).

26 IRIN News, "Afghanistan: Using Clinics as Polling Stations 'Not a Good Idea' – ICRC," April 30, 2009, <http://www.irinnews.org/Report.aspx?ReportId=84180> (accessed October 8, 2009).

purpose, and negotiating schools as conflict-free or neutral zones.²⁷ Prevention is also a part of attack response, as students are more likely to return if they have confidence that steps have been taken to avoid subsequent attacks.

Accurate information is essential to preventive measures. This includes which educational institutions are most at risk, who is being targeted, why, and how. Answering these questions requires knowing basic facts about schools: where they are, who runs and attends them, and how students and teachers get there. The collection of this data may be disrupted by conflict.²⁸ Monitoring can also reveal trends over time and place. For example, in Afghanistan, attacks have tended to decrease in the winter with bad weather and increase in the spring as the snows melt and the school year begins in most places.

Risk factors vary by locale and could include aspects inherent to the school, for example, the source of funding or other sponsorship (government, non-government, domestic, or foreign), the content of the curriculum, the sex of students or teachers, and the school's location (near military targets, accessible to attackers, remote from the community, distant from students' homes). External factors may include the attitude of local power holders to education, the extent to which government security forces can secure the area where the school is located, and the intensity of the general conflict. Also relevant is the security of routes and methods of transportation taken by students and teachers.

Some factors, of course, change with the political climate, the weather, the school year, and the conflict itself. Accordingly, in addition to general prevention, an early warning system could identify when targeted measures are needed. For this, a context-specific set of indicators that might predict an attack could be developed. Appropriate indicators may include threats, which would not necessarily be collected in post-attack monitoring; the development of these indicators may be informed by collecting information about events preceding previous attacks. For example, in Afghanistan some attacks have been preceded by pamphlets – so-called night letters – warning residents not to send their children to school, to educate girls, or to associate with the Afghan government or foreigners. In other areas, increased movements by militants or public statements against the government or education may indicate the likelihood of an attack. The presence, even temporary, of state or international security forces or the use of a school by the government for other purposes such as polling may also provoke attacks in some environments. For example, in Chhattisgarh state in India, Naxalites have justified the destruction of schools on the grounds that they were used by police and state-supported anti-Maoist vigilante groups.²⁹ In Afghanistan before the 2009 elections, a group of humanitarian agencies and the Minister of Education used

27 Christine Groneman, "Desk Study on Field-Based Mechanisms for Protecting Education From Targeted Attack," in *Protecting Education from Attack: A State-of-the-Art Review* (Paris: UNESCO, 2010), 227-244 ; Jackie Kirk and Rebecca Winthrop, "Home-Based Schooling: Access to Quality Education for Afghan Girls," *Journal of Education for International Development* 2, no. 1 (2005), http://www.equip123.net/JEID/articles/3/HomeBased_Schooling.pdf (accessed October 6, 2009); Dana Burde, "Weak State, Strong Community: Promoting Community Participation in Post-Conflict Countries," *Current Issues in Comparative Education* 6, no. 2 (2004), http://www.iiep.unesco.org/fileadmin/user_upload/Research_Highlights_Emergencies/62burde.pdf (accessed 6 October 2009); and INEE, *INEE Minimum Standards*.

28 INEE, *INEE Minimum Standards*.

29 HRW, *Being Neutral Is Our Biggest Crime: Government, Vigilante, and Naxalite Abuses in India's Chhattisgarh State* (New York: HRW, 2008), <http://www.hrw.org/reports/2008/india0708/> (accessed October 6, 2009).

data on attacks to call for schools to be used as polling places only as a last resort; according to the ministry, 26 of the 2,742 schools used as polling places were attacked on election day.³⁰

■ Monitoring and reporting for rapid response

Responding to an attack immediately is important for mitigating its effects and getting students back to school or university as quickly as possible. Although in some areas, security is simply too dire to permit an immediate return, in others, a swift and strategic response from authorities can avoid the school remaining shuttered or reopening with far fewer students and teachers. Rapid response may include repairing infrastructure and replacing school materials, as well as putting in place new steps to prevent future attacks and reassure students, teachers, and the community.³¹

A rapid response is, of course, impossible if the responding body is unaware that an attack has taken place. UNICEF education officials in Afghanistan in 2005, for example, told Human Rights Watch that their policy was to provide tents and to replace damaged textbooks and furniture within five days. However, they relied on their zonal offices for information and thus never learned of the vast majority of attacks, even those widely reported in the press.³² Accordingly, it is important that a monitoring and reporting mechanism have an 'alert' component, that it be able to collect and transmit quickly the basic information that an attack has occurred, the geographic location, and the extent of the damage. In addition to immediate damage repair, information about who is responsible and the reasons behind a particular attack can help to tailor steps to prevent future attacks.³³

When the school or university reopens, it is important to monitor any drop in student and teacher attendance, not only in the school itself but in surrounding schools that may fear similar attacks. Such monitoring may not happen automatically through education departments if, for example, schools only monitor annual enrolment numbers. If decreased attendance is noted and among whom (for example, students of a single sex, students who live far away or off main roads, students of a particular ethnic or linguistic group), it may then be possible to address specific barriers and encourage return.

30 IRIN News, "Afghanistan: Over 20 Schools Attacked on Election Day," August 24, 2009, <http://www.irinnews.org/Report.aspx?ReportId=85831> (accessed October 8, 2009).

31 Jonathan Penson and Kathryn Tomlinson, *Rapid Response: Programming for Education Needs in Emergencies* (Paris: UNESCO-IIEP, 2009), http://www.iiep.unesco.org/fileadmin/user_upload/Info_Services_Publications/pdf/2009/RapidResponse.pdf (accessed October 6, 2009).

32 HRW, *Lessons in Terror*.

33 The *INEE Minimum Standards* state that the "Analysis of the causes and effects of the emergency is critical. If the problem is not correctly identified and understood then it will be difficult, if not impossible, to respond appropriately." (INEE, *INEE Minimum Standards*, 12).

■ Monitoring and reporting for accountability

Documenting who is responsible, what they did, and how they did it is important for holding perpetrators of attacks accountable and deterring future attacks.³⁴ Accountability may come in the form of actual criminal prosecution, but attacks often occur where the justice system is too weak to reliably investigate, prosecute, and punish. Even in these cases, information collection remains valuable for future accountability if the area stabilizes, for increasing the political cost of attacks including public pressure or shaming of perpetrators, or, in rare cases, accountability in international fora. Investigations are also important for ensuring the integrity of public accusations regarding responsibility for attacks.

Collecting information about responsibility can be far more challenging than documenting the mere fact of an attack. Witnesses may fear retaliation, especially when the local power holders (whether allied with the government or not) are themselves responsible. Evidence that is admissible in a court or that can withstand the challenge of a motivated and named individual in the public eye must be of a higher quality and level of detail than, for example, that required for trend analysis, and may be harder to collect. However, even if most attacks cannot be adequately investigated and prosecuted in an actual court or the court of public opinion, taking up a few cases may deter future crimes.

The International Criminal Court (ICC) can prosecute war crimes committed on or after July 1, 2002, which can include attacks on schools (that are not military objects), teachers, and students.³⁵ NGOs and members of the public can submit communications and complaints which the court can examine. Although the court takes up only a very few cases, and then only when national courts are unwilling or unable to prosecute, these can have a deterrent effect. As of the time of writing, attacks on schools had not been included among the charges in any case before the ICC.³⁶

■ Logistical and ethical challenges to monitoring and reporting

Effective monitoring and reporting is likely to encounter various logistical and ethical challenges. These include three related issues: 1) access to areas where attacks occur, 2) collecting reliable information, and 3) the risk to monitors or sources of information.

34 Bede Sheppard, "'Painful and Inconvenient': Accountability for Attacks on Education," in *Protecting Education from Attack: A State-of-the-Art Review* (Paris: UNESCO, 2010), 125-146.

35 UNGA, *Rome Statute of the International Criminal Court*, A/CONF. 183/9 (July 17, 1998, last amended January 2002).

36 International Criminal Court (ICC), "All Cases," <http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/Cases/> (accessed October 26, 2009). By comparison, seven persons have been indicted for the enlistment, conscription, or use of child soldiers.

First, areas most vulnerable to attacks and where it is most necessary to collect information are often the least accessible because of poor security or poor infrastructure, such as roads and communication services. For example, a staff member of an Afghan NGO that had weathered serious security problems explained to Human Rights Watch why he had argued against expanding an education programme to a particular province: 'I said, "... we will have to hire staff two times: we will send staff and they will be killed.'" This is not a joke'.³⁷

Second-hand reports may be scant and unreliable; on-site visits and eyewitness interviews are critical. The press, which although varied in its reliability can be one avenue for learning about attacks for further investigation, faces similar constraints.

Where it is truly impossible to conduct on-site investigations, information may be collected remotely by speaking with informed persons who have recently been in the area, establishing networks of local informants who can transmit information out, and bringing witnesses to safer locations. Each of these solutions has a potential cost to the information's accuracy: witnesses may be afraid to give information over the phone and may be at risk of surveillance, relying on second-hand information may compromise its reliability, and witnesses who can travel out may not necessarily be the most informed and in some areas may be mainly male and adult. Regarding the last point, understanding the concerns of those most at risk, including children and female teachers in remote communities, is important for designing protective measures that will overcome security barriers that prevent them from going to school. It should be noted, however, that persons may speak more freely outside areas controlled by attackers and that for outside monitors to visit witnesses in their home areas may identify them and place them at risk.

In addition to impeding the collection of first-hand information, security and infrastructure barriers may also make it difficult to confirm reports via multiple sources. Even if it is impossible to obtain a precise count of attacks or to verify each of them independently, such information may still demonstrate patterns and trends that can usefully inform a response.

Where access is possible, police, security services, or others investigating for accountability purposes may lack basic forensic skills including in conducting investigations; record keeping; and collecting, securing, and keeping a chain of evidence.

Some information, for example, about militant activity or perpetrators of attacks, will be sensitive. Eyewitnesses, other local contacts, or outsiders collecting the information may be put at risk by gathering and sharing it. Those who live or work in the community may fear the perpetrators. Victims of violence may be at risk of retraumatization. Although some of the remote collection methods suggested above may help address security risks, using only national or local contacts to lower the profile of collectors may endanger those individuals. Maintaining the confidentiality of contacts may be difficult if the information is shared with a large or corrupt government bureaucracy. These risks underscore the importance of assessing what information is truly important to collect and where excessive risk requires refraining from collecting information.

Those with the most access to information may lack the skills to monitor or may even be motivated to deny the problem. Education officials or parties running education projects may wish to portray success to donors and not endanger their funding or own jobs by exposing

37 HRW, *Lessons in Terror*.

attacks that undermine their ability to work. For example, Human Rights Watch found, while investigating attacks on education in Afghanistan in 2005, that some Afghan NGO and UN staff working on education projects were reluctant to acknowledge that attacks were taking place or that general insecurity had made it impossible for them to work in some areas. This may have reflected fear of Taliban and other armed groups, concern for their own jobs, and pressure to maintain a positive picture of education in Afghanistan.³⁸ Establishing mandatory reporting systems, providing dedicated monitors screened for neutrality and independence, and training them in ethics and methodology may help overcome these barriers.

Although certain risks to local residents and monitors may be unacceptable, incurring even an acceptable level of risk demands that the information be used for a purpose, that the risk not be incurred for nothing. Similarly, the need to collect information and understand the problem must not be used as an excuse to unduly delay taking action. This requires not only the resources and political will to respond: poor security that facilitates attacks may also inhibit prevention and rapid response. Where some response – including a form of accountability – remains possible, this can justify monitoring efforts.

■ Conclusion: Addressing the gaps in monitoring and reporting on attacks on education

If monitoring and reporting systems were established at the country level and were designed in such a way as to promote prevention/early warning, rapid response, and accountability for attacks on education, the protection of schools, teachers, and students would potentially be enhanced and children's access to education likely improved. At the international level, a comprehensive picture of attacks worldwide, trends, and hotspots, and comparative data would also enhance international response towards these three goals.³⁹

The patchwork of current monitoring structures reflects recent progress but leaves significant gaps. How could monitoring be more comprehensive and more effective? While no single structure could fulfil every function, several activities might help. First, better coordination among existing mechanisms is needed. This would assist at the country level, for example, in defining who will take the lead in monitoring and where dedicated resources and training are needed. Coordination could also be improved between UN agencies and the office of the SRSG on Children and Armed Conflict about who is responsible for collecting information about attacks for countries where no monitoring and reporting mechanism (MRM) exists.

Second, reaching agreement on and widely distributing a set of standardized indicators that includes factors relevant for prevention, response, and accountability would assist compiling and sharing information. Such indicators could be based on the draft indicators for the MRM, although these do not address higher education, for which additional indicators will be needed.

38 Ibid.
39 See Vernor Muñoz, *Right to Education in Emergency Situations*.

The Education Cluster is currently drafting a Joint Needs Assessment Toolkit that could promote more consistent data collection if the relevant indicators are included.

Third, monitoring of attacks on education by interagency taskforces under the Monitoring and Reporting Mechanism (MRM) on Children and Armed Conflict could be improved. The Security Council's April 2009 Presidential Statement, noted above, by using a broader definition of attacks on education, and the Council's August 2009 Resolution 1882 by expanding the trigger beyond child soldiers to situations of sexual violence and killing and maiming of children, provide the potential to cover more countries where education is attacked and for interagency task forces to monitor a more expansive range of education-related violations in the field. This information could promote more and improved recommendations from the Security Council Working Group and stronger action from the Security Council specifically around attacks on education.

Fourth, the problem of monitoring attacks in countries such as India and Thailand where there is no MRM must be addressed. Simply facilitating the establishment of an MRM in such countries, including through expanding the MRM trigger mechanism to include attacks on education, may help. In addition, the requirement that all information be 'UN verified' for a country to be listed and an MRM established could be reconsidered where UN agencies are not present or are unwilling or unable to collect information, given that Security Council Resolution 1612 establishing the MRM only requires that information be 'timely, objective, accurate and reliable.' However, it should be recognized that the MRM will not be comprehensive and that other forms of monitoring will remain needed.

Fifth, information collected could be more systematically provided to other UN structures such as the Committee on the Rights of the Child, the Human Rights Council, and the Special Rapporteur on the Right to Education as well as to the International Criminal Court. The bodies could, in turn, do more to solicit and act upon information about attacks on education. The Committee on the Rights of the Child, following its day of general discussion on education in emergencies, is well-positioned to prepare a general comment on the topic that would clarify and strengthen the human rights prohibition on attacks. A general comment would, in turn, encourage more country reporting on the topic.

Finally, militaries, diplomats, political affairs offices, and other peace and security institutions should be encouraged to view – and thus monitor – access to and attacks on education at all levels as a critical measurement of security.⁴⁰

Growing attention to attacks on education presents a clear opportunity to governments, international institutions, and non-governmental bodies to improve the protection of schools, teachers, and students. Effective monitoring and reporting is a vital aspect of this.

40 HRW, *Lessons in Terror*.

Chapter 8.

‘Painful and inconvenient’: Accountability for attacks on education¹

Bede Sheppard

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■ Introduction

As painful and inconvenient as justice may be, we have seen that the alternative – allowing accountability to fall by the wayside – is worse.

-Archbishop Desmond Tutu²

Lofty international proclamations about the importance of protecting education during times of conflict tend to seem vacuous in a world where schools are bombed, teachers are shot in their classrooms, and children are forcibly recruited from playgrounds to fight the wars of adults. The role of accountability is to bring substance to the noble sentiments of international humanitarian and human rights’ law so as to bring genuine protection for students, schools, and teachers prior to attacks and, where such protections have failed, to offer appropriate redress for the victims.

At times, the term ‘accountability’ is used in a manner that makes it seem synonymous with a rigid penal response. Yet at other times, the very same term is used to implore almost any response to an ignored atrocity; but as such, the term becomes amorphous, intangible, and entirely incapable of being acted upon.

The reality is that there is no one formula for ‘accountability’ that is suitable to all attacks on education, all conflicts, all cultures, all countries. At different times and in different settings, the same act of planting a bomb beneath a school desk might amount to a crime of arson under domestic law, a war crime under international law, and a violation of children’s rights to education.

1 Research assistance for this paper was provided by Christine Groneman and Zoe Hutchinson, interns in the children’s rights division of Human Rights Watch.

2 Desmond Tutu, “Will Africa Let Sudan Off the Hook?” *New York Times*, March 2, 2009.

In its ideal aspiration, 'accountability' is the attempt to shift the burden and harm from a victim to the perpetrator while at the same time seeking to deter any repeat occurrence of a similar crime by any future perpetrator.³ At its most basic, 'accountability' simply means consequences for abuses.

Accountability can be attempted in a variety of effective ways, and this paper tries to identify some concrete examples of past efforts to hold violators to account for attacks on education, as well as current gaps and areas for possible expansion of accountability mechanisms. This paper particularly stresses the role of nongovernmental and intergovernmental organizations and therefore draws heavily upon Human Rights Watch's own experiences advocating for an end to impunity for attacks on education, the use of child soldiers, and other related war crimes.⁴

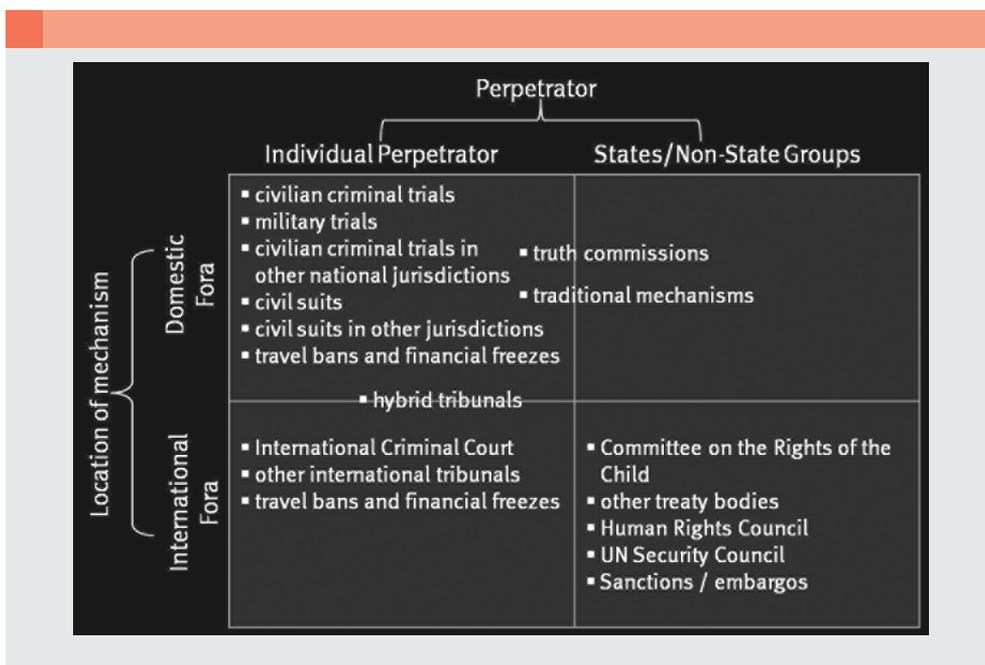
Accountability mechanisms

Important first questions when arguing for accountability for an attack on education are to consider who is to be held accountable and where. The table below helps illustrate the range of accountability mechanisms depending upon the answer to these questions. The first column shows mechanisms that focus on alleged individual perpetrators of violations while the second column refers to state or non-state group perpetrators. Sometimes one might seek to hold accountable the individual who physically carried out the attack but their identity may be unknown. At other

3 No law has ever successfully deterred all further violations. However, the ability of any legal prohibitions to actually deter future attacks on education depends on the degree to which the perpetrators believe they will be held accountable for their transgressions. Despite the still nascent development of international criminal justice, Human Rights Watch has seen increased awareness of what constitutes criminal behaviour as a result of international prosecutions. For example, in the Central African Republic, a rebel commander demobilized his child soldiers after learning about the International Criminal Court's prosecution of Congolese rebel leader Thomas Lubanga on charges of recruitment of child soldiers, claiming he had not known using child soldiers was a crime. In the Democratic Republic of the Congo, observers have also noted the educational impact of the Lubanga case. For other examples of deterrence caused by accountability see Human Rights Watch (HRW), *Selling Justice Short: Why Accountability Matters for Peace* (New York: HRW, 2009), 123-127, <http://www.hrw.org/en/reports/2009/07/07/selling-justice-short>.

4 In particular, this paper draws upon the research, findings, and recommendations of the following Human Rights Watch reports: HRW, *Scared Silent: Impunity for Extrajudicial Killings in the Philippines*, vol. 19, no.9(C) (New York: HRW, 2007), <http://www.hrw.org/en/reports/2007/06/27/scared-silent>; HRW, *Selling Justice Short*; HRW, *Dangerous Duty: Children and the Chhattisgarh Conflict* (New York: HRW, 2008), <http://www.hrw.org/en/reports/2008/09/05/dangerous-duty-0>; HRW, "Being Neutral is Our Biggest Crime": Government, Vigilante, and Naxalite Abuses in India's Chhattisgarh State (New York: HRW, 2008), <http://www.hrw.org/en/reports/2008/07/14/being-neutral-our-biggest-crime-0>; HRW, *Lessons in Terror: Attacks on Education in Afghanistan*, vol. 8, No. 6(C) (New York: HRW, 2006), <http://www.hrw.org/en/reports/2006/07/10/lessons-terror>; HRW, *No One is Safe: Insurgent Violence Against Civilians in Thailand's Southern Border Province* (New York: HRW, 2007), <http://www.hrw.org/en/reports/2007/08/27/no-one-safe>; HRW, *Universal Jurisdiction in Europe: The State of the Art*, vol. 18, no. 5(D) (New York: HRW, 2006), <http://www.hrw.org/sites/default/files/reports/ij0606web.pdf>; HRW, *Genocide, War Crimes and Crimes Against Humanity: A Topical Digest of the Case Law of the International Criminal Tribunal for the Former Yugoslavia* (New York: HRW, 2006), http://www.hrw.org/sites/default/files/reports/ICTYweb_0.pdf; and HRW, *Sabotaged Schooling: Naxalite Attacks and Police Occupation of Schools in India's Bihar and Jharkhand States* (New York: HRW, forthcoming).

times it might be more strategic to pursue individuals who ordered the attack,⁵ or the military commander who knew, or should have known, about the attack, and who failed to try to stop it.⁶ Similarly, one might choose to pursue the government official who knew his subordinates were illegally targeting schools but failed to submit the matter to proper authorities for investigation. Indeed, holding high-level commanders accountable can send a particularly clear message against impunity that no one is above the law.



Higher up the chain of command it might also be strategic to hold the state responsible; or, when it is not a state that is responsible for attacks, to hold the non-state actor – for example the guerrilla, separatist, revolutionary, or insurgent group – accountable.

The mechanisms shown in the upper row are based at national level, while international mechanisms are placed in the lower row of the matrix.

5 Individuals can be held accountable not only for directly committing a crime, but also under a variety of legal complicity theories such as ordering, soliciting, or inducing a crime. For example, under the *Rome Statute of the International Criminal Court* for 'ordering, soliciting, or inducing' a crime (United Nations General Assembly (UNGA), *Rome Statute of the International Criminal Court*, A/CONF.183/9 (July 17, 1998), art. 25 ('Individual criminal responsibility'). Similarly, under the statutes of the International Criminal Tribunal for the Former Yugoslavia or the International Tribunal for Rwanda for having 'planned, instigated, ordered' a crime (United Nations Security Council (UNSC), *Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY)*, Resolution 827, S/RES/827 (1993), art. 7(1); and UNSC, *Statute of the International Criminal Tribunal for Rwanda (ICTR)*, Resolution 955, S/RES/955 (1994), art. 6(1)). There are also many domestic jurisdictions that impose criminal liability for 'aiding and abetting' or 'soliciting' a crime. In some jurisdictions these may be considered separate crimes, while in others they are considered merely theories of individual complicity and responsibility.

6 See for example, UNGA, *Rome Statute*, art. 28 ('Responsibility of Commanders and Other Superiors').

As this table demonstrates, there are a number of accountability mechanisms available, and the list is not exhaustive. Moreover, it is important to note that many mechanisms are not criminal. The whole variety of possible mechanisms should be considered, because the alternatives need not be mutually exclusive, and to ignore some is to miss some potentially effective mechanisms. The mechanisms for each box of the table are considered below.

■ Accountability for attacks by individuals

Accountability in domestic fora for attacks by individual perpetrators

▶ Criminal trials and military tribunals at home

The most preferred forum for accountability is within the country where the atrocities took place; generally it is where the evidence is, the victims have greater access to proceedings, and justice is faster and cheaper.

Many countries have separate laws to regulate the conduct of members of their armed forces. Some countries use the regular civilian judicial systems for trials against members of the armed forces, while others use special judicial or quasi-judicial arrangements to enforce those laws.

However, the first step in seeking criminal prosecutions of individuals in domestic courts is that the underlying offences have to actually be criminalized. Many acts that constitute attacks on education will at least amount to a common crime under states' domestic laws. For example, the bombing of schools by Maoist insurgents in India may constitute 'mischief' under the Indian Penal Code,⁷ and the killing of teachers in southern Thailand may constitute 'murder' under the Thai Penal Code.⁸

Domestic law will often criminalize violations of humanitarian law as crimes, and states have an obligation to prosecute individuals responsible for serious international crimes, such as war

7 Indian Penal Code (IPC), sec. 435 ('Mischief by fire or explosive substance with intent to cause damage to amount of one hundred...rupees'); and IPC, sec. 436 ('Mischief by fire or explosive substance with intent to destroy house, etc'). For more on Naxalite attacks on schools see HRW, *Dangerous Duty*; and HRW, *Sabotaged Schooling*.

8 Penal Code of Thailand, sec. 288 ('Murder'). For more on killing of teachers in southern Thailand see HRW, *No One is Safe*.

crimes.⁹ However, since the war crimes legislation in many countries has not been updated to reflect developments in international law such as the Rome Statute and the statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY), attacks on schools often have to be subsumed into broader crimes such as attacks on civilian objects or other catch-all war crime categories.

For example, in April 2008, the State Court of Bosnia-Herzegovina found Pasko Ljubicic guilty of war crimes against civilians and sentenced him to 10 years imprisonment, following the acceptance of a plea agreement. Ljubicic, a former senior officer of the military police of the Croatian Defence Council in central Bosnia during the Bosnian war, was responsible for, among many other things, deploying a military police battalion to attack a Bosnian-Muslim village during which a Muslim primary school was burned.

Ljubicic had been originally indicted by the ICTY on ten counts, including destruction and wilful damage to institutions dedicated to religion or education.¹⁰ Although Ljubicic surrendered to the tribunal, in July 2005 the Chief Prosecutor requested his trial be transferred to Bosnia-Herzegovina. Under the Bosnian indictment, however, there was no separate charge for Ljubicic's attacks on educational institutions, and this crime appeared to have been subsumed within war crimes charges for attacks on civilian objects and the destruction and looting of property.¹¹

Another individual indicted by the ICTY for crimes related to educational institutions only to have his case transferred to domestic courts – this time in Serbia – is Vladimir Kovacevic. He was charged for his role as commander of the third battalion of the Yugoslav People's Army in the shelling of Dubrovnik on December 6, 1991, including a specific charge for destruction or wilful damage to institutions for education for damage to a university graduate centre, a kindergarten, two schools, and a music education centre.¹² Again, because it was not a stand-alone crime in the Serbian criminal code, once the case was in domestic court, the specific charges for damage to educational facilities had to disappear, and although the indictment from the Serbian war crimes prosecutor explicitly referred to damage caused to educational institutions, Kovacevic was charged more broadly for a 'war crime against civilian population' in line with the domestic criminal statute.¹³

9 See, for example, International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Protection of Civilian Persons in Times of War (Fourth Geneva Convention)*, 75 UNTS 287 (August 12, 1949), art. 146.

'The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article' (ibid.). The obligation to 'extradite or prosecute' can be found in approximately 70 international criminal law conventions. See Michael J. Kelly, "Cheating Justice by Cheating Death: The Doctrinal Collision for Prosecuting Foreign Terrorists – Passage of *Aut Dedere Aut Judicare* into Customary Law & Refusal to Extradite Based on the Death Penalty," *Arizona Journal of International and Comparative Law* 20 (2003), 497.

10 International Criminal Tribunal for the Former Yugoslavia (ICTY), *Prosecutor v. Pasko Ljubicic*, Indictment (The Hague, September 26, 2000).

11 Pursuant to art. 173(a) and (f) of the Bosnian Criminal Code. In his elocution as part of his guilty plea, however, Ljubicic stated that soldiers under his command had attacked a religious school (Court of Bosnia and Herzegovina, *Prosecutor v. Pasko Ljubicic*, X-KR-06/241, First Instance Decision (Sarajevo, May 28, 2008)).

12 ICTY, *Prosecutor v. Pavle Strugar, Milodrag Jokic, and Vladimir Kovacevic*, IT-01-42-PT, Amended Indictment (March 31, 2003), Schedule IV.

13 District Court of Belgrade-War Crimes Chamber, *Indictment Against Vladimir Kovacevic* (July 26, 2007). Kovacevic was charged under the Criminal Act of the Federal Republic of Yugoslavia (FRY), art.142 ('War Crime Against Civilian Population'). Kovacevic, however, is yet to stand trial, as he is currently being treated for a mental disorder.

While this encompassing of charges for attacks on education within broader war crimes charges may lead to similar punishment for the perpetrators of these crimes, it is nonetheless less clear than the specific delineation of the prohibition against attacks on schools and other education institutions under the Rome Statute or the statute of the ICTY. Such lack of clarity can be unhelpful to prosecutors, to victims, and to the cause of deterrence for these types of attacks.

Similarly, when countries fail to introduce definitions of international crimes into domestic law, efforts to prosecute such crimes can be hampered, even though prosecutors may be able to frame international crimes, such as war crimes, in terms of domestic equivalents. Using domestic criminal law offences in this way is possible, but may fail to fully capture the nature and gravity of the offence. More significantly, using domestic law criminal charges may mean that the crimes will be subject to statutes of limitation under national law, while under international law, crimes against humanity and war crimes are not subject to statutes on limitations.¹⁴

Both NGOs and UN agencies can play a role in advocating for individual states to criminalize attacks on educational institutions and to prosecute offenders accordingly for war crimes.¹⁵ NGOs advocating for states to adopt national implementing legislation for the ICC's Rome Statute, could ensure that such domestic legislation includes the crimes related to attacks on educational facilities.

Similarly, accountability before military tribunals for attacks on education will be assisted by the updating of military codes to bring them more into line with recent developments in international law. The United Kingdom's *Manual of the Law of Armed Conflict*, for example, has recently been updated following the adoption of implementing domestic legislation for the ICC. The updated manual includes specific references to the protection of education buildings.¹⁶ In addition to clearly stating that attacks on school are unlawful unless being used for military purposes,¹⁷ the manual also expounds clear rules that commanders can follow in other situations. The manual even determines that the 'use of a privileged building for an improper purpose' is a 'war crime traditionally recognized by the customary law of armed conflict' and provides as an illustration the use of a school as a sniper's post.¹⁸ The manual also lists the land and buildings of institutions dedicated to education as property which, even if they belong to the state, should be treated as private property, and that the seizure, destruction, or damage of them is forbidden.¹⁹

In the Democratic Republic of Congo (DRC), Ives Kahwa Panga Mandro ('Chief Kahwa'), founder of the Party for Unity and Safeguarding of the Integrity of Congo, was convicted by an Ituri Military Tribunal in August 2006 on six charges, including the war crime of intentionally

14 See UNGA, *Convention Against the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity*, Resolution 2391 (XXIII), 754 UNTS 73 (November 11, 1970). See also UNGA, *Rome Statute*, art. 29.

15 For example, in a July 2006 report, HRW, *Lessons in Terror*, Human Rights Watch documented how in late 2005 and the first half of 2006, attacks on schools, teachers and students rose significantly in Afghanistan. The report recommended that the government of Afghanistan, as part of its efforts to prevent attacks on schools, should enact legislation implementing the *Rome Statute* to render war crimes, including attacks intentionally directed against buildings dedicated to education, violations of Afghan law.

16 UK Ministry of Defence (UK MoD), *Manual of the Law of Armed Conflict* (Oxford: Oxford University Press, 2004).

17 *Ibid.*, 16.16.1.

18 *Ibid.*, 16.29(c), pp. 428-9 and p. 429, n. 122.

19 The Hague, *Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land* (October 18, 1907), art. 56, as cited in UK MoD, *Manual of the Law of War*, 11.87 – 11.87-1.

directing attacks against a primary school, a church, and a medical centre burned in a village in Bedu-Ezekere in October 2002. Citing the DRC constitution's provision allowing courts and military tribunals to apply international treaties, the tribunal directly applied the Rome Statute's criminalization of intentionally directing attacks against institutions of education. Kahwa received a 20 year sentence.²⁰ (However, in a decision light on both legal and factual reasoning, the Eastern Province Military Court later acquitted Kahwa on two offences which it held to fall within applicable amnesty provisions, and in respect to the other charges – including that for the destruction of the school – the appeal chamber cancelled the lower court's verdict citing procedural violations.²¹ At the time of writing, the case was in a legal limbo.)

A second obstacle with domestic trials is that governments are frequently averse to prosecuting their own officials and soldiers. UN agencies and NGOs can play an important role in documenting and publicizing attacks to make it difficult for governments to justify their failures to investigate and prosecute these attacks and to pressure the governments to take action. For example, in the Philippines, Human Rights Watch has documented the killing of three members of the left-wing League of Filipino Students (LFS).²² Although the motives behind the killings are uncertain, LFS members have long been targeted by the security forces for alleged links to the New People's Army. Human Rights Watch, Amnesty International, and many domestic NGOs have criticized the Philippine government's complete failure to carry out credible investigations and prosecutions in a spate of similar extrajudicial executions in the Philippines spanning many years, which has contributed to rampant impunity.

In many conflict-affected countries, justice systems often have limited capacity to hold perpetrators of violations against children accountable. In such situations UN agencies and NGOs can provide capacity building assistance, technical training, and share best practices from other systems around the world.

Public or private pressure by other governments and international organizations can play a role in changing behaviour. Sometimes this may require UN agencies to stand up for their child protection mandates even if that means taking a position on a conflict that is at odds with that of their host government.

► Civilian trials in other national jurisdictions

'Universal jurisdiction' is the power of a national court to try international crimes such as war crimes, crimes against humanity, genocide, or torture – even if neither the suspect nor the victim are nationals of the country where the court is located, and the crime took place outside that country. The exercise of universal jurisdiction is required by certain international conventions and allowed by international customary law with regards to crimes such as genocide or crimes against

20 Tribunal Militaire de Garnison de l'Ituri, *Jugement Contre Kahwa Panga Mandro*, RPA No. 039/2006, RMP No. 227/ PEN/2006 (August 2, 2006).

21 Cour Militaire de la Province Orientale, *Arrêt Contre Kahwa Panga Mandro*, RPA No. 023/2007, RMP 227/ PEN/2006 (July 28, 2007).

22 Cris Hugo, the regional coordinator for LFS and a journalism student at Bicol University, was shot and killed by an unidentified gunman on the evening of March 16, 2006, while walking along the streets of Legazpi City with one of his professors. Rei Mon Guran, the LFS provincial spokesperson and a student at Aquinas University, was shot and killed in the morning of July 31, 2006, on a crowded bus in his hometown of Bulan, in Sorsogon Province (Philippines). Early Alcantara II, a former LFS provincial spokesperson, and a business administration student at Camarines Norte State College, was shot and killed in the late evening of February 16, 2007, while riding home on his motorcycle with one of his professors. See HRW, *Scared Silent*.

humanity.²³ The underlying justification is that some crimes are so offensive and inexcusable they should be tried regardless of political geography, and all states have a responsibility, on behalf of the international community, to make sure that their perpetrators do not enjoy impunity.

On paper, many countries around the world appear to recognize that they can exercise universal jurisdiction over war crimes,²⁴ but practice has generally lagged far behind laws on the books. In a number of countries in western Europe, however, prosecutors have started using the concept of universal jurisdiction to pursue suspected foreign war criminals in domestic courts. In the United States, the first case in relation to torture committed abroad was adjudicated in 2008 for crimes committed in Liberia.²⁵ Furthermore, the new Child Soldiers Accountability Act of 2008, makes it a crime to recruit or use soldiers under the age of 15 and permits courts to prosecute any individual on American soil for the offense, even if the children were recruited or served as soldiers outside the United States.²⁶

Although opponents of universal jurisdiction claim that it is a dangerous political tool, research by Human Rights Watch shows that universal jurisdiction is first and foremost an effective road to justice for victims who have nowhere else to go.²⁷ Recognizing that the cases are more complex and resource intensive than most ordinary criminal cases, experiences examined by Human Rights Watch nonetheless show that the fair and effective exercise of universal jurisdiction is achievable where there is the right combination of appropriate laws, adequate resources, and institutional and political commitments.²⁸

NGOs can play an important role in ensuring the effective use of universal jurisdiction. For example, most cases that have proceeded to trial under universal jurisdiction laws in Belgium, the Netherlands, Denmark, and the United Kingdom have involved perpetrators who entered those countries as asylum applicants. So in Denmark, the Danish Red Cross works with immigration authorities to distribute pamphlets among asylum seekers explaining where and with whom they can file a complaint if they are the victim of an international crime or know of a perpetrator in Denmark.

NGOs also have a crucial role to play in lodging complaints. Many landmark universal jurisdiction cases have been initiated by private parties.²⁹ These cases have arisen in civil law jurisdictions with a legal practice whereby private petitioners can submit criminal complaints against an alleged perpetrator directly to an investigating judge or prosecutor. But in the United Kingdom, where private-initiated criminal procedure

23 The Grave Breaches provisions of the Geneva Conventions, for example, mandate the exercise of universal jurisdiction. See ICRC, *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention)*, 75 UNTS 31 (August 12, 1949), art. 49; ICRC, *Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention)*, 75 UNTS 85 (August 12, 1949), art. 49; ICRC, *Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention)*, 75 UNTS 135 (August 12, 1949), art. 129; and ICRC, *Fourth Geneva Convention*, art. 146.

24 See Amnesty International's survey of domestic laws: Amnesty International (AI), *Universal Jurisdiction – The Duty of States to Enact and Enforce Legislation*, AI Index: IOR 53/002/2001 (September 2001), http://web.amnesty.org/pages/legal_memorandum (accessed September 16, 2009).

25 United States District Court, *United States v. Roy Belfast, Jr. (a/k/a Charles 'Chuckie' Taylor, Jr.)*, 1:06-cr-20758-CMA (S.D. Fla., 2008). The US federal extraterritorial torture statute, 18 USC, sec. 2340A, makes it a crime for US citizens or anyone present in the United States, to commit torture abroad, or to attempt or conspire to commit torture abroad. The law applies regardless of the nationality of the victim.

26 Child Soldiers Accountability Act of 2008, 18 U.S.C. sec. 2442 (2008).

27 HRW, *Selling Justice Short*.

28 Ibid. And HRW, *Universal Jurisdiction in Europe*.

29 For example, the case against Chile's Augusto Pinochet in Spain and the request for his extradition from the United Kingdom, and the Belgian court's indictment and extradition request for former Chadian dictator Hissène Habré.

is difficult and rare, the media, victims' lawyers, and NGOs have nonetheless generally been responsible for notifying the police of the presence or anticipated arrival of perpetrators.

Victims and NGOs are frequently the principal sources of evidence or of witnesses that could establish responsibility for the alleged crime. Some governments, including Britain, Denmark, Norway, and the Netherlands, have created special war crimes units to conduct investigations across the globe, but initial information about an alleged criminal incident can be gleaned from open sources such as the reports of NGOs and intergovernmental organizations.³⁰

Despite the numerous positive developments in national practice detailed so far, significant limitations remain which hinder the exercise of universal jurisdiction. They include the continuing absence of implementing legislation in some states, restrictive threshold requirements for opening investigations, overly broad conferrals of immunity, and a lack of transparency in the exercise of universal jurisdiction. NGOs also have an important role therefore in sharing positive examples from around the world and advocating for solutions to these issues.³¹

► Other domestic mechanisms against individual perpetrators

Other accountability mechanisms that exist at the domestic level which could be considered and used for responding to attacks on education may include traditional justice and reconciliation mechanisms, bringing civil cases in courts at home or abroad,³² travel bans,³³ financial freezes, or the use of hybrid tribunals.³⁴

30 HRW, *Universal Jurisdiction in Europe*.

31 Further recommendations for action that countries can take to improve the use of universal jurisdiction to end impunity can be found in Human Rights Watch's report *Universal Jurisdiction in Europe*. In April 2009, for example, Germany's Ministry of Justice created three dedicated positions in the prosecutor's office to investigate cases that fall under Germany's universal jurisdiction law, and the Federal Criminal Police decided to establish a specialized international war crimes unit with seven investigators. Germany has had one of the most advanced universal jurisdiction laws on the books since 2002, but those laws have so far led to few investigations and no prosecutions. Human Rights Watch has pressed the German government to put its law into practice, by for example, testifying in favour of increasing the investigation capacity at a parliamentary hearing held at Human Rights Watch's request.

32 In many countries there is the possibility for aggrieved parties to bring civil cases against perpetrators to claim compensation for their losses. Because attacks on education under certain circumstances can rise to the level of an international crime, perpetrators might also expose themselves to civil suits under the Alien Tort Statute (ATS; also called the Alien Tort Claims Act) in the United States. ATS, 28 U.S.C. sec. 1350 states: 'The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.' See also United States Court of Appeals, *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980) and United States Supreme Court, *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004). In the United States, ATS claimants are typically assisted by NGOs, non-profit legal advocacy organizations such as the Center for Constitutional Rights, or pro bono lawyers, who finance all costs related to bringing such cases.

33 For example, the United States' Child Soldiers Accountability Act of 2008, 18 U.S.C.S. sec. 2442, allows the United States to deport or deny entry to individuals who have knowingly recruited children as soldiers.

34 A 'hybrid tribunal' is a mechanism that shares judicial criminal accountability between the state in which it functions and the United Nations, thus aiming to combine the strengths of international tribunals with the advantages of domestic prosecutions. The first hybrid tribunals were the Special Panels for Serious Crimes established in the Dili District Court and the Dili Court of Appeals in East Timor in June 2000, which had exclusive jurisdiction over war crimes, crimes against humanity, torture, genocide, murder, and sexual offences committed between January 1 and October 25, 1999, with each panel consisting of two international judges and one East Timorese judge. The most notable example today is the Special Court for Sierra Leone, established to 'try those who bear greatest responsibility' for the war crimes and crimes against humanity committed during the Sierra Leone Civil War. So far, seven defendants before the Special Court have been found guilty for the recruitment or use of child soldiers under the age of 15.

Accountability in international fora for individual perpetrators

When a state fails to exercise its obligation to investigate allegations of serious wrongdoing by its forces, international investigation and prosecution is an alternative.

▶ International Criminal Court (ICC)

The ICC, based in The Hague in the Netherlands, is the first permanent international criminal tribunal intended to end impunity for the perpetrators of the most serious international crimes, including genocide, crimes against humanity, and war crimes.³⁵ The jurisdiction of the ICC is 'complementary' to national courts, meaning that the ICC can only act when the relevant individual countries are either unwilling or unable to investigate and prosecute.

Cases before the ICC may be initiated by a state party to the Rome Statute, the Court's Prosecutor, or the United Nations Security Council,³⁶ but the Prosecutor decides whether there is a 'reasonable basis to proceed' with starting an investigation.³⁷ If the Prosecutor initiates an investigation, the pre-trial chamber reviews his decision. The Prosecutor accepts 'communications' from individuals and NGOs about alleged crimes³⁸ and can 'seek additional information from ... intergovernmental, non-government organizations or other reliable sources.'³⁹

The Rome Statute explicitly makes intentionally directing attacks against buildings dedicated to education a war crime in both international and internal armed conflicts, provided they are not military objectives.⁴⁰ As of October 2009, nobody has been charged under this provision, although the issues of attacks on schools and the effect that recruitment of children as soldiers can have on education, have been touched upon in a handful of cases already on the Court's docket.

In the case against Thomas Lubanga, charged with conscripting children under the age of 15 and using them in hostilities, a total of 99 victims are participating and are represented through seven lawyers. The victims' lawyers are present in the courtroom and are able to question witnesses and convey their clients' views to the Court. One of these victims is a school principal who is considered a victim both in his own personal right (and as an indirect victim as he was beaten when trying to intervene in the recruitment of children as soldiers from his school), but also as

35 The Court was established by the UNGA, *Rome Statute* treaty, which entered into force on July 1, 2002. In International Criminal Court (ICC), *The Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/07, the pre-trial chamber noted that: 'The retributory effect of the acts of the Court must be subordinate to the higher purpose of prevention' (para. 49). The Court will also exercise jurisdiction over the crime of aggression once a provision is adopted defining this crime and the conditions under which the Court may exercise its jurisdiction.

36 As of September 2009, there have been three 'state referrals' from the governments of the Democratic Republic of Congo, Uganda, and the Central African Republic, and one referral, regarding the situation in Darfur, from the United Nations Security Council.

37 UNGA, *Rome Statute*, art. 15.

38 Ibid. Submissions regarding alleged crimes can be sent to: International Criminal Court, Office of the Prosecutor, Communications, Post Office Box 19519, 2500 CM The Hague, The Netherlands; or sent by email to: otp.informationdesk@icc-cpi.int.

39 Ibid.

40 Ibid., arts. 8(2)(b)(ix) and 8(2)(c)(iv).

the representative of his school itself which was destroyed, and, as of January 2009 had not been rebuilt.⁴¹ This is the first time that victims have been able to present their concerns before an international tribunal outside of the role as witness. The victims' lawyers have even requested to the judges to initiate the procedure that would allow the Court to consider reclassifying the charges based on evidence already given in court. Although the final outcome of this manoeuvre is still pending appeal,⁴² and requires careful consideration of its impact on the fair trial rights of the defendant, it is nevertheless a powerful reminder that many victims care whether indictments reflect the reality of their personal experiences, and demonstrates the important role that victims can play at the new Court.

On March 4, 2009, the pre-trial chamber of the ICC issued an arrest warrant for President Omar Al Bashir of Sudan. The Prosecutor's application for the warrant pointed to a 'pattern of attacks' that included the burning of schools. As part of the Prosecutor's claim that Al Bashir's conduct constituted genocide, he cited the bombing of a school in South Darfur where villagers of the Fur ethnic group had fled. The application also cited particular examples of the bombing of a school in North Darfur as part of the Prosecutor's allegations of crimes against humanity. The application also referenced the rape by Janjaweed militia of schoolgirls at a boarding school, and the murder of a school head in Sirba.⁴³ Ultimately, the pre-trial chamber issued a warrant of arrest for Al Bashir listing five counts of crimes against humanity and two counts of war crimes; the crime of genocide is not included in the warrant.⁴⁴

In crime scenes that include attacks on educational facilities, such as Darfur, NGOs can call this to the Prosecutor's attention and press for its inclusion as a charge when appropriate. There is also a clear role for NGOs, both international and national, to advocate for states to sign-on to the Court.

▶ International Criminal Court for the Former Yugoslavia (ICTY)

The ICTY is an ad hoc international tribunal that was established by the UN Security Council in 1993 to prosecute serious crimes committed during the wars in the former Yugoslavia since 1991.⁴⁵ The ICTY statute provided for the tribunal to have jurisdiction to try individuals for

41 ICC, *Prosecutor v. Thomas Lubango Dyilo*, ICC-01/04-01/05, Decision on the Applications by Victims to Participate in the Proceedings (December 15, 2008), paras. 105-111. See also ICC, *Prosecutor v. Thomas Lubango Dyilo*, ICC-01/04-01/06-T-107-ENG ET WT, Procedural Matters (Open Session) (January 26, 2009), pp. 44-45. Under the ICC, *Rules of Procedure and Evidence*, ICC-ASP/1/3 (2002), victims may include both natural persons and 'organizations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes.'

42 A majority of the trial judges ruled on July 14, 2009 that it may be possible to reclassify charges, and invited the parties to put forward submissions to that they could make an informed determination. Both the prosecution and defence asked for leave to appeal against the decision.

43 ICC Office of the Prosecutor, *Public Redacted Version of the Prosecutor's Application Under Article 58*, ICC-02/05-157-AnxA (July 14, 2008), paras. 14, 112, 140, 232, and 234.

44 Al Bashir was charged with murder, extermination, forcible transfer, torture, and rape as crimes against humanity, and with intentionally directing attacks against a civilian population or against individual civilians, and pillaging as war crimes. See ICC, *The Prosecutor v. Omar Hassan Ahmad Al Bashir*, ICC-02/05-01/09, Warrant for the Arrest of Omar Hassan Ahmad Al Bashir, Pre-Trial Chamber 1 (March 4, 2009).

45 UNSC, *Statute of the ICTY*.

the destruction or wilful damage to institutions dedicated to education, among other crimes.⁴⁶ Although at least eighteen individuals have been charged in an indictment for such destruction or wilful damage, as of August 2009, only three individuals appear to have been convicted by the ICTY for attacks on schools.⁴⁷ Another fourteen cases referenced the use of schools as detention centres or as sites of beatings, torture, executions, or rape.⁴⁸

▶ Other international mechanisms against individual perpetrators

Just as individual states can impose sanctions such as travel bans, so too can the UN Security Council and the European Union call for freezing of assets and travel restrictions.

46 Ibid., art. 3(d).

47 (1) Dario Kordic in ICTY, *Prosecutor v. Dario Kordic and Cerkez* ('Lasva Valley'), IT-95-14/2 was convicted at trial among other charges. (2) In ICTY, *Prosecutor v. Miodrag Jokic* ('Dubrovnik'), IT-01-42/1, Jokic pleaded guilty for his involvement on the attack on Dubrovnik, and was sentenced to seven years' imprisonment, including for destruction of education buildings among other charges. (3) In ICTY, *Prosecutor v. Pavle Strugar* ('Dubrovnik') IT-01-42, Strugar was convicted among other charges for destruction or wilful damage done to institutions dedicated to education during the attack on Dubrovnik and sentenced to 7.5 years imprisonment. (4) In ICTY, *Prosecutor v. Milan Martić* ('RSK'), IT-95-11, Martić was charged with destruction of buildings dedicated to religion and education and although he was convicted on this count it was due to attacks on religious buildings not schools as the Court found there was insufficient evidence that the school at the church of the Assumption of the Virgin in Skabrnja was not being used for military purposes in November 1991. (5) In ICTY, *Prosecutor v. Tihomir Blaskić* ('Lasva Valley') IT-95-14, Blaskić was originally convicted by the trial chamber of, amongst other crimes, destruction or wilful damage to institutions of education and religion, however, that portion of his conviction was overturned on appeal. (6) In ICTY, *Prosecutor v. Milan Babić*, ('RSK'), IT-03-72, Babić was originally indicted for destruction or wilful damage done to institutions dedicated to education or religion, however that accusation was withdrawn as part of a plea agreement. (7)-(12) The six defendants on trial in ICTY, *Prosecutor v. Jadranko Prlić et al.*, IT-04-74 are all charged with destruction or wilful damage to institutions dedicated to religion or education, but that trial is still currently underway; the case also includes allegations that a number of elementary and high schools were used as detention centres. (13) The case ICTY, *Prosecutor v. Slobodan Milošević* ('Kosovo, Croatia and Bosnia'), IT-02-54, included charges of destruction and wilful damage to institutions dedicated to education, but those proceedings were terminated following Milošević's death. (14) Mehmed Alagić (ICTY, *Prosecutor v. Enver Hadžihasanović and Amir Kubura*, IT-01-47) was indicted on these grounds but died and the proceedings were terminated. (15) In ICTY, *Prosecutor v. Goran Hadžić*, IT-04-75, Hadžić has also been indicted for the destruction or wilful damage to institutions dedicated to religion or education, but remains at large. (16) ICTY, *Prosecutor v. Vojislav Seselj*, IT-03-67 originally indicted Seselj on these grounds, although that charge was dropped from the third amended indictment, and the trial is now adjourned until further notice due to alleged threats to a number of the Prosecutor's witnesses. As discussed above, the cases against (17) Pasko Ljubić and (18) Vladimir Kovacević have been referred to domestic courts in Bosnia and Serbia, respectively.

48 See ICTY, *Prosecutor v. Vujadin Popović et al.* ('Srebrenica') IT-05-88 (currently on trial); ICTY, *Prosecutor v. Milan Simić* ('Bosanski Samac') IT-95-9/2 (pleaded guilty); ICTY, *Prosecutor v. Zdravko Tolimir* ('Srebrenica') IT-05-88/2 (currently on trial); ICTY, *Prosecutor v. Dragan Zelenović* ('Foca') IT-96-23/3 (pleaded guilty); ICTY, *Prosecutor v. Stevan Todorović* ('Bosanski Samac') IT-95-9/1 (pleaded guilty); ICTY, *Prosecutor v. Milorad Trbić* ('Srebrenica') IT-05-88/1 (case transferred to Bosnia courts); ICTY, *Prosecutor v. Dragan Obrenović* ('Srebrenica') IT-02-60/2 (pleaded guilty); ICTY, *Prosecutor v. Stevan Janović and Dragan Stanković* ('Foca') IT-96-23/2 (case transferred to Bosnia and convicted); ICTY, *Prosecutor v. Vidoje Blagojević and Dagan Jokić*, IT-02-60 (convicted); ICTY, *Prosecutor v. Radoslav Brđanin* ('Krajina') IT-99-36 (convicted); ICTY, *Prosecutor v. Hadžihasanović and Kubura*, IT-01-47 (Enver Hadžihasanović convicted for cruel treatment at a Zenica music school, Amir Kubura convicted on other grounds, Mehmed Alagić deceased); ICTY, *Prosecutor v. Ivica Rajić* ('Stupni do') IT-95-12 (pleaded guilty); ICTY, *Prosecutor v. Dragoljub Kunarać, Radomir Kovač, and Zoran Vuković* ('Foca') IT96-23 and 23/1 (all three defendants convicted); and ICTY, *Prosecutor v. Milan Simić et al.* ('Bosanski Samac') IT-95-9.

Accountability for attacks by states and non-state groups

Holding individuals criminally responsible does not affect the responsibility that states might additionally and separately owe for any internationally wrongful act.⁴⁹ Because countries cannot be punished in any criminal manner, accountability for states must include increasing the costs of their international diplomacy by causing stigmatization through public exposure of violations, and, where appropriate, through punitive sanctions.

Non-state actors – such as insurgent, secessionist, or guerrilla groups – should also be held accountable for breaches of international humanitarian law. Although it is easier to influence states, some groups do care about their international reputation, and the failure of non-state actors to abide by international standards impairs their ability to claim international legitimacy. As many rebel groups fight because they want to become the government, they yearn for international legitimacy and not to be seen as human rights abusers.⁵⁰

In 2008, Human Rights Watch released a report on the conflict between Maoist guerrillas, government security forces, and a state-supported anti-Maoist vigilante group in India's Chhattisgarh state.⁵¹ Among many abuses perpetrated by all sides in that conflict, the report documented attacks by the Maoists on school buildings, and occupation of schools by security forces. The public critique spurred the Maoists to respond with a spirited seven-and-a-half page defence in their publication the *CPI (Maoist) Bulletin*.⁵²

Other groups, however, are not as susceptible to 'naming and shaming,' especially if they are fighting for reasons such as maximizing personal resources. In such circumstance it is important to consider questions such as where these groups receive support, and considering whether it is possible to influence the supplier of their money or weapons, for example through travel bans, asset freezes, or other sanctions.

49 See for example, UNGA, *Rome Statute*, art. 25(4): 'No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law.'

50 Moreover, as a matter of international law, the conduct of an insurrectional movement which becomes the new government of a state, or which succeeds in establishing a new State in part of the territory of a pre-existing State, will be considered – even retro-actively – an act of State. See International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, Supplement No. 10 (A/56/10), chp.IV.E.1 (November 2001), art. 10, http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/9_6_2001.pdf (accessed October 13, 2009).

51 HRW, "Being Neutral is Our Biggest Crime".

52 Communist Party of India (CPI), "A Review of the Report of Human Rights Watch on Human Rights Violations in Dantewara and Bijapur," *CPI (Maoist) Information Bulletin-5* (November 5, 2008), available at www.bannedthought.net/India/CPI/MIB/MIB-05.doc (accessed August 13, 2009). The defence nonetheless reiterated many of the key recommendations made by Human Rights Watch not only to the government and vigilante groups, but also the Maoists themselves.

Accountability in domestic fora for the responsibility of states and non-state groups

▶ Truth commissions

A 'truth commission' is a commission of inquiry established – usually by new governments following a transition to democracy or peace⁵³ – to document and expose past human rights violations by governments or non-state actors.

Sometimes, a truth commission will assign responsibility to the state or previous government regime, or to non-state groups, as a whole. Sometimes, they will also single out certain individuals for responsibility for certain acts as well. However, any labelling of individuals as perpetrators should be supported by credible and specific evidence sufficient to be passed on to prosecutorial authorities.

In 1983 in Argentina, President Raul Alfonsín established the *Comisión Nacional sobre la Desaparición de Personas* (CONADEP) to investigate forced disappearances and other human rights violations that occurred during Argentina's military dictatorship between 1976 and 1983. Included in the report were details of the 'Night of the Pencils' when a number of high school students who had taken part in a campaign for school subsidies were seized from their homes by security forces. The report pointed to the Buenos Aires Provincial Police as carrying out the abuses at the behest of the Armed Forces who considered the students' activities to be 'subversion in the schoolroom.'⁵⁴ Although three of the students were eventually freed, the Commission named seven students who it believed had been 'killed after undergoing the most horrible tortures in different secret detention centres,' and the report listed these locations.

The findings of the commission spurred trials for the dictatorship's junta (until new amnesty laws brought an end to such trials). In addition to naming the groups responsible for the students' disappearances – and therefore also implicitly naming the individuals responsible – the Commission also recommended the establishment of a reparations programme for the families of the disappeared and continued investigations and prosecutions in cases where persons remained disappeared.

Perhaps the most famous commission was the Truth and Reconciliation Commission (TRC) established in South Africa following the transition from apartheid. Because the TRC offered a complete amnesty to individuals who came forward to give full disclosure and demonstrated a political motive for their actions, no matter what their crimes, Human Rights Watch considers that

53 For example, the *Comisión Nacional de Verdad y Reconciliación* was established by Chile's first president after its return to democratic rule to detail extrajudicial executions and disappearances during the years of military rule under Augusto Pinochet from 1973 to 1990; Sierra Leone's Truth and Reconciliation Commission was established as a condition of the Lomé Peace Accord; and the Liberian Truth and Reconciliation Commission was a parliament-enacted organization created in May 2005 to investigate and report on gross human rights violations that occurred in Liberia between January 1979 and October 14, 2003.

54 Conadep (National Commission on the Disappearance of Persons), *Nunca Más (Never Again): Report of National Commission on the Disappearance of Persons* (Conadep, 1984).

the TRC's model would likely be seen as a step backwards today as far as accountability is concerned, although at the time it was an advance over previous models of truth commissions.⁵⁵

The TRC's final report reflected how schools in South Africa had been bombed, burned, and occupied; and how teachers and students had been assaulted and killed. With remarkable neutrality, the report documented attacks on schools and students carried out by a variety of state and non-state actors.⁵⁶ The names of individual perpetrators or responsible groups were frequently cited, and many individual perpetrators came before the Commission to confess to their own involvement in attacks against schools, students, and teachers. Despite such even-handedness in considering abuses by all sides, the TRC's fundamental condemnation was appropriately directed at the apartheid system and state.⁵⁷

Accountability in international fora for the responsibility of states and non-state groups

▶ Committee on the Rights of the Child

There is no international forum more focused on children's rights than the Committee on the Rights of the Child, the treaty body established under the Convention on the Rights of the Child.⁵⁸ States that are party to the Convention are required to submit reports to the Committee every five years, assessing their own compliance with their obligations under the treaty.⁵⁹ Each state's report is then subjected to review and questioning by the ten members of the Committee

55 HRW, *Selling Justice Short*, pp. 7-8. Indeed, Liberia's Truth and Reconciliation Commission concluded its own investigations with a recommendation that the government of Liberia establish an 'Extraordinary Criminal Tribunal' to prosecute alleged serious human rights and humanitarian law violations (Truth and Reconciliation Commission of Liberia, *Final Report of the Truth and Reconciliation Commission of Liberia* (July 1, 2009), 76).

56 Including: police occupation of schools; the high school pupils arrested and tortured by the South African police and Security Branch police members; the six schoolchildren killed and seven others injured when African National Congress (ANC) supporters ambushed a bus on March 2, 1993; the school children who were boycotting classes in protest over Steve Biko's death targeted in 1977 by vigilantes used by the Ciskei homeland government; the arson attacks on government schools by supporters of the mass opposition movement; the arson of schools by a member of the Azanian Students' Movement; an attack on a school by Zulu nationalists; and a series of bomb attacks by radical right-wing groups. See Truth and Reconciliation Commission of South Africa, *Report of the Truth and Reconciliation Commission of South Africa* (1998), Volume I. p. 34; Volume II. pp. 154, 150, 380, 387, 431, 436, and 661-662; Volume III. pp. 59-60, 236, 311, 370, 408, and 617; Volume IV. p. 266; and Volume V. p. 255.

57 For example, see *ibid*, Volume V, p. 355: 'The state identified and targeted schools as centres of resistance. Schools were occupied, and students and teachers intimidated and arrested. This created a climate within which unnecessary violence occurred. As a result, education was severely disrupted. Many children were unable to complete their schooling and/or advance to tertiary education.'

58 UNGA, *Convention on the Rights of the Child (CRC)*, 1577 UNTS 3, A/44/49 (November 20, 1989), arts. 43-45. The Committee is also responsible for overseeing the UNGA, *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, A/54/49 (May 25, 2000), vol. III, art. 8.

59 UNGA, *CRC*, art. 44.

who are all experts in the area of children's rights.⁶⁰ The Committee then makes concluding observations assessing the country's compliance with their obligations, and recommending further action that should be taken to enhance protections for children.

The Committee has used the occasion of these concluding observations to comment on the effect that conflicts and attacks on schools have on children's education with regards to the situation in at least four countries: Burundi, Ethiopia, Israel, and Moldova.⁶¹

The Committee's review process is extremely receptive to participation by non-governmental organizations and UN agencies, and such groups are welcome to submit their own shadow reports to the Committee.⁶² The procedures of the Committee include 'pre-sessional working group meetings' when NGOs that have submitted reports can meet in private with Committee members to comment upon the government's report. UN agencies are also able to participate. The Committee uses these meetings and the shadow reports as a source of information for questions to send to states to reply to in advance of their appearance before the Committee, and to answer during the interactive part of the review, as well as to formulate their observations and recommendations. Submissions from NGOs and UN agencies allow the Committee to be better informed in its critique, and may help steer the Committee to consider new topics.

60 Individual members of the Committee have also spoken out publicly to advocate for accountability for attacks on education. For example, Lothar Krappmann has recently stated: 'A zero-tolerance policy should not only be exercised with regard to the recruitment of and use of child soldiers, but should be strictly extended to attacks on schools, teachers and children. It is a deep concern of the Committee that these crimes apparently rarely or never are brought to justice. Thus, increased efforts are required to prevent these crimes and bring the perpetrators to justice.' Lothar Krappmann, "Statement by Mr. Lothar Krappmann, Member of the Committee on the Rights of the Child," (presentation, Interactive Thematic Dialogue of the United Nations General Assembly on *Access to Education in Emergency, Post-Crisis and Transition Situations-Caused by Man-Made Conflicts or Natural Disasters* (United Nations Trusteeship Council Chamber, New York, 63rd session, March 18, 2009), http://www.un.org/ga/president/63/interactive/education/lotharkrappmann_presentation.pdf (accessed October 13, 2009).

61 United Nations Committee on the Rights of the Child (CRC), *UN Committee on the Rights of the Child: Concluding Observations, Burundi*, CRC/C/15/Add.133 (October 16, 2000), paras. 64-65; CRC, *UN Committee on the Rights of the Child: Concluding Observations, Ethiopia*, CRC/C/ETH/CO/3 (November 1, 2006), paras. 27-28; CRC, *UN Committee on the Rights of the Child: Concluding Observations, Israel*, CRC/C/15/Add.195 (October 9, 2002), para. 52; CRC, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Convention on the Rights of the Child: 2nd and 3rd Periodic Reports of States Parties Due in 2005: Republic of Moldova*, CRC/C/MDA/3 (July 10, 2008), paras. 423 and 435.

62 UNGA, CRC, art. 45: 'In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention: (a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities ...'

The Committee is also responsible for formulating 'General Comments' – statements that expand upon and clarify provisions within the Convention.⁶³ These General Comments constitute useful persuasive interpretive aids to how states can ensure compliance with the Convention. Although the Committee recently held a day of discussion regarding the issue of education in emergency situations,⁶⁴ they have not, as of October 2009, turned the information collected on that subject into a General Comment. Such a new set of guidelines, however, could provide great assistance for both advising states on how to protect education during times of emergencies, as well as giving the Committee and other international and domestic bodies a set of standards by which to judge government action.

Unfortunately, the Convention on the Rights of the Child, unlike many other human rights treaties, lacks a provision by which individuals who believe their rights under the treaty have been contravened can petition directly to the Committee for relief if they cannot find it in their national court systems.⁶⁵ The process for creating an individual complaints procedure is however progressing slowly, although there is not as of yet any firm commitment to establish such a mechanism. Based upon a resolution of the Human Rights Council, a working group is being created to look into the feasibility of such a complaints mechanism to address concerns, and

63 The twelve general comments previously released by the CRC include: *General Comment No. 1: The Aims of Education*, CRC/GC/2001/1 (April 17, 2001); *General Comment No. 2: The Role of Independent Human Rights Institutions in the Promotion and Protection of the Rights of the Child*, CRC/GC/2002/2 (November 15, 2002); *General Comment No. 3: HIV/AIDS and the Rights of the Child*, CRC/GC/2003/3 (March 17, 2003); *General Comment No. 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child*, CRC/GC/2003/4 (July 1, 2003); *General Comment No. 5: General Measures of Implementation for the Convention on the Rights of the Child*, CRC/GC/2003/5 (November 27, 2003); *General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin*, CRC/GC/2005/6 (September 1, 2005); *General Comment No. 7: Implementing Child Rights in Early Childhood*, CRC/C/GC/7/Rev.1 (September 20, 2006); *General Comment No. 8: The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment*, CRC/C/GC/8 (March 2, 2007); *General Comment No. 9: The Rights of Children with Disabilities*, CRC/C/GC/9 (February 27, 2006); *General Comment No. 10: Children's Rights in Juvenile Justice*, CRC/C/GC/10 (April 25, 2007); *General Comment No. 11: Indigenous Children and their Rights under the Convention*, CRC/C/GC/11 (February 15, 2009); and *General Comment No. 12: The Right of the Child to be Heard*, CRC/C/GC/12 (July 20, 2009).

64 CRC, "Day of General Discussion on the Right of the Child to Education in Emergency Situations": Recommendations," (CRC, 49th Session, October 3, 2008).

65 Five of the human rights treaty bodies can currently consider individual complaints or communications from individuals, under certain circumstances: the Human Rights Committee may consider individual communications relating to States parties to the UNGA, *Optional Protocol to the International Covenant on Civil and Political Rights*, 999 UNTS 302 (1966); the Committee on the Elimination of Discrimination Against Women may consider individual communications relating to States parties to the UNGA, *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women*, A/RES/54/4, 2131 UNTS 83 (October 6, 1999); the Committee Against Torture may consider individual communications relating to States parties who have made the necessary declaration under art. 22 of the UNGA, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1465 UNTS 85 (December 10, 1984); the Committee for the Elimination of Racial Discrimination may consider individual communications relating to States parties who have made the necessary declaration under art. 14 of the UNGA, *Convention on the Elimination of All Forms of Racial Discrimination, Resolution 2106 (XX)*, 660 UNTS 195 (December 21, 1965); and the Committee on the Rights of Persons with Disabilities may consider individual communications relating to States parties to the UNGA, *Optional Protocol to the Convention on the Rights of Persons with Disabilities*, A/RES/61/106 (December 16, 2006). The UNGA, *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, A/RES/45/158 (December 18, 1990) also contains provision for allowing individual communications to be considered by the Committee on Migrant Workers; these provisions will become operative when 10 states parties have made the necessary declaration under art. 77.

develop potential elements for an optional protocol.⁶⁶ NGOs can play a crucial role in assuaging fears and advocating with potential critics.

An individual complaints procedure would present an unprecedented opportunity for quasi-judicial accountability at an international level for a variety of violations associated with attacks on education that are not currently actionable. For example, various types of government action or inaction – such as failure to provide adequate education alternatives during an emergency, failure to quickly rebuild damaged schools, or the use of school buildings by security forces without establishing adequate education alternatives for students – might rise to violations of a government's duty to provide primary education, and thus be actionable in this new forum.

▶ Human Rights Council

The Human Rights Council is a Geneva-based inter-governmental body established in 2006 within the UN system. It has a number of mechanisms that potentially offer some form of accountability for states and in limited cases for armed groups.

First, there is a 'Complaint Procedure' intended to address consistent patterns of gross and reliably attested human rights violations by which complaints can be received from individuals or NGOs and, if determined to deserve investigation, will be presented to the Council for response.⁶⁷

Second, the 'Universal Periodic Review' (UPR) procedure evaluates the human rights records of all UN Member States once every four years.⁶⁸ The reviews – conducted by a working group consisting of the Council's 47 members – are based on national reports provided by the state under review; information contained in the reports of the Special Procedures (see below), human rights treaty bodies (such as the Committee on the Rights of the Child) and other UN agencies; as well as information submitted by NGOs and national human rights institutions. NGOs can attend the UPR Working Group sessions and can also make statements when the results of the state reviews are considered at the regular session of the Human Rights Council. Accountability by states for complying with their obligations is encouraged by having states report in each subsequent review on what progress they have made to implement recommendations from the prior review.

Third, there are 'Special Procedures,' a series of mechanisms established to address either specific country situations or thematic issues. Special procedures are either an individual (frequently called a 'Special Rapporteur') or a 'working group' usually composed of five members.⁶⁹ These independent experts are mandated to monitor, advise and report on their designated human rights issue. They can conduct studies, carry out in-country investigations, send letters or urgent appeals to governments, provide technical advice and engage in general awareness-raising.

66 The first meeting of the working group should be held in December 2009. United Nations Human Rights Council (UNHRC), *The Rights of the Child, Resolution 7/29* (2008).

67 Two working groups make up the Complaint Procedure: the Working Group on Communications (WGC) and the Working Group on Situations (WGS). The WGC receives complaints directly from individuals and NGOs, and its five independent experts determine whether a complaint deserves investigation. If it does, the WGC passes the complaint to the WGS who reports to the Council on complaints received and can make recommendations about how the Council should respond (UNHRC, *Resolution 5/1* (June 18, 2007).

68 UNGA, *Resolution 60/251* (March 15, 2006), art. 5(e).

69 There were, as of September 2009, 30 thematic and eight country mandates.

Importantly for accountability, special procedures can issue public reports containing their findings and recommendations.

The most relevant Special Rapporteur for responding to attacks on education is the Special Rapporteur on the Right to Education.⁷⁰ In 2008, his annual report focused on education in emergencies and called for 'More action [to] be taken to put an end to impunity for persons and armed groups, including regular armies, which attack schools, students and teachers.'⁷¹ In August 2008, he also made a statement urging accountability in response to a Taliban attack that killed four aid workers supporting education in Afghanistan.⁷²

In April 2009, the Human Rights Council established an investigation into the military operations conducted in Gaza during December 2008 and January 2009.⁷³ In late March, Justice Richard Goldstone agreed to head up the investigation after re-negotiating its mandate to include serious violations by Palestinians as well as the Israelis. The fact-finding mission concluded that there was evidence of war crimes by both Israeli and Palestinian armed groups, as well as possibly crimes against humanity.

The investigation's report included sections dedicated to the impact on education both in Gaza and Israel. It stated that 280 schools and kindergartens as well as some university buildings were destroyed in Gaza, noting that such destruction occurred 'in a situation in which already restrictions on the importation of construction material meant that many school buildings were in serious need of repair.'⁷⁴ It also noted that rocket and mortar attacks by Palestinian armed groups damaged schools and kindergartens in Israel.⁷⁵

The report recommended that the UN Security Council require both Israel and the Gaza authorities to report within six months on investigations and prosecutions carried out with regards to the violations identified by the mission. It also recommended that the Security Council set up a body of independent experts to report on the progress of such investigations and prosecutions. If there are no good faith efforts within six months, the Security Council is advised to refer the situation to the ICC.

70 Currently, the Special Rapporteur on Education is Vernor Muñoz. Other relevant thematic Special Rapporteurs may include those on Freedom of Opinion and Expression; Minority Issues; Physical and Mental Health; Protecting Human Rights while Countering Terrorism; Racism, Racial Discrimination, Xenophobia and Related Intolerance; Human Rights of Indigenous People; and Human Rights of Internally Displaced Persons.

71 Vernor Muñoz, *Right to Education in Emergency Situations: Report of the Special Rapporteur on the Right to Education*, A/HRC/8/10 (2008), para. 145, <http://daccessdds.un.org/doc/UNDOC/GEN/G08/135/33/PDF/G0813533.pdf?OpenElement> (accessed October 13, 2009).

72 United Nations News Service, "UN Expert Calls for End to Impunity for Attacks on Educators after Afghan Ambush," August 15, 2008.

73 UNHRC, *The Grave Violations of Human Rights in the Occupied Palestinian Territory, Particularly Due to the Recent Israeli Military Attacks Against the Occupied Gaza Strip, Resolution S-9/1*, A/HRC/S-9/L.1/Rev.2 (2009). On April 3, 2009, pursuant to this resolution the President of the Human Rights Council established the United Nations Fact Finding Mission on the Gaza Conflict with the mandate 'to investigate all violations of international human rights law and international humanitarian law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009, whether before, during or after' UNHRC, *Human Rights in Palestine and Other Occupied Arab Territories: Report of the United Nations Fact-Finding Mission on the Gaza Conflict*, A/HRC/12/48 (September 25, 2009), <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf> (accessed October 13, 2009).

74 UNHRC, *Report of the United Nations Fact-Finding Mission on the Gaza Conflict*, paras. 70,1267, and 1269.

75 Ibid., paras. 106, 1692, and 1695.

The mission took into account in both its fact-finding and analysis the investigations and reports of domestic and international NGOs and UN agencies, and during its own inquiry met with many representatives of NGOs and UN agencies.⁷⁶

► UN Security Council

Over the last decade the UN Security Council has issued a series of seven resolutions on the topic of abuses experienced by children in armed conflict,⁷⁷ leading to the creation of a specialized Working Group and the initiation of a monitoring and reporting mechanism on violations against children in armed conflict. By October 2009, the working group had been functioning for three years, issuing 23 sets of conclusions on 13 country situations.⁷⁸ The monitoring and reporting mechanism is now active in 13 countries.⁷⁹ The Special Representative of the Secretary-General (SRSG) for Children and Armed Conflict has followed up on the Working Group's conclusions by making regular field visits to engage with parties to armed conflict responsible for violations against children. So far, these efforts have yielded some significant successes with regards to the use of child soldiers.⁸⁰

Although the Security Council has identified six grave violations against children in armed conflict including attacks on schools,⁸¹ to date it has focused primarily on the recruitment and use of child soldiers. Very few of the Secretary-General's country reports on children and armed conflict, or the Working Group's conclusions on individual situations include recommendations related to attacks on education. In the Secretary-General's report on Afghanistan he urged the Taliban and other anti-government elements to 'immediately cease attacks against civilians, especially children,

76 Ibid., paras. 134 and 137.

77 UNSC, *Resolution 1261*, S/RES/1261 (1999); UNSC, *Resolution 1314*, S/RES/1314 (2000); UNSC, *Resolution 1379*, S/RES/1379 (2001); UNSC, *Resolution 1460*, S/RES/1460 (2003); UNSC, *Resolution 1539*, S/RES/1539 (2004); UNSC, *Resolution 1612*, S/RES/1612 (2005); and UNSC, *Resolution 1882*, S/RES/1882 (2009).

78 The working group has issued conclusions on Afghanistan, Burundi, Central African Republic, Chad, Côte d'Ivoire, Democratic Republic of the Congo, Myanmar, Nepal, Philippines, Sri Lanka, Somalia, Sudan, Uganda (Office of the Special Representative of the Secretary-General for Children and Armed Conflict, "Security Council Working Group," <http://www.un.org/children/conflict/english/securitycouncilwgroupdoc.html> (accessed October 13, 2009)).

79 Afghanistan, Burundi, Central African Republic, Democratic Republic of the Congo, Myanmar, Nepal, Somalia, Sudan, Chad, Colombia, Philippines, Sri Lanka and Uganda (Office of the Special Representative of the Secretary-General for Children and Armed Conflict, "Monitoring and Reporting," <http://www.un.org/children/conflict/english/monitoringreporting.html> (accessed October 13, 2009)).

80 Five parties to the armed conflict in Côte d'Ivoire ended their use of child soldiers after agreeing to action plans to end the practice; the government of Uganda has been 'de-listed' from the Secretary-General's list of violators after removing children from the Uganda People's Defense Forces and local defence units associated with the government; several non-state armed groups in Burma (Myanmar) have signed voluntary 'deeds of commitment,' committing to ending their use of child soldiers, and submitting to independent verification; as follow-up to the Security Council working group conclusions, the SRSG for Children and Armed Conflict has secured commitments from parties to armed conflict in the Central African Republic, Chad, Nepal, Philippines and elsewhere to end the recruitment and use of child soldiers and/or to release children from their forces. See HRW, "Taking the Next Step: Strengthening the Security Council's Response to Sexual Violence and Attacks on Education in Armed Conflict," April 20, 2009, <http://www.hrw.org/fr/news/2009/04/20/taking-next-step> (accessed October 13, 2009).

81 The grave violations included not only the recruitment and use of children but also the killing and maiming of children, rape and other grave sexual violence, abductions, attacks against schools or hospitals and denial of humanitarian access to children (UNGA, *Report of UN Secretary-General, Children and Armed Conflict*, A/62/609-S/2007/757 (December 21, 2007), para. 160, <http://unispal.un.org/UNISPAL.NSF/0/0819721E7BD2E5F4852573E5005058C9>).

and civilian objectives.⁸² He also called on the United Nations country team in Afghanistan to 'engage with the Afghan Government on means to advocate the cessation of such attacks.'⁸³ Finally, he urged all parties to comply with their obligations under international law and 'to recognize and maintain the neutrality and safety of school...including their personnel... and to publicly declare an end to such practices.'⁸⁴

The Security Council has stated that it will consider the imposition of targeted measures against parties that do not show progress in ending the use of child soldiers, including arms embargoes.⁸⁵ The Secretary-General has recommended a broader range of targeted measures against parties responsible for the recruitment and use of child soldiers, including arms embargoes, travel bans, asset freezes, and the exclusion of individuals from governance structures. The Security Council should consider a broad range of targeted measures against parties responsible for other grave violations against children. Such measures should respect the due process rights of alleged offenders. The Working Group should routinely bring parties responsible for persistent violations against children, including attacks on education, to the attention of relevant sanctions committees, and recommend the application of targeted measures against parties and individuals responsible for violations.⁸⁶ As of October 2009, the working group has referred violations against children to the relevant committees on DRC and Côte d'Ivoire. In addition, the working group should transmit information on attacks on schools that constitute war crimes to the ICC for consideration.

In its conclusions, the Working Group has routinely called on parties to armed conflict to end their recruitment and use of child soldiers. However, it only rarely makes similar direct calls in regards to other violations. The conclusions on Somalia (December 2008) specifically called on Ethiopian forces to refrain from attacks against civilian objects, including schools.⁸⁷ While the conclusions on Nepal stated that the government should: 'Take all steps necessary to put an end to impunity by ensuring the effective accountability for violations and abuses committed by all parties during and after the conflict, in particular by investigating all allegations of...attacks on schools...and prosecuting the perpetrators of such actions.'⁸⁸

The Working Group can help deter violations against children by requesting that the Secretary-General include in his reports the names of individual commanders who have been implicated through credible evidence in attacks on education for possible referral to relevant sanctions committees or for investigation by the ICC. This requires investigations not only of individual

82 UNSC, *Report of the Secretary-General on Children and Armed Conflict in Afghanistan*, S/2008/695 (November 10, 2008), para. 67.

83 Ibid.

84 Ibid.

85 UNSC, *Resolution 1539*; UNSC, *Resolution 1612*; and UNSC, *Resolution 1882*.

86 As of October 2009, there are four sanctions committees that correspond to parties or situations that have been listed in the Secretary-General's annexes: DRC, Somalia, Sudan, and Al-Qaida and the Taliban. Côte d'Ivoire has been 'de-listed'.

87 United Nations Security Council Working Group on Children and Armed Conflict, *Conclusions on Parties to the Situation of Armed Conflict in Somalia*, S/AC.51/2008/14 (December 5, 2008).

88 United Nations Security Council Working Group on Children and Armed Conflict, *Conclusions on Children and Armed Conflict in Nepal*, S/AC.51/2008/12 (December 5, 2008).

cases, but of patterns within a particular chain of command that can establish accountability for such violations among senior commanders or officials.⁸⁹

▶ Military sanctions

An accountability tactic that has recently been bolstered for dealing with violators of the protection against the use of child soldiers is military sanctions. New legislation passed in the United States in 2008, the Child Soldiers Accountability Act, restricts the provision of US International Military Education and Training, foreign military financing, and other defence-related assistance to countries identified in the State Department's annual human rights country reports as recruiting or using child soldiers in government armed forces or government-supported paramilitaries or militias. Countries taking active steps to end their use of child soldiers are eligible for limited assistance to professionalize their armed forces until the problem is remedied. This legislation creates a powerful incentive for governments to end this practice.⁹⁰

■ Conclusion

It would be easy to become disillusioned by the fact that so many attacks on schools, students and teachers go by unaccounted for and unanswered. However, this paper has attempted to demonstrate that at least in a few instances there have already been some small efforts to bring about accountability and justice to perpetrators of attacks on education. There are nonetheless a number of areas where existing accountability mechanisms could be strengthened: for example, the explicit criminalization within domestic law and military codes of impermissible attacks on schools and other education institutions; the creation of a relevant 'General Comment' by the Committee on the Rights of the Child; the addition of an individual complaints procedure to the Committee on the Rights of the Child; and a better understanding under international law that military occupation of schools and other education institutions can cause a violation of the right to education. However, it is also important to note that there is already a variety of existing mechanisms for accountability that NGOs and UN agencies could be supporting, using and using better.

89 Other specific recommendations that Human Rights Watch has made regarding the Security Council and its working group include: mandating UN country teams expand the scope of dialogue with parties to armed conflict to achieve concrete, measurable action plans; targeted measures against parties responsible for other grave violations against children, including individual measures (travel bans, asset freezes, exclusion from governance structures); extending the monitoring and reporting mechanism to other situations where grave violations against children in armed conflict occur, regardless of whether or not the recruitment and use of child soldiers is taking place. See HRW, "Taking the Next Step".

90 Child Soldiers Accountability Act of 2008, 18 U.S.C. sec. 2442 (2008); HRW, "United States: Bush Signs Law on Child Soldiers," October 3, 2008, <http://www.hrw.org/legacy/english/docs/2008/10/03/usint19912.htm>.

Chapter 9.

International law and the protection of education systems

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■ Introduction

War and related insecurity are major reasons that millions of children and youth are being denied an education. This paper aims to help people from a variety of professional fields to make strategic choices about using international law to increase the protection of education systems in times of conflict. The paper addresses questions such as: Are there gaps in the legal protection for education systems during war and insecurity? How can educators and legal professionals work together to strengthen protection? What actions are needed at international and national levels to move things forward?

War and insecurity damage education systems in a number of ways. The harms that this paper is concerned with are:

- (i) Students, teachers and education institutions are directly targeted for attack, either by state armed forces or non-state actors such as rebels, paramilitaries or criminal gangs.
- (ii) Students and teachers are killed, and educational facilities destroyed or made unusable, 'incidental' to attacks on military targets.
- (iii) Education facilities are used by armed forces or armed groups, which not only deprives students of education but turns the facilities into legitimate military targets.

1 Seminar participants comprised of Khawar Qureshi, QC (McNair Chambers); Peter Rowe (University of Lancaster); Sarah Green (Office of the Special Rapporteur for the Right to Education); Zama Coursen-Neff (Human Rights Watch); Michael Bochenek (Amnesty International); Christopher Talbot and Jane Kalista (UNESCO); Bruce Abramson (consultant); Brendan O'Malley (consultant); John Gregg and Margaret Sinclair (Planning and Programming Directorate, Her Highness' Office).

- (iv) Adolescents and children are recruited into armed groups.
- (v) Students and teachers are kept away from their schools or colleges by the cumulative effects of a climate of fear and the disruption of the country's infrastructure, economy and social functioning.

Even though international treaties have only a few provisions that expressly protect education during conflict, this paper shows that international law still provides a valuable tool for educators to act upon. Specifically, international humanitarian law forbids the targeting of education systems, while international human rights law requires states to take steps to protect the public from attacks, including attacks on students and teachers. It places a duty on the state to realize the right to education to the extent possible, even during war and insecurity.

The paper will discuss the key rules and principles of international law as found in the core treaties in three fields of law. For international humanitarian law, the focus is on the four Geneva Conventions, their two Additional Protocols,² and on relevant rules of customary law. For international criminal law, the focus is on the Rome Statute (1998), the treaty that created the International Criminal Court.³ Finally, under international human rights law, the paper concentrates on the 1966 International Covenant on Civil and Political Rights (ICCPR), the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), and the 1989 Convention on the Rights of the Child (CRC).⁴

After discussing the protection of education under these three fields of law, the paper offers suggestions for using the law to strengthen this protection. The suggested measures come under the headings of studies and research; improved monitoring, reporting and accountability mechanisms; joint military/educator projects; public education; better legislation, implementation, and enforcement at the national level; and development of internationally endorsed guidelines to promote the fulfilment of the legal obligations to protect education during times of armed conflict and insecurity.

2 The four Geneva Conventions were created in 1949 (ICRC, *Geneva Conventions* (August 12, 1949)), and came into force in 1950: ICRC, *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in the Armed Forces in the Field (First Geneva Convention)*, 75 UNTS 31 (August 12, 1949); ICRC, *Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea (Second Geneva Convention)*, 75 UNTS 85 (August 12, 1949); ICRC, *Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention)*, 75 UNTS 135 (August 12, 1949); and ICRC, *Geneva Convention Relative to Protection of Civilian Persons in Times of War (Fourth Geneva Convention)*, 75 UNTS 287 (August 12, 1949). The two Additional Protocols were created in 1977, and came into force in 1979 and 1978, respectively: ICRC, *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 1125 UNTS 3 (June 8, 1977); and ICRC, *Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 1125 UNTS 609 (June 8, 1977). To illustrate the complexity of this field, see Dietrich Schindler and Jiri Toman, *The Laws of Armed Conflicts: A Collection of Conventions, Resolutions and Other Documents*, 3rd ed. (Dordrecht: Martinus Nijhoff, 1988), which contains 87 treaties and other texts.

3 United Nations General Assembly (UNGA), *Rome Statute of the International Criminal Court*, A/CONF. 183/9 (July 17, 1998).

4 UNGA, *International Covenant on Civil and Political Rights (ICCPR)*, 999 UNTS 171 (December 16, 1966); UNGA, *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, 993 UNTS 3 (December 16, 1966); and UNGA, *Convention on the Rights of the Child (CRC)*, 1577 UNTS 3 (November 20, 1989).

International humanitarian law

The laws of war – or ‘international humanitarian law’ (IHL) – can be defined as the rules that regulate the conduct of warfare, and matters closely related to war, such as the treatment of prisoners and the wounded. The main purpose of the law is to limit the death and destruction of war, with the rules being a compromise between military necessity and the needs of humanity. IHL covers all wars (or ‘armed conflicts’), whether internal, international or of a mixed character, and the rules are created by either treaty or custom.⁵

Humanitarian law applicable during armed conflict starts with a premise or vision: practical reality requires us to accept that wars will occur, but our shared humanity demands that we put limits on how they are fought. *Human suffering has to be minimized*. Starting with this vision, states have derived three basic rules:

1) Civilians and civilian objects must never be targeted for attack

This is usually referred to as the principle of distinction: the parties to a conflict must make a distinction between civilians and combatants, and between civilian objects and military objectives: only combatants and military objectives can be targeted.⁶

5 The definition is adapted from Claude Pilloud et al., eds., *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (Geneva: ICRC, 1987), xxvii; and H. Victor Condé, *A Handbook of International Human Rights Terminology*, 2nd ed. (Lincoln: University of Nebraska Press, 2004), 110. The rules that govern the conduct of war go by a number of names. The ‘laws of war’ is the traditional term. Nowadays, militaries often favor ‘the law of armed conflict,’ and States often use ‘international humanitarian law applicable in armed conflict’ in formal texts, while academic commentators and humanitarian workers typically prefer ‘international humanitarian law,’ and the acronym ‘IHL.’ This paper uses the terms interchangeably. ‘International humanitarian law’ accurately reflects the aim of reducing suffering during war, but it avoids recognizing the unpleasant side of the compromise: IHL gives legal authority for the killing of human beings, both soldiers and civilians. To add the confusion in terminology, the legal literature contains other, often narrower, definitions of ‘international humanitarian law.’ For example, ‘[IHL] comprises all of those rules of international law which are designed to regulate the *treatment of the individual* – civilian or military, wounded or active – in *international armed conflicts*’ Dieter Fleck, ed., *The Handbook of Humanitarian Law in Armed Conflict* (Oxford: Oxford University Press, 1995), 102 (emphasis added).

6 ICRC, *Protocol I*, arts. 48, 51(2), and 52; and ICRC, *Protocol II*, art. 13 (civilians). *Protocol II*, which covers non-international conflicts, has a serious gap because the rule of distinction between objects only applies to a few kinds of civilian objects, which do not include education facilities (arts. 15 and 16). The gap is covered by customary law (see Jean Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law: Volume I: Rules* (Geneva and Cambridge: ICRC and Cambridge University Press, 2005), 25-29 (Rule 7). Customary law is discussed below. The ‘*principle of distinction*’ is in a sense a misnomer because a principle is a generalization, and a generalization does not compel any specific performance in specific situations. See Ronald Dworkin, *Taking Rights Seriously* (London: Duckworth, 1977), 22-28; and Karl Zemanek, “Basic Principles of UN Charter Law,” in *Towards World Constitutionalism*, eds. Ronald St. John Macdonald and Douglas M. Johnston (Leiden and Boston: Martinus Nijhoff Publishers, 2005), 401. The ‘*rule of distinction*’ would be more accurate, because the prohibition against targeting civilians compels specific behaviours in real-life situations.

2) An attack must not cause an unreasonable amount of 'incidental' (or 'collateral') harm to civilians or civilian objects

This is usually called the principle of proportionality: when targeting a military objective, the attack must not be carried out if it is expected that it would cause 'incidental loss' to civilians or civilian objects that is 'excessive in relation to the concrete and direct military advantage anticipated.'⁷

3) The weapons and methods of warfare must not cause an unreasonable amount of suffering to human beings

This is also the principle of proportionality: it is unlawful to cause 'superfluous injury or unnecessary suffering.'⁸ Poison gas is a familiar example.

Violating any of these rules is a war crime.⁹

As noted above, the laws of war cover both *international* and *non-international* armed conflicts.¹⁰ They cover *state actors*: the state itself, the political leaders and commanders who make decisions about the means and methods of warfare. Each soldier personally, from the highest-ranking officers to the lowest, is obligated to comply with the rules. In non-international conflicts, the law also covers any 'Party to the conflict',¹¹ and all *non-state 'organized armed groups.'* The latter term refers to a group that has a command structure that could enforce compliance with the rules of warfare, and that has sufficient control of an area so that it can 'carry out sustained and

7 ICRC, *Protocol I*, art. 51(5)(b); for non-international armed conflicts, the rule on collateral damage can be inferred from ICRC, *Protocol II*, art. 13(1) ('The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations.') The operative word 'excessive' can be rendered as 'reasonable' in ordinary speech; see, for example, Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (Cambridge: Cambridge University Press, 2004), 125 (using 'reasonable' to explain when collateral damage is lawful), or the legal word 'disproportionate.' See note 9 below on the proportionality principle.

8 ICRC, *Protocol I*, art. 35(2).

9 The principle of proportionality is a reasonableness test. The proportionality principle requires that 'the measure taken bear [*sic*] a *reasonable* relationship to the aim of the measure' Condé, *A Handbook of International Human Rights Terminology*, 208 (emphasis added). See also, Pieter van Dijk and Fried van Hoof, *Theory and Practice of the European Convention on Human Rights*, 3rd ed. (The Hague: Kluwer, 1998), 719, explaining the proportionality principle in terms of 'reasonableness', and 723, explaining 'fair balance.' The term 'principle of proportionality' has entered the legal vocabulary in jurisdictions around the world with respect to IHL, human rights law, and regional and national laws, although sometimes with different terminology. But despite the variations in vocabulary, the reasonableness standard has been said to be the most fundamental norm of state behavior in any field of law; see David M. Beatty, *The Ultimate Rule of Law* (Oxford: Oxford University Press, 2004).

10 Under ICRC, *Protocol II*, art. 1(1), a 'non-international armed conflict' is one in which the fighting is between a state and non-state "dissident armed forces or organized armed groups." An armed conflict in which 'peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination' is treated as an international armed conflict, although it is likely to be taking place within just one state; see ICRC, *Protocol I*, art. 1(4).

11 All four ICRC, *Geneva Conventions*, in their 'Common Articles 3'.

concerted military operations', and can carry out the duties imposed by the laws of war.¹² Groups and persons not covered by the term include those participating in 'internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.'¹³

Applying the law of armed conflict (international humanitarian law) can sometimes be difficult because of the three threshold tests just mentioned: (i) the level of violence, which must be high enough to amount to an 'armed conflict'; (ii) the degree of organization of the armed group; and (iii) the group's degree of control over the territory. The threshold tests create two problems: agreeing on an interpretation of the vague language of the test, and knowing the facts in individual cases. For instance, when is a 'paramilitary group' a *de facto* arm of a state, and therefore covered by the rules applicable to the state as a party to the hostilities, and when is it a non-state actor? Or when is a rebel or terrorist group 'organized', or in sufficient control of an area? These questions are important, given the diversity of attacks on teachers, students and schools in contemporary internal conflicts. The work of the International Criminal Court and other tribunals will probably develop case law on some of these legal questions, although such judicial elaboration usually proceeds slowly.¹⁴

The three threshold tests also leave us with a category of military-like entities that are not state militaries, non-state organized armed groups, or some other type of 'Party to the conflict'.¹⁵ This paper will refer to members of such entities, and to ordinary criminals and members of criminal gangs, as 'private actors' to indicate that they are not covered by this body of law.

In discussing humanitarian law applicable in armed conflict, it is important to consider the institutions that push and pull people towards complying with the rules. The primary institutions are the states and the non-state organized armed groups that are engaged in armed conflict. All of the states that have ratified the Geneva Conventions and Protocols have individual and collective rights and duties to ensure that their soldiers are complying with the laws of war contained in those treaties.¹⁶ Moreover, the law makes a 'grave breach' an international crime: any party to the treaty – even one that is not a party to the armed conflict – can prosecute

12 ICRC, *Protocol II*, art. 1. Since 'Party to the conflict' in common art. 3 (see previous note) is not defined, the command and territorial qualifications in Protocol II would not apply to non-state parties in non-international conflicts covered by the Geneva Conventions.

13 Ibid.

14 For deciding if a paramilitary group is a *de facto* state actor, matters to be considered are the role of the state in organizing, coordinating, and planning the military actions of the group, but the mere provision of money, training, and equipment would not be enough; see Knut Dörmann, *Elements of War Crimes Under the Rome Statute of the International Criminal Court: Sources and Commentary* (Cambridge: Cambridge University Press, 2003), 20 (citing several cases).

15 See note 9 for 'Party to the conflict' under the ICRC, *Geneva Conventions*, common art. 3. Some courts have treated private individuals (i.e., persons who are not part of a military or a government official) as war criminals if their actions have a close enough link to the war. There are no treaty provisions that provide the criteria, and the court cases tend to produce conflicting results, and not give principled reasons. See, for example, the cases in Antonio Cassese, *International Criminal Law*, 2nd ed. (Oxford: Oxford University Press, 2008), 83-84, n. 4 and n. 5; also see, Michael Cottier, 'Article 8,' in *Commentary on the Rome Statute of the International Criminal Court: Observers' Notes, Article by Article*, 2nd ed., ed. Otto Triffterer (Munich: Beck/Hart/Nomos, 2008).

16 For example, ICRC, *Fourth Geneva Convention*, art. 146; and ICRC, *Protocol I*, art. 80.

the people who are responsible for grave breaches.¹⁷ The treaties also expressly recognize the indispensable roles of the Red Cross, Red Crescent and other humanitarian organizations in achieving the vision of the law of armed conflict.

The law adds a powerful mechanism to propel compliance: commanders can be criminally responsible for violations committed by others. If a commander knows that a subordinate is committing a war crime and fails to take all reasonable measures to try to stop it, he too will be guilty of a war crime. In addition, a commander can be liable if he should have known that such a violation was occurring, based on information that he possessed, but failed to take preventive measures.¹⁸

National actors who have duties under IHL

- The state has the duty to instruct soldiers in the law of armed conflict.¹⁹ The state has the duty to provide commanders with legal advisors on the law of armed conflict.²⁰
- Commanders have a duty to prevent violations.²¹
- Commanders have a duty to make sure that their troops know their obligations under the laws of war.²²
- Commanders have a duty to initiate disciplinary or penal actions.²³
- The legislature has a duty to pass any laws 'necessary to provide effective penal sanctions' for grave breaches.²⁴
- The state has an obligation to hunt down persons suspected of committing grave violations to bring them to trial.²⁵
- The state has a duty to cooperate with other states in regard to extradition and other aspects of a prosecution of grave crimes.²⁶

17 ICRC, *Fourth Geneva Convention*, art. 146. Some states have national laws that extend their criminal jurisdiction extra-territorially; this allows them to prosecute non-nationals who commit war crimes in another state. In addition, prosecutions can be under the International Criminal Court, or under *ad hoc* international criminal tribunals, such as those for the Former Yugoslavia, Rwanda and Sierra Leone, and mixed tribunals, as in Cambodia. Examples of 'grave' violations of IHL: ICRC, *Fourth Geneva Convention*, art. 147 (willful killing of civilians; willfully causing great suffering to civilians; excessive destruction of property not justified by military necessity, and done unlawfully and wantonly); and ICRC, *Protocol I*, art. 85(3)(a) (targeting civilians) and art. 85(3)(b) (excessive collateral damage to civilians or civilian objects).

18 ICRC, *Protocol I*, art. 86.

19 Ibid., art. 83.

20 Ibid., art. 82.

21 Ibid., art. 87(1).

22 Ibid., art. 87(2).

23 Ibid., art. 87(3).

24 ICRC, *First Geneva Convention*, arts. 49 and 50; ICRC, *Second Geneva Convention*, arts. 50 and 51; ICRC, *Third Geneva Convention*, arts. 129 and 130; and ICRC, *Fourth Geneva Convention*, arts. 146 and 147. See also ICRC, *Protocol I*, arts. 11(4) and 85.

25 Ibid.

26 ICRC, *Protocol I*, art. 88.

IHL protects education systems on the basis of their civilian nature

International humanitarian law protects education systems in two ways. First of all, education is protected because the people and the facilities are civilians or civilian objects; this protection will be discussed immediately below. Secondly, the law has a few rules that expressly protect education in some specific situations, which will be addressed afterwards.

Protection against direct attacks

The law of armed conflict forbids military attacks that target students, education personnel or education buildings, simply because of their status as civilians or civilian objects. Violating the rule of distinction is a war crime in both international and non-international armed conflicts.²⁷

However, if a teacher or student takes a 'direct' (or 'active') part in the hostilities, the person loses the protected status of being a civilian during the period of participation, even if the person is a child, or has been forced into acting.²⁸ The treaties do not define the terms in this exception, although there is no doubt that they would include the use of weapons or planting explosives aimed at soldiers, and transporting ammunition.²⁹ Second, a civilian object can be turned into a military objective, in which case it could be lawfully attacked. Using a school building to house soldiers or as a command post are familiar examples of what triggers this exception.³⁰

The law elaborates on the rule of distinction by specifying several particular applications, and these applications are important for protecting education systems during military action:

- Those who plan or authorize an attack must do 'everything feasible' to verify that the targets are not civilians or civilian objects (which includes students and teachers, and schools and other education facilities).³¹
- Legal advisors must be available to advise commanders on the lawfulness of an attack when it is being planned and authorized.³²
- Those who launch or carry out an attack must stop the attack if it becomes apparent that the targets are civilians or civilian objects.³³

27 ICRC, *Protocol I*, arts. 48, 51(2), 52, and 85(3)(a) (grave violation); and ICRC, *Protocol II*, art. 13. Protocol II has a gap because educational objects are not protected; the deficiency is corrected by customary international law, as discussed below.

28 ICRC, *Protocol I*, art. 51(3); and ICRC, *Protocol II*, art. 4(1).

29 See ICRC, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under IHL* (Geneva: ICRC, 2009), 51-52.

30 ICRC, *Protocol I*, art. 52.

31 *Ibid.*, art. 57(2)(a)(i). There are a number of tools that can be used to improve verifications, like agreed-upon symbols and modern communications technology. The 'everything feasible' test requires a military to make use of any reasonably available technology or method.

32 *Ibid.*, art. 82.

33 *Ibid.*, art. 57(2)(b).

Whether soldiers can use a particular civilian object for a military purpose is determined mainly by the principle of 'military necessity.' And since this exception undermines the protective purpose of not targeting civilian objects, as well as the underlying premise that suffering must be minimized, the law imposes several corollary duties. The corollary duties are quite general, but they can help to keep militaries and armed groups from stretching necessity into convenience:

- 'The civilian population and individual civilians shall enjoy protection against dangers arising from military operations.'³⁴
- Warring parties must take 'necessary precautions to protect the civilian population, individual civilians and civilian objects under their control against the dangers resulting from military operations.'³⁵

Because these duties to take precautions are framed in the generic language of civilians, the warring parties automatically have duties to protect students, staff and education infrastructure. Academic lawyers could develop the arguments that would particularize these general duties into more concrete duties to take practical measures to protect education systems. NGOs and other organizations could then turn the scholarship into effective public advocacy.

The specific and the general duties open doors of opportunities for international organizations to promote protection. For example, militaries may sometimes have difficulty determining if a particular education facility is being used by its adversary, or if students and teachers are taking a direct part in the armed conflict. There is a specific duty to verify the military nature of the target, and school authorities and humanitarian workers may be able to help military planners to avoid mistaken attacks by being in communication with them. As another example, school authorities can instruct teachers and students on humanitarian law, and urge any of them who are taking an active part in the hostilities either to stop or to keep their activities away from the schools. This could help protect other students and teachers, and the facilities, from being attacked. Schools can further educate students about the prohibition on recruitment of children and adolescents by military forces under international law.³⁶

In addition, school authorities, school management committees, humanitarian workers and human rights workers can use the law to demand that armed forces or armed groups not make use of school facilities. Soldiers must be made to realize how damage to education infrastructure can harm current and future generations of children and young people.

Other important measures are to educate non-state armed groups about humanitarian law and to motivate them to comply. Sometimes these groups attack schools because they are symbols of their enemy, the state, or as a tactic to undermine the legitimacy of the state as the provider

34 Ibid., art. 51(1). 'Dangers' and 'military operations' are very broad, and go far beyond 'incidental damage' and 'targeted attacks.'

35 ICRC, *Protocol I*, art. 58(c).

36 While Protocols I and II, and the Rome Statute set the age at 15 years, human rights law protects up to 18 years of age: see UNGA, *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, A/54/49 (May 25, 2000), art. 1 (participation in combat) and art. 2 (recruitment).

of basic services and protection. However, they might not fully appreciate the backlash in local or international support or sympathy, or be aware of the expanding reach of international criminal law.³⁷

No unreasonable (or 'disproportionate') collateral damage

It is a war crime to attack a lawful target if it is likely to cause an unreasonable (disproportionate) amount of collateral damage to students, teachers or other education personnel, or to school buildings and other education facilities.³⁸ The law has a number of rules and principles that help the military to fulfil its duty to minimize collateral damage (see box).

Specific duties to eliminate or minimize collateral damage

- Those who plan or authorize an attack must take 'all feasible precautions to 'minimiz[e]' any disproportionate amount of collateral damage (e.g. incidental loss of lives of students or teachers, or damage to schools or other facilities).³⁹
- 'Effective advance warning' must be given of attacks which may affect the civilian population, 'unless circumstances do not permit.'⁴⁰
- If the military has a choice, it must take the course of action that is likely to 'cause the least danger to civilian lives or objects.'⁴¹
- Legal advisors shall be available, when necessary, to advise commanders on the lawfulness of an attack when it is being planned and authorized.⁴²
- Those who launch or carry out an attack must stop the attack if it becomes apparent that the attack is likely to cause disproportionate collateral damage.⁴³
- A warring party must 'avoid locating military objectives within or near densely populated areas.'⁴⁴

Unintended damage could perhaps be minimized by marking education institutions with a protective symbol and by using modern technology to inform military planners of the location of these institutions. Militaries have the possibility of communicating such information to each other through mutually agreed symbols, sharing of GPS coordinates and so on. In the absence

37 While NGOs and intergovernmental organizations face many practical difficulties in having direct contacts with non-state armed groups, there are notable success stories. For example, Geneva Call, an international NGO, works with non-state militaries to stop the use of landmines, using the United Nations (UN) *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Ottawa Convention)* (September 18, 1997), which non-state entities cannot ratify, as the point of reference. This suggests that NGOs could do similar things with the Geneva Conventions and Additional Protocols, and the human rights treaties, with the aim of protecting the enjoyment of the right to education.

38 See note 7.

39 ICRC, Protocol I, art. 57(2)(a)(ii).

40 Ibid., art. 57(2)(c).

41 Ibid., art. 57(3).

42 Ibid., art. 82. 'The absence of legal advisers cannot be an excuse for any violation of international humanitarian law by any party to any armed conflict.' See also Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, discussion on Rule 141.

43 ICRC, Protocol I, art. 57(2)(b).

44 Ibid., 58(b).

of universal symbols, the parties to a conflict may be persuaded to adopt *ad hoc* methods for identifying educational buildings.

It might also be possible for the military to improve its planning by seeking objective information from people knowledgeable about education in the area under attack. For instance, planners could minimize collateral harm by being given information on the likely movements of students and teachers (like the days and timings of classes, national examinations, vacations). It may be useful to develop guidelines on the kinds of measures that states and others could take to protect education systems from collateral damage, as will be discussed below.

In addition, educators and humanitarian workers can press upon soldiers the damage that their operations can do to students and their education.⁴⁵ The rule on collateral damage is not an objective test. The rule says that 'incidental loss' to civilians or civilian objects shall not be 'excessive in relation to the concrete and direct military advantage anticipated.'⁴⁶ 'Excessive' means unreasonable (or disproportionate). Planners and commanders are making subjective judgments about what is a reasonable trade-off between competing interests: this much civilian death and destruction is a reasonable price for achieving this much of a military advantage.

Education specialists, lawyers and other humanitarian workers can affect the trade-off judgments by actively engaging with military planners and their legal advisors. They can try to increase the 'weight' given to the 'humanitarian considerations' and help the planning and authorizing officers to see the human beings – other people's children, their teachers and their educational futures – behind the abstractions.

In short, one of the most important tasks is to help soldiers improve their planning, with the aim of eliminating or minimizing collateral damage to the education system. The rule on collateral damage is based on a reasonableness or fair balance test: it is not primarily an objective determination, but a judgment that will be affected by the degree that decision-makers can 'see' and 'feel' the impacts of the fighting on the civilians.

One of the legal gaps is understanding how the rule on collateral damage applies to disrupting education systems. The rule is framed in terms of 'incidental loss' to civilians. Blowing up school buildings is an immediate loss of property, but that loss will lead to other losses. Children and young people still have resiliency even though they have been traumatized by war and insecurity, and being in school is important for helping them to cope, recover and develop. Moreover, education plays a leading role in preparing children and young people to earn a living, and to participate in the social, economic and political development of their country. On the other hand, deprivation of education can be one of the grievances of marginalized social groups that can fuel civil conflict. Adolescents sometimes report that lack of education and other life opportunities was an important reason for becoming an under-aged soldier. Furthermore, when a school is destroyed, the full impact of that act of collateral damage goes beyond the material value of the buildings and loss of education on the day of the bombing. The consequences of destroying a school will live on until the school is rebuilt, teachers have been hired and trained and the

45 Experienced humanitarian aid workers have reported success in protecting education systems by good communications with non-state armed groups and state militaries. For instance, rebel commanders have used mobile phones to warn aid workers of pending operations that could endanger students and teachers, and later notify them when it is safe to return.

46 See note 7.

education resumed, and this often takes years. In the meantime, every youngster who could have been getting an education is hurt, and that deprivation of education can have life-shaping consequences. It is doubtful that all of the consequences mentioned in this paragraph must be considered under the rule on collateral damage, or the generalized duty to take precautions.⁴⁷ But the more that military advisors and planners know about these long-term, cumulative effects, and the more that civil society demands that they be taken into account, the greater the chances that these humanitarian considerations will tilt the balancing judgment in favour of protecting the educational futures of the children.

Attacks by private actors

International humanitarian law does not regulate the conduct of private actors who do not have a sufficiently close link to an armed group. Moreover, it does not place any clear obligations on the parties to a war, in their capacities as warring parties, to protect the public from private actor violence. By contrast, a state does have an implied duty to protect educators and students from attacks by private actors, as will be considered in the discussion of human rights law.⁴⁸

■ IHL rules that expressly protect education

International humanitarian law is concerned with much more than just regulating the way that militaries conduct the fighting. The law has numerous rules that protect designated aspects of human well-being. There are prohibitions against destroying cultural and religious objects, for instance, as well as many detailed provisions on medical services, such as identity cards and waterproof armbands for personnel who work in hospitals or transport patients.⁴⁹

By contrast, the law contains only a few rules expressly about education (see box).

47 For example, if students cannot attend primary school for a substantial period of time, that will deprive them of basic learning; they cannot then progress into secondary school; and so on. So, what losses must be taken into account? When does the law cut the causal chain for the purposes of this rule? This legal question needs to be addressed by lawyers concerned with protecting education. More attention has been given to intentional and collateral destruction of a country's electricity system; see David Kennedy, *The Dark Sides of Virtue: Reassessing International Humanitarianism* (Princeton: Princeton University Press, 2007), 299 (discussing the changes in thinking about destroying electricity systems in the Gulf War, the NATO campaign against Serbia and the 2003 Iraq campaign).

48 For the duties of private actors under IHL, see notes 14 and 15.

49 ICRC, *Fourth Geneva Convention*, art. 20.

Education-specific duties under IHL

International armed conflicts: A party must take all necessary measures to facilitate the education of children under 15 who have been separated or orphaned by the war;⁵⁰ and, when a Party evacuates children to a foreign country, the education that is provided must be done so as to ensure maximum continuity.⁵¹

Non-international armed conflicts: The *de jure* or *de facto* authority that controls a territory must ensure that when children receive education, the instruction will respect the parents' 'wishes.'⁵²

Occupation: The occupying power must cooperate with national and local authorities so as to facilitate the proper working of educational institutions for children; and when local institutions cannot do so, it must make arrangements to educate children who are orphaned or separated by the war, and the education should, if possible, be carried out by persons of the children's nationality, language and religion.⁵³

Internment during international wars: The education of children and young people must be ensured; recreational spaces and playgrounds must be provided; and practical measures must be taken to ensure that all internees can enjoy educational, intellectual and recreational activities.⁵⁴

These rules only mention some of the educational needs of civilian populations, and with little detail; but of course compliance with the rules can have profound effects on the well-being of the intended beneficiaries.

■ Closing the gaps through customary law and with innovation

One of the gaps in the law comes from the fact that the application of the Geneva Conventions and Protocols to a particular armed conflict depends on their being ratified by the relevant states. This is not a serious problem with the Geneva Conventions because of their near universal ratification, but the gap is real when it comes to the Protocols, and especially Additional Protocol II on non-international armed conflicts.

The key function of customary international law is to fill the 'ratification gap.' The concept behind customary international law is that a state is bound by a norm of conduct even when it has not given its sovereign consent through ratification of a treaty, and even though it strongly disagrees that the alleged norm is in fact customary law. The idea is that a practice can become a rule of international law simply by custom – by the words and actual behaviours of the states of the world, when enough of the states have maintained those standards for themselves,

50 Ibid., art. 24.

51 ICRC, Protocol I, art. 78.

52 ICRC, Protocol II, art. 4.3(a). The specification that the duty is on the *de jure* or *de facto* authority is not in the article, but comes from Pilloud et al., Commentary on the Additional Protocols, 1377.

53 ICRC, Fourth Geneva Convention, art. 50.

54 Ibid., art. 94.

and proclaimed them as binding on other states. There can be fierce disputes as to whether a particular standard of conduct has become a binding rule of law through custom.

The legal controversies that often surround claims about customary international law need not be seen as a stumbling block to the objective of using this law to strengthen the legal protection of education. This is because the two basic rules for protecting education systems – no targeting of civilians or civilian objects, and no excessive collateral damage – are among the most firmly established customary norms in the laws of war.⁵⁵

There are also two gaps in Additional Protocol II on non-international armed conflict: The rule of distinction only pertains to people, so the targeting of civilian objects is not *per se* prohibited;⁵⁶ and there is no rule outlawing ‘disproportionate’ (or unreasonable) collateral damage to civilians or civilian objects.

Customary law fills these gaps in Additional Protocol II for the same reason that the ratification gap is filled: the two basic rules of humanitarian law are solidly entrenched as rules of customary law.

Another kind of gap occurs when the matter falls below the three threshold tests discussed earlier – the level of violence does not amount to an armed conflict, the actors are not sufficiently organized or do not sufficiently control enough area, or the actors are not a party to an armed conflict. While acts of violence committed in circumstances below the thresholds would normally be regulated by national criminal law, and states have human rights duty to protect the public from violence (as discussed below), there has been considerable interest in bringing these problems into the discourse of international law.

The best known initiative in this regard is the ‘Declaration on Minimum Humanitarian Standards,’ which was adopted by a group of experts in 1990, and has since attracted widespread attention.⁵⁷ The ‘Turku Declaration,’ as it is sometimes called, is an example of an innovation that seeks to expand the discourse on international standards. Another kind of innovation, which was previously mentioned, is the work of an international NGO, Geneva Call, in getting non-state armed groups to sign ‘Deeds of Commitment’ modelled after the convention on land mines and to monitor compliance.⁵⁸

55 Henckaerts and Doswald-Beck, *Customary International Law*, 3 (Rule 1: rule of distinction between soldiers and civilians); 25 (Rule 7: rule of distinction between civilian objects and military objectives); and 46 (Rule 14: no excessive collateral damage). The International Committee of the Red Cross produced a two volume study that postulated the rules it considers to have reached the status of customary law, and the state practices that support its arguments (Ibid.; and Jean Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law: Volume II: Practice* (Geneva and Cambridge: ICRC and Cambridge University Press, (2005)).

56 ICRC, *Protocol II*, art. 14 forbids targeting or destroying ‘objects indispensable to the survival of the civilian population, such as foodstuffs, [etc.]’, which has not been interpreted as covering education objects. Other articles protect specific kinds of civilian objects.

57 Institute for Human Rights, “Declaration of Minimum Humanitarian Standards,” (declaration adopted at expert meeting, Åbo Akademi University, Turku/Åbo, Finland, November 30-December 2, 1990), http://web.abo.fi/institut/imr/publications/publications_online_text.htm.

58 See note 37.

Innovations like these that have vision and that are supported by energetic advocates can have the potential to influence the development of treaty-based law and customary law, with respect to both humanitarian and human rights law.⁵⁹

There are two other categories of gaps to address. One is the disjoint between law and behaviour, that is to say, the problem of getting the institutions of government to take the measures that will regulate the behaviours of state actors, and the problem of getting people to internalize the rules and the values that underlie the rules. This is briefly discussed immediately below. The other gap occurs when decision-makers lack guidance on how to make just trade-off decisions; this is covered, in part, in the final section of the paper, under the heading of Guidelines.

■ The implications of the rules of IHL

The rules of humanitarian law have important implications for states. In order for a state military to ensure that its soldiers know and observe the rule of distinction and the rule on collateral damage, including damage to education institutions, the state will need to do a number of things. Many of the measures that it must take will be within the institutions of its armed forces and ministry of defence. But other institutions of the state, particularly the ministry of education, the ministry of justice and perhaps the national courts, will have to coordinate their initiatives with the military.

The measures that a state would need to take would include the following:

Training and Instruction Units⁶⁰

- Train officers in the laws of war (and relevant human rights law and the Rome Statute)
- Train troops
- Reinforce the training
- Instruct troops during the briefings for manoeuvres

Legal units

- Legal advisors to guide military planners on complying with the law⁶¹
- Prosecution and defence lawyers for military trials for breaches of the law

59 See, for example, Marco Odello, "Fundamental Standards of Humanity: A Common Language of International Humanitarian Law and Human Rights Law," in *International Humanitarian Law and Human Rights Law*, ed. Roberta Arnold and Noelle Quenivet. (Boston: Martinus Nijhoff, 2008), 15-56; and Martin Scheinin, *Turku/Abu Declaration of Minimum Humanitarian Standards (1990)* (Geneva: International Council on Human Rights Policy, 2005). The Declaration was submitted to the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities (E/CN.4/Sub.2/1991/55), but not adopted.

60 People obey rules from a variety of motivations, including conscience (the rules have been internalized), social approval, especially by peers, and out of concern for formal rewards and punishments (e.g. citations and medal, promotions, demotions, punishment tours of duty, discharge from the service and prosecution). A State will need to take steps in all of these areas if it is going to maximize compliance with IHL.

61 ICRC, *Protocol I*, art. 82.

Inspection units

- Monitor and evaluate the training, reinforcement of training, and briefing instructions
- Monitor and evaluate the compliance with the laws of war (e.g. at the planning, authorization and execution stages of attacks)

Law enforcement units

- Investigation unit determines if the laws have been violated in suspected cases
- Prosecution unit brings the accused to justice (overlaps with Legal unit)
- Tribunals (military or civilian) try the alleged perpetrators
- Witness-support unit gives emotional and material assistance
- Prisons and jails detain the accused before, during and after trial

Victim assistance units⁶²

- Administer the compensation laws
- Provide recovery assistance

Public education units⁶³

- Educate school children, university students and the public about the laws of war (e.g. the importance of making a distinction between soldiers and civilians)
- Conduct awareness-raising on laws of war and problems leading to non-compliance

If a state lacks any of these institutional units or activities, then it is not doing all that it should be doing to ensure compliance with international humanitarian law and the Rome Statute (with the exception of Victim-Assistance, which is not covered).⁶⁴ Moreover, each category of implementation measure would need a legal mandate and training that specifically address the protection of education systems.

62 Victim-Assistance and Public Education do not have to be located within the military.

63 ICRC, *Protocol I*, art. 83(1).

64 The illustration of categories of measures pertains to states and their militaries. Similar mappings can be developed for other state institutions, such as the police, and for other types of armed forces, such as organized armed groups, UN forces and regional forces. A comprehensive assessment of the problem needs to map out all of the important institutional units and their functions.

The Rome Statute

The Rome Statute of the International Criminal Court was created in 1998; and it came into effect in 2002. In classifying fields of law, it is considered as part of International Criminal Law; indeed, it is now a central part of this field. The treaty takes the principles of substantive and procedural criminal law, as found in well-developed national legal systems, and applies them to four categories of 'international crimes.' One of these is of direct concern with regard to education: war crimes.⁶⁵

The vision or premise of the Rome Statute is that states collectively must use the criminal law to protect the people of the world from some of the most extreme abuses of international law. In the past, states individually had the right and the duty to capture and punish perpetrators of egregious abuses, but this has proved insufficient. Now, states collectively have used treaty-law to assert the right to create a supra-national entity with the powers to enforce 'international criminal law' in ways that are analogous to national enforcement of criminal laws.

The Rome Statute defines 'grave breaches' and 'other serious' war crimes, as applicable to international and non-international armed conflicts. So the abuse must occur in the context of an armed conflict, and the crime must be 'committed as part of a plan or policy or as part of a large-scale commission of such crimes.'⁶⁶ Only individuals can be prosecuted under the Rome Statute, and the perpetrators will usually be members of a state military or non-state organized armed group, or political leaders making decisions about the means or methods of warfare.⁶⁷

The Statute creates an International Criminal Court and an Office of the Prosecutor with the additional powers of investigation and charging. Moreover, the states parties have collective authority over the execution of the treaty, and the International Court of Justice can determine certain disputes that might arise under the treaty.

The international crimes that are the most relevant for education are: (i) targeting a student or teacher (or any other civilian);⁶⁸ (ii) targeting an education building;⁶⁹ and, (iii) in international armed conflicts, causing an excessive ('disproportionate') amount of collateral harm to students

65 UNGA, *Rome Statute*, art. 5(1). The other crimes are genocide, crimes against humanity and aggression, although aggression is yet to be defined (*Ibid.*, art. 5(2)). Prior to the establishment of the Court, special international tribunals had been established for specific conflicts.

66 *Ibid.*, art. 8(1).

67 The International Criminal Court will probably hold private individuals accountable if their abuses are connected closely enough to the armed conflict, following other courts; see note 14.

68 *International armed conflict*: UNGA, *Rome Statute*, art. 8(2)(a) ("willful killing' of civilians") and art. 8(2)(b) (targeted attacks against civilians). *Non-international armed conflict*: *Ibid.*, art. 8(2)(c) (violence against civilians) and art. 8(2)(e) (targeted attacks against civilians). However, the civilians must not be taking a direct part in the hostilities.

69 *International armed conflict*: UNGA, *Rome Statute*, art. 8(2)(b)(ix) ('building dedicated to ... education'), which is a particularized application of art. 2(b)(ii) ('civilian objects'). *Non-international armed conflict*: *Ibid.*, art. 8(2)(e)(iv) ('building dedicated to ... education'). The Statute does not expressly define attacks on civil objects *per se* as war crimes in non-international conflicts. However, some specialists argue that all civil objects come under art. 8(2)(e)(xii); see Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, 27.

and teachers (or other civilians), and damage to education facilities (or any other civilian objects).⁷⁰

In other words, targeting teachers and students, targeting school buildings, and, in international armed conflict, inflicting excessive collateral damage to education systems are war crimes under both international humanitarian law and international criminal law.⁷¹ This allows us to think of the International Criminal Court as a special kind of accountability mechanism for enforcing the laws concerned with war crimes (although it also has jurisdiction over other kinds of international crimes). It is special because it is a major innovation in international law, and because of its powerful potential for bringing the worst perpetrators to account and thus deterring other potential war criminals.

The International Criminal Court is a kind of back-up accountability mechanism. The Court is only able to exercise its jurisdiction if a state, which also has jurisdiction over the case, is unable or unwilling to try the individual. In addition, states individually have duties to cooperate, as in extraditing suspected war criminals.

■ International human rights law

Human rights are usually explained in terms of *human dignity*. The vision behind international human rights law is that states must promote respect for the human dignity of each and every human being. While 'human dignity' has diverse meanings, it is helpful in this context to think of it as a person's total well-being, encompassing the physical, mental, emotional, spiritual, material and all other aspects of human life. Each human right protects some particular aspect of well-being: the right to health, the right to education, freedom of speech, freedom of religion, and so on, particularize aspects of human dignity into legally protected spheres of life. Promoting respect for human dignity means that a state must work to advance the well-being of each member of society, in each of the spheres of life covered by the human rights treaties that the state has ratified.

States are the duty-bearers under human rights law. A state becomes a duty-bearer when it ratifies a human rights treaty: ratification imposes legal obligations on the state. Since only states are duty-bearers, only a state can violate the human rights contained in the treaties.

Three special cases may be mentioned, which are not exceptions to the rule that only states can violate human rights, but are nuances. First, a private actor can be *complicit* in a state actor's

70 *International armed conflicts*: UNGA, *Rome Statute*, art. 8(2)(b)(iv) ('in the knowledge that such an attack will cause incidental' damage to civilians or civilian objects 'which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated'); also art. 8(2)(a) ('Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly'). The Statute has a gap because unreasonable collateral damage is not a specific war crime within the jurisdiction of the International Criminal Court in *non-international armed conflicts*. However, such action would be contrary to customary international humanitarian law; see Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, rule 18.

71 For contemporary war crime trials involving abuse of education buildings, see ICTY, *Prosecutor v. Kordic* (IT-95-14/2-A); ICTY, *Prosecutor v. Jokic* (IT-01-42/1-S); ICTY, *Prosecutor v. Strugar* (IT-01/42A) (2008); and ICTY, *Prosecutor v. Ljubicic* (IT-00-41-AR11bis.1).

violation. (A builder who bribes a government inspector to say that a defective school building is safe is complicit in the state's violation of its obligations under the CRC.) Second, private actors can become state actors when they perform functions of the state pursuant to delegated authority. (If the state contracts with a private security company to safeguard schools, the security officers could be considered state actors, under the normal principles of accountability in national laws.)

Third, a state may have a duty to pass and enforce domestic laws regulating private actor behaviour as a means to fulfil its human rights obligations. The international law duty to make primary education compulsory entails an implied duty to pass state laws that require parents to send their children to school, for instance. These implied duties are usually called either the '*horizontal effects*' or the '*third-party effects*' of human rights obligations.⁷²

Almost all human rights require the state to make '*trade-offs*' in order to fulfil its obligations. The need for trade-offs makes it impossible for a state to fully realize all of the human rights of all right-bearers simultaneously, since the gain of one individual or group of individuals comes at some kind of a 'cost' to others.⁷³ Allocating more of the education budget to primary education benefits right-holders in elementary school, at the expense of right-holders at other levels, for instance. And even if the treaty did not expressly say that the right to education is 'progressive,' or subject to the state's resources,⁷⁴ the legislature would still have the right to make trade-off decisions when it sets the yearly education budget: more for education will mean less for health, law enforcement and anything else.

As with the rule on collateral damage in humanitarian law applicable to armed conflict, the need for trade-offs in human rights law in general shows educators where to focus their efforts. The decision at hand might be about building up education services, or providing greater physical protection during insecurity, or sparing education systems during the fighting. In all of this decision-making, advocacy is needed to strengthen the value given to education and to the well-being of the people who will be affected.

72 For a spirited argument that international human rights law should be reformulated to also make private actors duty-bearers, thus going beyond these three nuances, see Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford: Oxford University Press, 2006). Three points should be noted. First, Clapham describes his position as a 'radical rethink' (p.28). Second, words have multiple meanings: many people (including Clapham) use 'human rights' to refer to moral rights (or natural rights), which causes confusion with the legal rights in the UN treaties. Third, there is a difference between what the law *is* and what (one believes) the law *ought* to be.

73 As Isaiah Berlin put it, '[W]e must engage in what are called trade-offs – rules, values, principles must yield to each other in varying degrees in specific situations... [N]o perfect solution is, not merely in practice, but in principle, possible in human affairs...'. Isaiah Berlin, *The Crooked Timber of Humanity* (London: Fontana, 1991), 17, 48.

74 UNGA, *CRC*, arts. 4 and 28(1).

■ The right to education

The right to education is contained in the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child.⁷⁵ The right expressly includes primary, secondary and higher education, and, for minors at least, vocational education. The treaties do not define what education is, and there is no mention of literacy, numeracy, health, mathematics, science, history or other subjects that make education so highly valued by ordinary people and government officials alike. Instead, the treaties define the right in terms of ultimate purposes, which are framed in idealistic, all-encompassing language: 'full development of the human personality'⁷⁶ and the 'development of the child's personality, talents and mental and physical abilities to their fullest potential.'⁷⁷

The right to education is an idealized end-goal. It is an end-goal because enjoyment of the right is something a state must work towards over time, and it is idealized because a state cannot fully realize the right for everyone at any moment in history: the 'working towards' never ends. The state has the task of translating the abstract end-goal into concrete entitlements through trade-off decisions. The text of the right does not give us the test by which we judge the correctness of a state's balancing judgments. The general principles of legal interpretation provide the solution: in the absence of a stated standard, one usually 'reads into' the right a reasonableness (or 'proportionality') standard of duty.⁷⁸ So, at the abstract level, a state has to take all reasonable steps to realize the right to education of every person within its borders. The right to education is a right to have the state make reasonable progress in moving towards the end-goal. We could say the state has a duty to be continually taking measures to build, maintain, improve and when attacked, repair its education system, and these obligations are to be fulfilled under a 'reasonableness' standard.

The right to education is fulfilled through *systems*. Realization of the right to education involves a number of systems and sub-systems: a system of specialized institutions (pre-schools, primary schools, secondary schools, vocational schools, universities, distance learning, facilities for those with 'special needs,' etc.); a system of centralized and local management; numerous sub-systems within the centralized administration (management, personnel department, finance, procurement, curriculum development, pensions, the gathering and analysis of statistics, etc.); a system of frontline workers (the classroom teachers and teaching assistants); teacher training institutions; text-book publishers; the overlapping mandates of ministries (education, health, women and children, culture and sports, public safety, transportation, etc.), and so forth. A state will translate the right to education from abstraction to concreteness through the process of constructing, maintaining, improving and repairing the education system, and, ultimately, through the

75 UNGA, *ICESCR*, art. 13; and UNGA, *CRC*, arts. 28 and 29.

76 UNGA, *ICESCR*.

77 UNGA, *CRC*. See, for example Vernor Muñoz, *Right to Education in Emergency Situations: Report of the Special Rapporteur on the Right to Education*, A/HRC/8/10 (2008); and United Nations Economic and Social Council (ECOSOC), *Implementation of the International Covenant on Economic, Social and Cultural Rights: The Right to Education*, E/C.12/1999/10, General Comment No. 13 (December 8, 1999). The World Conference on Education for All, *World Declaration on Education for All* (Paris: UNESCO, 1990), cited in para. 5 of the Comment, has been updated by the World Education Forum, *Dakar Framework for Action: Education for All; Meeting Our Collective Commitments* (Paris: UNESCO, 2000).

78 Beatty, *The Ultimate Rule of Law*.

interactions between its frontline workers and the right-holders – the teachers and the students. Each step in the process requires state actors to make trade-offs, and those decisions must be reasonable. The systems and sub-systems have to be developed over long periods of time; for instance, the time it takes to educate and train teachers, build schools and develop curricula. This is why damage to education systems during armed conflict is such a serious setback to the well-being of children and adolescents, and to social and economic development: it destroys what has taken decades, even generations, to build.⁷⁹

The right to education gives rise to an *implied duty to protect* students from attacks under the concept of '*horizontal effects*.' The right to education is an end-goal – that everyone becomes educated – and a state has to take reasonable steps to realize the right for every person within its borders. An essential part of that right is that there are schools and colleges for the right-holders to attend. The obligation to realize the right to education also contains an *implied obligation* to remove the barriers that prevent children and young people from attending those schools, both public and private. In times of armed conflict or insecurity, this would mean that a state has an implied duty to protect students from attacks while en route to school or at school; this includes protection from private actors, whether criminal gangs or paramilitaries. The right to education depends upon trade-off decisions, which are subject to the reasonableness test. A state is required to take *reasonable steps* to fulfil the right for the right-holders in question, with 'reasonable' being judged in the light of all relevant considerations in the situation at hand. So, during war or insecurity, a state has a duty under international human rights law to take reasonable steps to protect students whenever the threat of violence is a barrier to enjoying the right to education.⁸⁰

While international attention to education has often focused on literacy and primary education, *attacks on higher education* are important to our present concerns. University students and professors are often engaged in politics, and campuses are frequently the sites of political activities. In some situations, governments are concerned about links between higher education, opposition groups and/or perceived subversion, leading to closures or restrictions on human rights, such as freedoms of speech, association, assembly, the right to work, and to derivative rights, like the rights to intellectual inquiry and scientific research. Individual academics may be at risk of persecution or killing by known or unknown persons or groups because of their status or activities.⁸¹

Since the human rights at stake in cases of state restrictions on higher education institutions during conflict and instability permit (and require) the state to make trade-off decisions, the legal

79 According to the first Special Rapporteur on the Right to Education, the root of the difficulties in realizing the right is the political contest over the state's revenues (Katarina Tomasevski, *Background Paper Submitted by the Special Rapporteur on the Right to Education of the Commission of Human Rights*, E/C.12/1998/18 (November 30, 1998), 1-3). See also, David E. Bloom and Joel E. Cohen, "Education for All: An Unfinished Revolution," *Daedalus* (Summer 2002), 84-95, arguing that education specialists have not yet made a sufficient case for the economic value of education, and, until they do, education-for-all will not be achieved; also stressing the need to draw on successful efforts to change large, complex systems in other fields.

80 For example, in its General Comment on 'The right to education,' the Committee on Economic, Social and Cultural Rights recognized the implied duty to remove all barriers: 'By way of illustration, a State must... protect the accessibility of education by ensuring that third parties, including parents and employers, do not stop [boys and] girls from going to school...' ECOSOC, *Implementation of the International Covenant*, General Comment No. 13, para. 50. To the examples of parents and employers, the Committee could have added criminal gangs, militias and soldiers whose attacks keep students from attending school. See also, Muñoz, *Right to Education in Emergency Situations*, para. 21.

81 Another problem that can arise when there is an occupying power or international sanctions is the restriction on universities' acquisition of 'dual use technology.'

questions come down to 'proportionality': is the harm imposed by the restriction on the rights reasonable in light of the objective that the state is aiming to achieve? Given the frequency of attacks on higher education systems, such problems deserve attention from education specialists and lawyers.

It is the role of human rights workers to assert claims and to demand fulfilment of duties in the language of human rights. Education specialists and rights advocates should explore the frame of 'the duty to protect': this is legal language that legitimates demands for the state to act to protect education systems from attacks by private actors. Advocates can then demand specific measures tailored to the situation; for instance, demands for safe access to quality education aimed at the ministry of education and support for protection from the ministry responsible for public safety, the ministry of justice and the armed forces. The 'duty to protect' brings demands for practical action under the scope of international human rights. A comprehensive set of international guidelines of protection measures would be a valuable tool, and will be discussed below.

The right to life

Deadly attacks on teachers and students go to the heart of our subject matter. The most basic claim for protection under human rights law is the right to life. This right is contained in both the International Covenant on Civil and Political Rights (Art. 6(1)), and the Convention on the Rights of the Child (Art. 6(1)). There is also an implied duty to have reasonably effective systems of law enforcement, and this gives a basis for using human rights law to demand that states take additional steps during insecurity to protect the lives of students and teachers from attacks by paramilitaries, militias, criminal gangs and other private actors.⁸² And the implied duty opens the door for offering states assistance in law enforcement in the name of enhancing human rights. The duty to have reasonably effective protection measures is the legal language that legitimates demands that a state take specific measures to meet the needs of the situation at hand. Here, too, it would be helpful to have a set of internationally endorsed guidelines.⁸³

82 This implied obligation has not been well-developed in the international human rights literature, but it is firmly established in the case law of the European Court of Human Rights with respect to a similar right to life in the European Convention, using similar lines of reasoning; see Van Dijk and Van Hoof, *Theory and Practice of the European Convention on Human Rights*, 358-367. UNGA, *ICCPR*, art. 2(2) is an umbrella obligation, and when read together with art. 6(1), the duty is a general one to *the public* at large, rather than a duty to right-holders individually. In the case law of the European Convention, a state violates an *individual's right* to life if the police knew that a particular person posed a real and immediate risk to the right-holder, but failed to take reasonable preventive measures.

83 When a state military targets civilians, or when it kills them as collateral damage during an attack on a military objective, a question may be raised about the relation between the law of armed conflict and human rights law. The right to life in the *ICCPR* requires that no one be 'arbitrarily deprived' of life. In this context, 'arbitrary' means unreasonable (or disproportionate). As discussed above, there are two rules in the laws of war that allow killing: the person targeted is a military objective (such as a student taking a direct part in the hostilities), or the person is killed as a reasonable act of collateral damage. Any deprivation of life that meets those conditions is lawful under international humanitarian law, and this gives us a standard by which to judge what is reasonable in the case of the right to life in the *ICCPR* (and the *CRC*). It can be said that acting in accordance with the Geneva Conventions and Protocols meets the reasonableness test in the right to life. So the reasonableness test legalizes the taking of life during armed conflict when the laws of war are complied with, and outlaws it when the rules are violated.

Mechanisms for accountability

Even though a state keeps its sovereign right to make the trade-off decisions that are inherent in realizing human rights, it is accountable for its decisions. International law provides a complex system for holding states accountable. One way to hold states accountable for realizing the right to education during conflict is to use these systems specifically to protect education.

There are two sets of duty-bearers and right-holders in the human rights treaties. The treaties are framed in terms of rights possessed by individuals: the state is the duty-bearer to all of the corresponding individual right-holders;⁸⁴ and each state party promises to each of the other state parties that it will work to fulfil all of the rights in the treaty for the people within its borders. So each state party is both a duty-bearer and a right-holder in respect to each other state party. Because of these reciprocal duty-bearer/right-holder relations between all of the parties, the states collectively have a right and a responsibility to enforce the treaty. This means that the states collectively have the duty to promote each state's compliance with its human rights obligations.⁸⁵ It also means that the parties collectively have the right to decide the meaning of the rights, and whether a party is fulfilling its duties to realize the rights (that is to say, whether a state has breached its obligations to the other parties by violating the individually-held rights). The parties to the UN human rights treaties typically discharge their collective responsibilities through 'mechanisms' for accountability. The ICCPR, ICESCR and the CRC each have a treaty-monitoring committee that operates on delegated authority. Each state party must give the committee a progress report; the committee discusses with the state the strengths and weaknesses in the state's efforts to realize the rights; and the committee gives its assessment, along with recommendations for improvement. In addition, the parties collectively can authorize the committee to decide complaints from individual right-holders, and states individually can opt into this procedure. The committees are quasi-judicial bodies, and their decisions are best described as advisory opinions. So each state keeps its sovereign authority to make its own trade-off decisions, while being subject to international accountability. One way to strengthen the protection of education is to raise the profile of education in conflict situations in the work of these treaty-bodies.

The human rights treaties discussed here were created under the authority of the UN General Assembly, and state compliance becomes a part of the complex UN system of accountability. For example, the treaty-bodies report to the General Assembly. Noteworthy here is the Committee on the Rights of the Child, which monitors the right to education, and which held a Day of Discussion on education in emergencies in 2008. In addition, the General Assembly has created the Human Rights Council, which in turn has accountability mechanisms, such as the Special Rapporteurs for the Right to Education, and for Extrajudicial, Summary or Arbitrary Executions.

84 See, for example, Louis Henkin, "Introduction," in Louis Henkin, ed., *The International Bill of Rights* (New York: Columbia University Press, 1981), 1, 14-15 (individuals can be right-holders under the concept of third-party beneficiaries).

85 '[E]very State party has a legal interest in the performance of every other State party of its obligations' United Nations Human Rights Committee (UNHRC), *General Comment 31: The Nature of the General Legal Obligations Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13 (May 26, 2004), para. 2. See also, UN, *Charter of the United Nations*, 1 UNTS XVI (October 24, 1945), art. 1(2), defining one of the purposes of the UN as 'to achieve international cooperation ... in promoting and encouraging respect for human rights....'

The Special Rapporteur for the Right to Education prepared a report in 2008 specifically on education in conflict and disaster situations.⁸⁶ The UN Secretary-General also has accountability mechanisms, which include Special Representatives on Children and Armed Conflict, and Violence Against Children and on Internally Displaced People. The Office of the High Commissioner of Human Rights is another accountability mechanism within the UN system.

The Human Rights Council has taken an important step to get states collectively to play a more prominent role in human rights enforcement when it introduced Universal Periodic Reviews (UPR) as a new kind of accountability mechanism. The Council, which is made up of 47 states, is systematically reviewing every state's progress in realizing human rights, and its primary sources of information are the state reports to the committees of the human rights treaties and the support treaties, and the committees' evaluations. The review process also includes country reports from the Special Rapporteur on the Right to Education and the Special Representative on Children and Armed Conflict, and will soon include reports from the Special Representative on Violence Against Children. The UPR is a peer review process in which states can try to form a consensus on interpretations of the rights, on whether each state is making reasonable trade-off decisions, and if each is making reasonable progress in fulfilling its human rights obligations. The fact that states are directly addressing other states on their human rights performance, and doing it systematically for all states and all relevant treaties, together in a human rights forum, is a remarkable step; and the four-yearly rotation means that there is an opportunity to review a state's long-term progress in protecting education systems, since the damage to the system will continue even as the violence diminishes. It will be important to raise the profile of education in conflict and insecurity within this mechanism.

The Security Council is an important accountability mechanism, and has passed a number of recommendations regarding children and armed conflict. Using Resolution 1612 (2005), for instance, the Security Council's Working Group on Children and Armed Conflict, with the support of the Monitoring and Reporting Mechanism, has dealt primarily with violations of the international ban against recruitment of children by armed forces.⁸⁷ Resolution 1882 (2009) also requires action on killing, maiming, rape and other sexual violence against children in situations of armed conflict. Field reporting mechanisms cover the six types of abuses of children and adolescents named in these resolutions, including attacks on schools and hospitals.

In conclusion, the right to life and the right to education lead to the same legal result: *A state has a duty under international human rights law to protect students and education personnel from attacks.* The duty exists at all times. The duty pertains to all categories of perpetrators: state actors, non-state armed groups, and private groups and individuals. And the duty applies to all levels or categories of education covered by the CRC or the ICESCR. Second, *a state must take steps to realize the right to education during war and insecurity.* And third, *these duties have a 'reasonableness' standard:* the state has a legal duty to take all reasonable steps to stop students and teachers from being attacked, and to maintain and repair education services, despite whatever violence the country is undergoing.

86 Muñoz, *Right to Education in Emergency Situations*.

87 See Watchlist on Children and Armed Conflict, *UN Security Council Resolution 1612 and Beyond* (New York: Watchlist on Children and Armed Conflict, 2009).

Relationship between the IHL and International Human Rights Law

There is increasing attention in the literature to the relationship between international humanitarian law and human rights law, both universal human rights law under the UN treaties, and regional human rights law under the regional treaties. Commentators often describe the interconnections in metaphors like ‘bodies’ of law ‘converging.’

What the commentators are referring to are several trends in the enforcement of the human rights treaties in times of war and insecurity, and the enforcement of the Geneva Conventions and Protocols. One trend is the increasing use of judicial institutions – national courts, the regional human rights courts, the *ad hoc* international tribunals and the International Criminal Court. These courts are called upon to do justice in the case at hand, which might require deciding the facts in complex situations. But the courts must also resolve disputes over the interpretation of the law, and these rulings can have long-term effects in shaping the behaviours of states and non-state armed groups. Another trend is that judges are using both fields of law. For instance, when a case is brought to a court of one of the regional human rights treaties, the judges might explicitly or implicitly use the rules in international humanitarian law in deciding legal questions in human rights law.⁸⁸

These trends open up possibilities for education specialists and organizations that specialize in these fields of law. The paper has stressed the reality of trade-off decisions. Whether a specific act of damage to an education system is approached as a question of ‘excessive’ collateral damage under the law of armed conflict, or as the denial of the right to life, or education, or other rights under human rights law, the legal question will come down to a judgment about ‘proportionality’ or reasonableness. Regardless of which set of laws is used to judge the matter, the trade-off decision will involve subjective considerations, and will ultimately hinge on value judgments. Educational specialists and international organizations can play an important role in informing these balancing decisions.⁸⁹

88 For a study of how international, regional and state courts have used IHL, international human rights law and regional rights, see Alexander Orakhelashvili, “The Interaction Between Human Rights Law and Humanitarian Law: Fragmentation, Conflict, Parallelism, or Convergence?” *European Journal of International Law* 19, no. 1 (2008), 161-182. For a further discussion, see Geneva Academy of International Humanitarian Law and Human Rights, “Rule of Law in Armed Conflicts (RULAC) Project: Interaction Between Humanitarian Law and Human Rights in Armed Conflict,” http://www.adh-geneva.ch/RULAC/interaction_between_humanitarian_law_and_human_rights_in_armed_conflicts.php. IHL is often said to have a *lex specialis* effect on human rights, in times of armed conflict. For a penetrating analysis of the strengths and weaknesses of this approach, see Conor McCarthy, “Legal Conclusion or Interpretative Process? *Lex Specialis* and the Applicability of International Human Rights Standards,” in *International Humanitarian Law and Human Rights Law*, ed. Roberta Arnold and Noelle Quenivet. (Boston: Martinus Nijhoff, (2008), 101-118. See also, Louise Doswald-Beck and Sylvain Vité, “International Humanitarian Law and Human Rights Law,” *International Review of the Red Cross* 293 (1993), 94-110; and Cordula Droege, “The Interplay Between International Humanitarian and International Human Rights Law in Situations of Armed Conflict,” *Israel Law Review* 40, no. 2 (2007), 310-355.

89 When courts rule on whether a reasonableness test has been violated, they do not decide what the correct trade-off decision, or the fairest balance, would have been. Instead, they decide if the decision was within the bounds of reasonableness, or the ‘zone of discretion’ (Kennedy, *The Dark Sides of Virtue*, 290), or the margin of appreciation, in European legal terminology.

One contribution is to raise awareness of the value of education to society and to children and young people as individuals. As military and judicial decision-makers give more weight to education, the more protection will be accorded to students, teachers and school buildings.

Another contribution is to develop internationally accepted guidelines for practical measures to protect education. Guidelines can help states and others to prevent damage to education systems during war and insecurity; and, after the fact, they can help courts to evaluate the reasonableness of the actions that caused the damage.

These and other practical steps will be covered in more detail in the last section, 'Moving the agenda forward.' To conclude this section, the chart below summarizes the law in the three fields.

Damage to Ed-System	IHL	Rome Statute	Human Rights Law
Military's ⁹⁰ targeted attack	Violation, <i>unless</i> military objective	Individual violates, <i>unless</i> military objective ⁹¹	State violation <i>when</i> it violates IHL ⁹²
Military's incidental damage	Violation <i>when excessive</i>	Individual violates <i>when excessive: only</i> in international wars ⁹³	State violation <i>when</i> it violates IHL ⁹⁴
Private actor attacks	n/a	n/a	State's duty to protect ⁹⁵
Effects of insecurity	n/a	n/a	State's duty to protect, and duty to realize the right to education

Moving the agenda forward

The paper has reached a number of conclusions:

- (i) Humanitarian law provides extensive legal protection to students, education personnel and institutions because of their status as civilians or civilian objects (as long as they do not become lawful military targets).
- (ii) Children, youth and adults always possess a human right to education. The state's obligations to fulfil this right continue through peace and war, acting in accordance with the standard of proportionality (or reasonableness).

90 'Military' refers to state armed forces, organized non-state armed groups, UN, and regional armed forces. Only individuals can commit international crimes under the Rome Statute, which also has a 'part of a plan or large-scale commission' qualification.

91 In non-international wars, education buildings are expressly protected.

92 The chart does not address the possible extraterritorial effects of the human rights treaties.

93 In non-international wars, collateral damage to persons and property is not expressly covered.

94 See note 92 above.

95 Private actors are not duty-bearers under international human rights law.

- (iii) The right to life gives rise to an implied duty to protect the public from private actor violence, and the right to education gives rise to an implied duty to protect students from threats of violence that stand in the way of enjoying their right to education; and these duties continue during war and insecurity, and are subject to the proportionality principle.
- (iv) There are a few gaps in international law relevant to protecting education, there are some questions of legal interpretation, and some potentials for developing the law, all of which need further study and innovation.

Overall, the fact that attacks on education systems occur is not due to deficiencies in the written law. While action should be taken to correct any weak places in the law, most of the work to strengthen protection will have to go to solving other dimensions of the problem.

Some activities that would strengthen the profile of protecting education, or would lead to the implementation of practical measures, are considered below under the headings of studies and research; improved monitoring, reporting and accountability mechanisms; joint military/educator projects; public education; better legislation, implementation, and enforcement at the national level; and development of internationally endorsed guidelines.⁹⁶

Studies and research

The first basic task in advancing education in times of conflict and insecurity is to get a deeper understanding of the attacks: the problems must be carefully defined before solutions can be decided upon. Understanding the scope, nature and diversity of attacks will require field studies in all regions of the world.⁹⁷ As a clearer picture of the attacks emerges, the legal questions will also take on a sharper focus. Examples of studies might include:

- Field research on why different categories of actors are attacking education institutions, including higher education, and on their methods of attacks; the effectiveness of existing preventive and response measures, both practical and under national law; research on the levels of awareness of the basic rules of relevant national and international law at the field level; and research on traditional constraints on attacks on children or education by armed forces and others;
- Research into the extent and kinds of harm done to children and young people by attacks, by insecurity and by the resulting denial of education; legal research into the scope of the term ‘incidental ... injury to civilians’ with respect to the longer term effects of loss of education;
- Research into forced recruitment of students and persons of school age, as it relates to recruitment in schools and to deprivations of education;

⁹⁶ Participants in the London seminar, held on 25 June 2009 (see note 1) reviewed papers by Professor Peter Rowe and Bruce Abramson. Possible strategies for future action were identified and in follow-up exchanges those suggestions, together with suggestions made during earlier consultations in Geneva with staff of the ICRC, and with Professor Louise Doswald-Beck, were drawn upon for some of the material in this section.

⁹⁷ During the consultations, Professor Louise Doswald-Beck stressed the need to first define the problem of attacks on education by field research and analysis before deciding about specific solutions or strategies.

- Research into attacks on education under occupation and related situations, such as sanctions regimes;
- Research into attacks on education by non-state armed groups, covering both factual documentation and scholarly work on legal accountability;
- Research on remedies for attacks on education systems, including recovery assistance, reparations, restitution and compensation;
- Research into law, policy and practice regarding education for refugees and internally displaced persons;
- Studies of state responsibilities and legal practice under IHL, international criminal law and human rights law regarding attacks on education, including national legislation, and national, regional and international trials;
- Studies on how attacks on education are being included in the regional and UN accountability mechanisms (Monitoring and Reporting Mechanism on Children and Armed Conflict, Human Rights Council, rapporteurs and special representatives, treaty-bodies, etc.), and in national mechanisms; and studies on how the recommendations are being followed-up, and on their impacts;
- A deeper exploration of the legal and practical issues raised in this paper, especially in regard to the interplay between IHL, international human rights law and the Rome Statute, and the right to education.

Strengthening monitoring, reporting and accountability mechanisms

Strengthening the legal protection of education systems and increasing enjoyment of the right to education entail more than attention to the written law. There is also an institutional dimension to the law: law is created, interpreted, applied, transformed, complied with and fulfilled through institutions. The protection of education systems can be strengthened by activities aimed at building the capacities of institutions. Examples might include:

- Improving UN and national monitoring systems to generate an international database on impairments of the right to education by conflict and insecurity⁹⁸;
- Sponsoring education-protection posts in, and proving support resources to, UN agencies, UN accountability mechanisms (e.g., Special Procedures mechanisms), other intergovernmental organizations and international NGOs;

98 This can be linked with other initiatives that create databases, such as the Rule of Law in Armed Conflict Project, <http://www.adh-geneva.ch/RULAC/>, and the Right to Education Project, <http://www.right-to-education.org>.

- Assisting organizations to provide input into the accountability mechanisms regarding attacks on education (e.g. NGO reports to the Monitoring and Reporting Mechanism, the CRC Committee and Human Rights Council);
- Helping to expand the capacity of these institutions with respect to internal organization and procedures, partnering, networking and so forth;
- Improving monitoring, reporting and accountability mechanisms for higher education;
- Supporting the use of national, regional and international courts to bring war criminals to justice for unlawful attacks on, or unlawful collateral damage to, education; support might include advocacy, legal and investigation assistance, sponsoring legal scholarship on questions relevant to war crime trials, and monitoring trials.⁹⁹

Joint military/educator projects

As noted earlier, little attention is given to education in the Geneva Conventions and the Protocols, in contrast to many practical rules for protecting medical personnel and services. Likewise, the Rome Statute does not have detailed provision on education. A consultation process, with organizations like the ICRC, experts in military training and other specialists, could produce recommendations for practical measures aimed at improving the ways that militaries handle the protection of education systems from targeted attacks and unnecessary collateral damage. Topics that may be explored include:

- Possible use of an international symbol to denote educational premises;
- Possible use of modern technologies to identify locations of educational institutions and their status as civilian objects (e.g. through communication with neutral observers);
- Possible use of symbols to denote staff and students, and arrangements for their safe travel to and from educational institutions;
- Possible use of education advisers to minimize the damage to education systems and processes; and training of military lawyers (e.g. on the legal protection of education and on the harms caused by collateral damage);
- Review of selected military manuals and training to find ways to improve training on, and ways to develop manuals' guidance regarding, collateral damage and targeted attacks on education;

⁹⁹ War-crimes trials usually seek multiple objectives: to 'educate' states and their militaries that they are accountable for violating international law; to obtain court rulings on what commanders should be doing to avoid harming civilians; to stir the public into demanding tougher enforcement of international law; and, of course, to secure justice for victims. NGOs have given vital assistance to the various international war crimes tribunals. They have also been active in bringing cases of IHL violations before the regional courts. Organizations seeking better protection for education systems can work with the litigation groups to bring court cases involving unlawful attacks on, or unlawful collateral damage to, education systems.

- Exploring ways of holding military actors accountable within the military, and by national legal systems and international courts¹⁰⁰;
- Development of international strategies to encourage state militaries and non-state armed groups, as well as UN and regional military forces, to integrate education protection into all relevant units, and to be more transparent and accountable for their compliance with IHL.

Public education on IHL and human rights

The Fourth Geneva Convention (Art. 144) obliges governments to disseminate the text of the Convention as widely as possible, to include its study in military and, if possible, civil instruction, 'so that the principles thereof may become known to the entire population' and to carry out these measures during both peace and war. The ICRC assists countries with military instruction in humanitarian law, and it does public education, notably through its 'Exploring Humanitarian Law' (EHL) modules designed for young people in secondary schools and for independent study. EHL has been adapted by several governments as part of national curricula, and pilot programmes are in progress in many countries.¹⁰¹

Public education in international human rights law is another long-term approach for strengthening the protection of education during conflict. States have long recognized the importance of human rights education. For example, the Universal Declaration of Human Rights sets the goal that 'every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms,'¹⁰² and rights-education has been included in the Convention on the Rights of the Child.¹⁰³ It is also supported by the current World Programme for Human Rights Education, established to follow-up on the UN Decade for Human Rights Education (1995-2004).

Unfortunately, there has been fragmented action in this area. For instance, education in the laws of armed conflict (IHL) is sometimes omitted from programmes of education for peace, human rights and citizenship. Future action in these areas should include the specific issue of protecting education under international humanitarian and human rights law. Collaboration is needed between ICRC and education actors, including the Inter-Agency Network for Education in Emergencies (INEE), to move this agenda forward. Integrating the protection of education into the curricula is especially important as it could help at-risk students to protect themselves from under-age voluntary recruitment, and it would foster the idea that schools should be 'zones of peace.'¹⁰⁴

100 While even the most conscientious government might withhold details of investigations in order to protect military operations, the legislature is often entitled to know facts that can be kept from the public. Civil society organizations can press legislators to hold the military accountable: if the inspection and law enforcement units are not performing up to standard, then the state is not fulfilling its obligations under international law applicable in armed conflict.

101 See ICRC, *Exploring Humanitarian Law: Education Modules for Young People* (Geneva: ICRC, 2001), <http://www.ehl.icrc.org>, and the EHL 'virtual campus' at the same URL.

102 UNGA, *Universal Declaration of Human Rights* (December 10, 1948), preamble, para. 8.

103 UNGA, *CRC*, arts. 29(2) and 42.

104 For an integrated approach to education for peace, human rights, humanitarian law and citizenship, at both primary and secondary levels, see German Agency for Technical Cooperation (*Deutsche Gesellschaft für Technische Zusammenarbeit*)(GTZ), *Learning to Live Together: Design, Monitoring and Evaluation of Education for Life Skills, Citizenship, Peace and Human Rights* (Eschborn: GTZ, 2008).

Better legislation, implementation, and enforcement at the national level

States need to enact laws aimed at fulfilling their international duties under all three fields of law (e.g. national laws for prosecuting war crimes, for implementing the Rome Statute and for fulfilling the implied duties to protect the public from violence). They also need to develop the institutional capabilities to comply with the law, and to do justice when the law is broken. International cooperation and assistance are especially important to assist developing countries in capacity-building.

A first step is to map out the existing measures for implementing and enforcing the current national laws in a given state; this will set the stage for identifying gaps in the legislation, and in the institutional structures and their functions.

As an example of a mapping exercise, a state would need to take the following legislative action in order to make the Rome Statute effective:

- Instrument of accession deposited with the UN Secretary-General¹⁰⁵;
- A national law that translates the international crimes defined by the Rome Statute into crimes under state law¹⁰⁶;
- A national law that allows for extradition of suspected international criminals;
- National laws that allow for the state to give international cooperation¹⁰⁷;
- A national law that provides for victims to be compensated.

In addition, each state has responsibility to promote the right to life and the right to education, as discussed above in the section on human rights law. This also requires legislation and institutional structures. In particular, the ministry of education will have a major role to play in making education as safe as possible, and in taking steps to ensure the continuity of education despite hot and low-level fighting and general insecurity. In some situations, conflict can be mitigated by ensuring fair access to quality education for students from all social groups, and by teaching peace education, human rights and the laws of armed conflict. Inter-agency cooperation to promote capacity-building and assistance may be needed to help states discharge their duties to protect.

105 UNGA, *Rome Statute*, art. 125(2). In other words, a state ratifies the treaty by the actions of a designated state institution (e.g. the prime minister, the parliament), and then certifies this by filing the instrument of accession: the deposit of the accession document is the legal act that binds the state to the treaty.

106 This allows for the state to prosecute offenders under its own laws.

107 UNGA, *Rome Statute*, arts. 86 to 99.

Development of internationally endorsed guidelines

The law grows in large part thanks to the visionaries whose energies, arguments and advocacy change perceptions. One of the most dynamic approaches to influencing perceptions is the development of internationally endorsed guidelines. This process is usually referred to as 'international standard setting.' Guidelines give specificity to abstract legal obligations: guidelines identify the types of practical measures that states may need to take. They are often referred to as 'soft law': 'soft' indicating that states have flexibility in deciding which kinds of measures are necessary and suitable to their respective situations, and 'law' indicating that the guidelines are authoritative statements of the kinds of actions that a state is likely to need to take if it is to meet the reasonable standard of duty that accompanies many of its international legal obligations.

A set of guidelines for protecting education systems during war and insecurity can include measures that would fulfil duties in all three fields of international law, but it would not have to categorize them into particular fields; indeed, there would be considerable overlap. (For instance, training soldiers not to attack students and teachers and enacting legislation that makes violations of IHL a crime under national law would satisfy legal obligations under all three fields.) Guidelines could identify measures that would come under the remit of various ministries, and they could also address international, regional and national level actors.

Guidelines for protecting education from attack can serve several vital functions. Firstly, they can have a preventive function: guidelines present a comprehensive list of possible solutions to numerous problems, which gives state decision-makers a solid basis for planning, programming and policy-making. Secondly, they can serve an advocacy function: advocates can use an authoritative set of guidelines to legitimate demands that a state take particular prevention measures. And thirdly, they can serve an accountability function. For instance, judges in a war-crime trial can use the guidelines to help determine if a commander acted reasonably when verifying if a particular target was a protected school building, and judges in a human rights case can use the guidelines to decide if the state authorities acted reasonably regarding protection measures for a particular school that was under threat of private actor violence.

Experience shows that guidelines can be created in a variety of ways. A small group of experts may write a set of guidelines at a workshop,¹⁰⁸ or guidelines might come from a large international meeting.¹⁰⁹ Guidelines can originate outside of the UN system, then be given to a UN human rights forum, and from there go to General Assembly.¹¹⁰ One way that has proven to be effective is for some part of the UN system to organize one or more conferences of experts, and the experts' guidelines are then sent to the General Assembly for adoption.¹¹¹ A set of guidelines adopted by the General Assembly is the most direct statement of what the nations of the world

108 For example, UN, *The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, E/CN.4/1987/17, Annex (1987). See also note 57, the Institute for Human Rights, "Declaration of Minimum Humanitarian Standards".

109 For example, International Commission of Jurists (ICJ), *The Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity* (March 2007).

110 UNGA, *Guidelines for the Alternative Care of Children*, A/HRC/11/L.13 (2009).

111 UNGA, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice ('The Beijing Rules')*, A/RES/40/33 (November 29, 1985).

think that they should be doing to fulfil their international obligations, as states individually and collectively.¹¹²

In order to create an authoritative set of guidelines on the protection of education, and to have it adopted by a prestigious body such as the General Assembly, key organizations and coalitions would need to work together, involving states, militaries, security specialists, humanitarian organizations, education coalitions and other interested actors. The process of creating guidelines would be time-consuming. But the end result – a practical set of guidelines on protecting education, and an authoritative statement of what states would need to do to fulfil their obligations under the three fields of international law – would be a major step forward.

112 A good example is the UNGA, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*, known as 'The Beijing Rules.' Adopted by the General Assembly in 1985, it is used by juvenile justice professionals and governments around the world. It was also used to write the juvenile justice article in the Convention on the Rights of the Child; and the Committee on the Rights of the Child refers to it in almost all of its concluding observations to states. Another very successful set of guidelines is the UNGA, *Standard Rules on the Equalization of Opportunities for Persons with Disabilities*, A/RES/48/96 (1993). It paved the way for the Convention on the Rights of Persons With Disabilities.

Chapter 10.

The application of international humanitarian law to attacks on education in armed conflict

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■ Introduction

This paper is an attempt to consider the general issue of protecting education from attack during the course of armed conflict. In doing so, one must bear in mind the inherent limitations of international law, in terms of its explicit reach into education systems, its use of specific terminology and its enforcement mechanisms.

Depending on the circumstances, deprivation of an appreciable period of primary education, for instance, can have effects on an individual's future life and well-being equally as serious as a significant permanent physical disability caused through the effects of armed conflict. The appearance may not be the same but the consequences may be just as long-lasting.¹

1 See generally, United Nations Economic and Social Council (ECOSOC), *Implementation of the International Covenant on Economic, Social and Cultural Rights: The Right to Education*, E/C.12/1999/10, General Comment No. 13 (December 8, 1999), para. 1.

Armed conflict and international humanitarian law

International humanitarian law² (IHL) is applicable whenever an armed conflict is taking place. The term 'armed conflict' is not defined in the four Geneva Conventions of 1949 or in their two Additional Protocols of 1977. Three questions arise:

- (a) What is an 'armed conflict'? This has been defined as existing 'whenever there is a resort to armed force between states or protracted armed violence between governmental authorities and organised armed groups or between such groups within a state.'³
- (b) When and for how long does IHL apply? This is stated as being 'from the initiation of such armed conflict and extends beyond the cessation of hostilities until a general conclusion of peace is reached, or, in the case of internal conflicts, a peaceful settlement is achieved.'⁴
- (c) Does the armed conflict have to be taking place over the whole of the territory concerned? The simple answer is no. 'International humanitarian law continues to apply in the whole of the territory of the warring states, or in the case of internal conflicts, the whole of the territory under the control of a party, whether or not actual combat takes place there.'⁵

Although the word 'attack' may have a wider general meaning, IHL is careful to define it. An 'attack' is 'an act of violence ... whether in offence or in defence.'⁶ Thus, the taking over of empty school buildings by a party to the conflict will not amount to an 'attack'.

2 A definition of international humanitarian law is 'international rules, established by treaties or custom, which are specifically intended to solve humanitarian problems directly arising from international or non-international armed conflicts and which, for humanitarian reasons, limit the right of parties to a conflict to use the methods and means of warfare of their choice or protect persons and property that are, or may be, affected by conflict' Claude Pilloud et al., eds., *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (Geneva: ICRC, 1987), xxvii. Other terms used to refer to the same branch of law are the law of war or the law of armed conflict.

3 See International Criminal Tribunal for the former Yugoslavia (ICTY), *Prosecutor v. Dusko Tadic*, IT-94-1-A, Appeals Chamber Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (October 2, 1995), para. 70. In relation to a non-international armed conflict the definition of an armed conflict is stated in similar terms in United Nations General Assembly (UNGA), *Rome Statute of the International Criminal Court*, A/CONF. 183/9 (July 17, 1998), art. 8(2)f. Disorder short of an armed conflict, such as 'riots, isolated and sporadic acts of violence or other acts of a similar nature,' is NOT covered by international humanitarian law (UNGA, *Rome Statute*). See, however, Institute for Human Rights, "Declaration of Minimum Humanitarian Standards," (declaration adopted at expert meeting, Åbo Akademi University, Turku/Åbo, Finland, November 30-December 2, 1990), http://web.abo.fi/institut/imr/publications/publications_online_text.htm.

4 ICTY, *Prosecutor v. Dusko Tadic*.

5 Ibid.; and ICTY, *Prosecutor v. Dragoljub Kunarac, Radomir Kovac, and Zoran Vukovic*, IT-96-23 and IT-96-23/1-A, Appeals Chamber Judgement (June 12, 2002). The Appeals Chamber of the ICTY confirmed this and set out its position as follows: 'The state of armed conflict is not limited to the areas of actual military combat but exists across the entire territory under the control of the warring States' ICTY, *Prosecutor v. Kunarac, Kovac, and Vukovic*. It then added that, 'the acts of the [accused must be] closely related to this armed conflict' ICTY, *Prosecutor v. Kunarac, Kovac, and Vukovic*, para. 64.

6 International Committee of the Red Cross (ICRC), *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 1125 UNTS 3 (June 8, 1977), arts. 49(1) and (2), read together; Claude Pilloud et al., eds., *Commentary on the Additional Protocols*, para. 1877; and UNGA, *Rome Statute*, arts. 8(2)(e)(i) and (vii). The *Rome Statute* makes it a war crime intentionally to direct 'attacks' against civilians during a non-international armed conflict. Acts other than an 'attack' may be specifically prohibited, such as conscripting or enlisting children under the age of 15 years or using them to participate directly in hostilities and the threat of violence the primary purpose of which is to spread terror among the civilian population.

International and non-international armed conflict

An international armed conflict is one between, or among, two or more states. The term also covers total or partial occupation of territory⁷ or where 'peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination.'⁸

In this context IHL assumes that each state is able to continue its normal governmental functions, such as the provision of education, during an international armed conflict. It makes some small reference to education.⁹ The occupation of territory changes, by its very nature, the role of government. It may not be clear, however, if territory is actually occupied by another state.¹⁰ If it is, the occupying state must fulfil at least some of the responsibilities of the displaced government. In these circumstances some specific reference to education (of, at least, children) would be expected. Thus, 'with the cooperation of the national and local authorities, [it must] facilitate the proper working of all institutions devoted to the care and education of children.'¹¹ In some situations the human rights treaties of the occupying state may apply in the occupied territory.¹²

7 ICRC, *Geneva Conventions* (August 12, 1949), common art. 2. All states in the world are parties to the *Geneva Conventions*.

8 ICRC, *Protocol I*, art. 1(4).

9 The parties to the conflict must take 'the necessary measures to ensure that children under 15, who are orphaned or separated from their families as a result of the war... [that] the exercise of their...education [is] facilitated in all circumstances' ICRC, *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 75 UNTS 287 (August 12, 1949), art. 24. Compare the UNGA, *Convention on the Rights of the Child (CRC)*, 1577 UNTS 3 (November 20, 1989), art. 38(4), which seems to apply this obligation to children under the age of 18. Where they evacuate children, 'each child's education ... shall be provided while he is away with the greatest possible continuity' ICRC, *Protocol I*, art. 78(2). There are some provisions in relation to *adult education*. Thus, subject to the measures which 'the detaining Power may consider essential to ensure their security or to meet any other reasonable need, the representatives of...any other organisation assisting prisoners of war [may distribute] relief supplies and material ...intended for...educational...purposes' ICRC, *Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention)*, 75 UNTS 135 (August 12, 1949), art. 125. A similar provision applies to persons protected under ICRC, *Fourth Geneva Convention*, art. 142. The detaining power is required to 'encourage the practice of intellectual, educational, and recreational pursuits...amongst prisoners' ICRC, *Third Geneva Convention*, art. 38. A similar provision applies to internees in ICRC, *Fourth Geneva Convention*, art. 94. Where prisoners of war are required to work they must receive 'training' ICRC, *Third Geneva Convention*, art. 51 (author's emphasis).

10 Territory must be 'actually placed under the authority of the hostile army' The Hague, *Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land* (October 18, 1907), art. 42. Where actual fighting is taking place it may be difficult to say that the territory is occupied by the invading state so that state could exercise any governmental functions. In some cases an invading state may claim that it is not in occupation but is, for instance, reclaiming its own territory. The invading state's view is not, of course, conclusive of the matter.

11 ICRC, *Fourth Geneva Convention*, art. 50.

12 See, for example, International Court of Justice (ICJ), *Legal Consequences of the Construction of a Wall in the Occupied Territory*, Advisory Opinion, ICJ Rep 136 (July 4, 2004), para. 112 (relating to UNGA, *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, 993 UNTS 3 (December 16, 1966). Despite Israel's claim that the Covenant did not apply in the occupied territories, Israel was held to the further obligation 'not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities' ICJ, *Legal Consequences of the Construction of a Wall*, para. 112. Similarly the CRC is 'applicable within the Occupied Palestinian Territory' (ICJ, *Legal consequences of the Construction of a Wall*, para. 113). The above analysis illustrates that human rights treaties must be looked at individually to determine whether they have any extra-territorial effect. Is there a limitation to the effect that the occupying state must be able to apply *all* of the rights to be under an obligation to apply *any* of them? There have been a number of cases stemming from European Court of Human Rights (ECHR), *Bankovic et al. v. Belgium and 16 Other Contracting States* (2007) 44 EHRR SE5.

A non-international (or intra-state) armed conflict is one which does not fall within the above definition. Common Article 3 to the Geneva Conventions applies if there is an armed conflict not of an international character occurring in the territory of a state but Additional Protocol II to the Geneva Conventions has a higher threshold of applicability. It requires organised armed groups to 'exercise such control over a part of [the] territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.'¹³

In the Geneva Conventions and their Additional Protocols, along with the Rome Statute of the International Criminal Court 1998, the distinction is maintained between these two types of armed conflict. In practice there may be some doubt as to whether there is an armed conflict in existence or whether it is of an international or non-international character.

It is, however, hard to sustain this distinction between the two types of armed conflicts, certainly from the point of view of the victim. Intra-state conflicts are much more numerous than international armed conflicts. Some treaties¹⁴ apply to both types whilst customary international law is argued, in most cases, to supply a similar norm.¹⁵

■ Customary international law

This is defined as 'evidence of general practice accepted as law'¹⁶ as distinct from an obligation accepted by a state by treaty. The general practice is found in the way states act or, more commonly in times of armed conflict, do not act.¹⁷ The reason for acting (or not acting) in a particular way must be that they accept that the law requires this. A good example would be the USA, which is not a party to Additional Protocol I (1977). It accepts that a number of the provisions in that treaty reflect customary international law and are binding on it as law through the customary international law route and not through the treaty. It is common to find that states have signed a treaty but have not ratified it. This may be due to the fact that they will need to secure parliamentary approval prior to ratification and this may take some time. In the meantime, if certain provisions of that treaty reflect customary international law they will be bound by the rule of law concerned.¹⁸

13 ICRC, *Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 1125 UNTS 609 (June 8, 1977), art. 1. This also requires the armed conflict to be 'between [the State's armed forces] and organised armed groups' (ibid.). It therefore assumes that to amount to an armed conflict the civilian police, acting by themselves, are unable to restore order.

14 See, for example, United Nations (UN), *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (and Protocols)* (CCW), 1342 UNTS 137 (October 10, 1980, amended December 21, 2001), amended art. 1. The Convention was amended in 2001 to apply the CCW and its Protocols in non-international armed conflicts. Some 72 states are party to this Amended Protocol. (ICRC website, <http://www.icrc.org>).

15 See the Rules applying in ICRC, "Customary International Humanitarian Law," March 2005, <http://www.icrc.org/ihl.nsf/WebList?ReadForm&id=612&t=art>.

16 UN, *Statute of the International Court of Justice* (April 18, 1946), art 38.

17 It is, for instance, common for states to indicate in their military manuals that they will not act in a way prohibited by a treaty even though they may not be a Party to that treaty.

18 Moreover, once a state has signed a treaty it must 'refrain from acts which would defeat the object and purpose of [the] treaty' UN, *Vienna Convention on the Law of Treaties*, 1155 UNTS 331 (May, 23, 1969), art. 18.

Since the extent of IHL found in treaties applying to an international armed conflict is much greater than in a non-international armed conflict, the scope for determining whether a norm exists in customary international law (which would be binding on a state) is greater in a non-international armed conflict.

■ The UN Convention on the Rights of the Child (CRC) 1989

Article 38 of the CRC provides that 'State¹⁹ Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them²⁰ in armed conflicts which are relevant to the child.' It also requires that 'in accordance with their obligations under international humanitarian law to protect the civilian population²¹ in armed conflicts, States Parties shall take all feasible measures²² to ensure protection and care of children who are affected by an armed conflict.' The CRC's Optional Protocol (2000) prohibits conscription or recruitment of children and their taking a direct part in hostilities if under 18 years.²³

19 Compare the *Geneva Conventions*, which imposes obligations on 'each Party to the conflict' ICRC, *Geneva Conventions*, common art. 3. This is particularly important in imposing obligations on non-state organised armed groups. See also UNGA, *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (CRC Optional Protocol)*, A/RES/54/263 (May 25, 2000), which imposes obligations on 'armed groups'.

20 See the discussion above in relation to treaties and customary international law. Whilst all states are party to the ICRC, *Geneva Conventions*, 168 are party to ICRC, *Protocol I*. Some 193 states are party to the UNGA, *CRC* (ICRC website, <http://www.icrc.org>).

21 See, in particular, ICRC, *Protocol I*, arts. 48-60.

22 On ratification of ICRC, *Protocols I and II*, the UK stated that it understood this phrase to mean 'that which is practicable or practically possible, taking into account all circumstances ruling at the time, including humanitarian and military considerations' Adam Roberts and Richard Guelff, eds., *Documents on the Laws of War*, 4th ed. (Oxford: Oxford University Press, 2000).

23 There are 128 states party to the *CRC Optional Protocol* (ICRC website, <http://www.icrc.org>). The recruitment of child soldiers aged under 15 years is a war crime under UNGA, *Rome Statute*, arts. 8(2)(b)(xxvi) and 8(2)(e) (vii), and also under customary international law.

International human rights law applicable during armed conflict

International human rights law (IHRL) can apply, alongside international humanitarian law (IHL), during periods of armed conflict.²⁴ In many important cases they speak the same language (e.g. no torture, inhuman or degrading treatment).²⁵ Where each branch would produce a different result (usually in an international armed conflict) it is generally IHL which prevails as the *lex specialis* (the prevailing branch of international law). Thus, a member of the armed forces of one state is entitled to kill a member of the armed forces of another state during an international armed conflict since IHL permits this. Where IHL and the human right to education appear to clash during an armed conflict the former will prevail. Thus, if a school becomes a military objective (see below) it may be attacked by the other party to the armed conflict.

In some cases human rights law may be the *lex specialis*. A good example is the way in which the European Court of Human Rights has dealt with a number of cases arising from the Chechnya conflict.²⁶ The governing law has been the European Convention on Human Rights 1950 and not IHL.

Unlike IHL there are a number of different human rights treaties and enforcement regimes in IHRL. Some states are not party to, for example, the International Covenant on Economic, Social and Cultural Rights 1966²⁷ or indeed, to any human rights treaty.²⁸

24 As to the applicability of human rights treaties during armed conflict see the ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Rep 226 (July 8, 1996), para. 25; and ICJ, *Legal Consequences of the Construction of a Wall*, which stated that there were 'three possible situations: some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law. In order to answer the question put to it, the Court will have to take into consideration both these branches of international law, namely human rights law and, as *lex specialis*, international humanitarian law' (para. 106). See also ICJ, *Case Concerning Armed Activities on the Territory of the Congo (DRC v. Uganda)* (December 19, 2005), para. 215.

25 See ICRC, *Geneva Conventions*, common art. 3; ICRC, *Protocol I*, art. 75; and ICRC, *Protocol II*, preamble. In the Geneva Conventions there is much that could be described as 'human rights'.

26 See, for example, ECHR, *Isayeva, Yusupova and Bazayeva v. Russia* (2008) 41 EHRR 39, paras. 170-171; and ECHR, *Isayeva v. Russia* (2005) 41 EHRR 38. 'A State's responsibility was not confined to circumstances where there was significant evidence that misdirected fire from its agents had killed a civilian. It could also be engaged where the State failed to take all feasible precautions in the choice of means and methods of a security operation against an opposing group with a view to avoiding and, in any event, minimising incidental loss of civilian life' ECHR, *Isayeva v. Russia*, para. 176. As to 'disappearances' see ECHR, *Malsagova and Others v. Russia*, Application No.27244/03, Judgment (April 9, 2009); ECHR, *Baysayeva v. Russia* (2009) 48 EHRR 33; and ECHR, *Luluyev v. Russia* (2009) 48 EHRR 45.

27 UNGA, *ICESCR*. The right to education is in arts. 13-14.

28 Approximately 34 States are not Party to the UNGA, *ICESCR* (ICRC website, <http://www.icrc.org>). See also now UNGA, *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, A/RES/63/117 (adopted March 5, 2009), which will come into force 3 months after the 10th ratification. Art. 2 is particularly significant. The right to education under the Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, ETS 5 (November 4, 1950), is in Protocol I, art 2; and in UNGA, *CRC*, arts 28 and 29. See also the United Nations Educational, Scientific and Cultural Organization (UNESCO), *Convention Against Discrimination in Education* (December 14, 1960); and UNGA, *Convention on the Rights of Persons with Disabilities* (January 24, 2007), arts. 11 and 24.

Protection of educational establishments and connected individuals under international humanitarian law: Is the law unclear?

Schools and other *buildings* dedicated to education²⁹ are specifically protected by IHL.³⁰ More generally, they would be considered to be civilian objects³¹ which may not be attacked. Only military objectives may be attacked.³² There are many examples of schools being attacked during an armed conflict.³³ Schools also face the risks of damage and looting thereby preventing normal

- 29 The term 'education' is not defined. It is likely, however, to refer to all forms of education, other than to specific military training centres, which may become military objectives in themselves. Compare, however, United Nations Security Council (UNSC), *Resolution 1882*, S/RES/1882 (2009) on the protection of children affected by armed conflicts, which 'strongly condemns...attacks against schools' (ibid., para. 1; author's emphasis).
- 30 UNGA, *Rome Statute*, art. 8(2)(b)(ix) in relation to international armed conflicts and art 8(2)(e)(iv) relating to non-international armed conflicts. Note the continuance here of the distinction between international and non-international armed conflicts. The wording is taken (largely) from the The Hague, *Hague Convention IV*, art. 27, but education was added to the list of the purposes for which the buildings are used. The addition of the word 'education' was proposed by the 1998 Preparatory Committee draft as Option II (Option I being virtually identical with the The Hague, *Hague Convention IV*, art. 27). Indeed, the addition of 'education' appears in the 1996 Preparatory Committee draft also (M. Cherif Bassiouni, *The Legislative History of the International Criminal Court* (Ardsey, NY: Transnational Publishers, 2005)). This may be because 'education' had been added to the list of types of building found in The Hague, *Hague Convention IV*, art. 27 in the UNSC, *Statute of the International Tribunal for the Former Yugoslavia (ICTY)*, S/RES/827 (1993), art. 3(d). Jean Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law* (Cambridge: Cambridge University Press, 2005) include under the heading 'Cultural Property' as Rule 38A: 'Special care must be taken in military operations to avoid damage to buildings dedicated to religion, art, science, education, or charitable purposes and historic monuments unless they are military objectives.' (author's emphasis). Rule 38A is said to have a long history (going back to the *Lieber Code* in 1863) but none of the instruments referred to in footnote 5 (of Rule 38A) include education buildings. The first modern treaty inclusion of education buildings would appear to be in UNGA, *Rome Statute*. That education buildings are included along with buildings dedicated to religion, art, science, etc. can, however, hardly be doubted prior to the UNGA, *Rome Statute*. In ICTY, *Prosecutor v. Dario Kordic*, IT-95-14/2-A, Appeals Chamber Judgment (December 17, 2004), the Appeals Chamber of the (ICTY) concluded that 'there is no doubt that the crime envisaged of destruction of educational buildings was part of international customary law at the time it was allegedly committed' (para. 92) (author's emphasis). This is important in respect of those states not party to the UNGA, *Rome Statute*. As at July 21, 2009 there are 110 states bound by the *Rome Statute*. A number of the states referred to in United Nations Security Council (UNSC), *Report of the Secretary-General on Children and Armed Conflict*, S/2009/158 (2009) are not parties to the Rome Statute.
- 31 ICRC, *Protocol I*, art. 52(3). A civilian object is to be contrasted with a military objective. There is a presumption that a school is not a military objective.
- 32 ICRC, *Protocol I*, art. 52. In non-international armed conflicts see the general terms of ICRC, *Protocol II*, art.13(1). For discussion of the differences between international and non-international armed conflicts in this connection, see Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, 26-29. Compare the position if the school building is being used for military purposes (such as a military training facility).
- 33 For examples see UNSC, *Report of the Secretary-General on Children and Armed Conflict*, paras. 69, 89, 98, 118, and 125. See also UNSC, *Report of the Secretary-General on Children and Armed Conflict in Colombia*, S/2009/434 (August 28, 2009), para. 44; Independent International Fact-Finding Mission on the Conflict in Georgia (IIFMCG), *IIFMCG Report* (Council of European Union, 2009), 328-9, <http://www.ceig.ch/>; and United Nations Human Rights Council (UNHRC), *Human Rights in Palestine and Other Occupied Arab Territories, Report of the United Nations Fact-Finding Mission on the Gaza Conflict*, A/HRC/12/48 (2009), paras. 1271 (damage or destruction of school buildings in Gaza) and 1659 (damage or destruction of school buildings in Israel), <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf>.

school activities. Acts by an adversary which cause these events would be contrary to IHL unless the destruction or seizure was 'imperatively demanded by the necessities of the conflict.'³⁴

A school or other educational building being used for military purposes may make that building a military objective, which may then be attacked, if to do so would offer a definite military advantage.³⁵ Civilian objects may suffer damage during an attack as a collateral or incidental consequence of an attack on a military object. Such an attack will be considered to be indiscriminate and therefore unlawful if the attack is 'expected to cause incidental loss of civilian life, damage to civilian objects or a combination thereof, which is excessive in relation to the concrete and direct military advantage anticipated.'³⁶

Students and teachers are civilians and may not be attacked unless they take a direct (or active) part in hostilities.³⁷ These principles will apply whether a particular state is a party to the various treaties concerned, whether the armed conflict is of an international or of a non-international character and whether the individuals are attacked in their homes or in the educational establishment.³⁸ There are many examples of attacks on teachers and other academics or on their students occurring during armed conflicts.³⁹ Where, however, teachers are threatened or attacked by individuals not representing the

34 If the destruction or seizure was not imperatively demanded the conduct would amount to a war crime under UNGA, *Rome Statute*, arts. 8(2)(b)(xiii) and (e)(xii).

35 UNGA, *Rome Statute*, art. 8(2)(b)(ix) recognizes that if buildings dedicated to education are used in such a way that they become military objectives (as defined by art. 52) their right to be protected from attack will be lost. The effect of this is to impose an obligation on those taking part in the armed conflict not to use such a building so as to make it a military objective by their adversary. If, in these circumstances, the building is attacked the breach of IHL will be on the part of those who used it in such a way as to cause it to become a military objective and not on the part of the attacker (who is attacking a military objective) subject to avoiding the causing of excessive incidental or 'collateral' damage, discussed below. For the firing of rockets from a school building see UNHRC, *Human Rights in Palestine*, para. 451.

36 ICRC, *Protocol I*, art. 51(5)(b). Although not referred to specifically in ICRC, *Protocol II*, a similar rule would be likely to apply by way of customary international law, see Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, 48-49. In practice it will be difficult to show that an individual expected such damage to occur unless the attack was clearly indiscriminate. This may occur if, for example, the attack is made by military aircraft or long-range artillery, see UNSC, *Report of the Secretary-General on Children and Armed Conflict*, para.136 (referring to Sri Lanka). The destruction of electricity generating stations in modern conflicts shows how the effect of attacking a military objective may have indirect consequences, such as the effect on sewage plants, or the closing of educational establishments.

37 ICRC, *Interpretive Guidance on the Notion of Direct Participation in Hostilities Under International Humanitarian Law* (Geneva: ICRC, 2009). Direct participation covers 'any consequence adversely affecting the military operations or military capacity of a party to the conflict' (*ibid.*, 47). Examples, apart from killing or injuring adversaries, would include sabotage or clearing mines placed by an adversary (*ibid.*, 48-50). See also ICRC, *Protocol II*, art. 4(3)(d), where children under 15 have taken a direct part in hostilities and are captured.

38 ICRC, "Customary International Humanitarian Law," rule 1; and ICRC, *Protocol I*, art. 48. This is, perhaps, the most fundamental principle in IHL and is often called the principle of distinction. Related to it is the principle that 'acts or threats of violence the primary purpose of which is to spread terror among the civilian population' are prohibited (ICRC, "Customary International Humanitarian Law," rule 2).

39 For examples see Nasir Ahmed Al Samaraie, "Humanitarian Implications of the War in Iraq," *International Review of the Red Cross* 89 (2007), 929 and 934, [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/review-868-p929/\\$File/irrc-868_Samaraie.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/review-868-p929/$File/irrc-868_Samaraie.pdf). UNGA, *Report of the Secretary-General on Children and Armed Conflict* gives a number of examples of teachers and pupils being attacked directly. See also the chapters in this volume relating to the attacks on Iraqi academics (Robert Quinn, "Attacks on higher education communities: A holistic, human rights approach to protection," in *Protecting Education from Attack: A State-of-the-Art Review* (Paris: UNESCO, 2010), 99-110. and the 'night letters' in Afghanistan (Zama Coursen-Neff, "Attacks on education: Monitoring and reporting for prevention, early warning, rapid response and accountability," in *Protecting Education from Attack: A State-of-the-Art Review*, 111-124. In both Iraq and in Afghanistan these events have occurred during an armed conflict.

party to the conflict⁴⁰ and without there being a close connection with that conflict, IHL will have no application, although the human rights obligations of the state will continue to apply.⁴¹ In addition, the national law of the state concerned is likely to make such activities criminal, although it may permit government forces (and not armed groups) to use force with varying degrees of impunity.

During a non-international armed conflict states party to Additional Protocol II, 1977 have accepted a 'fundamental guarantee' to provide that 'children...shall receive an *education*, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care.'⁴²

■ Use of weapons which might affect school children in particular

The use by those engaged in an armed conflict of anti-personnel mines or of cluster munitions can have extremely serious effects on children since they can kill or maim indiscriminately.⁴³ There are three treaties which deal specifically with these weapons. Their full titles indicate their nature. The two most important are the Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction 1997 and the Convention on Cluster Munitions 2008.⁴⁴ Each applies to states party to them.

A further risk, particularly to children, arises from the presence after a particular area has been subjected to armed conflict of unexploded ordnance. Protocol V (2003) to the Conventional Weapons Convention 1980 imposes obligations on states party and each party to an armed conflict to remove, clear or destroy such material. Where they do not control the territory where these remnants of war are located they must provide assistance, directly or indirectly, to the state which does.⁴⁵

40 Obligations under IHL are laid on individuals acting for 'Parties to the armed conflict' either as combatants or civilians taking a direct part in hostilities. A paramilitary group may represent a party to the conflict if there is sufficient control over the group by a party. Compare this with the situation where individuals attack teachers or students purely for their own personal reasons.

41 See, Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/ii.84, doc.39, rev 1 (1993), relating to the killing of professors and teachers. See Mario Novelli, *Colombia's Classroom Wars: Political Violence Against Education Sector Trade Unionists* (Brussels: Education International, 2009), 41; and Mario Novelli, "Fighting for Their Lives: Political Violence Against Teachers in Colombia," *id21 insights education* 6 (2007), <http://www.id21.org/insights/insights-ed06/art05.html>, relating to the threat to teachers who take part in trade union activities.

42 ICRC, *Protocol II*, art. 4(3).

43 See UNSC, *Report of the Secretary-General on Children and Armed Conflict*, para.70 (Lebanon) and para. 135 (Sri Lanka); and UNSC, *Report of the Secretary-General on Children and Armed Conflict in Colombia*, para. 86.

44 The other treaty is the UN, *Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and other Devices (CCW Amended Protocol II)* (May 3, 1996). There are 93 States Party to this amendment. There are 156 States party to the UN, *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (Ottawa Convention)* (September 18, 1997); and 17 States Party to the Diplomatic Conference for the Adoption of a Convention on Cluster Munitions, *Convention on Cluster Munitions*, CCM/77 (May 30, 2008) (ICRC website, <http://www.icrc.org>).

45 There are 60 States Party to this UN, *Protocol on Explosive Remnants of War (CCW Protocol V)* (November 28, 2003) (ICRC website, <http://www.icrc.org>). See UNSC, *Report of the Secretary-General on Children and Armed Conflict*, where children in Lebanon were reported as being 'exposed to the threat of explosive remnants of war because of the unprecedented use of cluster munitions in residential areas, villages, schools and agricultural land' (para. 70). The Government of Israel was asked to supply the 'strike data'.

Obligation of a state to remove civilians, to the extent that this is feasible, from the vicinity of military objectives⁴⁶ or to render safe a dangerous area particularly for children

This is implicit from Additional Protocol II, Article 13, which directs that the 'civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations.' The notion that the state owes an obligation to protect the right to life of persons within its jurisdiction is well understood under the European Convention on Human Rights.⁴⁷ A particularly relevant example is *Erol v. Turkey*⁴⁸ where an anti-personnel land mine exploded in a grazing area injuring the applicant. Turkey was held responsible for a breach of the right to life of the applicant. The Court stated that 'in assessing whether the authorities had taken all measures necessary to avoid endangering life, it was taken into account that Turkey was a party to an international convention on the prohibition of the use of mines, the zone where the mines were placed was village pastureland used regularly to graze animals, the barbed wire and warning signs did not constitute effective protection; and that children in the rural community should not be expected to behave as responsible adults.'

Responsibility of armed groups

It has been shown above that some treaties are addressed only to states party, whereas others impose obligations on a 'party to an armed conflict'. The latter term would include organised armed groups.⁴⁹ The most significant obligation is that contained in Common Article 3 to the Geneva Conventions 1949, which applies to 'each Party to the conflict'. Common Article 3 is

46 See generally, Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, rule 24.

47 See, for example, ECHR, *Oneryildiz v. Turkey* (2005) 41 EHRR 20, where the Court stated that 'obligation had to be construed as applying in the context of any activity, whether public or not, in which the right to life was at stake' (para. 71).

48 ECHR, *Erol v. Turkey*, (2009) 49 EHRR 27.

49 The motives of organized armed groups can vary significantly. In some cases they may control territory in places where the state government is unable to do so, whilst in other cases their intentions may be purely exploitative. There is no serious doubt that some obligations under IHL are placed on an individual acting as a non-state actor and, by the UN Security Council, on organised armed groups themselves. On the latter point see Jan K. Kleffner, "The Collective Accountability of Organised Armed Groups for Systems Crimes," in *System Criminality in International Law*, edited by Harmen van der Wilt and Andre Nollkaemper (Cambridge: Cambridge University Press, 2009). Compare the position in relation to human rights obligations, where the position is not so clear. See, generally, Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford: Oxford University Press, 2006). There is, however, considerable overlap between IHL and human rights. See ICRC, *Geneva Conventions*, common art. 3. Many UN Security Council Resolutions refer to obligations under IHL and IHRL without distinguishing between them and specifically direct obligations towards non-state actors. See, for example, UNSC, *Resolution 1882*, preamble, para. 8.

directed towards those who are not taking an active part in the hostilities (such as teachers and school students). Towards such individuals the following are prohibited: murder, mutilation, cruel treatment, torture, taking of hostages, outrages upon personal dignity, in particular, humiliating and degrading treatment.

A common feature of any treaty which refers to obligations on non-state actors is that any such provisions will not 'affect the legal status of Parties to the conflict.'⁵⁰ Where organisations wish to enter into negotiations with non-state groups they will normally seek the approval of the state in which the groups are acting. In this way, action plans can be agreed with organised armed groups.⁵¹ Other organisations may invite non-state actors to agree to comply with particular treaties. A good example of this is the activity of Geneva Call, which has invited non-state actors to sign a Deed of Commitment to ban the use of anti-personnel mines.⁵²

■ Use of human shields

IHL is clear that civilians must not be used as human shields.⁵³

■ Suggestions for practical protection of educational establishments and connected individuals

International humanitarian law provides an adequate normative basis for the protection of education during armed conflict. It seems to me, however, that the key issue is *how*, at a practical level, education can be protected.

1. The importance of the right to education during an armed conflict needs to be stressed as an obligation not merely as international human rights law, but integral to IHL, the major principles of which in this context are the protection of education buildings,⁵⁴ the protection from attack of civilian objects and of civilians not taking a direct part in

50 See, for example, ICRC, *Geneva Conventions*, common art. 3; and UN, *CCW Amended Protocol II*, art. 6. See also the importance of this for states, UNSC, *Resolution 1882*, preamble, para.11.

51 For examples see UNGA, *Report of the Secretary-General on Children and Armed Conflict*, paras. 146-148. See also UNSC, *Resolution 1882*, para. 5(a).

52 See the Geneva Call website, <http://www.genevacall.org/home.htm>.

53 'The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations' ICRC, *Protocol I*, art. 51(1). It is also a war crime under UNGA, *Rome Statute*, art. 8(2)(b)(xxii). Although not referred to directly in the *Rome Statute* referring to non-international armed conflicts it is likely that a similar rule would apply by virtue of customary international law. See Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, rule 97. For examples see UNSC, *Report of the Secretary-General on Children and Armed Conflict*, paras. 87-88.

54 See for example, ICTY, *Prosecutor v. Kordic*, IT-95-14/2-A; ICTY, *Prosecutor v. Jokic*, IT-01-42/1-S; ICTY, *Prosecutor v. Strugar*, IT-01-42A (2008), all of which involved destruction of protected buildings within the terms of UNSC, *Statute of the ICTY*, art. 3(d). In ICTY, *Prosecutor v. Brdjanin*, IT-99-36, the conviction was based partly on the responsibility of the accused for the taking over of a school as a detention facility for civilians (as to which see also ICTY, *Prosecutor v. Ljubicic*, IT-01-42/1).

hostilities, and the prevention of the recruitment of child soldiers.⁵⁵ During an armed conflict it is, perhaps, natural to expect that IHL (sometimes referred to as the laws of war) will be the primary branch of applicable international law. It will be seen as such by, for example, media outlets. It may be that protection of some of the aspects of the right to education⁵⁶ may, at a practical level, be curtailed where an armed conflict is taking place.

2. Should this IHL approach be taken two consequences would flow. First, states (and possibly armed groups) would see the protection of education as being important during an armed conflict (and not merely in peacetime). Secondly, the potential for holding *individuals* (whether members of armed groups or not) to account under international or national criminal law (or, indeed by other methods) will be increased. The issue of publicity is addressed in point 4 below.
3. The holding of individuals to account by way of prosecution for war crimes (or genocide or crimes against humanity) is, perhaps, one of the most effective ways of trying to ensure compliance. Recent practice before the international 'war crimes' tribunals has shown the importance of holding commanders (whether of high or of modest rank) to account where they have known (or ought to have known) war crimes were being committed and where they have failed to take all necessary and reasonable steps to prevent them. The importance of holding commanders to account is likely to be seen in the substantial deterrent effect it can have on such commanders and in showing that such prosecutions involve those 'most responsible' for the most 'serious crimes'. Prosecutions are normally brought under IHL where a court has jurisdiction.⁵⁷ At the national level some states are either showing a willingness to extend their criminal jurisdiction extra-territorially (to include non-nationals), extradite suspects found to be within their territory

55 See, for example, Special Court for Sierra Leone (SCSL), *Prosecutor v. Norman*, SCSL-04-15-T (2004); SCSL, *Prosecutor v. Brima et al.*, SCSL-04-16-T (2007) (conscripting children under 15 and using them to participate directly in hostilities, a war crime); ICC, *Prosecutor v. Dyilo*, ICC-01/04-01/06 (currently on trial before the ICC); and United States Department of State, *Report to Congress on Incidents During the Recent Conflict in Sri Lanka* (2009), <http://www.state.gov/documents/organization/131025.pdf>.

56 See ECOSOC, *Implementation of the International Covenant on Economic, Social and Cultural Rights*, which deals with availability, accessibility, acceptability and adaptability of education provision.

57 For example, the International Criminal Tribunal for the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), the Special Court for Sierra-Leone (SCSL), and the International Criminal Court (ICC). In addition, a number of 'war crimes' trials have been held by national courts. In some cases these have arisen from the exercise by a state of its extra-territorial jurisdiction. See the direction to Member States in UNSC, *Resolution 1882*, para. 16. The principle of complementary jurisdiction in the *Rome Statute* provides that the primary mode of trial will be under national jurisdiction with the ICC as a court of 'default' jurisdiction. A further limitation on the jurisdiction of the ICC is the 'gravity threshold' in UNGA, *Rome Statute*, art. 17(1) (d), as to which see ICC, *Situation in the Democratic Republic of Congo*, Pre-Trial Chamber, ICC-01/04-01/07, para. 47, referring to the need to show 'systemic (pattern of incidents) or large-scale' conduct. The Chamber went on to state that, 'the retributory effect of the acts of the Court must be subordinate to the higher purpose of prevention' (ICC, *Situation in the DRC*, para. 49). UNGA, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, A/RES/60/147 (December 16 2005) has a similar 'gravity threshold' as the title of the instrument suggests. Most crimes require intention as the required mental element. The ingredients of all the crimes can be found in the ICC, "Elements of Crimes," http://www.icc-cpi.int/NR/rdonlyres/9CAEE830-38CF-41D6-AB0B-68E5F9082543/0/Element_of_Crimes_English.pdf.

or to repatriate those who have made false statements on immigration forms.⁵⁸ Where they cannot be extradited, for human rights reasons, the advantage of extending a state's extra-territorial jurisdiction to try individuals under national law and thereby to ensure that there is no 'safe haven for [alleged] war criminals' is clear. It should not be forgotten that the obligation, on the part of a state, to carry out an independent investigation into an alleged breach of the right to life or the right not to be subjected to torture, inhuman or degrading treatment within its territory has been well developed by the European Court of Human Rights, one object of which is the holding to account of individuals by national law.⁵⁹

4. Training: Making those who take part in armed conflict aware of what is and what is not permitted by law is essential since the very nature of armed conflict (which does legitimize killing and the destruction of property in certain circumstances) turns on its head the normal 'moral code'. The training of members of a state's armed forces is a much easier task than the training of armed groups. To my mind this is one of the key issues which offers any real hope that educational systems can be protected during armed conflict. States may claim⁶⁰ that they are training their soldiers in IHL but this is not the same issue as whether soldiers understand what is permissible by law and what is not. Even if the training in IHL is excellent it must be accompanied by effective military discipline to avoid soldiers giving way to their desire for revenge or (often politically induced) hatred of a different ethnic group. The training of non-state armed groups is likely to be very limited. In this case public condemnation of the acts of such groups and stressing the liability of 'commanders' may be the only effective ways of getting a particular message across. Here, international media outlets are extremely important. One example of their effective operation was the campaign to ban the use of anti-personnel land mines, spearheaded by Princess Diana. This led, after a very short time, to the Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997.

58 For an example, see the trial in England of an 'Afghan warlord' for the crime of torture committed in Afghanistan against other Afghans, England and Wales Court of Appeal, *R v. Zardad* [2007] EWCA Crim. 279; Richard J. Wilson, "Spanish Supreme Court Affirms Conviction of Argentine Former Naval Officer for Crimes Against Humanity," *American Society of International Law Insights* (January 30, 2008), <http://www.asil.org/insights080130.cfm>; and John R. Crook, ed., "US Efforts to Identify and Deport Human Rights Abusers," *American Journal of International Law* 102, no. 1 (2008), 179.

59 There are many cases on this point. In ECHR, *Guygova v. Russia* (2009) 49 EHRR 22, the applicants alleged that relatives were killed following a heavy bombardment by Russian armed forces in Chechnya. The Government claimed that the relatives had been killed by unknown persons. The Court decided that there had not been an effective, prompt and thorough investigation by the Russian authorities. The principle of independent investigations would apply also in relation to alleged grave breaches of the ICRC, *Geneva Conventions* and ICRC, *Protocol I*. The importance of national jurisdiction is also stressed by UNSC, *Resolution 1882*.

60 A number of states include in their military manuals the 'obligation to take special care to avoid damage to buildings dedicated to education...' Henchaerts and Doswald-Beck, *Customary Humanitarian Law*, rule 38, p.127, n. 2. A number of such manuals, if written before the UNGA, *Rome Statute* do not, in fact, include education buildings. Compare the United Kingdom Ministry of Defence (UK MoD), *Manual of the Law of Armed Conflict*, (Oxford: Oxford University Press, 2004), which does. A further issue here is that states may assert they do train their soldiers in IHL but this training may be heavily (or completely) geared towards an international armed conflict. In other forms of armed conflict one of the most crucial issues will be the treatment of civilian detainees (and not prisoners of war). Experience shows that uncertainty by individual soldiers (because they have not been trained properly, or at all, as to how civilian detainees should be treated), or a break down of military discipline, are the principal causes of their ill-treatment.

5. Medical establishments and their personnel are specifically protected by IHL. Cultural property is also protected⁶¹, along with those objects which contain dangerous forces (such as dams, dykes and nuclear generating stations); civil defence infrastructure and personnel; vehicles, installations involved in humanitarian assistance or peacekeeping missions. They are protected by the distinctive emblems or other distinctive or special signs. Special protection is also given to declared non-defended localities,⁶² agreed neutralized zones,⁶³ agreed demilitarized zones,⁶⁴ and hospital/safety zones.⁶⁵

A possibility would be to consider whether education activities could, and should, be accorded a special distinctive symbol (as, for instance, with cultural property with which education is included in the war crimes provisions of the Rome Statute). A strong argument could be made that by placing *education* buildings within a group of other buildings set out in the Rome Statute which have been considered to reflect cultural property suggests that the protection of *educational* buildings are of the same type.⁶⁶ Many would argue that the right to education should be seen as a right needing protection greater than that for cultural property. Where possible, GPS co-ordinates of educational buildings could be given to military commanders. It may be, however, that considerable persuasion would be required to convince states that the protection of education facilities requires a protective emblem whilst other human rights (such as the right to food/water) do not.

6. The possibility, in non-international armed conflicts, of entering into special agreements with the parties involved, which could include the protection of education provision.⁶⁷
7. Referring cases involving attacks on educational provision to national prosecutors⁶⁸ and, in an appropriate case, to the Office of the Prosecutor of the International Criminal Court.⁶⁹ In the latter case it would be necessary to show that the 'gravity threshold' has been met (see footnote 57 above). Proceedings before the ICC are likely to be of value if

61 The Hague, *Convention for the Protection of Cultural Property in the Event of Armed Conflict*, 249 UNTS 240 (May 15, 1954); The Hague, *First Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict*, 249 UNTS 358 (May 15, 1954); and The Hague, *Second Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict*, 38 ILM 769 (March 26, 1999).

62 ICRC, *Protocol I*, art. 59.

63 ICRC, *Fourth Geneva Convention*, art. 15.

64 ICRC, *Protocol I*, art. 60.

65 ICRC, *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention)* 75 UNTS 31 (August 12, 1949), art. 23.

66 See generally, Gregory Bart, "The Ambiguous Protection of Schools Under the Law of War: Time for Parity with Hospitals and Religious Buildings," *Georgetown Journal of International Law* 40, no.2 (2009), 429, who draws out the fact that no limitations are imposed on an adversary making use of 'school' buildings, as contrasted with medical facilities (protected from such use under ICRC, *First Geneva Convention*, art. 33). The state may always instruct its armed forces not to attack school or other educational buildings or, indeed, not to interfere with the provision of a whole range of educational services. For an example see Adam Roberts and Richard Guelff, eds., "1991 Operation Desert Storm, US Rules of Engagement: Pocket Card" in *Documents on the Laws of War*, 4th ed. (Oxford: Oxford University Press, 2000), p. 562, para. C.

67 The opportunity to enter into special agreements is provided by ICRC, *Geneva Conventions*, common art. 3.

68 In the state where the alleged war criminal is living (which may not be his or her own state).

69 A state (or the UN Security Council) may refer a situation to the prosecutor requesting an investigation or the prosecutor may initiate such an investigation on the basis of information supplied (UNGA, *Rome Statute*, arts. 13-15). Under UNGA, *Rome Statute*, art. 15, the prosecutor may 'seek additional information from... intergovernmental, non-governmental organisations or other reliable sources.'

the principal reason for a referral is to deter others or to prevent such conduct from being repeated.

8. Stressing to states the need to watch carefully for interruptions to education during periods of tensions falling short of armed conflict. In practice some states may deny that an armed conflict is taking place within their territory (or the position may not have been reached where an armed conflict is taking place). Monitoring bodies under human rights treaties perform an extremely useful function in this regard.
9. Students, who may subsequently become voluntarily or otherwise members of armed groups, can learn about IHL through their schools, colleges or otherwise. The EHL (Exploring Humanitarian Law) project run by the ICRC is an important resource in this regard.⁷⁰

■ Conclusion

It has been shown that attacks by parties in an armed conflict can have a significant effect on the opportunities, which would otherwise be available to civilians, to receive an education, at whatever level. Depending on the circumstances this can have long lasting consequences for the individuals involved. International law is not silent on the main issues where protection can be given to those who wish to deliver and to receive an education. It treats these individuals (and their educational buildings) as equally worthy of protection, whatever the quality, or form, of education provided.

International humanitarian law develops at a fast pace when international tribunals hold individuals to account for genocide, crimes against humanity or war crimes. It is to be hoped that an indictment against an individual based upon his attack on education providers, their students or their educational buildings will show that such acts are to be condemned in the same way as the recruitment of child soldiers or the laying of anti-personnel land mines.

70 ICRC, "Exploring Humanitarian Law," http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/section_exploring_humanitarian_law. For a fuller treatment of the topic see Margaret Sinclair, "Protecting through curriculum: A call for collaboration," in *Protecting Education from Attack: A State-of-the-Art Review*, 279-301.

Chapter 11.

The ambiguous protection of schools under the law of war: Time for parity with hospitals and religious buildings

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■ Introduction

A disturbing trend during recent armed conflicts is that states tend to treat school buildings less respectfully than they treat hospitals and religious buildings. One important cause of this trend is the different privileged status afforded to each building type under the law of war. The law of war equally forbids targeting hospitals, religious buildings, schools, and other civilian buildings unless they become justifiable military objectives. But ironically, it fails to equally protect these buildings from being used for such objectives in the first place. Under the law of war's privileges for civilian hospitals and most religious buildings, armed forces cannot use these buildings for military purposes – without exception. In contrast, the law of war's privilege for school buildings ambiguously allows military use based on necessity. This is surprising because military use converts a school from a privileged site into a justifiable target for an opposing army. Even more troubling, such use increases the likelihood that an opposing army will confuse converted and unconverted schools and wrongfully attack one that shelters children and other civilians.

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State practice paradoxically both opposes and accepts military use of schools during war. The ongoing conflict in Iraq provides many examples. In 2003, the United States condemned Iraqi military commanders for employing school buildings and grounds as sites for artillery, materiel storage, and headquarters.² Human Rights Watch noted that the Iraqi practice directly contributed to the number of civilian casualties because those buildings became lawful targets for the coalition forces.³ The United States also denounced hostile insurgent forces for using school buildings as weapons caches and bases to launch attacks.⁴ Meanwhile, in northern Iraq, U.S. military commanders employed school buildings for military headquarters and command posts.⁵ Of note, American forces utilized school buildings that they characterized as abandoned or as former schools while Iraqi and insurgent forces exploited ones that were still occupied by students.⁶ But these incidents beg the question of why armed forces respect hospitals and religious buildings more than schools?

This article considers whether the law of war provides school buildings with a less privileged status than it gives to hospitals and religious buildings. It proposes that three critical issues necessarily affect any legal regime that seeks to establish privileged status for a specific type of building during war: 1) defining which buildings qualify; 2) ensuring maintenance of privileged status by prohibiting their military use; and 3) ensuring their recognition by armed forces.

The article's first section reviews how the law of war and humanitarian law evolved to address these issues for hospitals and religious buildings. It traces how the law of war originally gave these buildings only a derivative privileged status that was based entirely on the presence of civilians and noncombatants. Through a series of treaties, the law of war gradually gave direct, independent protection to hospital buildings based on their inherent humanitarian nature and to most religious buildings based on their cultural and spiritual value to a people. The law shifted from focusing exclusively on the obligations of military attackers in targeting to creating equally shared obligations for attackers and defenders not to use these buildings for military purposes.

The second section shows that the law of war's privilege for schools has not evolved to the same extent because it fails to clearly answer the above three questions for school buildings. Current international law does not provide most with a direct, clear, and independent privileged status based on their inherent humanitarian nature or value to a people. Rather, it protects schools against military use based solely on the presence of civilians and noncombatants. It thereby focuses exclusively on the military attacker's obligations to discriminate in targeting. These indirect protections are anachronistic compared to the direct ones currently afforded to hospitals and religious buildings.

The final section proposes that the law of war should adopt for schools a modern privilege that answers the above three issues. It asserts that school buildings have an inherent value to society that merits independent protection. It further suggests a framework for a modern school

2 See Central Intelligence Agency, Putting Noncombatants at Risk: Saddam's Use of "Human Shields" 5-6 (2003).

3 Human Rights Watch, Off Target: The Conduct of the War and Civilian Casualties in Iraq 79, 125 (2003), available at <http://www.hrw.org/reports/2003/usa1203/usa1203.pdf>.

4 Kathleen T. Rhem, *Marine General: Fallujah Operations 'Ahead of Schedule,'* American Forces Press Service, Nov. 11, 2004, available at <http://www.defenselink.mil/news/newsarticle.aspx?id=24854>.

5 Russell Skelton, *U.S. Forces Use Schools for Cover*, Sydney Morning Herald, April 4, 2003, at 3.

6 See Human Rights Watch, *supra* note 2, 74-76 (indicating that Iraqi forces regularly used schools for weapons placement and storage, putting civilians in danger).

privilege by borrowing the best aspects of the protections currently afforded to hospitals and religious buildings. Specifically, for schools, a modern privilege should describe which buildings qualify, prohibit their military use, and establish a distinctive emblem. In this manner, the law of war might inhibit in the future the high incidence of school building destruction that has been common in recent armed conflicts.

I. The Privileges for Hospitals and Religious Buildings under the Law of War

Through a series of treaties over the last century, the law of war's privileges for hospitals and religious buildings evolved from providing derivative protections based on the presence of civilians and noncombatants to providing direct protection. This process occurred on different timetables for each type of structure. However, for both, it was linked to gradual international recognition of the need to preserve these buildings because of their inherent humanitarian, cultural, or spiritual value.

Delegates at successive international conventions noted that during nineteenth and twentieth century wars hospitals and religious buildings were generally privileged against being targeted but this privilege was ineffective at preventing their damage and destruction.⁷ Therefore, the delegates progressively developed in each convention more detailed definitions of which buildings were covered by these privileges. More significantly, they observed that it was meaningless to make hospitals and religious buildings immune from attack if armed forces could still turn these buildings into lawful targets by using them for military purposes based on vague concepts of necessity. The goals of the state-participants in these conventions evolved from merely prohibiting the targeting of hospitals and religious buildings to crafting detailed restrictions on their military uses.⁸ States also recognized that their new goals required clear means through distinctive emblems for military forces to recognize medical and religious sites on the battlefield.

The histories of the privileges for hospitals and religious buildings are relevant to considering the current privilege afforded to schools. The issues that shaped the evolution of the hospital and religious building privileges may be applied to assess the effectiveness of current school building protections.

A. The Independent Privileged Status of Hospital Buildings

Under customary international law, there were no universally accepted privileges afforded to hospitals and wounded persons. Rather, combatants provided protections sporadically, depending on the nature of the conflicts and the participants.⁹ For example, during the Revolutionary Wars of the eighteenth century, a French commander proposed to an Austrian commander that:

7 See Leslie C. Green, *Essays on the Modern Law of War* 500-01 (2d ed. 1999).

8 See *Id.* at 496-97.

9 See *Id.* at 490-91.

[T]he roads leading to hospitals [should] be marked by special signs which would indicate the presence of wounded in the vicinity. Troops were to avoid these roads wherever possible or in passing along them were to abstain from disturbing noises. Hospitals were to remain the property of the belligerent even after he had evacuated the country.¹⁰

Significantly, the Austrian commander rejected this proposal, citing the ideological nature of the conflict.

The law of war's modern privilege for hospitals originated in the international movement to protect the wounded and sick that arose after the Battle of Solferino in 1859.¹¹ France and Sardinia's allied armies decisively defeated Austria's forces at Solferino. Their victory was a crucial historical step in the Kingdom of Sardinia's unification of modern Italy. However, reports of the battle stated that both sides fought brutally and that many wounded and dying soldiers were shot or bayoneted. Jean-Henri Dunant, a witness to the battle, vividly described its horrors in *A Memory of Solferino*.¹² This book sparked an international humanitarian movement to safeguard wounded persons and hospitals during war. This movement created the International Committee of the Red Cross and caused the world's states to adopt a series of multilateral treaties on the law of war and humanitarian law.¹³

1. Protection of Hospital Buildings from Targeting Based on the Presence of Wounded and Sick Persons

Early treaties established a privilege for hospitals but narrowly defined it in terms that depended on privileges afforded to wounded and sick persons. The first of these was the 1864 Geneva Convention for the Amelioration of the Conditions of the Wounded and Sick in Armies in the Field.¹⁴ Article 1 stated, "Ambulances and military hospitals shall be acknowledged to be neutral, and, as such, shall be protected and respected by belligerents so long as any sick or wounded may be therein."¹⁵ This created a privileged status for hospitals that existed only when wounded and sick persons were present.¹⁶ Article 2 similarly declared that hospital personnel could "participate in the benefit of neutrality," but only while sick and wounded were present.¹⁷ Curiously, the convention did not define who were sick and wounded and left that issue presumably to common sense. However, it specified that the privilege applied only to military hospitals.¹⁸ Civilian hospitals were therefore not privileged sites under the 1864 Geneva Convention and only had sporadic protections, depending on the parties to a conflict.

10 *Id.* at 491.

11 *Id.* at 492-93; L.C. Green, *The Contemporary Law of Armed Conflict* 27 (2d ed. 2000).

12 Henri Dunant, *A Memory of Solferino* (1986).

13 Pierre Boissier, *From Solferino to Tsushima: History of the International Committee of the Red Cross* 134-39 (2d ed. 1985).

14 Amelioration of the Condition of the Wounded on the Field of Battle art. 1, August 22, 1864, 22 Stat. 940, 1 Bevans 7 [hereinafter 1864 Geneva Convention]. There were 57 state parties, including the United States, United Kingdom, France, Germany, Prussia, Russian Federation, Switzerland, and Turkey.

15 *Id.*

16 Jean S. Pictet, *Commentary I: Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* 197 (Jean S. Pictet ed., 1952).

17 1864 Geneva Convention, *supra* note 13, at art. 2.

18 Pictet, *supra* note 15, at 196 – 97.

Further, on the issue of maintaining status, this convention did not prohibit or restrict armed forces from using hospitals for military purposes. Article 1 merely declared vaguely that a hospital's neutrality ended if it was "held by a military force."¹⁹ Perhaps the 1864 Geneva Convention made its most lasting contribution to the law of war by establishing the first ever method for armed forces to recognize privileged hospital buildings. Article 7 stated:

A distinctive and uniform flag shall be adopted for hospitals, ambulances and evacuations. It must, on every occasion, be accompanied by the national flag. An arm-badge (brassard) shall also be allowed for individuals neutralized, but the delivery thereof shall be left to military authority. The flag and the arm-badge shall bear a red cross on a white ground.²⁰

Despite this significant step towards protecting hospitals, the convention nonetheless contained no prohibition against armed forces using buildings marked with this symbol for military purposes.

The 1899 Hague Convention with Respect to the Laws and Customs of War on Land adopted all of the 1864 Geneva Convention protections for the sick and wounded and attempted to expand the privilege for hospitals.²¹ Article 27 of its regulations stated, "In sieges and bombardments all necessary steps should be taken to spare as far as possible edifices devoted to religion, art, science, and charity, hospitals, and places where the sick and wounded are collected, provided they are not used at the same time for military purposes."²² But it is doubtful whether Article 27 gave hospitals a protected status against targeting that was independent of the presence of sick and wounded persons. The words, "hospitals, and places where the sick and wounded are collected," might be construed as redundant, implying that hospitals' protected status is derivative of their presence. Alternatively, they might be considered as part of a list – two types of buildings that qualify separately and independently for protection. It is reasonable to assume that the absence of the word "other" before the words "places where the sick and wounded are collected" was intended to indicate that such places were merely another type of building – besides hospital buildings – that military forces should take care to avoid in their attacks. This interpretation means that Article 27 of Hague II would have established for these buildings a privilege that was independent of the presence of wounded and sick. If so, the armed forces of that period did not widely accept this interpretation.²³ At that time, military medical personnel did not rely on an independent protected status for hospital buildings and transports. In fact, they commonly feared that empty ambulances did not qualify for protected status because of the absence of wounded persons. And strangely, many ambulance drivers purposely entered battlefields with wounded persons already present in their ambulance in order to ensure the vehicle's protected status.²⁴

19 1864 Geneva Convention, *supra* note 13, at art. 1.

20 *Id.* at art. 7. A picture of the 1864 Geneva Convention's distinctive emblem is attached to this article at appendix 1, figure 11-1(a), reproduced from Dep't of the Navy et al., *Naval Warfare Pub. 1-14M, The Commander's Handbook on the Law of Naval Operations*, 11-6 (1997) [hereinafter *Commander's Handbook*].

21 Convention with Respect to the Laws and Customs of War on Land art. 21, July 29, 1899, 32 Stat. 1803, 1 Bevans 247. [hereinafter *Hague Convention of 1899 or Hague II*]. There were 49 state parties, including the United States, United Kingdom, France, Germany, Russian Federation, Switzerland, and Turkey.

22 *Id.* at art. 27.

23 *Pictet, supra* note 15, at 197.

24 *Id.*

Nevertheless, Hague II did contain the first restrictions on the military use of hospital buildings. Article 23 of its regulations declared that improper use of the Red Cross as a means to injure the enemy amounted to unlawful treachery.²⁵ But Article 27's terms stopped short of expressly prohibiting armed forces from using hospital buildings for military purposes. It did not prevent armed forces from converting military hospitals from their humanitarian purpose as long as the forces did not make improper use of the Red Cross. Such conversion simply caused hospitals to lose their privilege against being targeted. Arguably, this was not a significant deterrent against military use, given that Hague II's privilege ultimately depended on the coincidental presence of wounded and sick persons.

Further, Hague II did not specifically address the military use of civilian hospitals. Rather, Article 56 merely established some limited protections for civilian charitable buildings in occupied territories, and this applied only generally to civilian hospitals. It declared that all charitable buildings should be treated as private property, even if publicly owned, and that seizure, destruction, or intentional damage to them was prohibited and subject to legal proceedings.²⁶ But its language did not specifically prohibit armies from temporarily requisitioning or using civilian hospitals.²⁷ Also, it did not address the fact that such use might cause an opposing army to destroy the temporarily converted hospital as a legitimate military target. Finally, this provision focused on legal proceedings to compensate private owners for damage to their buildings in occupied territories. Its terms did not declare as a goal preserving the inherent humanitarian nature of hospital buildings.

2. Independent Protection of Hospital Buildings from Targeting

The 1906 Conference for the Revision of the Geneva Convention of 1864 drafted and concluded a new convention to resolve some of these issues – but only for military hospitals.²⁸ The resulting 1906 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armies expressly granted a direct and independent privileged status to military hospital buildings during war.²⁹ Concerning the medical (sanitary) service, Article 6 broadly stated, “Mobile sanitary formations (i.e., those which are intended to accompany armies in the field) and the fixed establishments belonging to the sanitary service shall be protected and respected by belligerents.”³⁰ Thus, the presence of sick and wounded was no longer a prerequisite to a hospital building's privileged status.³¹ The 1906 convention explained that the Red Cross emblem

25 Hague II, *supra* note 20, at art. 23. Treachery takes many forms, but it is generally considered present when a combatant feigns noncombatant status in order to achieve an advantage during an attack. See Dep't of the Army, Field Manual FM 27-10: The Law of Land Warfare, para. 50 (1956) [hereinafter, FM 27-10].

26 Hague II, *supra* note 20, at art. 56. Article 34 of the U.S. Army's Lieber Code of 1863 contained very similar language and therefore did not provide hospitals with any greater privileged status than that provided in the 1864 or 1899 conventions. D. Schindler and J. Toman, *The Laws of Armed Conflicts* 8 (1988).

27 See FM 27-10, *supra* note 24, at paras. 406, 407, 412.

28 Pictet, *supra* note 15, at 197.

29 Convention for the Amelioration of the Condition of the Wounded of the Armies in the Field arts. 6-7, July 6, 1906, 35 Stat. 1885, 1 Bevans 516 [hereinafter 1906 Geneva Convention]. There were 52 state parties, including the United States, United Kingdom, France, Germany, Russian Federation, Switzerland, Italy, and Turkey.

30 See *id.* at art. 6.

31 Pictet, *supra* note 15, at 197.

could be placed even on supplies connected to medical care.³² It included specific guidance as to how a hospital could maintain its privileged status:

A sanitary formation or establishment shall not be deprived of the protection accorded by Article 6 by the fact:

1. That the personnel of a formation or establishment is armed and uses its arms in self defense or in defense of its sick and wounded.
2. That in the absence of armed hospital attendants, the formation is guarded by an armed detachment or by sentinels acting under competent orders.
3. That arms or cartridges, taken from the wounded and not yet turned over to the proper authorities, are found in the formation or establishment.³³

But like earlier conventions, the 1906 Geneva Convention did not prohibit forces from using hospital buildings for non-medical purposes, as long as they removed the distinctive protective emblem of the Red Cross. Article 6's language that hospitals must be "protected and respected" referred primarily to restrictions against targeting hospitals, not the military use of a hospital building.³⁴ This convention even accepted the practice that armed forces could convert an opponent's military hospitals to non-medical use as long as there was an "important military necessity" and care was provided for any displaced sick and wounded.³⁵ Thus, under this convention, a military hospital building maintained its privilege against being targeted only as long as the building was not used as a means to injure the enemy.³⁶

The last important law of war treaty that entered into force before World War I was the 1907 Hague Convention Respecting the Laws and Customs of War on Land (known as Hague IV).³⁷ It replaced Hague II. However, Hague IV did not expand the law of war's privilege for hospital buildings. It included Hague II's prohibition against the treacherous use of the Red Cross emblem. It also contained Hague II's requirements that armed forces take necessary steps to spare hospitals and other civilian buildings during attacks and that in occupied territories, they refrain from seizing charitable and private buildings.³⁸

Of note, the 1907 Hague Convention also produced the Hague Convention concerning Bombardment by Naval Forces in Time of War (known as Hague IX). It added to the law of war a distinctive emblem for the battlefield identification of all civilian buildings.³⁹ Its purpose was to assist naval commanders in not targeting these buildings. Article 5 required civilians to mark protected buildings with "[V]isible signs, which shall consist of large, stiff rectangular panels

32 1906 Geneva Convention, *supra* note 28, at art. 19.

33 *Id.* at art. 8.

34 See Pictet, *supra* note 15, at 196.

35 1906 Geneva Convention, *supra* note 28, at art. 15.

36 *Id.* at arts. 7-8.

37 Convention Respecting the Laws and Customs of War on Land, October 18, 1907, 36 Stat. 2277, 1 Bevans 631 [hereinafter 1907 Hague Convention or Hague IV]. There are 35 state parties, including the United States, United Kingdom, France, Germany, Russian Federation, Japan, Switzerland, and Austria-Hungary.

38 *Id.* at arts. 23, 27, 56.

39 Convention Concerning Bombardment by Naval Forces in Time of War art. 5, October 18, 1907, 36 Stat. 2351, 1 Bevans 681 [hereinafter Hague IX]. There are 35 state parties, including the United States, United Kingdom, France, Germany, Japan, Russian Federation, and Switzerland. Of note, Italy is not a state party.

divided diagonally into two coloured triangular portions, the upper portion black, the lower portion white.”⁴⁰ But the distinctive emblems could only be placed on buildings that were not being used for military purposes. Hence, Hague IX did not prohibit the military use of civilian hospitals and also only covered bombardment by naval forces.

During World War I, Hague IV's and Hague IX's terms were largely ineffective in preventing armed forces from using civilian buildings for military purposes and their subsequent destruction as targets.⁴¹ Both the Allied and Central Powers made numerous counter-charges of violations of Hague IV.⁴² For example, Allied forces alleged that the German Luftwaffe purposely carried out the majority of their bombing attacks at night in order to feign or create an inability to see protective emblems and to discriminate hospitals from lawful military targets. The Germans bombed at least two military hospitals – one American and one Canadian – under this excuse despite having conducted daytime aerial reconnaissance only a few hours before the night attack.⁴³

3. Protection of Hospital Buildings from Military Use

After World War I, the 1929 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field replaced the 1906 Geneva Convention and slightly improved the privilege for military hospital buildings by raising the level of necessity under which military forces might convert an opponent's military hospitals to non-medical uses.⁴⁴ Under this convention, such use had to be for “urgent military necessity.”⁴⁵ Significantly though, it did not affect the level of military necessity required for armed forces to use civilian hospitals for non-medical purposes. The privileges given to civilian hospital buildings under the law of war remained substantially the same throughout World War I and World War II.

The most significant steps in the development of the privileged status of hospital buildings occurred after World War II. The Geneva Conventions of 1949 fundamentally expand and clarify the protections afforded to hospitals regarding which buildings are covered, the maintenance of their protected status, and battlefield recognition.⁴⁶ The 1949 Conventions replace the 1929 Convention but carry forward the concept of providing direct protection for hospital buildings that is not dependent on the presence of noncombatant sick or wounded persons. Geneva

40 *Id.* A picture of Hague IX's distinctive emblem is attached to this article at appendix 1, figure 11-1(k), reproduced from Commander's Handbook, *supra* note 19, at 11-8.

41 Matthew D. Thurlow, Note, *Protecting Cultural Property in Iraq: How American Military Policy Comports with International Law*, 8 Yale H.R. & Dev. L.J. 153, 158 (2005).

42 Green, *supra* note 6, at 500-01.

43 *Id.*

44 Convention for the Amelioration of the Condition of the Wounded and the Sick of Armies in the Field, July 27, 1929, 47 Stat. 2074, 118 L.N.T.S. 303 [hereinafter the 1929 Geneva Convention]. There are 60 state parties, including the United States, the United Kingdom, France, Germany, Italy, Japan, Russian Federation, and Switzerland.

45 *Id.* at art. 15.

46 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in the Armed Forces in the Field, August 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31 [hereinafter GC I]; Geneva Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, August 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85 [hereinafter GC II]; Geneva Convention relative to the Treatment of Prisoners of War, August 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135 [hereinafter GC III]; Geneva Convention relative to the Protection of Civilian Persons in Time of War, August 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 [hereinafter GC IV]. There are 194 state parties, including the United States, United Kingdom, all developed countries, Iraq, and Afghanistan.

Convention I (GC I) focuses on the condition of the sick and wounded. Article 19 defines which hospital buildings are privileged and broadly declares, “Fixed establishments and mobile medical units of the Medical Service may in no circumstances be attacked, but shall at all times be respected and protected by the parties to the conflict.”⁴⁷ The convention’s drafters purposely inserted the phrase “at all times” to clarify that the privileged status of hospital establishments existed inherently and was not transient or dependent on the presence of noncombatants.⁴⁸ Geneva Convention II (GC II) extends similar protections to hospital ships.⁴⁹ Moreover, Geneva Convention IV (GC IV), Article 18 declares similar protections for all civilian hospitals in all areas – both occupied territory and home territory.⁵⁰ Thus, after the 1949 Geneva Conventions, the law of war more clearly defined privileged hospital buildings as all hospitals, meaning medical establishments, regardless of their military or civilian personnel or their permanent or temporary nature.⁵¹

The 1949 Geneva Conventions add specific guidance on how hospital buildings keep their protected status and what, if any, non-medical uses are appropriate. Jean Pictet, the noted writer of the official commentary to the conventions, opined that 1949 drafters gave Article 19’s phrase that hospitals must be “respected and protected” a wider meaning in the 1949 Geneva Conventions than in the 1929 Geneva Convention.⁵² The words previously referred only to the obligation of attacking armed forces to avoid targeting hospitals. Under the 1949 Conventions, the phrase acquires the additional meaning that all military forces – attackers and defenders – must not impede or interfere with the medical duties or mission of hospitals.⁵³ Military forces are therefore no longer prohibited only from targeting hospitals or from using them treacherously to injure the enemy. After 1949, the law of war also prohibits armies from using military or civilian hospital buildings for any purpose that affects medical functions. Certainly, the conversion of a hospital to military purposes such as a headquarters or munitions warehouse would affect its functions and is generally prohibited. The 1949 Geneva Conventions also require state parties to locate military facilities as far as possible from medical establishments so that an opposing army’s attacks on military objectives do not endanger hospitals.⁵⁴

Nevertheless, GC I preserves the 1929 Geneva Convention’s exception that allows military forces to convert an opponent’s military hospitals in occupied territory to non-medical uses. This is permissible in the case of urgent military necessity, as long as the sick and wounded still receive care.⁵⁵ Significantly, GC IV, Article 57 contains a similar military necessity exception concerning

47 GC I, *supra* note 45, at art. 19.

48 See Pictet, *supra* note 15, at 195 (stating that the presence of the wounded was not necessary for a hospital to qualify as a medical unit).

49 GC II, *supra* note 45, at arts. 22, 28, 35.

50 GC IV, *supra* note 45, at art. 18.

51 Oscar M. Uhler et al., Commentary IV: Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 145 (Jean S. Pictet ed., Ronald Griffin & C.W. Dumbleton trans., 1958). The authors comment that Article 18’s definition of hospitals includes all establishments where medical attention is given, regardless of whether they are hospitals, clinics, sanatoria, health centers, ophthalmic, psychiatric or child clinics. They even include makeshift medical sites temporarily placed in non-medical buildings such as schools. But they do not indicate whether a whole building would qualify for the privilege if only part of it is used for medical purposes.

52 Pictet, *supra* note 15, at 196-97.

53 *Id.* at 196.

54 GC I, *supra* note 45, at art. 19; GC IV, *supra* note 45, at art 18 (recommending that, where possible, civilian hospitals be located far away from military objectives).

55 GC I, *supra* note 45, at arts. 33-34.

temporary military requisition or use of civilian hospitals in occupied territory.⁵⁶ However, Article 57 specifically prohibits occupying armies from doing so as long as such hospitals are necessary for the needs of the civilian population. The drafters intended this provision to help preserve the humanitarian nature and purpose of all civilian hospital buildings.⁵⁷

Additionally, the 1949 Geneva Conventions significantly tighten the conditions under which hospital buildings can lose their protected status and become lawful targets when armed forces convert them to military purposes. Article 21 of GC I states:

The protection to which fixed establishments and mobile medical units of the Medical Services are entitled shall not cease unless they are used to commit, outside of their humanitarian duties, acts harmful to the enemy. Protection may, however, cease only after a due warning has been given, naming, in all appropriate cases, a reasonable time limit and after such warning has remained unheeded.⁵⁸

GC IV contains a similar requirement for civilian hospitals.⁵⁹ Thus, attacking military forces must notify the opposing side that a hospital building's privileged status is in jeopardy due to its real or suspected military use before they may target the building.

Finally, the 1949 Conventions amplify the means and methods for military forces to identify hospitals in the battlefield. These practical measures are designed to minimize the chances for civilian and noncombatant casualties and collateral damage. The 1949 Conventions add the emblems of the Red Crescent and Red Lion and Sun to the previously approved distinctive emblem of the Red Cross.⁶⁰ They also provide a method for warring state parties to notify each other of the existence and location of safety zones that contain hospital buildings.⁶¹ GC IV even contains a draft agreement for state parties to designate such zones and which includes a distinctive emblem to mark and identify the zones.⁶² Finally, the 1949 Geneva Conventions require state parties to adopt legislation or other means to ensure that all distinctive emblems are not misused.⁶³ The 1949 conventions thus remove much uncertainty for military forces about the marking and identification of hospitals as sites that are privileged against targeting and military use.⁶⁴

56 GC IV, *supra* note 45, at art. 57.

57 Uhler et al., *supra* note 50, at 316–318. The authors comment that the drafters rejected a complete prohibition against military requisition of civilian hospitals. But they did so for humanitarian reasons, not deference to military necessity. They felt that such a restriction would not be respected by armies seeking to care for their wounded. Plus, the restriction would deny them medical treatment and therefore not be consistent with the humanitarian goals of the conventions.

58 GC I, *supra* note 45, at art. 21.

59 GC IV, *supra* note 45, at art. 19.

60 GC I, *supra* note 45, at arts. 38–44; GC II, *supra* note 45, at arts. 41–43; GC IV, *supra* note 45, at art. 18. A picture of the Red Crescent emblem is attached to this article at appendix 1, figure 11-1(b), reproduced from Commander's Handbook, *supra* note 19, at 11-22.

61 GC I, *supra* note 45, at art. 23; GC IV, *supra* note 45, at arts. 14-15.

62 GC IV, *supra* note 45, at Annex I, art. 6. A picture of the safety zone distinctive emblem is attached to this article at appendix 1, figure 11-1(d), reproduced from Commander's Handbook, *supra* note 19, at 11-6.

63 GC I, *supra* note 45, at arts. 53-54.

64 Of interest, the Geneva Conventions leave great discretion to states concerning the marking of civilian hospitals during peacetime versus wartime. The authors comment: The marking of civilian hospitals is intended essentially for time of war; it is then that it takes on its real importance. However, the rule may be made more flexible in application, in order to ensure that practical considerations are taken into account so that the marking will be completely effective. There is in fact no reason why a State, which is obliged to consider every possibility, should not be able to mark its civilian hospitals in peace time. Uhler et al., *supra* note 50, at 151.

The 1977 Protocol I to the 1949 Geneva Conventions further clarifies and expands the protections of hospital buildings on the issues of a definition for hospitals, maintenance of their privileged status, and their identification.⁶⁵ Although the United States is not a party to Protocol I, it supports and follows as a matter of policy and customary international law the protocol's provisions concerning the protection of hospitals.⁶⁶ Protocol I defines hospitals as establishments "organized for medical purposes" and exclusively assigned to such purposes.⁶⁷ Accordingly, it precludes any temporary military use of hospital buildings.⁶⁸ It specifically declares that hospitals cannot be used in any manner to shield military objectives from attacks.⁶⁹ Further, it specifically limits military use of civilian hospitals in occupied territories, mandating that such facilities must retain their medical purpose.⁷⁰ For example, military forces are prohibited from turning a civilian hospital building in occupied territory into military headquarters. They may use the building only as a military hospital. Protocol I contains an annex with pictures of the distinctive emblems and adds light and radio signals as means to communicate the identity of hospitals to military forces.⁷¹

Thus, the privileged status of hospitals truly evolved in law of war treaties from the 1864 Geneva Convention to the 1977 Protocol I. These treaties changed the definition of protected hospitals from ones that contained noncombatant sick and wounded persons to all military and civilian medical buildings regardless of their occupancy. It clarified that hospitals are not buildings with fungible uses that can be converted to military purposes. Rather, the modern hospital privilege recognizes hospitals as structures with an inherently humanitarian purpose that must be preserved. Accordingly, it articulates detailed restrictions on all military forces' use of hospitals and provides practical means for forces in the field to identify and recognize these privileged buildings. The modern hospital privilege does not simply limit attacking forces from targeting such buildings. It places a shared burden on both attacking and defending military forces.

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- 65 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts art. 8 June 8, 1977 1125 U.N.T.S. 3 [hereinafter Protocol I]. There are 164 state parties, including the United Kingdom, France, Germany, Italy, Japan, Russian Federation, China, North and South Korea, and Switzerland. The United States has signed but not ratified Protocol I. Of note, Iraq, Afghanistan, and Iran are not state parties.
- 66 Martin P. Dupuis, John Q. Heywood & Michele Y.F. Sarko, *The Sixth Annual American Red Cross – Washington College of Law Conference on International Humanitarian Law: A Workshop on Customary International Law and the 1977 Protocols Additional to the 1949 Geneva Conventions*, 2 Am. U. J. Int'l L. & Pol'y 415, 423 (1987).
- 67 Protocol I, *supra* note 64, at art. 8(e); Claude Pilloud, et al., *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, at 128 (Yves Sandoz et al. eds., 1987) (adding that medical units must be exclusively assigned to medical purposes)
- 68 Pilloud, et al., *supra* note 66, at 128, 167. Of interest, the authors imply that the definition of hospital excludes buildings that partly serve a non-medical purpose.
- 69 Protocol I, *supra* note 64, at art. 12, ¶ 4; pilloud et al., *supra* note 66, at 167.
- 70 Protocol I, *supra* note 64, at art. 14; pilloud et al., *supra* note 66, at 185, 186.
- 71 Protocol I, *supra* note 64, at Annex I. Of note, see the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Adoption of an Additional Distinctive Emblem (Protocol III), Dec. 8, 2005, S. Treaty Doc. No. 109-10, 45 I.L.M. 558, which added for medical establishments a fourth distinctive emblem – a red frame in the shape of a square on edge on a white ground – also called the Red Crystal. A picture of the Protocol III's distinctive emblem is attached to this article at appendix 1, figure (I). Protocol III did not further expand the protections afforded to hospitals. There are currently nineteen state parties, including Bulgaria, Croatia, El Salvador, Georgia, Hungary, Philippines, and Switzerland, and the United States, and sixty-five state signatories, including Australia, Canada, France, Germany, Israel, Italy, Poland, the Russian Federation, Turkey, and the United Kingdom.

B. The Independent Privileged Status of Religious Buildings

The law of war's privilege for religious buildings evolved analogously to the privilege afforded to hospital buildings. Even so, the law of war has not yet clarified for religious buildings the issues of definition, maintenance of status, and identification to the same extent as it has for hospitals.⁷²

1. Protection of Religious Buildings from Targeting Based on the Presence of Civilians and Noncombatants

At the close of the nineteenth century, the privilege afforded to religious buildings depended entirely on the presence of civilians and noncombatants, such as priests, rabbis, chaplains, or sick and wounded persons. It therefore focused narrowly on the obligations of attacking military forces in their targeting. But throughout the twentieth century, the drafters of successive treaties grappled with the details of a wider religious building privilege in terms of defining which structures qualify, prohibiting their military use, and identifying them on the battlefield. They gradually embraced shared duties for attacking and defending military forces to prevent or inhibit the military conversion of religious buildings into legally justifiable targets.

The 1899 Hague II Convention and the 1907 Hague IV Convention provided a limited and dependent privileged status to religious buildings. They required that care should be taken to spare religious buildings from targeting, provided that they are not being used for military purposes.⁷³ But just like hospitals at that time, armed forces treated this privilege in practice as providing protection from targeting only as long as noncombatants were present. More significantly, this privilege did not prohibit armed forces from using religious buildings for military purposes and thereby depriving them of their protected status. Armed forces readily overcame the privilege by claiming military necessity.

Further, the 1864, 1906, and 1929 Geneva Conventions did not provide direct, independent protections for religious buildings. Their terms focused on the privileges afforded to hospitals and sick and wounded persons, but not to religious property.⁷⁴ Accordingly, the privileges in these conventions extended to religious buildings only to the extent that churches, synagogues, mosques, and the like provided shelter to the sick and wounded; such protections were clearly derivative of the presence of civilians and noncombatants and not based on the inherent humanitarian nature and purpose of religious buildings. These conventions did not prohibit military forces from using religious buildings, depriving these structures of their privileged status. Thus, the conventions failed to ensure the protection of many religious buildings during World War I. For example, German military forces bombed Rheims Cathedral in France, claiming ostensibly because French forces had used the building for military purposes.⁷⁵

72 See Green, *supra* note 10, at 154 – 55.

73 See Hague II, *supra* note 20, at arts. 21, 56; Hague IV, *supra* note 36, at arts. 23, 27, 56.

74 See Green, *supra* note 10, at 153 – 154.

75 Joshua E. Kastenburg, *The Legal Regime for Protecting Cultural Property During Armed Conflict*, 42 A.F. L. Rev. 277, 286 (1997).

As a result, in 1935 delegates from the United States and twenty other countries crafted an agreement called the Roerich Pact.⁷⁶ They intended the Pact to improve protections for religious buildings and all cultural property. Significantly, the Pact included a distinctive emblem for marking such buildings so that armed forces could identify them.⁷⁷ However, its text largely mirrored Hague IV's prohibitions against seizure of charitable property, extending such protections to religious and cultural property. Moreover, Hague IV's protections were ineffective during World War I. The Roerich Pact also required state parties to a conflict to "respect and protect" cultural property; however, like similar language in the 1929 Geneva Convention, the Pact's terms referred to prohibitions against targeting rather than against military use of cultural property. As stated, it was not until the 1949 Geneva Conventions that these terms acquired a broader meaning to prohibit military use. Moreover, the state parties to the Roerich Pact were mostly from the Americas. Thus, it had a very limited impact on the privilege afforded to religious buildings during World War II.⁷⁸

The 1907 Hague IV Convention determined the privileged status for religious buildings during World War II. This convention unfortunately gave little guidance on what constitutes a protected religious building, how such protections are maintained, or even the means for armies to identify them. Accordingly, its terms often went unheeded.⁷⁹ There were occasions where German soldiers used churches and synagogue buildings for military purposes, resulting in these buildings losing their privileged status and being targeted by the Allies' armed forces. British forces also allegedly used churches as resting areas for troops during their retreat in 1940 at Dunkirk, France.⁸⁰ However, purely as a matter of policy, the Allies' armed forces generally avoided using religious and cultural buildings.⁸¹ Perhaps the most celebrated incident concerning Hague IV's ineffective protection of religious buildings was the Allies' bombing of the Benedictine Monastery at Monte Cassino, Italy. Many scholars have debated whether the Allies' attack violated Hague IV.⁸² General Eisenhower opined that the monastery had lost its protected status due to the presence of German artillery and that the bombing was based on military necessity.⁸³ But the debate begged the question of the need for clearer prohibitions under the law of war against the military use of religious buildings.⁸⁴

Unfortunately, the 1949 Geneva Conventions do not provide religious buildings with a privileged status that is independent of the presence of civilians and noncombatants.⁸⁵ They focus almost

76 Treaty Between the United States of America and other American Republics on the Protection of Artistic and Scientific Institutions and Historic Monuments, Apr. 15, 1935, 49 Stat. 3267, 167 L.N.T.S. 289 [hereinafter Roerich Pact]. There are ten state parties, including the United States, Mexico, Cuba, Colombia, and Brazil. Of note, all state parties are western hemisphere countries.

77 A picture of the Roerich Pact's distinctive emblem is attached to this article at appendix 1, figure 11-1(h), reproduced from Commander's Handbook, *supra* note 19, at 11-8.

78 See Matthew D. Thurlow, Note, *Protecting Cultural Property in Iraq: How American Military Policy Comports with International Law*, 8 Yale H.R. & Dev. L.J. 153, 159 – 160 (2005) (noting that the Axis and Allied Powers largely ignored the privileges afforded to cultural property by the Hague Convention of 1907 and the Roerich Pact during World War II).

79 *Id.*

80 Green, *supra* note 10, at 46.

81 Kastenburg, *supra* note 74, at 288–89 nn. 49–50.

82 See John Henry Merryman, *Two Ways of Thinking About Cultural Property*, 80 Am. J. Int'l. L. 831, 838–39 n. 27 (1986).

83 *Id.* at 839 n. 28.

84 See Kastenburg, *supra* note 74, at 289.

85 Green, *supra* note 10, at 153–54.

entirely on the condition of sick and wounded persons, prisoners of war, and civilians rather than on any privilege against the military use of religious property. As such, they emphasize attacking military forces' responsibilities concerning targeting and do not adequately address defending forces' shared responsibilities concerning military use of religious buildings. In short, they provide no more protection for churches, synagogues, mosques, and the like than existed under the 1907 Hague IV Convention.⁸⁶

2. Independent Protection of Religious Buildings from Targeting

Fortunately, the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict addresses, for buildings of important cultural significance, many of the legal and practical aspects of definition, maintenance of privileged status, and identification on the battlefield.⁸⁷ It creates the term "cultural property," defining it as buildings that are of "great importance to the cultural history of every people," and specifically included religious establishments.⁸⁸ This definition includes religious buildings with artistic or historic significance, but not all religious buildings. The convention applies to buildings such as the Vatican or the Dome of the Rock, but not to ordinary places of worship.⁸⁹ Concerning maintenance of privileged status, Article 4 directs state parties to respect cultural property by refraining from using it in any manner that might cause it damage during armed conflict.⁹⁰ Finally, concerning battlefield identification, the 1954 Convention creates an internationally-recognized distinctive emblem to mark the identity and privileged status of cultural sites such as religious buildings.⁹¹ It is in the shape of a royal-blue and white shield – with a royal-blue square turned on edge and forming the bottom point of the shield, a royal-blue triangle inverted above, pointing at, and touching the square, and the space on either side being taken up by a white triangle.⁹² Further, like the Red Cross and other emblems for hospitals, the 1954 Convention includes specific prohibitions against treacherous use of the cultural property emblem.⁹³ Thus, the 1954 Hague Convention elevates the privileged status of some historic religious buildings from mere dependency on the presence of civilians and noncombatants to independent protection against targeting and military use based on their inherent cultural value to society. It therefore represents a shift in the law of war by recognizing, in part, that attacking and defending military forces have shared obligations in their treatment of some religious buildings.

86 *Id.* at 154–55.

87 *Id.* at 153.

88 Convention for the Protection of Cultural Property in the Event of Armed Conflict, art. 1, May 14, 1954, 249 U.N.T.S. 214 (entered into force August 7, 1956) [hereinafter 1954 Hague Convention]. There are 114 state parties, including France, Germany, Iran, Iraq, Holy See, Russian Federation, and Switzerland. The United States and United Kingdom have signed but not ratified. The U.S. Senate provided advice and consent to ratification, subject to understandings, on September 25, 2008. Of note, Afghanistan is not a state party or signatory.

89 Green, *supra* note 10, at 155.

90 1954 Hague Convention, *supra* note 87, at art. 4.

91 *Id.* at arts. 16–17.

92 *Id.* at art. 16; A picture of the 1954 Hague Convention's distinctive emblem is attached to this article at appendix 1, figure 11-1(g), reproduced from Commander's Handbook, *supra* note 19, at 11-7.

93 1954 Hague Convention, *supra* note 87, at art. 17.

3. Protection of Religious Buildings from Military Use

The 1977 Protocol I greatly clarifies this status and expands the prohibition against military use to include most religious buildings, independent of their historic or cultural value.⁹⁴ While the 1954 Hague Convention focuses on property that is “of great importance to the cultural heritage,” Article 53 of Protocol I enlarges the scope of protection to include objects which “constitute the cultural or spiritual heritage.”⁹⁵ The Commentary on Protocol I notes that the term “cultural” generally applies to buildings of historic importance, but the term “spiritual” specifically applies to places of worship.⁹⁶ The language of Protocol I provides this privileged status to religious buildings independent of their historical significance or the presence of civilians and noncombatants. Although it does not extend to all places of worship, it certainly includes all buildings that express the religious nature of a people.⁹⁷ As described in the Commentary on Protocol I:

The Conference rejected the idea which was put forward by some delegations of including any and all places of worship, as such buildings are extremely numerous and often have only a local renown of sanctity which does not extend to the whole nation. Thus, the places referred to are those which have a quality of sanctity independently of their cultural value and express the conscience of the people.⁹⁸

Thus, Protocol I expands the definition of what religious structures qualify for the privilege.

Nevertheless, there are still some ambiguities in determining which buildings are covered by the privilege. Not every prayer room or ad hoc church meets the threshold. But all religious buildings that represent the “people” do. Although the Commentary to Protocol I referred to the “nation,” it also noted that the drafters of Protocol I purposely used the more inclusive term “people” instead of “country” in Article 53 to describe the relative significance of the spirituality of a privileged building.⁹⁹ “People” is not defined and does not signify a specific region, ethnic group, or religious denomination. However, the authors of the Commentary to Protocol I certainly felt that a religious building must have more than merely local renown. It might be fairly argued that Article 53 protects most permanent religious buildings that might tend to attract worshippers of more than a purely local nature.

Most importantly, the privilege in Article 53 specifically prohibits military use of these religious buildings. This is more than the protection against targeting that Article 52, Protocol I gives to all civilian buildings and that previous conventions generally provided. As described by the Commentary to Protocol I:

Article 53 lays down a *special* protection which prohibits the objects concerned from being made into military objectives and prohibits their destruction. This protection is

94 pilloud et al., *supra* note 66, at 646-47.

95 Protocol I, *supra* note 64, at art. 53.

96 pilloud et al., *supra* note 66, at 646.

97 *See id.* at 647.

98 *Id.*

99 *Id.* at 646.

additional to the immunity attached to civilian objects; all places of worship, regardless of their importance, enjoy the protection afforded by Article 52.¹⁰⁰

Hence, while Article 52 merely states that general civilian objects “shall not be the object of attack or of reprisals,” Article 53 specifically prohibits states from using places of worship that constitute the spiritual heritage of peoples “in support of the military effort.”¹⁰¹

Unfortunately, Protocol I does not add to the practical means for armies to identify protected religious sites. For cultural religious sites, it perhaps refers to the 1954 Hague Conventions’ distinctive blue and white emblem. But Protocol I does not designate a separate emblem for those religious buildings that Article 53 protects but that the 1954 Hague Convention does not. In any event, the issue of identification has always been less problematic for religious buildings than for other civilian buildings as a matter of common sense. Most religious buildings have exterior markings – a cross, star, or crescent – that indicate their spiritual purpose.¹⁰² It might seem surprising that Protocol I does not include a prohibition against treacherous use of religious symbols. But such a restriction might be considered implicit in Article 53’s general prohibition against using protected religious buildings for military purposes.

Thus, the privileged status of religious buildings has evolved analogously to the privileged status of hospital buildings under the law of war but not to the same extent. Over the course of the nineteenth and twentieth centuries, successive treaties articulated in increasingly greater detail the independent basis for the religious building privilege in terms of defining which buildings qualify, prohibiting their military use, and creating practical means to identify and recognize them. The law of war shifted from only limiting military attackers’ choice of targets to prohibiting all military forces – attackers and defenders – from converting religious buildings to military purposes. Unfortunately, the privileged status of school buildings has not yet undergone the same evolution that occurred in the cases of hospitals and religious buildings.

II. The Lesser, Inadequate Current Privilege for School Buildings

The privileged status of schools has not changed significantly since the 1899 and 1907 Hague Conventions. Those conventions vaguely declared that military forces must take “necessary steps” to spare most civilian buildings during sieges and bombardments and that seizure of such buildings was forbidden.¹⁰³ But in practice, military forces viewed those protections as merely derivative of the presence of civilians and noncombatants and only as limitations on an attacker’s choice of targets. The 1899 and 1907 Conventions’ terms were therefore as ineffective at providing adequate protections for school buildings as they were in providing such protection for hospitals and religious buildings during the World Wars. For example, during World War I the German Army shelled the University of Louvain under the alleged premise that French forces

100 *Id.* at 647.

101 Protocol I, *supra* note 64, at art. 53.

102 For example, Israel uses the Red Star of David to mark religious sites. A picture of this emblem is attached to this article at appendix 1, figure 11-1(c) from Commander’s Handbook, *supra* note 19, at 11-6.

103 Hague IV, *supra* note 36, at arts. 27, 56.

were using the university for military purposes.¹⁰⁴ Although subsequent conventions attempted to give better protection to hospitals and religious buildings by solving issues of definition, maintenance of status, and battlefield identification, these issues unfortunately remain largely unaddressed for school buildings.

Neither the 1899 Convention nor the 1907 Convention define the specific qualities that make a building an educational institution for purposes of being privileged against targeting or military use. For example, Article 27 of the Hague IV Regulations simply states that military forces must try to spare buildings, “dedicated to religious, art, science, or charitable purposes” during attacks.¹⁰⁵ It does not explicitly state that these categories cover school buildings. Article 56 provides an almost equally vague prohibition concerning seizure of civilian buildings.¹⁰⁶ It applies to institutions dedicated to education. But what is an institution dedicated to education? How long must a building be used for education for it to be considered dedicated? Do children and other civilian or noncombatant students need to be present for the privilege to exist? Could nonuse cause a school to lose its protected status? Or do educational buildings merit protection inherently?

Further, the later Geneva Conventions of 1864, 1929, and 1949 offer few answers to these questions. They focus on the protection of sick, wounded, and civilians generally. They clarified the definition of hospitals for purposes of privileged status and provided enhanced indirect protections for religious and school buildings to the extent that those buildings might happen to be used for sheltering wounded and sick persons. All buildings used for such purposes are entitled to be marked with medical distinctive emblems, such as the Red Cross or Red Crescent. But they do not define what constitutes a school building. Moreover, as with religious buildings, these conventions exclusively concern an attacking force’s choice of targets and do not create an independent privileged status that might prohibit attacking and defending armed forces from using school buildings for military purposes. Ultimately, they provide no more protection for school buildings than exist generally for all civilian buildings under the 1907 Hague Convention.

Nevertheless, some school buildings receive additional protection based on their cultural value pursuant to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. This convention addresses for school buildings “of important cultural significance” many of the legal and practical aspects of definition, maintenance of privileged status, and identification on the battlefield.¹⁰⁷ But it does not specifically include school buildings in its definition of cultural property and thus would not apply to most schools. Certainly, some historic universities and school buildings might qualify if they are of “great importance to the cultural heritage of every people.”¹⁰⁸ However, this definition is extremely vague and open to interpretation and therefore abuse by opposing armed forces at war. It might apply to the ancient buildings of Oxford and Cambridge Universities, but not to ordinary grammar schools or high schools. And even old universities have many new buildings. What is sufficiently ancient to receive the benefit of the privilege? American universities are relatively new compared to the established educational institutions of Europe; conceivably, then, no American universities are

104 Thurlow, *supra* note 40, at 158.

105 Hague IV, *supra* note 36, at art. 27.

106 *Id.* at art. 56.

107 Green, *supra* note 10, at 153.

108 1954 Hague Convention, *supra* note 87, at art. 1.

eligible. The 1954 Hague Convention therefore lacks clarity in defining the school buildings to which it might provide a privileged status during armed conflict.

Concerning maintenance of this status, Article 4 directs state parties to respect cultural property by refraining from using it in any manner that might cause it damage during armed conflict.¹⁰⁹ With respect to battlefield identification, states have discretion to mark protected historic school buildings with the 1954 Hague Convention's distinctive blue and white emblem in the same manner as historic religious buildings.¹¹⁰ Thus, the 1954 convention elevates the privileged status of some historic schools from providing dependent protection, based on the presence of civilians and noncombatants, to providing independent protection against targeting and military use, based on these buildings' inherent cultural value to society. As with religious buildings, it represents the beginning of a shift in the law of war towards recognition of shared responsibilities by attacking and defending armed forces in their treatment of school buildings.

But this is where the evolution of a privileged status for schools stops. Article 53 of Protocol I extends the protections of the 1954 Hague Convention to religious buildings that represent the cultural or spiritual values of a people, if not to such buildings generally. It expressly prohibits armed forces from using these religious buildings "to support the military effort."¹¹¹ But Article 53 does not apply to school buildings.¹¹² Rather, Protocol I provides school buildings only with the general protections against being targeted that are given to all civilian buildings in Article 52.¹¹³

Moreover, Articles 52 and 53 allow for military use of school buildings by expressing without limitation that schools may be converted into military objectives. Article 52 defines a military objective, in part, in terms of an object's contribution to military action.¹¹⁴ It states that religious and school buildings are normally dedicated to civilian purposes but creates a presumption in case of doubt whether a "place of worship... or a school, is being used to make an effective contribution to military action."¹¹⁵ This language therefore recognizes that armed forces may conceivably use any unoccupied civilian buildings for military purposes, especially those near combat areas.¹¹⁶ As stated, Article 53 limits the application this language in the case of religious buildings by expressly prohibiting their military use. But Protocol I contains no limitation of its application in the case of school buildings. Accordingly, Article 52 acknowledges that unlike religious buildings, no independent prohibitions exists against military use of school buildings, i.e., converting them into military objectives.¹¹⁷

Protocol I limits military use of schools only to the extent that civilians and noncombatants are present. Articles 51 and 58 prohibit state parties from placing military objects in locations

109 *Id.* at art. 4.

110 The 1954 Hague Convention creates two categories of protected cultural sites – ordinary and special. They both carry the same protections. The difference between them is that state parties have discretion to mark ordinary cultural sites. Special cultural sites are designated by the United Nations Educational, Scientific, and Cultural Organization (UNESCO) and listed on an international registry. *See id.* at art. 8.

111 Protocol I, *supra* note 64, at art. 53.

112 *See* Protocol I, *supra* note 64, at art. 53 (failing to specifically mention schools).

113 *See* Pilloud et al., *supra* note 66, at 647.

114 Protocol I, *supra* note 64, at art. 52.

115 *Id.*

116 *See* Pilloud et al., *supra* note 66, at 637.

117 *Id.* at 636-37.

where civilians are present.¹¹⁸ Such acts are considered as the use of human shields to inhibit an opposing army from targeting those military objects.¹¹⁹ Accordingly, if civilian students are still using a school building, an army may not lawfully use the building for military purposes. Protocol I's privileged status for schools is therefore entirely derivative of the presence of civilians and not based on these buildings' inherent humanitarian value.

The current law of war contains no clear general prohibition against armed forces using school buildings for military purposes, as long as civilians and noncombatants are not present.¹²⁰ Such military use could potentially include converting unoccupied school buildings into headquarters, fortified positions, artillery sites, observation posts, barracks, or supply depots. School buildings are therefore not privileged or protected sites to the same degree as hospitals and religious buildings. Human Rights Watch tacitly acknowledged this distinction in its recent report on the conduct of the war in Iraq and civilian casualties. The report excludes school buildings from its criticism of the illegal Iraqi practice of placing military objectives in places that are specially protected under international law. It states, "In addition to protecting civilians, international humanitarian law gives special protection to certain facilities, including hospitals, places of worship, and cultural property. Iraqi armed forces used these protected places to advance their military goals."¹²¹ Human Rights Watch explained in detail that Iraq's military use of hospitals and mosques violated international humanitarian law by failing to honor the special privileged status of these sites. Yet the report's section on protected sites did not mention the Iraqis' improper military use of schools. The report discussed that issue later in the section concerning protection of the civilian population and implied derivative protection of school buildings.

III. Developing a Modern Privileged Status for School Buildings

Given this distinction, the law of war should be updated to provide school buildings with a privileged status that is similar if not superior to the privileges afforded to hospitals and religious buildings. These three groups of civilian buildings share similar rationales for asserting special protections. All have a unique nexus to civilians and noncombatants and possess independent, inherent, and unique humanitarian values to society. There is a logical link between the military use of school buildings, their conversion into justifiable targets, and the high incidence of these buildings' destruction in recent wars. After all, one army's use of a school building, even if the students have left, logically increases the likelihood that an opposing army might target a

118 Protocol I, *supra* note 64, at arts. 51 and 58.

119 *Id.*

120 Of note, the Military Commissions Act of 2006, 10 U.S.C. §§ 948a-950 (2006), did not create such a general prohibition under the law of war. It is a domestic statute, not part of the international law of war, and applies only to a limited group of combatants. The Act establishes a domestic system of military commissions for the United States to prosecute offenses that are committed by alien unlawful combatants – persons that are not members of any state's armed forces. Certainly, its enumerated offenses include "Using Protected Property as a Shield," which essentially prohibits alien unlawful combatants from using protected property for military purposes. But it defines such property as that afforded specific protection by the law of war. As stated, the law of war currently provides school buildings with no specific, independent protection against military use. See *id.* § 950v.

121 Human Rights Watch, *supra* note 2, at 72.

functioning school under the mistaken belief that it is also being used for military purposes. In 2003, during Operation Iraqi Freedom, over 84 percent of Iraq's higher education institutions were damaged or destroyed despite efforts by Coalition Forces to avoid collateral damage.¹²² Similar results occurred in 1999 during the Kosovo conflict. The Prosecutor for the International Criminal Tribunal for the Former Yugoslavia (ICTY) confirmed NATO's efforts, through precision weapons and detailed target vetting, to bomb only those buildings in that were justifiable lawful military objectives.¹²³ Yet, the ICTY Prosecutor also noted that Human Rights Watch found generally reliable the Federal Republic of Yugoslavia's (FRY) White Book report of civilian casualties, which included allegations that the NATO bombing campaign destroyed or damaged many schools in Yugoslavia.¹²⁴ Further, in the wake of military operations, the United Nations Children's Fund (UNICEF) estimated that forty-five percent of Kosovo's schools were severely damaged or destroyed and that 668 out of 1000 needed significant repairs.¹²⁵

As already discussed, the evolution of the privileges afforded to hospitals and religious buildings began with a recognition that a nexus exists between the protection of those buildings and the safety of particular groups of noncombatants and civilians during wars. The protection of hospitals from targeting and military use was acknowledged as linked to the safety of wounded and sick persons. And the protection of religious buildings from targeting and some from military use was acknowledged as linked to the safety of pilgrims and persons seeking special refuge.

There is an analogous nexus between the protection of schools from targeting and military use and the safety of children and other civilian and noncombatant students during wars. The changing nature of warfare in the twentieth and twenty-first centuries has dramatically increased the number of civilian casualties during armed conflict, and a disproportionate number of these have been children.¹²⁶ This has produced a growing international consensus that the United Nations must find a solution. The United Nations Secretary-General's Special Representative for Children and Armed Conflict is studying the effects of wars on children.¹²⁷ The Security Council also recently established a Working Group on Children and Armed Conflict to monitor and report on the condition of children who are exposed to armed conflict throughout the world and to propose solutions.¹²⁸

But these relationships and needs do not mean that the law of war should provide only derivative protection to school buildings. Rather, the best means to ensure the protection of these buildings is through an international regime that provides an independent privileged status; such a regime

122 UN Office for the Coordination of Humanitarian Affairs, *Iraq: Activists Call for Protection of Academics*, IRIN News, Jan. 15, 2006, available at <http://www.irinnews.org/Report.aspx?ReportID=26049>; see Human Rights Watch, *supra* note 2, at 17, 92, 95 (Coalition ground and air forces included schools on no-strike lists and took other precautions to avoid damaging schools).

123 ; International Criminal Tribunal for the Former Yugoslavia (ICTY), Final Report to the Prosecutor by the Committee Established To Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia, paras. 7, 90, June 8, 2000, 39 I.L.M. 1257, available at <http://www.un.org/icty/pressreal/nato061300.htm>;

124 *Id.* at para. 90; Human Rights Watch, *Civilian Deaths in the NATO Air Campaign*, footnote 25 and Appendix A (2000), available at <http://www.hrw.org/legacy/reports/2000/nato/index.htm#TopOfPage>.

125 United Nations Children's Fund News Release, *Kosovo Schooling Faces Great Challenges*, Sep. 2, 1999, available at <http://www.unicef.org/newsline/99pr35.htm>.

126 The United Nations Children's Fund (UNICEF), Guide to the Optional Protocol on the Involvement of Children in Armed Conflict 7 (2003), available at http://www.unicef.org/publications/files/option_protocol_conflict.pdf.

127 *Id.* at 8.

128 U.N. News Service, *Security Council Starts Work on Measures to Protect Children During War*, Nov. 21, 2005, available at <http://www.un.org/apps/news/printnewsAr.asp?nid=16642>.

must also answer legal and practical questions of definition, maintenance of status, and battlefield identification and recognition. In protecting school buildings, the law of war should expand its focus from exclusively limiting military attackers' choice of targets to also prohibiting attackers and defenders from converting school buildings to military purposes. For schools, one could draw analogies to the existing regimes for hospitals and religious buildings and by including these new provisions in amended conventions or an entirely new one.

Certainly, a policy need also exists for the law of war to recognize that schools should have an independent privileged status to protect them from being turned into military objectives. Just like hospitals and religious buildings, schools occupy a unique role in civilian communities. Schools are centers of education, shelter, and activity for children; facilitators of democratic expression through voting and peaceful assembly; and sources of civic pride. As such, they are often the first public structures built in new communities or settlements and are arguably more important to a community's future growth and development than other civilian buildings such as museums, sports facilities, libraries, or even a city hall. Thus, as a matter of policy, schools merit a modern privileged status similar to that afforded to hospitals and religious buildings that prohibits their military use because of their inherent educational, and therefore humanitarian, value to society.

A. Defining What Is a School Building

A modern privileged status for school buildings should clearly define to which buildings it applies. As with hospitals and religious buildings, the privilege should extend to all civilian school buildings, independent of the presence of civilians and noncombatants. It should emphasize the building's inherent humanitarian value, not just as a sanctuary for civilians and noncombatants, but as an essential part of a community's existence. By doing so, it also necessarily means that the building should be immune from military use and not just from being targeted. As discussed, a building's general privilege against being targeted is ineffective if the building can be converted into a justifiable target through military use.

The definition should clarify whether it applies equally to temporary and permanent structures. The privileged status of hospitals extends to all hospitals – whether temporary or permanent and whether fixed or mobile. In contrast, the privileged status for religious buildings states that the building must represent the spiritual conscience of a people or community. It might be argued that this excludes temporary structures and applies only to permanent buildings that attract pilgrims from a broad area. Perhaps this difference is due to the closer nexus between protecting civilians and noncombatants and protecting a building with respect to hospitals and the sick and wounded than as between religious buildings and the pious. Given the policy basis of creating more protections for schools, the privilege for schools should probably follow the hospital privilege example and apply to all permanent and temporary structures. No distinction should be made among schools other than if they are military ones, as addressed below. This means that the privilege would apply to all levels of civilian schools from day care centers and grammar schools through universities and even to commercial schools such as culinary schools or language centers.

However, as with medical establishments and religious buildings, confusion can arise from mixed civilian uses of buildings. For example, day care centers sometimes are located in office buildings. Some houses have dual roles as parents provide home-schooling. Some adults even conduct their

education at home through distance learning. Finally, some factories and offices have on-the-job training centers located within non-educational buildings.

In those cases, a modern school privilege should perhaps provide greater protection than the hospital and religious building privileges afford. As already described, a hospital building must be exclusively dedicated to medical purposes in order for it to qualify for the hospital privilege under the law of war. For example, a nurse's office in an office building or even a school would not cause the entire building to qualify for the hospital privilege. But the nurse's office, that portion of the building, would certainly qualify. In contrast, the religious building privilege does not expressly address the issue of mixed civilian uses. So, if a secular office building contains a religious room or chapel, it is unclear whether the entire building would qualify for the religious privilege. On the other hand, it might if the room or chapel made the whole building representative of the spiritual conscience of a people.

In the case of schools, it can be strongly argued that all civilian school facilities have educational value and have a nexus to civilians and noncombatants. Further, they potentially serve the needs of all civilians and represent the capacity of all persons to grow intellectually. In contrast, the primary purposes of hospitals and religious facilities arguably serve different or even limited aspects of civilian society. Hospitals certainly treat all persons – healthy and ill – and may be used as facilities for many community needs that are unrelated to medical care. But their primary purpose is not to develop the intellectual capacity of all persons. Similarly, religious buildings certainly host all worshipers and may be used for many secular community needs. But their primary purpose is a place of worship for the pious and that may not include all persons from a civilian society or global perspective. Schools therefore have a broader inherent humanitarian purpose than hospitals and religious buildings. In the context of law of war privileges, they are more analogous to religious structures that represent the spiritual conscience of an entire people than they are to hospitals or to religious structures generally. In other words, perhaps civilian schools can imbue an entire civilian building with an educational purpose, regardless of a particular school's size, level, specific civilian purpose, or even whether it grants certificates or degrees. If so, all civilian educational facilities should qualify for a modern school privilege, even when they are only part of a civilian building.

However, a modern school privilege should distinguish between civilian and military school buildings. It should clarify that civilian schools merit the privilege while military schools do not. Unlike military and civilian hospitals and religious buildings, military and civilian schools do not share the same underlying humanitarian purposes. Military schools have no obvious nexus to civilians and noncombatants. In fact, military schools generally serve to train combatants for conducting hostilities. Further, a modern school privilege should provide a framework to address mixed circumstances, such a military education that occurs on or near civilian school campuses.

Accordingly, to define protected school buildings, a modern school privilege must clearly articulate the differences between military and civilian school buildings. And similar to the modern hospital and religious building privileges, such definitions should focus on the school's purpose and be independent of the presence of combatants, civilians, and noncombatants. A modern privilege for schools could define the differences between military and civilian schools using the same language that the law of war employs to distinguish military objectives from civilian objects. Protocol I, Article 52 defines military objectives as, "those objects which by their

nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.”¹²⁹ Based on this distinction, a modern school privilege could logically declare that the military or civilian purpose of a school building is demonstrated by its mission or curriculum,¹³⁰ location, name, and sources of funding – and how these aspects relate to military activities. For example, it is reasonable to conclude that military schools produce combatants, teach military skills, are typically located on bases, often carry the word “military” in their name, and are funded from sources closely related to military activities.

It is interesting to consider applications of such a standard to existing schools. For example, the United States’ military academies would be unprivileged military schools. Their curriculum is designed to train aspiring military officers – to make an effective contribution to military action.¹³¹ Graduates receive military officer commissions. These schools carry military names, are located on military bases, and are funded as part of the Department of Defense. On the other hand, civilian school buildings used by Reserve Officer Training Corps (ROTC) programs are a closer call.¹³² ROTC curricula generally include military science courses that focus exclusively on training future military officers for operations. They may also include courses that all civilian students study with a non-military purpose, such as chemistry, biology, history, and literature. But the classes occur in buildings located on civilian universities, not on military bases. Accordingly, it might be fairly concluded that the ROTC military science classes occur in unprivileged military school buildings. In contrast, the locations of ROTC and other students’ non-military courses are privileged civilian school buildings. Of note, it would be illogical to deprive other university buildings of the privilege merely because of proximity to a ROTC building. The law of war does not expressly deprive hospitals and religious buildings of their individual privileges merely because of proximity to other unprivileged buildings. Of course, hospitals and religious buildings would certainly be at greater risk for collateral damage if they are in close proximity to legitimate military targets, regardless of their privileged status.

Finally, applying Protocol I, Article 52, private military high schools and grammar schools should be privileged civilian schools only to the extent that they do not make an effective contribution to military action such that their destruction would provide the enemy with a definite military advantage. Thus, they would arguably qualify for the privilege if they are not located on military bases, are not directly funded by the Department of Defense, and do not have a military skills curriculum that automatically leads to a military rank, commission, or position upon graduation. It would be unreasonable or highly speculative to assert that private military high schools and grammar schools contribute to military action if they do not meet such criteria. Moreover, a modern school privilege should clarify that private so-called military grammar and high schools are not permitted to have curricula that are designed to train and graduate children to be combatants. The law of war prohibits states from allowing children to be combatants – to take a

129 Protocol I, *supra* note 64, at art. 52.

130 Of note, recent congressional hearings examined the curriculums of Islamic religious schools – madrassas – to address concerns that they allegedly have ties to terrorist organizations and promote Islamic militancy and extremism. See Peter Bergen and Swati Pandey, Op-Ed., *The Madrassa Myth*, N.Y. Times, June 14, 2005, at A23; Febe Armanios, Islamic Religious Schools, *Madrasas*: Background 1, 6 (Cong. Research Serv., CRS Report for Congress Order Code RS21654, Oct. 29, 2003).

131 See, e.g., 10 U.S.C. § 4331(a) (2006) (providing for the establishment of the U.S. Military Academy).

132 See 10 U.S.C. § 2102 (2006) (establishing the statutory authority and guidelines for ROTC programs)

direct part in hostilities.¹³³ Accordingly, most, if not all, private military grammar and high schools should have civilian purposes and therefore be privileged under a modern privilege for school buildings.

B. Identifying and Recognizing Schools on the Battlefield

The issue of definition is closely linked to the practical one of battlefield recognition and distinctive emblems. Logically, a privileged building, which is marked with a universally recognized distinctive emblem, should function in its protected capacity or purpose. For hospitals, the law of war recognizes distinctive emblems that indicate whether a building is in fact a hospital. It outlaws the use of such emblems on buildings that are not hospitals. In contrast, the law of war's conventions and treaties do not create distinctive emblems specifically for religious buildings. The 1954 Hague Convention provides a distinctive emblem to mark some religious buildings. For others, the issue of identification is less controversial because the distinctive emblems of the world's major religions are commonly known and easily recognized. Nevertheless, for purposes of uniformity, the law of war should have a more than customary emblem to mark buildings that merit an independent privilege against targeting and military use.

Accordingly, for school buildings, there is a need to create a universally recognized distinctive emblem that would identify a temporary or permanent structure as a protected educational site. An internationally recognized emblem would be useful to armed forces in the field in distinguishing between current and former school buildings. The emblem from the 1954 Hague Convention might be used for historic school buildings that are a culturally important. But that emblem would not be applicable to most school buildings.

In order to facilitate a modern school privilege, a distinctive emblem must be designed. Like the Red Cross and other distinctive emblems, it should consist of bright, contrasting colors that are easily seen from a distance. It should be a familiar shape that is easily recognized by soldiers as signifying a school site. Also, it should be a simple pattern that students, teachers, and school administrators can easily draw and duplicate as needed.¹³⁴ Finally, the creation of a new distinctive emblem just for school buildings must be accompanied by a prohibition against its misuse. The law of war acknowledges and implements this basic principle with the distinctive emblems that mark hospitals and cultural property.

C. Maintaining the School's Privileged Status

A modern privilege for schools should also address the conditions through which such buildings maintain and keep their status. It should emphasize that attacking and defending forces equally share obligations to respect and protect school buildings. For both hospitals and religious buildings, the law of war has traditionally provided that they would lose their privileged status if armed forces used these buildings for military purposes. Over the past century, the hospital privilege evolved from no restrictions on military use to allowing some uses of military hospitals based on necessity. Finally,

133 See Protocol I, *supra* note 64, at art. 77.

134 Of note, an emblem that meets these criteria is the five-sided yellow sign that some countries use to mark automobile traffic safety zones near elementary and secondary schools. See appendix 2. Such a distinctive emblem would be convenient and easily recognizable as associated with schools.

it adopted a complete ban on military use of civilian hospitals for non-humanitarian purposes. For religious buildings, the law evolved from vague and often ignored restrictions on seizing these buildings to a complete ban on using them for non-humanitarian purposes. For schools, a modern privilege should follow these trends and forbid using civilian educational buildings for any direct, intended military purposes – for those that make an “effective contribution to military action,” as Protocol I, Article 52 defines military objectives.¹³⁵ This would require a continuous vetting of the purposes of course curricula and research programs that occur within an individual school building in order for it to maintain a privileged status.

It is important to note that these specially protected buildings can lose their privileged status for reasons other than military use. Civilians might convert them from a humanitarian purpose to another civilian purpose or even to no purpose at all. For example, civilians could transform a hospital or religious building into apartments or into an office. Of note, school buildings are typically less distinctive in their architecture compared to hospitals and religious buildings, making it easier to convert them to different uses. But this fact should not diminish the unique educational purpose and value of schools. Regardless of their design, communities still need them, and the policy reasons for their protection still exist. Even so, a modern school privilege should recognize that civilian conversion of schools to non-educational purposes will terminate these buildings’ special privileged status without violating humanitarian law. However, it should also ensure that military forces do not employ their influence on occupied territories to coerce civilians into making such conversions.

Civilians’ complete abandonment of a school building would also affect its special protections. Specifically, a modern privileged status should distinguish between temporary versus permanent abandonment. Certainly, temporary periods of nonuse should not affect a school’s status. Otherwise it would undermine the building’s independent protection and again make its status entirely derivative of the presence of noncombatants. As already discussed, such derivative protections are ineffective at protecting buildings.

For civilian hospitals, the law of war does not directly address whether abandonment affects a hospital’s status and therefore the lawfulness of military use. Rather, it indicates that continued functionality and the presence of distinctive markings affect status. Protocol I prohibits armed forces from requisitioning military hospitals “so long as these resources are necessary for the provision of medical services for the civilian population.”¹³⁶ The Commentary on Protocol I notes that the word “necessary” as used in this provision has “a wide range of meanings from ‘useful’ to ‘indispensable.’”¹³⁷ But an army is clearly forbidden from using a civilian hospital building for military purposes as long as the structure has some potential medical functionality and the local population intends to use it. This might be a difficult standard for armed forces to apply in the field and ultimately depends on the circumstances and common sense. Certainly though, long periods of nonuse and the removal of protective emblems reasonably indicate abandonment.

As with religious buildings, the law of war does not specifically address whether abandonment affects status and the lawfulness of military use. Unlike the hospital privilege, the religious building privilege does not link protected status with functionality. The 1954 Hague Convention

135 Protocol I, *supra* note 64, at art. 52.

136 Protocol I, *supra* note 64, at art. 14.

137 Pilloud et al., *supra* note 67, at 184.

and Protocol I contain no derogations from the prohibition on using protected religious sites to support the military effort.¹³⁸ Thus, one might argue that unlike hospitals, a religious building can never lose its status through abandonment. A religious site remains sacred whether worshippers continue to pray there or not. In practice, there are thousands of inactive religious shrines throughout the world. Many are located in inaccessible war zones. Others have been lost and rediscovered. For example, the Kish Church in Azerbaijan has been abandoned for hundreds of years without an assigned priest or body of parishioners, yet it is still considered a sacred site,¹³⁹ These buildings are still regarded by the international community as protected religious sites.¹⁴⁰

Accordingly, civilian school buildings are more similar to hospitals than religious buildings with respect to abandonment and retention of privileged status. Like hospitals, a school building's protected status seems reasonably linked to its functionality and the intent of the local civilian population. School buildings should therefore retain their privileged status despite temporary nonuse or abandonment. After all, a school might not be used for several months because of summer break or because a population flees a town to avoid a battle. Neither circumstance seems a reasonable basis for an army to conclude that the local civilian population intended to no longer use the building for its educational humanitarian purpose.

On the other hand, a modern privileged status for schools – like for hospitals – should reasonably recognize that a school building might lose its special status if it has not been used for a significant period. Such nonuse might indicate that a civilian population no longer intends to use a school building for its humanitarian purpose. For example, in 2002, U.S. Special Forces established in Afghanistan headquarters in a school building that had been unused for an unknown period that was estimated to be several years from the physical condition of the building.¹⁴¹ A modern privileged status for schools should address abandonment, as Protocol I obliquely does for hospitals. It should establish a framework for a case by case assessment of functionality and the intent of the civilian community. Longer periods of nonuse and civilian removal of protective emblems from schools should reasonably indicate abandonment.

■ Conclusion

Thus, the law of war currently provides schools with a less privileged status than it affords to hospitals and religious buildings. The current school privilege prohibits armed forces from targeting these buildings. But it fails to prevent or discourage military use, which converts school buildings into justifiable targets for opposing forces. States therefore have inconsistent policies concerning military use of school buildings during armed conflicts. There is a logical circumstantial link between military use of schools and the fact that in war-torn areas, large percentages of schools were destroyed in recent conflicts despite precision targeting methods and efforts to

138 *Id.* at 649.

139 See *The Kish Church: Digging Up History*, Azer. Int'l, Dec. 31, 2000, at 18, available at 2000 WLNR 7491434.

140 See generally Geoffrey S. Corn, "Snipers in the minaret – what is the rule?" *The Law of War and the Protection of Cultural Property, a Complex Equation*, Army Lawyer, July 2005, at 36 (noting that Hague IV protects religious sites such the mosque mentioned in the article unless some military necessity exists).

141 This point is based upon the author's experience as the Staff Judge Advocate for Commander, Special Operations Command Central from August 2000 to September 2003.

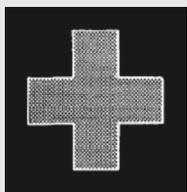
avoid damage to civilian sites. Moreover, military use of schools endangers lives by increasing the likelihood that military forces will target an unconverted school filled with children. The current privilege for schools is untenable and must be remedied.

In solving this problem, it should be recognized that three critical issues necessarily affect any legal regime that seeks to protect buildings, especially from military use: 1) defining which buildings qualify, 2) maintaining privileged status, and 3) ensuring battlefield recognition. The law of war evolved over the past century to better protect hospitals and religious buildings by addressing these issues.

The current privilege for schools needs to similarly evolve. Most importantly, it should prohibit armies from using school buildings for military purposes. By addressing the above three issues, a modern school privilege will reduce the high incidence of destruction of school buildings in future wars. School buildings have an inherent educational and therefore humanitarian value that merits the same or greater protections than the law of war affords to hospitals and religious buildings.

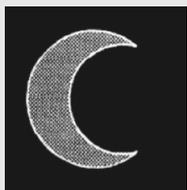
Moreover, the development of a modern school privilege might also serve as a model to reassess the law of war's protections of other types of buildings during war. Schools are not likely the only under-protected civilian buildings that have a unique humanitarian value to civilized society. Further, it might become part of larger trend. The law of war's privileges for hospitals and religious buildings evolved from first placing burdens exclusively on military attackers to placing them equally on attackers and defenders. It changed from exclusively limiting military attackers' choice of targets to later equally limiting both attackers' and defenders' military use of such buildings. The development of a modern school privilege might serve as a catalyst to refocus the law of war on the equal and interrelated burdens that attackers and defenders share to alleviate the sufferings of war on civilian populations and their buildings.

Appendix I



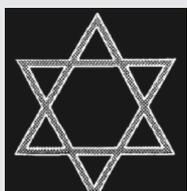
a. The Red Cross

Symbol of medical and religious activities.



b. The Red Crescent

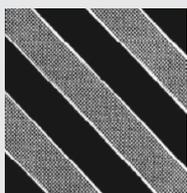
Symbol of medical and religious activities



c. The Red Star of David

Israeli emblem for medical and religious activities.

Israel reserved the right to use the Red Star of David when it ratified the 1949 Conventions.



d. Marking for Hospital and Safety Zones for Civilians and Sick and Wounded (Three Red Stripes)

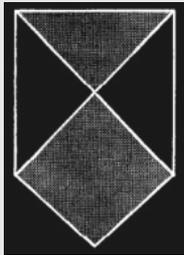
(Noncombatants)



e. Symbols for Prisoner of War Camps

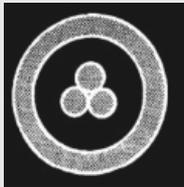


f. Civilian Internment Camps



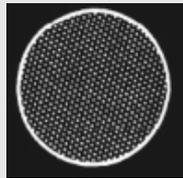
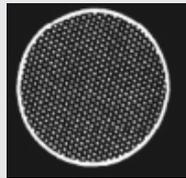
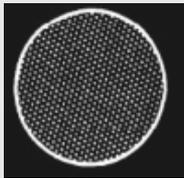
g. Symbol for Cultural Property Under the 1954 Hague Convention (Blue and White)

(Also used in a group of three to indicate special protection.)



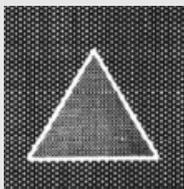
h. Roerich Pact (Red and White)

Symbol used for historical, artistic, education, and cultural institutions, among Western Hemisphere nations.



i. Special Symbol for Works and Installations Containing Dangerous Forces

(Three Orange Circles)



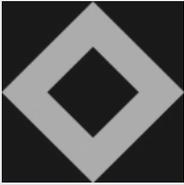
j. Symbol designating Civil Defense Activities

(Blue triangle in an orange square)



k. The 1907 Hague Sign

Naval bombardment symbol designating cultural, medical, and religious facilities.



l. Third Protocol Emblem – the Red Crystal

(Red frame against a white background)

Symbol of medical and religious activities.

■ Appendix 2. Proposed distinctive emblem for schools



(Yellow field with black border)

Chapter 12.

Desk study on field-based mechanisms for protecting education from targeted attack

Christine Groneman¹

About the author: Christine Groneman is an independent researcher and consultant in international education development. She has years of experience as a classroom teacher in Cape Verde and New York City. The research that informs this desk study was conducted during a graduate student internship in fulfilment of a Master's degree in International Education at New York University (<http://steinhardt.nyu.edu/humsocsci/international>), under the supervision of Dana Burde, Assistant Professor of International Education.

■ Introduction

Ensuring that education services continue during periods of armed conflict or insecurity is complicated when education itself is the intended target of an attack. Violence, or the threat of violence, against education makes communities, teachers' unions, government ministries, non-governmental organizations (NGOs), UN agencies, and others working in the field adapt and implement strategies that will protect schools, universities, students, teachers, academics and other educational personnel.

This desk study is a survey of field-based mechanisms that have been used in response to attacks on education. The purpose of the study is neither to evaluate any particular example in great depth, nor to propose any one strategy as a panacea to the problem of attacks on education. However, by synthesizing and sharing these examples, this paper provides practitioners, researchers, and others working in education in emergencies with a snapshot of mechanisms being used today to protect education, and a resource to identify current gaps and areas for further research.

The paper is organized into four sections or categories of protection mechanisms – physical protection, alternative learning sites and schedules, negotiation of schools as conflict-free zones and community involvement in education protection. The four categories provide an initial

¹ I would like to acknowledge Dana Burde for her dedication to research in this field and thank her for her guidance and mentorship during this project. Thank you also to Christopher Talbot and Jane Kalista of UNESCO for the opportunity to participate in the seminar and Pam Vimommas Vachattimanont of UNESCO for her helpful feedback during the writing process.

framework for analyzing ways to defend existing educational institutions and personnel, to provide safe learning alternatives in high risk situations, to prevent further violence and to involve community members who are most affected by these attacks in the protection of education. Of course the importance of incorporating other long-term conflict prevention and child protection elements, such as peace education, survival skills curriculum and psychosocial support into educational provision should not be overlooked. However, each of these topics has a vast body of literature unto itself that is beyond the scope of this study, which focuses on mechanisms for protecting education from the immediate threat of or actual targeted attack during situations of armed conflict or insecurity.

Each of the four sections describes specific examples from the field, gathered from a variety of sources including news media, UN documents, NGO programme reports, toolkits, guidebooks, academic papers and correspondence with experts working on education in emergencies – and considerations for applying these strategies in other contexts. Because quantitative and qualitative data on most of these programmes are scarce, very few conclusions can be drawn about their effectiveness. However, based on the examples gathered in this study, the paper closes with suggestions for future enquiry.

■ Physical protection

There are some immediate measures that can be taken to increase the physical security of schools, students and educational personnel and to avoid closing educational institutions entirely in the case of a threat or an actual attack. In this study, physical protection refers to defensive measures to keep students and teachers safe and to minimize damage to buildings in case of an attack. The Inter-Agency Network for Education in Emergencies (INEE) Good Practice Guide: Safety and Security Measures² suggests strategies to ensure that school infrastructure and the school environment is safe for students and teachers during emergencies, strategies that can be applied in situations when schools are specifically targeted for an attack. These include reinforcing school walls and ceilings, using sandbags to catch ricocheting bullets, building fences or walls around school compounds, providing school guards and arranging escorts or safe school transportation, to name a few. Country-specific examples of some of these and other defensive mechanisms such as arming teachers, building on-campus housing, avoiding high risk areas or times of day and organizing community defence of schools, are described below.

Providing transportation and/or escorts

- Afghanistan: In August 2009, the Mirwais Mena School for Girls near Kandahar purchased a school bus to minimize the risk of physical attack that girls face walking to and from school. The money for the purchase came from international donations, following extensive media coverage of the horrific acid attacks on 11 girls and four teachers in 2008.³

2 Inter-Agency Network for Education in Emergencies (INEE), "INEE Good Practice Guide: Safety and Security Measures," http://www.ineesite.org/toolkit/docs/doc_1_Safety_and_Security_Measures.pdf.

3 Dexter Filkins, "A School Bus for Shamsia," *New York Times Magazine*, August 17, 2009, <http://www.nytimes.com/2009/08/23/magazine/23school-t.html>.

- Occupied Palestinian Territories (OPT): Due to pressure from peace advocates and unarmed international escorts, the Israeli military assigned armed escorts to accompany students in the villages of Tuba and Maghaer al-Abeed in the South Hebron Hills to and from school. In the period 2006-2008, it is reported that students continued to be harassed by both settlers and by the military escorts themselves.⁴
- Thailand: The Royal Thai Police formed teacher protection units to escort teachers to and from school. However, as early as 2005, news reports indicated that attacks continued as insurgents began ambushing teacher escort units.⁵
- Colombia: In 2003, a Working Group on the Human Rights of Teachers made up of members of the Colombian teachers' union *Federacion Colombiana de Educadores (FECODE)*, UNHCR, and authorities from the Colombian government, began providing administrative and financial support to teachers for special protection measures, such as bulletproof vehicles, armed body guards and mobile phones.⁶
- Iraq: In Baghdad in 2003, male family members began escorting girls to and from school, and girls started walking together in groups for greater physical security, practices that had a positive correlation with girls' attendance rates.⁷
- Kosovo: The International Rescue Committee (IRC) and the Christian Children's Fund (CCF), as part of an effort to generate community support for the education of Roma children, had them escorted to and from school by other children or parents in particularly hostile areas.⁸
- Israel: Since 1974, armoured buses have provided transportation for some students in Israel.⁹

Assigning security guards at schools

- Iraq: In recent years, the Iraqi Ministry of Education began assigning armed guards to primary and secondary schools in Baghdad.¹⁰

4 Christian Peacemaker Teams (CPT) and Operation Dove, *A Dangerous Journey: Settler Violence Against Palestinian Schoolchildren Under Israeli Military Escort, 2006-2008* (CPT/Operation Dove, 2008), <http://cpt.org/files/Palestine-School-Accompaniment-Report-2006-2008-Dangerous-Journey.pdf>.

5 Human Rights Watch (HRW), *No One Is Safe: Insurgent Violence on Civilians in Thailand's Southern Border Provinces* (New York: HRW, 2007), 72-82, <http://www.hrw.org/en/reports/2007/08/27/no-one-safe>; China View, "Policemen Ambushed in Southern Thailand," October 4, 2005, http://news.xinhuanet.com/english/2005-10/04/content_3583173.htm; and MCOT English News, "Police Wounded in Narathiwat Bombing: Security Tightened in Wake of Death Plot Discovery," June 26, 2009, <http://enews.mcot.net/view.php?id=10511>.

6 Mario Novelli, *Colombia's Classroom Wars: Political Violence Against Education Sector Trade Unionists* (Brussels: Education International, 2009), 41; and Mario Novelli, "Fighting for Their Lives: Political Violence Against Teachers in Colombia," *id21 insights education* 6 (2007), <http://www.id21.org/insights/insights-ed06/art05.html>.

7 HRW, *Climate of Fear: Sexual Violence and Abduction of Women and Girls in Baghdad* (New York: HRW, 2003), 9, <http://www.hrw.org/reports/2003/iraq0703/iraq0703.pdf>.

8 Susan Nicolai and Carl Triplehorn, *The Role of Education in Protecting Children in Conflict*, HPN Paper #42 (London: Overseas Development Institute, 2003).

9 Brendan O'Malley, *Education under Attack: A Global Study on Targeted Political and Military Violence Against Education Staff, Students, Teachers, Union and Government Officials, and Institutions* (Paris: UNESCO, 2007), 32, <http://www.unesco.org/education/attack/educationunderattack.pdf>.

10 Ibid.

Arming teachers

- Thailand: Nearly 2,000 teachers in the Southern provinces were given handguns for protection and trained in defence and negotiation strategies.¹¹
- Israel: In 1974, as a response to an attack on a school, some teachers in Israel started to carry firearms.¹²

Reinforcing school infrastructure

- Israel: In 2009, Israel built the first rocket-proof elementary school near Gaza, with 40 cm thick concrete walls, shatterproof windows and a reinforced concrete wall surrounding the yard.¹³

Building on-campus housing

- Thailand: In 2009, the government planned to build safe housing for teachers on school grounds to better ensure their security and minimize their time spent en route to and from school, when they are vulnerable to attacks.¹⁴

Organizing community defence of schools

- Afghanistan: In some communities in Khost Province, Arbikai Shuras provide protection for schools. Arbikai Shuras are traditional community defence groups made up of young men from different tribes in the area who are paid by the community to deal with security issues.¹⁵
- Afghanistan: There are several accounts of communities rallying together to physically protect their schools and drive would-be attackers from the scene. For example, in 2006, unarmed guards at a school in Helmand prevented an arson attack by alerting the community, who then came to defend the school and captured the attackers.¹⁶ In another incident, also in 2006, villagers in Hesarek forced ten arsonists to flee before they had a chance to attack the school.¹⁷ In Khost Province, when the school guard himself was killed, the community chased the attackers and successfully forced them out of the area.¹⁸

11 Ibid.

12 David Kopel, "Gun-Free Zones," *Wall Street Journal*, April 18, 2007, http://online.wsj.com/article_email/SB117686668935873725-1MyQjAxMDE3NzE2ODgxNjg2Wj.html; and David Kopel, "Follow the Leader," *The National Review*, September 2, 2004, <http://www.nationalreview.com/kopel/kopel200409022215.asp>.

13 UPI.com, "First Israeli Rocket-proof School Built," July 20, 2009, http://www.upi.com/Top_News/2009/07/20/First-Israeli-rocket-proof-school-built/UPI-16431248097314/.

14 BangkokPost.com, "Teachers to Get Safe Homes in the South," June 29, 2009, <http://www.bangkokpost.com/breakingnews/147380/southern-militants-target-50-teachers>.

15 Marit Glad, *Knowledge on Fire: Attacks on Education in Afghanistan; Risks and Measures for Successful Mitigation* (CARE/World Bank/Afghan Ministry of Education, 2009), 45.

16 Sayed Yaqub Ibrahim, "Neighborhood Watch for Afghan Schools," *International Relations and Security Network Current Events*, January 22, 2007, <http://www.isn.ethz.ch/isn/Current-Affairs/Security-Watch/Detail/?ots591=4888CAA0-B3DB-1461-98B9-E20E7B9C13D4&lng=en&id=52836>.

17 O'Malley, *Education under Attack*, 33; and US Fed News Service, "Villagers Prevent School Burning," October 4, 2006.

18 Glad, *Knowledge on Fire*, 50.

- Liberia: Even during the post-conflict period, schools in Northern Liberia remained susceptible to attacks. Communities in Nimba and Lofa counties, with support from the IRC, organized escorts for students and provided unarmed guards at school buildings to increase physical security.¹⁹
- Sri Lanka: In 1988, when threats were at a peak, parents at some state and private schools organized their own security teams to keep a constant watch on schools.²⁰

Avoiding high risk areas or times of day

- Iraq: In 2007, some members of the Iraqi teachers' union were reportedly taking different routes to work, parking their cars in different places and using different entrances to access their offices to avoid attacks.²¹
- Occupied Palestinian Territories, Somaliland: Souktel, an organization that provides mobile phone services to university students and aid workers and facilitates communication of news and data through SMS (text messages), has also used its text message service to relay security information from universities to students, including alerts for things such as university closings or blocked access to these schools.²²

Considerations when using physical protection strategies

Where there is a high risk of armed attack, increasing physical security at schools may be deemed necessary. However, there are possible unintended consequences to consider when deciding how to best defend and protect schools, as minimizing one threat may actually increase the risk for another type of attack. For example, bussing students or providing on-campus housing for teachers may make it easier to protect people by getting them off the streets and gathered in one location, but this mechanism may also make it easier to target all of the students or teachers in a single attack.

Reinforcing infrastructure may minimize damage during an attack, but it may also make school buildings an attractive location for local police, military forces or other armed groups to occupy

19 Women's Commission for Refugee Women and Children, *Help Us Help Ourselves: Education in the Conflict to Post-Conflict Transition in Liberia* (Women's Commission for Refugee Women and Children, 2006), 15, http://www.womenscommission.org/pdf/lr_ed.pdf; and Daniel McVitalis, "Provision of Physical Security for Education by Communities in Northern Liberia" (presentation, UNESCO International Expert Seminar *Protecting Education from Attack*, Paris, September 29, 2009).

20 Everett M. Ressler, Joanne Marie Tortonci, and Alex Marcelino, *Children in War: A Guide to the Provision of Services* (New York: UNICEF, 1993).

21 General Federation of Iraqi Workers (GFIW), "Iraqi Teachers' Union Visit UK as Guests of NASUWT," August 24, 2007, http://www.iraqitradeunions.org/archives/cat_iraqi_teachers_union.html.

22 Jacob Korenblum, co-founder of Souktel, personal communication, August 26, 2009. Souktel's services are particularly useful in areas with poor internet access but wide-spread cell phone use. Besides security alerts, the technology has the potential to be used for monitoring and reporting, such as reporting incidents of attacks by school principals in the field or reporting other school data for collection and monitoring. For more information, see the Souktel website, www.souktel.org.

and use for their own operations.²³ This could put the building at greater risk and turn it into a legitimate military target. In other cases, where police or military guards are stationed at or near a school, their presence is perceived to actually increase the risk of an attack, if these armed forces are themselves a target.²⁴ Finally, involving relatives and community members as escorts or guards also puts them at risk.

There are alternatives to having an armed presence in school zones to provide physical protection. The examples from Liberia and Afghanistan above highlight the use of unarmed guards at schools. The INEE Good Practice Guide: Safety and Security also mentions the possibility that having an unarmed international presence may deter violence.²⁵ Yet another alternative that emerged in a recent study conducted in Afghanistan was community disarmament.²⁶ It suggests that disarming community members might mitigate violent attacks on schools, particularly in cases when perpetrators of attacks come from that community. This strategy needs to be considered with caution, however, as disarmament might have negative consequences, such as making schools more vulnerable to attacks from outside the community.

Ultimately, like all of the strategies described in this study, adapting and implementing physical protection strategies should take into account the context-specific factors of the conflict and the possible consequences of any physical protection intervention in that particular area to decide what would be the most feasible and effective protection mechanism.

Alternative school sites and modified schedules

In situations where conflict and insecurity interrupt regular government educational services or attending school puts people at risk, alternative school sites and modified schedules can remove students and teachers from the line of fire and ensure that at least minimal educational services continue. Community-based schools are widespread in Afghanistan, but other learning alternatives used elsewhere include distance learning programmes, modified scheduling and the relocation of students or teachers to safer schools.

Home-based schools/Community-based schools (HBSs/CBSs)

Broadly speaking, HBSs or CBSs, like those in use in Afghanistan, are modelled after formal government schools and typically operate through partnerships between a community council, the local or national government and an international NGO.²⁷ Classes are taught by locally

23 United Nations Children's Fund (UNICEF), *Safe Schools in Safe Territories: Reflections on the Role of the Educational Community in Risk Management* (UNICEF, 2009), 58, <http://www.ineesite.org/uploads/documents/store/Safe%20Schools%20in%20Safe%20Territories.pdf>.

24 Glad, *Knowledge on Fire*, 23.

25 INEE, "INEE Good Practice Guide". See also the Peace Brigades International website for an example of an NGO providing international volunteer accompaniment in areas of conflict, www.peacebrigades.org.

26 Glad, *Knowledge on Fire*, 52.

27 United States Agency for International Development (USAID), "Complementary Education Models and Strategies for Achieving EFA Series," <http://www.equip123.net/webarticles/anmviewer.asp?a=360&z=92>. This website also contains links to other resources, case studies, and evaluations of complementary education models.

recruited teachers and may be held in a room of a house, under a tree or in a mosque. They are intended to be temporary solutions until the government is able to provide educational services for those students in remote areas.²⁸ While community schools may have been established for other purposes, they can offer protection from attacks in conflict-affected areas by minimizing factors that make education vulnerable, such as the distance to school, the existence of infrastructure or buildings designated for education and the association of education with the government.²⁹

- Afghanistan: The Partnership for Advancing Community Education in Afghanistan (PACE-A) is a collaboration between the IRC, CARE, Catholic Relief Services (CRS), the Aga Khan Foundation and USAID, scheduled to run from 2006-2011. The coalition is led by CARE and the IRC, who have experience running home-based schools through the Community Organized Primary Education programme and the Healing Classrooms Initiative, respectively.³⁰
- Central African Republic (CAR): During the conflict in CAR, villagers forced into hiding in the bush opened 'Ecoles de Village' or Bush Schools to provide either informal or formal education for students. The displaced community members set up temporary classrooms and paid parents with in-kind donations to teach in Bush Schools, so that at least a minimum of education services could continue while the villagers remained in hiding. The schools received technical support from UNICEF and *Cooperazione Internazionale* (COOPI), and later were endorsed by the government of CAR.³¹
- Burundi: Community junior secondary schools (*colleges communaux* – 'les cocos') were established between 1990 and 1995, in response to insecurity at far-away boarding schools and other concerns such as suspicion of secondary school selection processes and impoverishment. Communities set up 155 alternative day schools for secondary students, which today have been absorbed into the state education system.³² While not necessarily established as a direct response to an attack, the community school did keep students closer to home.

Distance learning

Similar to community-based schools, distance-learning alternatives exist in some conflict-affected countries. While not all were established specifically to address security issues, their use could help mitigate attacks by removing students, teachers and other educational personnel from the physical infrastructure of schools.

- Afghanistan: In 2009, twelve Afghan women graduated from a distance learning programme at Southern Alberta Institute of Technology (SAIT) Polytechnic. The programme is part of the

28 Ibid.

29 Dana Burde, "Community-Based Schools in Ghor Province, Afghanistan" (presentation, UNESCO International Expert Seminar *Protecting Education from Attack*, Paris, September 30, 2009).

30 International Rescue Committee (IRC), "Development of Community-Based Education (CBE) in Afghanistan," www.campaignforeducationcanada.org/en/files/Bahram.ppt; CARE, "Project Information: Education Partnership for Advancing Community Education in Afghanistan (PACE-A)/COPE/Secondary Schools for Girls," <http://www.care.org/careswork/projects/AFG023.asp>.

31 Nathalie Fiona Hamoudi, "Bush schools in the Central African Republic" (presentation, UNESCO International Expert Seminar *Protecting Education from Attack*, Paris, September 30, 2009).

32 Anna Obura, *Staying Power: Struggling to Reconstruct Education in Burundi Since 1993* (Paris: UNESCO-IIEP, 2008), 125-36, http://www.unesco.org/iiep/PDF/pubs/2008/Burundi.pdf?class=IIEP_PDF_pubs&page=Burundi_reconstruction&estat_url=http://www.unesco.org/iiep/PDF/pubs/2008/Burundi.pdf.

Afghan School Project that supports the Afghan-Canadian Community Centre in Kandahar, where men and women have access to classes and a computer centre.³³

- Iraq: In October 2008, the Ministry of Education and UNESCO launched Iraqi Edu, an educational TV channel.³⁴
- Burundi: In 2006, it was reported that 'Radio Ndragakura' was broadcasting school lessons, in addition to health and human rights lessons, for three hours a day.³⁵
- Sri Lanka: In 1988, a 'study pack' system was developed, so that when schools were under threats, students could complete work remotely. As part of this system, educational programmes were broadcast on TV in the morning, informal classes were organized in homes, and teachers collected and corrected the students' work on a weekly basis.³⁶

Alternate schedules that accommodate flexible school hours

- Iraq: In 2007, it was reported that the Ministry of Higher Education was allowing academics and researchers to work from home a few days per week, to minimize time spent on the road or at universities, where they may be targeted.³⁷
- Thailand: In 2005, a school in Yala Province was dismissing students and teachers an hour earlier to allow them to get home safely. However, this cut the school day short and students were missing class time.³⁸

Relocation of teachers and students at risk

- Colombia: A special committee made up of representatives of the Colombia teachers' union *FECODE*, the Ministry of Education, the Departmental Education Authority and the Regional Public Prosecutor was established to assess the risk to individual teachers and, in certain cases, to provide them with the opportunity and financial support to relocate to different schools.³⁹

33 The Canadian Press, "A Dozen Afghan Women Graduate Long-distance from Calgary's SAIT Polytechnic," June 1, 2009; and Southern Alberta Institute of Technology (SAIT) Polytechnic News, "SAIT Polytechnic Welcomes Director of Afghan School Project to Calgary," June 1, 2009, <http://www.sait.ab.ca/pages/about/news/newsreleases/2009/SAITPolytechnicWelcomes.shtml>. See also the Afghan School Project website, <http://www.theafghanschool.org/>.

34 United Nations Educational, Scientific and Cultural Organization (UNESCO) Iraq, "Interview with Mohamed Djelid, Director UNESCO Iraq," http://www.unesco.org/education/Interview_DirectorIraq.pdf; and UN News Centre, "UN Launches Educational Television Channel for Iraqi Children," October 21, 2008, <http://www.un.org/apps/news/story.asp?NewsID=28644&Cr=Iraq&Cr1=education>.

35 Chapter 11, UNESCO-International Institute for Educational Planning (IIEP), *Guidebook for Planning Education in Emergencies and Reconstruction* (Paris: UNESCO-IIEP, 2006), http://www.iiep.unesco.org/fileadmin/user_upload/Research_Highlights_Emergencies/Chapter11.pdf.

36 Ressler, Tortorci, and Marcelino, *Children in War*.

37 O'Malley, *Education under Attack*, 33.

38 Natthinee Rodraska, "Schools Targeted in Southern Thailand Violence," *UNICEF Real Lives*, August, 2005, http://www.unicef.org/thailand/realives_3754.html.

39 Novelli, *Colombia's Classroom Wars*, 40; Novelli, "Fighting for Their Lives"; and "Two More Teachers Murdered in Colombia," Education International News, April 3, 2009, <http://www.ei-ie.org/en/news/show.php?id=1002&theme=rights&country=colombia>.

- Thailand: Due to insecurity in the southern border provinces in 2007 that forced the government to close schools in remote and violence-prone areas, the government stated that it planned to transfer students to safer districts.⁴⁰ However, no further information was found on whether this plan was ever carried out. Earlier, in 2005, up to 3,500 teachers had expressed a desire to transfer to other locations with some of them, in fact, moving.⁴¹
- Sudan: During the conflict beginning in 2003, mobile schools were prepared to move students, families and teachers to new locations to avoid fighting and continue educational services.⁴²
- Multiple locations: Several programmes exist for accepting academics, targeted or threatened in their own countries, into foreign universities. For example, the Scholars at Risk Network, the Scholar Rescue Fund and the Council for Assisting Refugee Academics (CARA) provide an opportunity for scholars to leave areas where they are at risk and continue their work in the safety of universities abroad.⁴³ In addition, UNESCO has offered 145 short-term fellowships specifically for Iraqi researchers, scholars, artists and other professionals to study and conduct research abroad through the International Fund for Higher Education in Iraq.⁴⁴

Considerations for alternative school sites and schedules

Considerations for implementing alternative learning programmes include their quality, sustainability and relationship to the government-run education system. Implementing safe alternative programmes gives students in conflict-affected areas temporary access to at least minimal education services. However, there are limits to the quality of services that can realistically be provided during situations of conflict that should be acknowledged and addressed in the longer-term. Also, alternative education programmes need to consider sustainability. Finally, programmes should consider how the students might be incorporated into the government education system after the threat of violence has subsided and how students' achievements in alternative programmes might be measured. There is a possibility that achievement in alternative programmes might not be fully recognized by the state.⁴⁵

40 HRW, *No One Is Safe*, 7.

41 Rodraska, "Schools targeted in Southern Thailand".

42 INEE, *INEE Global Consultation Outcome Report* (INEE, 2009), 32, http://www.ineesite.org/assets/inee_gc_2009_report_final.pdf.

43 See the Scholars at Risk Network website, <http://scholarsatrisk.nyu.edu/>. the Scholar Rescue Fund website, <http://www.scholarrescuefund.org/pages/intro.php>; and the Council for Assisting Refugee Academics (CARA) website, <http://www.academic-refugees.org>.

44 UNESCO, "International Fund for Higher Education in Iraq: Cooperation between UNESCO and the Qatar Foundation for Education, Science and Community Development," http://portal.unesco.org/en/ev.php-URL_ID=34398&URL_DO=DO_TOPIC&URL_SECTION=201.html.

45 For information about certification of education credentials in the context of refugee camps, see Jackie Kirk, *Certification Counts: Recognizing the Learning Attainments of Displaced and Refugee Students* (Paris: UNESCO-IIEP, 2009), http://www.iiep.unesco.org/fileadmin/user_upload/Info_Services_Publications/pdf/2009/Certification.pdf; and Lynne Bethke and Pamela Baxter, *Alternative Education: Filling the Gap in Emergency and Post-Conflict Situations* (Paris: UNESCO-IIEP/CfBT Education Trust, 2009), <http://unesdoc.unesco.org/images/0018/001849/184938e.pdf>.

Negotiation of schools as conflict-free zones

Gaining widespread recognition from all parties involved in a conflict that schools are conflict-free zones or zones of peace can prevent further attacks on education. The concept of children as zones of peace can be traced back to the 1980s, when humanitarian aid workers called for negotiations of conflict-free areas or conflict-free days, so they might safely reach those in need of services.⁴⁶ In the education sector, the concept was adapted to promote the idea that all schools should be conflict-free zones. In particular, the Schools as Zones of Peace (SZOP) campaign in Nepal successfully negotiated understandings between stakeholders that schools be recognized as politically neutral, safe spaces. The Nepal SZOP campaign and several additional examples of negotiations with armed groups are described in this section.

Schools as Zones of Peace (SZOP)

- Nepal: Schools as Zones of Peace (SZOP) campaign. In 2004, numerous partners, including UNICEF, international and national NGOs, launched a campaign to promote schools as zones of peace. They advocated in the national media, lobbied both the army and the Maoist groups, and eventually negotiated codes of conduct with political parties and the government representatives in several areas that respected schools as neutral, conflict-free zones. The codes of conduct included such terms as banning arms from schools and prohibiting political activity on school grounds, among other things. At the local level, the campaign organized committees of community members, and aimed to build capacity and raise awareness of children's rights. Today, the SZOP campaign continues to encourage dialogue and negotiations between stakeholders, to hold children's consultations, to televise public hearings and to promote schools as conflict-free zones.⁴⁷

Other negotiations with armed groups

- Democratic Republic of the Congo: In 2002, it was reported that the conflict was stopped long enough for students in rebel-held areas of the DRC to sit for state exams.⁴⁸
- Afghanistan: In 2009, the Ministry of Education expressed a willingness to negotiate with the Taliban for the safety of schools and make compromises to allow for the Taliban's religious reservations, such as allowing a school to be called a '*madrassa*' or a teacher to be addressed as '*Mullah*'.⁴⁹

46 Varindra Tarzie Vittachi, *Between the Guns: Children as Zones of Peace* (London: Hodder & Stoughton, 1993).

47 Melinda Smith and Raj Kumar Dhungana, "Schools as Zones of Peace, Nepal" (presentation, UNESCO International Expert Seminar *Protecting Education from Attack*, Paris, September 30, 2009); Child Workers in Nepal (CWIN), "Children Are Zones of Peace," http://www.cwin.org.np/press_room/press_release/joint_statement.htm; and Save the Children, *Child Protection in Emergencies: Priorities, Principles and Practices* (Save the Children, 2007), http://www.essex.ac.uk/armedcon/story_id/000721.pdf.

48 Nils Kastberg, "Strengthening the Response to Displaced Children," *Forced Migration Review* 15 (2002), <http://www.fmreview.org/textOnlyContent/FMR/15/01.htm>.

49 Irin News, "Afghanistan: Taliban Forces Students Out of Schools into Madrasas," February 17, 2009, <http://www.irinnews.org/Report.aspx?ReportId=82963>.

- Afghanistan: There are reported cases of community members negotiating directly with attackers to put an end to the violence targeting education. In one rare case, the police in Herat even provided transportation for community members to attend a meeting with attackers.⁵⁰
- Northern Ireland: Despite a peace agreement in 1998, incidents of sectarian violence continued for several years in Northern Ireland. In 2001, one particular case caught the international media's attention when an earlier incident sparked riots and protests that targeted the Holy Cross Girls' Primary School, a Catholic school located in a Protestant area of Northern Belfast. The state responded by providing armed escorts for the 225 students trying to get to and from the Holy Cross School safely each day. The dispute was finally settled after three months when both sides to the conflict engaged in dialogue and an agreement was reached to restore safe access to the school.⁵¹

Considerations when negotiating schools as conflict-free zones

Preventing further attacks on educational institutions, students and personnel by negotiating understandings for the recognition of schools as conflict-free zones might mean making compromises with armed groups. During the negotiation process, it is important to consider the consequences of these compromises, the potential physical harm to those involved in the negotiations and the impact that the compromises might have on the education system in the future.

Also important to consider are factors that may contribute to perceptions of schools as political spaces and possibly undermine efforts for establishing schools as neutral zones. For example, sources of funding for schools and for NGOs that partner with schools might come with a political agenda or be perceived as such by communities or armed groups. Allowing international military actors to be involved in distributing materials and constructing schools can send mixed messages to local communities and armed groups about the neutrality of education.⁵² Whether the influence of any of these factors is positive or negative depends largely on context. More research is necessary to draw any further conclusions on the impact negotiations have on incidents of attacks but dialogue with armed groups has the potential to promote the recognition of schools as conflict-free zones.

50 Glad, *Knowledge Under Fire*, 49.

51 Alan Smith, "Sectarian Attacks on Schools in Northern Ireland: The Holy Cross Incident" (presentation, UNESCO International Expert Seminar *Protecting Education from Attack*, Paris, September 30, 2009).

52 Ajmal Samadi, "Students and Teachers are Innocent," *e-Ariana*, August 2, 2009, <http://www.e-ariana.com/ariana/eariana.nsf/allPrintDocs/B39535150651D1198725760300540BA4?OpenDocument>.

■ Community involvement in education protection

Those most affected by attacks on education and the disruptions they cause are the communities themselves. Targeted attacks not only cost lives, but also interrupt education and can limit opportunities for young people well into the future. Students, teachers, parents and religious leaders play an important role in responding to attacks on education and preventing further violence. As illustrated by several examples above, community participation is a component of all three of the mechanisms already described. Community members have been active in school protection through such mechanisms as providing physical security, teaching in, or otherwise supporting, community schools, or negotiating with armed groups. This section is devoted to other examples of community participation not previously mentioned.

There are several reasons to highlight the importance of community participation in education, especially during conflict or insecurity. For one, involving community members in decision-making through education committees can make school governance more participatory, inclusive and transparent.⁵³ It can create a sense of local ownership and local responsibility for education, and possibly contribute to the perception of schools as neutral zones. Further research is necessary before drawing any conclusions about the direct impact of community participation on school protection. However, this section provides examples of how religious leaders, schools committees and children's clubs have contributed in some cases to protecting schools and promoting the right to education.

Religious leaders promoting the right to education

- Afghanistan: In some areas, the government is working with local religious leaders to promote girls' education based on the Islamic principle that education is a must for all children, and to mobilize communities to protect schools, students and teachers.⁵⁴ Local mullahs have also been invited to teach the Qur'an as part of the government school curriculum and to be a part of school governance.⁵⁵
- Afghanistan: In 2007, in the Western Region, the Governor involved religious leaders and tribal elders in meetings with technical departments with the aim of reopening six schools and one health centre. All the affected facilities were successfully reopened and no further incidents were reported at that time.⁵⁶

53 Joan Sullivan-Owomoyela and Laura Brannelly, *Promoting Participation: Community Contributions to Education in Conflict Situations* (Paris: UNESCO- IIEP, 2009), http://www.iiep.unesco.org/fileadmin/user_upload/Info_Services_Publications/pdf/2009/community_participation.pdf; and INEE, *INEE Minimum Standards for Education in Emergencies, Chronic Crises, and Early Reconstruction* (INEE, 2004), 14-19, http://www.ineesite.org/minimum_standards/MSEE_report.pdf.

54 O'Malley, *Education under Attack*, 33; and Ibrahim, "Neighborhood Watch for Afghan Schools".

55 INEE, *INEE Global Consultation Outcome Report*, 32.

56 United Nations Security Council, *Report of the Secretary-General on Children and Armed Conflict in Afghanistan, S/2008/695* (2008), 16, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/534/13/PDF/N0853413.pdf?OpenElement>.

School committees

In some contexts, existing school committees (Management Committees, Community Education Committees, Parent Teacher Associations, etc.) can be mobilized to enhance protection of schools. Government ministries, NGOs or other coordinating groups could take advantage of the fact that community members are already organized and work with them to expand their role to help address security issues. In situations where such committees are not already organized, school protection committees could be formed for this purpose.⁵⁷ The following examples show the role of several different types of committees working towards education protection.

- Afghanistan: In recent years, a Ministry of Education initiative aimed to create either PTAs or School Management Committees (*shuras*) in all government schools to encourage community participation in education.⁵⁸ In addition, as part of a national programme led by the Department of Protection and Safety of Schools in 2006, the Ministry established school security shuras in 7,195 schools across the country that had experienced attacks.⁵⁹ Each *shura* consisted of about five to seven unarmed parents or community members able to negotiate with groups that had been targeting education, promote acceptance of girls' education and provide support for physical security in the schools.⁶⁰
- Nepal: Save the Children encouraged education committees made up of representatives from families to research and create local school improvement plans. The education committees then encouraged the District Education Office to support their plans. Eventually the education committees negotiated with Maoist rebels for an agreement to respect education.⁶¹
- Guatemala: *Comunidades de Poblaciones en Resistencia – CPRs* [Communities of Populations in Resistance] kept schools running during the civil war and held lessons outside. CPRs also had procedures for hiding children in case of attack.⁶²

Children's clubs

When schools are threatened or attacked, children may be forced to stay home for indefinite periods of time until security is restored, schools are repaired and classes resume. Organized children's groups provide a forum for students to voice their own concerns, represent their own interests and possibly persuade those responsible for the attacks that schools and students should not be targets in the conflict.

57 Susan Nicolai, *Education in Emergencies: A Tool Kit for Starting and Managing Education in Emergencies* (London: Save the Children, 2003).

58 Glad, *Knowledge on Fire*, 44.

59 Ibid.

60 Ibid.

61 Save the Children, *Rewrite the Future: Education for Children in Conflict-Affected Countries* (London: Save the Children, 2006), http://www.savethechildren.net/alliance/what_we_do/rewritethefuture/resources/publications.html.

62 Bart Vrolijk (1998), as cited in Nicolai and Triplehorn, *The Role of Education*.

- Sri Lanka, Uganda, Nepal, Sudan, and elsewhere: Children's clubs have confronted armed forces on both sides of conflicts about issues such as recruitment, safe passage to school and school occupation.⁶³

Community pressure to end attacks

- Afghanistan: In several cases it was reported that after a threatening night letter was broadcast publicly, the attack never occurred.⁶⁴
- Somalia: In 2008, Education Fraternity, an umbrella organization of education networks in Mogadishu, held a strike to call for the government and the opposition to stop attacks on schools. The strike itself shut down schools for three days.⁶⁵

Considerations for community participation

While community mobilization and involvement in protecting education can create local ownership and a greater sense of responsibility for what happens to education during conflict, there are still some considerations when mobilizing community groups. First and foremost, as mentioned previously, is the risk associated with being involved in protecting education from attack. Moreover, community mobilization requires organization, coordination and some level of training. Finally, it necessitates a high level of interest in protecting education in situations where other issues might be perceived as more urgent, an interest that must be sustained for the duration of the conflict. The community can be a powerful resource and tool, but efforts to mobilize community support need to consider immediate needs, associated risks, and local capacity to participate.

■ Suggestions for further enquiry

Attacks on education cause destruction and disruption of educational services in the already chaotic context of conflict and insecurity. Targeting students, teachers and other education personnel costs lives and compromises the capacity of the education system to recover. Attacking schools disrupts classes in the short-term and creates fear that might keep students out of school for longer periods of time. Protecting educational institutions, students and personnel and preventing future attacks is key to ensuring that these incidents do not continue to disrupt the education system indefinitely.

Motives for targeting schools, students and educational personnel and the tactics used to carry out attacks on education change from context to context, and perhaps even within the same affected

63 Save the Children, *Child Protection in Emergencies*, 39; and Joanna Wedge, *Where Peace Begins: Education's Role in Conflict Prevention and Peace Building* (London: Save the Children, 2007), 21, http://www.savethechildren.net/alliance/what_we_do/rewritethefuture/resources/publications.html.

64 Glad, *Knowledge on Fire*, 50.

65 Irin News, "Somalia: Schools Close in Protest Over Insecurity," September 3, 2008, <http://www.irinnews.org/Report.aspx?ReportId=80151>.

area. Strategies to protect education must also adapt and change in response. The examples of field-based protection mechanisms in this background paper point to important principles and approaches for further consideration, including depoliticizing the school environment, expanding children's clubs, coordinating with other protection strategies and investment in research.

Depoliticizing the school environment

In order for schools to be recognized as politically neutral and thus more likely to be accepted and recognized as conflict-free zones, the physical space cannot be perceived as a highly politicized space. Ending the practice of using schools for political purposes was a component of the codes of conduct signed during the SZOP campaign in Nepal, and could be adopted elsewhere. This issue is currently being raised in Afghanistan, where officials from the Ministries of Health and Education and other groups have expressed concern over using schools and medical facilities for voter registration and polling stations.⁶⁶ During the recent elections on 20 August, 2009, over 20 schools being used as polling stations were reportedly attacked.⁶⁷ Not locating polling stations in schools in the future could minimize damage to school infrastructure and time lost to making repairs so that buildings are safe again for students. It would also relocate international military or security forces that may be present at polling stations away from schools, thus reducing the politicization of education facilities.

Continuing efforts to ensure that schools, particularly primary and elementary schools, are politically neutral and conflict-free should also include removing all political campaign activities, slogans and propaganda from school grounds, and prohibiting political ceremonies and meetings from taking place in schools.

Expanding children's clubs

Save the Children has indicated several countries in which children's clubs are organized and negotiating with armed groups to respect their right to education and protection, as mentioned above. In two other cases, the concept of the children's group was expanded into a formal Children's Parliament, in the Democratic Republic of the Congo in 2004⁶⁸ and Liberia in 2008.⁶⁹ The purpose of the Children's Parliament is for students themselves to speak up about issues that are of concern to them and feed this discussion into the policy process. Issues discussed so far

66 INEE, *INEE Global Consultation Outcome Report*, 32; Irin News, "Afghanistan: Security Concerns Over Voter Registration Process," October 23, 2008, <http://www.irinnews.org/Report.aspx?ReportId=81071>; Irin News, "Afghanistan: Elections May Jeopardize Education, Says NGO," July 30, 2009, <http://www.irinnews.org/report.aspx?ReportId=85494>; and Samadi, "Students and Teachers Are Innocent".

67 Al Jazeera English, "Kabul Hit Ahead of Afghan Poll," August 18, 2009, <http://english.aljazeera.net/news/asia/2009/08/2009081891514880245.html>; and Irin News, "Afghanistan: Over 20 Schools Attacked on Election Day," August 24, 2009, <http://www.irinnews.org/Report.aspx?ReportId=85831>.

68 Irin News, "Congo: Despite End to Civil War, Youth Still Suffer Violence," *In-depth: Youth in crisis: Coming of Age in the 21st Century Series*, February 2007, <http://www.irinnews.org/InDepthMain.aspx?InDepthId=28&ReportId=70026&Country=Yes>.

69 Sullivan-Owomoyela and Brannelly, *Promoting Participation*.

by the Children's Parliament in Liberia have included trafficking, rape and abuse,⁷⁰ but there is potential for school security issues to come out of this type of forum. The Children's Parliament could provide a link that brings the field-based strategy of negotiating with armed groups to a national audience with the power to affect policy, and possibly lead to greater accountability for attacks on education.

Coordinating field-based responses with other protection strategies

The field-based mechanisms described in this desk study are responses to the immediate threat of attack or actual attacks on education and arise out of necessity to protect school buildings and ensure the safety of students and educational personnel. They form part of a much broader picture that includes other protection strategies, such as monitoring and data collection, policy development and accountability. The examples described in this study – providing physical protection and alternative learning sites, negotiating for conflict-free zones, and involving the community in education protection – should be coordinated with these other strategies to create a more comprehensive and effective response. Establishing Children's Parliaments is one example of expanding field-based mechanisms into the realm of national policy, but other ways to expand and coordinate protection mechanisms should be explored.

In Afghanistan, which is featured repeatedly in this desk study, there are ongoing efforts by committees, ministries and agencies to protect education and prevent further attacks. Coordinating these efforts at the local, regional and national level to create a more effective response is a challenge. The initiation of school security *shuras* in 2006, described above, was part of a much wider national school protection plan that also included Mobile Protection Teams of two protection officers per province and a centralized Provincial Relations and Security Coordination Unit at the Ministry of Education to monitor school security.⁷¹ Integrating local programmatic responses with efforts to monitor incidents of attacks on education at a regional or national level is an important step for understanding trends in school security that will hopefully better inform future programming, education policy and allocation of resources. The effects of the school protection plan in Afghanistan remain to be seen, but similar efforts could be made in other countries to better coordinate and integrate responses to attacks on education.

70 Ibid.

71 UNICEF, "UNICEF Alarmed as Attacks on Afghan Schools Rise," *UNICEF Press Centre*, August 4, 2006, http://www.unicef.org/media/media_35196.html; and Glad, *Knowledge on Fire*.

Further research into the impact of these protection mechanisms on the security of education

There are virtually no quantitative or qualitative data to analyze and evaluate the impact of these protection mechanisms on school security. Questions that emerge from the examples in this desk study include: How does community participation affect incidents of attacks? How do alternative learning programmes affect the quality of education services? How do negotiations affect perceptions of schools as neutral spaces? Measuring how effective a programme is in actually reducing attacks is difficult, considering research must be conducted in an insecure and constantly changing environment; however, it is useful information to have for improving protection strategies.

The work of the INEE in compiling a Strategic Research Agenda addresses the need for further research on a wide range of topics in the field of education in emergencies.⁷² What is needed, perhaps, is to include questions related to the impact of field-based mechanisms on preventing further violence in the research agenda. The INEE is a useful and effective forum for sharing information, and should be utilized to develop research questions and share results with others working to protect education from attack.

In conclusion, it should be emphasized that the examples of field-based mechanisms for protecting education from attack described in this paper are context-specific and may serve to protect schools, universities, teachers, academics and other education personnel in their particular setting. In the future, better protection for education requires that these mechanisms be integrated components of a more comprehensive strategy that includes better monitoring, universal recognition of schools as conflict-free zones and accountability when education is attacked.

72 See the INEE website for more on the Strategic Research Agenda, <http://www.ineesite.org/index.php/post/research>.

Chapter 13.

Preventing violent attacks on education in Afghanistan: Considering the role of community-based schools

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■ Introduction

In Afghanistan, anti-government forces including the Taliban, their allies, common criminals and local warlords launch violent attacks against schools, students, teachers and administrators. Attacks include bombing of buildings, arson, targeted killings and acid attacks particularly on female students and teachers.² Although data are difficult to collect and track, the impact of these attacks is clear. Hundreds of teachers and students have been killed, and hundreds of schools have been forced to close. Girls are severely intimidated, and in Zabul, Uruzgan and Paktika Provinces the number of girls attending lower secondary school has dropped to less than one per cent.³

In many conflicts, attacking schools is a way for a disenfranchised or belligerent group to register its complaints against a government. In remote rural or marginalized communities, school buildings are often the only symbol of the state. Motives behind these attacks in Afghanistan are difficult to document, but appear to include opposition to the state, to the curriculum in

1 I would like to thank Zama Coursen-Neff, Jane Kalista, Jehanzaib Khan, Leigh Linden, Erin Murphy-Graham, Margaret Sinclair and Chris Talbot for their comments on an earlier draft of this paper, and thank you to Amy Kapit for research assistance. Thank you also to the Spencer Foundation, the National Science Foundation, the Weikart Family Foundation, the U.S. Institute of Peace and the Columbia University Institute for Social and Economic Research and Policy for providing funding for the studies discussed here, and to Catholic Relief Services for their support throughout the Afghanistan studies.

2 Human Rights Watch (HRW), "Letter to President Barack Obama on Afghanistan," March 26, 2009, <http://www.hrw.org/en/news/2009/03/26/human-rights-watch-letter-president-barack-obama-afghanistan>; and HRW, *The Human Cost: The Consequences of Insurgent Attacks in Afghanistan* (New York: Human Rights Watch, 2007), <http://www.hrw.org/reports/2007/afghanistan0407/index.htm>.

3 HRW, "Letter to President Barack Obama".

government schools, to the education of girls and to foreign influences.⁴ In addition, given that social stability and security are primary goals of the international community and the foreign-backed Afghan government, any activity that is likely to hamper or thwart these goals is useful to anti-government forces. Attacks on schools, students and education personnel undermine security and serve as critical indicators of social instability.

Yet official responses to the attacks on education in Afghanistan have been slow and lacklustre. Government and multinational agencies were reluctant initially to recognize the problem for fear of creating a sense of failure in reaching project goals and jeopardizing progress toward development. As a result, agencies have collected data in a limited and unsystematic way. Incomplete data offer an incomplete picture of the problem. Correspondingly, government and international agencies have only recently understood the extent of the damage to the education system and the ripple effect this has had on social stability and morale among the Afghan civilian population.

Despite the slow start in recognizing and documenting the destruction, today government and international agencies are beginning to focus on addressing the problem. With the aim of contributing to this process, the following pages illustrate a particular education intervention – community-based schools – that international nongovernmental organizations and the Afghan government alike have championed and that may show promise in preventing attacks on education. The following observations lead to hypotheses about how community-based schools may be less vulnerable to these kinds of attacks because of their particular characteristics. Although these hypotheses have not been empirically tested, they show promise given the current trends in attacks on education.

In 2005 I began studying community-based schools that were sponsored by an international nongovernmental organization, Catholic Relief Services (CRS)⁵ in Afghanistan. This paper draws on observational data of community-based schools in the Panjshir Province and from a more recent large-scale study, also of CRS's schools, in Ghor Province. The latter was a mixed-methods study that included a randomized trial, case study and ethnographic methods to measure the impact of community-based schools on villages, households and children in Ghor Province.⁶ My co-principal investigator and I worked closely with CRS to study the impact of their community-based schools on children's enrolment and achievement, and on secondary effects such as protection. Although this study was not designed to test the way these schools may resist violent attacks, I draw on data from the study (school structure, administration, social and geographical position) to inform my hypotheses.

4 HRW, *Lessons in Terror: Attacks on Education in Afghanistan*, HRW Reports 8, no. 6(C) (New York: HRW, 2006), <http://www.hrw.org/reports/2006/afghanistan0706/index.htm>; and Brendan O'Malley, *Education under Attack: A Global Study on Targeted Political and Military Violence Against Education Staff, Students, Teachers, Union and Government Officials, and Institutions* (Paris: UNESCO, 2007).

5 CRS is an international NGO headquartered in Baltimore that supports relief and development programmes in countries around the world. The organization works with all people regardless of race or creed and is in no way involved in religious conversion. In Afghanistan, CRS is part of the PACE-A consortium of NGOs, which includes CARE, International Rescue Committee, and the Aga Khan Foundation, that is carrying out a nationwide community-based schools programme across 19 of 34 provinces. CRS has worked in Afghanistan since 2001. They work in several provinces around Kabul, but the bulk of their work takes place in the centre and west of the country, in Herat and Ghor Provinces.

6 My co-principal investigator, Leigh Linden, and I carried out this study in remote Afghan villages in Ghor Province from 2007-2008.

Based on evidence gathered during these studies, and on data collected from community-based schools in other studies of Afghan populations, the following pages illuminate the ways in which these programmes may help prevent attacks on education. I argue that community-based schools can help reduce the likelihood and frequency of ideological and criminal attacks on education that affect both the demand and supply of education services. Community-based schools do this by eliminating the need for school buildings and reducing distance to school.

The paper consists of the following sections. Firstly, it examines briefly the types of violence in Afghanistan and the kinds that we found specific to education and Ghor Province. Classifying the attacks schools, students and education personnel face is important for understanding the ways in which these schools may prevent or respond to these incidents. Secondly, it presents a description of the schooling options in the country and province, particularly highlighting community-based schools. Thirdly, it explores the ways in which community-based schools may be less vulnerable to these types of attacks and explains the advantages that they may hold in preventing or reducing violence. I suggest that reducing distance to school is one critical way to address attacks on education. The conclusion offers a summary of constraints and opportunities that these schools present.

■ General violence and violence against education in Afghanistan and Ghor Province

Security in Afghanistan has deteriorated steadily since 2005 and dramatically since 2007 when the Taliban re-invigorated its fight against foreign and Afghan government forces.⁷ In 2008 the United Nations recorded 2,100 civilian deaths, up 40 per cent from the year before. Despite the high profile and large numbers of casualties caused by NATO and US air strikes, the Taliban and anti-government forces remain responsible for the majority of civilian deaths across the country.⁸ Currently, the UN considers half the country unsafe for road travel because of lack of security.⁹ Taliban insurgents use asymmetrical tactics such as suicide attacks, improvised explosive devices, arson, abductions and assassinations to target allied forces as well as civilians and non-military institutions. Using two complementary approaches – targeted attacks and obstructing access

7 Afghanistan NGO Safety Office (ANSO), *ANSO Quarterly Data Report Q. 4 2007* (ANSO, 2007), <http://www.afgnsso.org/2007/2007%20Q4.pdf>.

8 HRW, "Afghanistan: Civilian Deaths from Airstrikes," September 7, 2008, <http://www.hrw.org/en/news/2008/09/07/afghanistan-civilian-deaths-airstrikes>; and United Nations Assistance Mission in Afghanistan (UNAMA), *Armed Conflict and Civilian Casualties; Afghanistan: Trends and Developments, 01 January 2008 – 31 August 2008* (UNAMA, 2008), [http://www.reliefweb.int/rw/RWFiles2008.nsf/FilesByRWDocUnidFilename/EGUA-7JJMA8-full_report.pdf/\\$File/full_report.pdf](http://www.reliefweb.int/rw/RWFiles2008.nsf/FilesByRWDocUnidFilename/EGUA-7JJMA8-full_report.pdf/$File/full_report.pdf). This is not intended to diminish the importance of civilian casualties caused by allied air strikes, but rather to note that civilian casualties caused by Taliban have been even higher.

9 United Nations Children's Fund (UNICEF), *Humanitarian Action Report: Mid-Year Review* (UNICEF, 2009), http://www.unicef.org/infobycountry/files/HAR_Mid-Year_Review_2009.pdf.

to services – they aim to demoralize foreign and national forces and the civilian population.¹⁰ Disrupting provision of and access to education is critical to this strategy.

Violent trends are uneven regionally, with the Taliban insurgency much stronger in Pashtun areas in the southern and eastern provinces. To date, Ghor Province has remained part of the relatively peaceful northwest and has not experienced the level of attacks and counter attacks seen in the rest of the country. Of all civilian casualties that occurred across the country in 2008, 11 per cent occurred in Ghor, while 42 per cent occurred in the south and 40 per cent in the southeast.¹¹ In rural areas of Ghor Province where Taliban influence is limited, violent incidents resulting from communitarian¹² and criminal (including domestic) motivations outnumber those motivated by ideology. The few Taliban attacks that have occurred in Ghor mirror those carried out in other parts of the country.

A limited understanding of the Afghan insurgency, both generally and specifically as it relates to education, has characterized the foreign and domestic response to these attacks. Foreign military responses have insufficiently accounted for the role of ethnicity and local networks in determining Taliban strategies. The Taliban continue to maintain a dominant Pashtun and conservative identity, but in addition, they offer a source of income, comradeship and protection for young men who would be otherwise unemployed.¹³ While NATO and U.S. military forces have pressed for control from the centre, Taliban take the opposite approach. A village leader's description of his tribal relationships characterizes local dynamics: 'My allegiance is to my family first, then to my village, sub-tribe and tribe.'¹⁴ Understanding this structure, Taliban extend their influence from the bottom up. They rely on networks of local commanders who conduct operations within their home provinces where they maintain tribal affiliations.¹⁵ They start at the village level and typically send an envoy from the same tribe or sub-tribe to coerce or persuade a local leader to join them.¹⁶ To rally support, they cite grievances against foreign forces and point to the Karzai administration as a corrupt, puppet government – both common complaints among the civilian population.

Complicating the Afghan government and allied response to the spread of the insurgency, increased cooperation between the Taliban and criminal groups has enhanced both criminality and the Taliban resurgence. According to ANSO, cooperation with 'organized crime, local strongmen, and, in some cases, corrupt officials' has reinforced Taliban efforts to undermine the government.¹⁷ Notably, increased alliances with organized criminals and local strongmen have allowed them to push into previously peaceful areas in the north and west. Insecurity provides a fertile environment for criminals to operate unhindered. At the same time it contributes to the Taliban goal of disrupting international and government efforts to rebuild the country and

10 International Crisis Group (ICG), *Afghanistan: New U.S. Administration, New Directions*, Crisis Group Asia Briefing #89 (Kabul/Washington/Brussels: ICG, 2009).

11 UNAMA, *Armed Conflict and Civilian Casualties*.

12 I use the term 'communitarian' to refer to what people in Ghor Province typically describe as 'intertribal' or 'interethnic' violence among subgroups or 'clans' who may share the same ethnicity, language and religious beliefs, but differentiate themselves according to clan or tribe.

13 Fotini Christia and Michael Semple, "Flipping the Taliban: How to Win in Afghanistan," *Foreign Affairs* 5, no. 87 (July/August 2009).

14 As quoted in Seth Jones, "Going Local: The Key to Afghanistan," *Wall Street Journal*, August 7, 2009.

15 Christia and Semple, "Flipping the Taliban".

16 Jones, "Going Local".

17 ANSO, ANSO Quarterly Data Report Q. 4 2008 (ANSO, 2008), 5.

provide stability to the local population. Problems that plague responses to the conflict are also compounded by the extent to which the population in Afghanistan is rural and isolated. Seventy-five per cent of the population lives in rural areas and 50 per cent lives in villages of 500 inhabitants or fewer.¹⁸ As a result, providing services to this diffuse population is difficult, and many Afghans walk long distances to reach schools and clinics.

Effectively addressing violence against education requires a nuanced understanding of the phenomenon. As has been documented clearly elsewhere, attacks on education violate laws in at least three ways. Firstly, they are a criminal offence according to Afghan law which prohibits 'threats, intimidation and violent attacks on students, teachers and school buildings.'¹⁹ Secondly, they violate international humanitarian law that governs behaviour in war. International humanitarian law prohibits states and non-state belligerents from attacking civilians and civilian facilities such as schools while engaged in conflict unless these buildings have been appropriated by armed forces for military objectives.²⁰ Thirdly, attacks on education constitute human rights abuses. The Convention on the Rights of the Child mandates children's right to education; attacks on schools, education personnel, and students – and the threat of attack – erode these rights.

Tracking violence against NGOs and international agencies provides important security indicators as well as a useful starting point for considering how attacks on education could be recorded. Agencies that track conflict trends in Afghanistan (e.g. the Afghanistan NGO Safety Office and the United Nations Assistance Mission in Afghanistan) focus on violence against nongovernmental organizations, the Afghan government, UN, and US or NATO forces. They typically classify these violent acts as anti-government or criminal. Anti-government perpetrators tend to be ideologically motivated, while criminal perpetrators tend to be economically motivated.²¹ Yet distinguishing between anti-government and criminal activity is difficult, and as conditions in Afghanistan continue to deteriorate, these categories become increasingly blurred.

Classifying attacks by perpetrator (anti-government or criminal) also overlooks ethnic and communitarian divisions that play a crucial role in the conflict. The Taliban consist nearly exclusively of ethnic Pashtuns, and thus hold limited appeal for the non-Pashtun population. Communitarian violence occurs between two local groups (village, clan, tribe) and usually results from an unresolved dispute or perceived violation of a social code. The rule of law is weak across the country, but particularly in rural areas, and local commanders operate with impunity. Revenge killings or forced marriages remain common ways to settle scores in rural Afghanistan, and children are at risk of kidnapping. This risk is typically highest when children are in transit from one village to another. If there is ethnic or communitarian strife among villages, the whole village may be at risk.

Attacks on NGOs and government agencies are linked to violence that targets education because these institutions are critical to supporting education administration and infrastructure. Surveying attacks on NGOs, however, provides an incomplete picture of problems specific to education.

18 J. Alexander Thier, as quoted in Michael Gordon, "Afghan Strategy Poses Stiff Challenges for Obama," *New York Times*, December 2, 2008.

19 HRW, *Lessons in Terror*, 115.

20 International Committee of the Red Cross (ICRC), "International Humanitarian Law," <http://www.icrc.org/Eng/ihl> (accessed October 9, 2009).

21 ANSO, ANSO Quarterly Data Report Q. 4 2008; and ANSO, ANSO Quarterly Data Report Q. 2 2009 (ANSO, 2009).

And although key international agencies and the Afghan Ministry of Education have begun to monitor attacks on education, these efforts are inconsistent and poorly coordinated. For example, there is no shared definition of what constitutes attacks on education, and the definitions that exist are inconsistently applied.²²

Across the country, as mentioned above, attacks specific to education include threats, arson, bombing of schools, and assaults on teachers, students and education personnel. Insurgent attacks on education are ideological and strategic and target both supply (numbers of schools and extent of education resources available to children) and demand (numbers of students whose parents are willing to send them to school). In addition, such attacks are on the rise. For example, according to President Hamid Karzai, in 2008, violence in southern Afghanistan forced 300,000 school children to stay home, an increase of 50 per cent from 2007.²³ Although criminal violence affects both NGOs and educational institutions and personnel significantly, the most common crime against NGOs is armed robbery,²⁴ while crimes that disrupt education appear more likely to include kidnapping of students and teachers for forced marriage, sex or work.²⁵ In keeping with Human Rights Watch, I include crimes against students, teachers and education personnel that occur en route to or from school or on school grounds in the definition of attacks on education. Beyond incidents that occur en route or on school grounds, increased criminality also creates secondary effects that contribute to the hostile environment, decreasing accessibility to school.

In sum, all four types of violence identified here – ideological, criminal, ethnic and communitarian – have a chilling effect on education, reducing both supply of services and willingness to access them (demand). Ideological incidents such as threats, destruction of physical infrastructure, and attacks against education personnel and students target civilians for their participation in the government education system. Incidents stemming from other motivations are also a barrier to education. For example, criminal activity may not be initiated with the express purpose of disrupting education or preventing children from going to school. However, its by-product of instability has a dramatic influence on education. Parents, education personnel, and NGO workers in Afghanistan repeatedly cite distance as one of the biggest barriers that deters boys and girls from attending school. Even in some cases where schools are closer to students, the area in which a school is situated may be problematic, particularly for girls. For example, it is not considered appropriate for girls to walk through busy public places to get to school. Furthermore, the number of school buildings in Afghanistan cannot address the need for them, and although the Afghan government and foreign forces have constructed additional buildings, attacks have destroyed hundreds, particularly in the south and east. Community-based schools present an alternative to address some of these issues. I will discuss these possibilities below, after presenting a brief overview of education options in Afghanistan.

22 Marit Glad, Knowledge on Fire: Attacks on Education in Afghanistan; Risks and Measures for Successful Mitigation (CARE/World Bank/Afghan Ministry of Education, 2009).

23 BBC News, "Afghan Strife Keeps Children Home," January 21, 2008, as cited in ICG, *Afghanistan: New U.S. Administration*, 8.

24 ANSO, ANSO Quarterly Data Report Q. 4 2008.

25 HRW, *Lessons in Terror*.

Schooling options in Afghanistan and Ghor Province

Attacks on education in Afghanistan have a disproportionately large impact on the civilian population – physically and psychologically – because of the poor state of the existing educational infrastructure. Likewise, efforts to address attacks must contend with these weaknesses. According to the United Nations Development Programme (UNDP), school enrolment in Afghanistan increased from 900,000 to 5.4 million between 2001 and 2007, with girls benefiting significantly.²⁶ The Ministry of Education Schools Survey recorded 800,000 new students, 40 per cent girls, enrolled in school in 2007 alone.²⁷ Still, as of 2007, over half of the school-age population was not in school, and only 37 per cent of children between the ages of 6 and 13 attended school. The education system remains highly centralized, therefore its distribution is uneven: although 17 per cent of schools are located in urban areas and 83 per cent are in rural areas, the urban schools support a disproportionate number of the total student population with 35 per cent attending urban schools and 65 per cent attending rural ones.

Education is also unevenly distributed by gender. In urban areas the ratio is nearly 1:1 between girls and boys attending school, but the numbers are much more uneven in rural areas.²⁸ Across the country, males make up about two-thirds of the student population in government schools. The number of females attending school drops even more after third grade, and by grade 12, only 25 per cent of the student population is female. The biggest drop occurs between grades 6 and 7.²⁹ Ghor Province records the highest attendance rates in Afghanistan, but the number of children between the ages of 6 and 13 who are actually in school still reaches only 28 per cent. Again, this distribution is uneven across the genders. Boys make up 77.5 per cent of the population attending Ghor's 385 primary and secondary schools. Distance is a problem for school enrolment. Only 29 per cent of the population lives within 5 km of a primary school, only 13 per cent lives within 5 km of a secondary school and only 4.2 per cent lives within 5 km of a high school.³⁰

Despite limited access, government schools serve as the principal source of education for Afghan children. According to the Ministry of Education approximately 95 per cent of the roughly 6 million registered students attend government schools. Approximately 1.5 per cent attend Islamic schools (government registered madrasas), and close to 3 per cent attend community-based schools.³¹ Government schools in Afghanistan are very similar in form and function to

26 United Nations Development Programme (UNDP), *Afghan Human Development Report 2007* (Kabul: Center for Policy and Human Development, Kabul University, 2007).

27 Islamic Republic of Afghanistan Ministry of Education (MoE), *Schools Survey Summary Report* (MoE EMIS Department, 2007).

28 UNDP, *Afghan Human Development Report 2007*.

29 MoE, *Schools Survey Summary Report*.

30 Islamic Republic of Afghanistan Ministry of Rural Rehabilitation and Development (MRRD), "Ghor Provincial Profile," <http://www.mrrd.gov.af/NABDP/Provincial%20Profiles/Ghor%20PDP%20Provincial%20profile.pdf> (accessed February 13, 2009).

31 MoE, *Schools Survey Summary Report*.

conventional schools elsewhere.³² They have, or are intended to have, an educational structure similar to that found in most countries around the world including classes, grades, certified teachers, administrators and school buildings. Most classes meet for 2.5 or 3 hours per day, Saturday to Thursday throughout the country. In urban areas, many schools hold double and sometimes triple shifts. Winter and summer schedules vary depending on the location, with cold areas taking long breaks in the winter months, and hot areas scheduling their long breaks during the summer. Most government schools in rural areas are located in a relatively accessible and dense population centre. Because there are not enough schools to serve all the children who would like to attend, rural schools often function the way rural, central schools do elsewhere – one central school is intended to serve the surrounding villages.

In addition to serving as the main provider of education, government schools also serve as the primary target of violence. The government education system is structured in a way that leaves it vulnerable to attacks on both supply and demand sides. On the supply side, government schools are vulnerable because of their physical infrastructure, location, concentration of students/teachers, and apparent ties to the state and/or foreign forces. Firstly, government-supported education in Afghanistan, like most countries in the world, usually takes place in conventional school buildings with multiple classrooms, desks, chairs and chalkboards. These buildings may be newly renovated or they may be in various states of disrepair (missing roofs, windows, holes in walls). Regardless, the buildings present clear targets for those who intend to undermine the education system. Even tents may become targets.³³ Secondly, the location of these schools makes them vulnerable. As noted above, because there are so few schools in Afghanistan the ones that exist often serve as central schools. They are located in larger towns, commercial areas close to transit routes, or areas that are more accessible to provincial capitals. The location of schools in transit areas or relatively populated regions makes the space around them more difficult to monitor and may contribute to increasing the likelihood of anonymous threats and attacks. Thirdly, because there are not enough schools, the ones that exist draw a concentration of students and teachers. Finally, school buildings serve as symbols of the state. They provide a designated space for large numbers of students and teachers to gather, are clearly marked, and symbolically important. The fewer schools there are in the region, the greater the role of the school as one of the few state structures in the area.

Government and community-based schools are the primary focus of this discussion, but it is useful to identify characteristics of mosque schools that may assist community-based schools in reducing vulnerability to violence. No records are kept of mosque schools.³⁴ Although remote rural villages lack schools, they almost always have mosques. Nearly every mosque has a school where the mullah (religious leader) teaches local children lessons from the Qur'an, related religious books, and

32 Although many scholars, practitioners and policy makers take for granted the common structure and organization of mass education found in most countries today, the fact that many mass education systems evolved simultaneously in ways that are remarkably similar to each other has been the subject of much scholarly inquiry. See for example Francisco Ramirez and John Boli, "The Political Construction of Mass Schooling: European Origins and Worldwide Institutionalization," *Sociology of Education* 60, no. 1 (1987), 2-17; and John Meyer, Francisco Ramirez, and Yasmin Soysal, "World Expansion of Mass Education, 1870-1980," *Sociology of Education* 65, no. 2 (1992), 128-49.

33 HRW, *Lessons in Terror*.

34 The Ministry of Education in Afghanistan attempted a comprehensive review of government and community-based schools and madrasas in 2007. Insecurity interfered with the data collection, but it still provides a useful overview of educational options in Afghanistan. See MoE, *Schools Survey Summary Report*. Community-based schools, government schools, and madrasas are now tracked and included in government education data, but mosque schools are not.

some include Persian poetry. Classes are limited to 2-3 hours per day, mostly of rote memorization of Koranic passages in Arabic.³⁵ Both boys and girls typically attend mosque classes when they are young – between the ages of 4 and 7. Parents typically pay the mullah in-kind for these services, for example, a child may bring a loaf of bread to the lesson once a week.

Similar to mosque schools, community-based schools in Afghanistan are intrinsically local institutions. Community-based education, a common aid programme in developing countries, is an increasingly popular humanitarian intervention in countries emerging from conflict. In countries where the education system has collapsed or government capacity is weak, community-based schools can provide education services quickly. Governments and international agencies use them as a way to move toward universal primary enrolment in the context of limited budgets,³⁶ or system breakdowns.³⁷ As noted above, community-based schools in Afghanistan are generally fostered by NGOs. The sponsoring NGO asks participating communities to provide classroom space, a local teacher and administrative support from community associations. Community members identify an existing space in the village where they can host the school, usually a room in a home or mosque. They may also provide some support to the teacher, usually in-kind donations. The NGO, in turn, provides training to these teachers, materials for the classroom (government textbooks supplied by the Ministry of Education, notebooks, writing utensils) and regular monitoring to track progress over time. Although many community-based schools hold classes in a room in a private house, most of the community-based schools included in the studies discussed here held classes in the village mosque. As will be elaborated in the next section, this is likely key to reducing their vulnerability.

Beyond these changes to classroom space, international agencies believe that working through community associations (e.g. parent-teacher associations, school management committees) may promote structural reform while enhancing the indirect social benefits for children and their families by embedding schools in their communities. In countries recovering from conflict, international and national agencies consider community associations an important element for enhancing participation among marginalized communities, strengthening a community's commitment to education and increasing community cohesion. Communities participating in these programmes typically provide administrative support from community associations. Multiple social benefits are believed to flow from community-based schools. For example, international aid agencies such as Save the Children (SC), CARE and CRS support these education programmes to enhance stability in communities recovering from conflict, to improve child welfare, to increase girls' enrolment, to protect children³⁸ and to prevent 'backward development.'³⁹

35 Although most Arabic letters are the same in Dari and Pashto, the alphabets are not identical.

36 Mark Bray, *Community Partnerships in Education: Dimensions, Variations and Implications* (Paris: UNESCO, 2000); and Pauline Rose, "Community Partnerships in School Policy and Practice in Malawi: Balancing Local Knowledge, National Policies and International Agency Priorities," *Compare* 33, no. 1 (2003), 47-64.

37 Dana Burde, "Weak State, Strong Community: Promoting Community Partnerships in Post-Conflict Countries," *Current Issues in Comparative Education* 6, no. 2 (Spring 2004).

38 Graça Machel, *The Impact of War on Children* (London: UNICEF, 2001); Canadian International Development Agency (CIDA), *CIDA's Action Plan for Child Protection: Promoting the Rights of Children Who Need Special Protection Measures* (Ottawa: CIDA, 2001); Margaret Sinclair, *Planning Education In and After Emergencies* (Paris: UNESCO-IIEP, 2002); Kenneth Bush and Diana Saltarelli, eds., *The Two Faces of Education in Ethnic Conflict* (Florence: UNICEF Innocenti Research Center, 2000); and Susan Nicolai and Carl Triplehorn, *The Role of Education in Protecting Children in Conflict*, HPN Paper #42 (London: Overseas Development Institute, 2003).

39 Paul Collier et al., *Breaking the Conflict Trap: Civil War and Development Policy* (Washington DC: Oxford University Press/World Bank, 2003); and World Bank, *Reshaping the Future: Education and Post-Conflict Reconstruction* (Washington DC: World Bank Group, 2005).

Although available data indicate that community-based schools increase children's enrolment, attendance, and achievement significantly,⁴⁰ evidence for the secondary benefits cited by advocates is uneven. Some note that requiring poor, marginalized communities to support their own schools could allow the state to abdicate its responsibility to provide education to its citizens, revising the social contract in the process.⁴¹ In addition, given many different forms of community participation, it is unclear whether the kind these schools require leads to the multiple effects that proponents expect.⁴² Community cohesion may increase, but in conflicted-affected or post-conflict environments, strengthening ties within already homogenous, isolated local communities may decrease opportunities for cross-regional, cross-ethnic reconciliation.⁴³

Despite these criticisms, in Afghanistan today community-based schools offer an important option for school-age children. Policy makers should consider promoting them given the alternative (no education); policy makers should also consider these schools in light of the added benefit they may bring to countering attacks. In this context, their local character would appear to work in their favour. Reducing distance to school is a key factor in reducing the impact of ideological and criminal violence. The following section explores the ways in which community-based schools may be less vulnerable to attack than government schools.

■ Community-based schools in Ghor: Key findings and hypotheses

In Ghor Province, Afghanistan, roughly 90 per cent of the 485,000 population lives in rural villages.⁴⁴ Few of these villages have government schools. This is not exclusively a result of Afghanistan's multiple conflicts – these villages have never been reached by the government education system. At the same time, parents consider education critical to the development and socialization of their children and go to great lengths to enrol them in school. A small minority of villagers cope with the barriers by sending their children, almost exclusively their boys, to walk long distances to the closest government school. On average these children walk two hours one-way to get to school. Once there, the school day typically lasts 2.5 hours. After school, the children return home, again on foot. A larger number, perhaps 25 per cent, of children study the Qur'an in the village mosque. These lessons may include Persian poetry, but do not teach numeracy.⁴⁵

The Partnership for Advancing Community Education in Afghanistan (PACE-A) is a five-year, \$24 million USAID-funded programme that began in June 2006 and is meant to 'expand quality

40 Dana Burde and Leigh Linden, "The Effect of Proximity on School Enrollment: Evidence from a Randomized Controlled Trial in Afghanistan," Steinhardt School of Culture, Education, and Human Development Working Paper, New York University (2009).

41 Karl Botchway, "Paradox of Empowerment: Reflections on a Case Study from Northern Ghana," *World Development* 29, no. 1 (2000), 135-53; and Burde, "Weak State, Strong Community".

42 Bray, *Community Partnerships in Education*; and Rose, "Community Partnerships in School Policy".

43 Burde, "Weak State, Strong Community".

44 MRRD, "Ghor Provincial Profile".

45 Burde and Linden, "Effect of Proximity".

learning and life opportunities for marginalized communities and their children in Afghanistan⁴⁶ via a consortium of NGOs tasked with providing hundreds of community-based schools for children between the ages of 6 and 11 in 17 provinces across Afghanistan. CRS is part of the PACE-A consortium. In establishing community schools in remote areas where children have not previously had access to education, the consortium intended to increase access to education generally, and particularly for girls; to strengthen community-based associations such as parent-teacher associations and community education committees; to provide education that meets a certain standard of quality; and to avoid the pitfalls that have hindered other community-based schools programmes in the past by developing close and careful coordination with the Afghan Ministry of Education (MoE). Beyond these goals, CRS and other humanitarian organizations expect that community associations will enhance general support for education, and that the programme will provide indirect benefits to children such as protection and life chances.⁴⁷

Prior to establishing schools, CRS surveys communities to assess their level of need, interest and ability to commit to the terms required. CRS selects districts according to the following factors: limited access to government primary schools (villages must be at least a three-kilometre distance from government schools), gender gaps in primary enrolment, security issues, presence of other NGO projects, community interest, MoE interest, sustainability and cost-effectiveness. First, the district is identified as secure enough for staff to work without excessive risk. Next, the pool of potential communities is established and the highest priority communities are chosen based on the following criteria: (1) availability of potential teachers (especially women); (2) level of interest expressed by a community in a community-based school; (3) community willingness to mobilize resources (teachers' salaries and classroom space); (4) support from the MoE. In promoting community schools, CRS first mobilizes community support. Community members identify an existing space to host the school (room in a home or mosque), and help support the teacher who usually comes from the community. CRS provides training to these teachers, materials for the classroom (government textbooks supplied by the Ministry of Education, notebooks, writing utensils) and regular monitoring to track progress over time.⁴⁸

We conducted an academically rigorous, policy-relevant study to understand how this common education intervention (establishing community-based schools) affects children, households and villages. It is important to reiterate that because of the relative stability of this area, we could not investigate the extent to which community-based schools mitigated or prevented violent attacks, nor was the experiment designed to compare community-based schools to government schools. Instead, the research project took advantage of CRS's planned expansion of community-based schools in Ghor Province to conduct a randomized evaluation of their work. Half of the villages in Ghor Province slated to receive a CRS school were randomly assigned to act as a treatment group by receiving a CRS school in 2007. The rest were assigned to act as a control group by receiving a school in 2008, after the study had been completed. This randomized trial portion of the study aimed to understand the effects of the CRS schools on children's attendance and achievement, as well as indirect social outcomes. The quantitative part of the study was complemented by qualitative components that included document analysis, observation and interviewing.

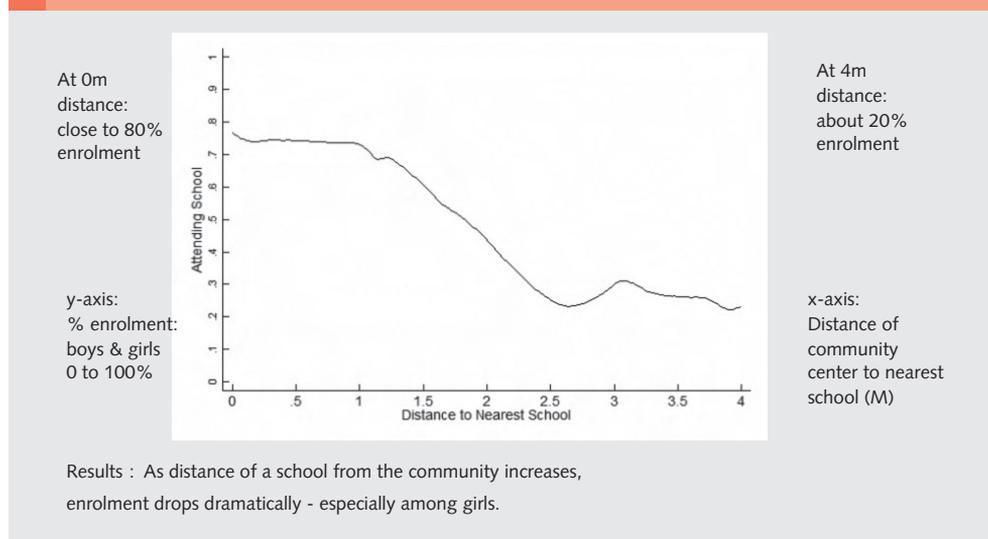
46 Partnership for Advancing Community Education in Afghanistan (PACE-A), *PACE-A Summary* (USAID Afghanistan/CARE International, 2007), 1.

47 Burde and Linden, "Effect of Proximity"; CIDA, *CIDA's Action Plan*; and Nicolai and Triplehorn, *The Role of Education*.

48 PACE-A, *PACE-A Summary*.

With a sample of 31 villages and roughly 1,500 children between the ages of 6 and 11 in northwest Afghanistan, we randomly assigned 13 villages to receive community-based schools one year before the schools were supplied to the entire sample. This time delay allowed us to estimate the one-year impact of the schools on girls' and boys' attendance and knowledge of math and the local language, Dari. We found that community-based schools have a dramatic effect on children's academic participation and performance and have tremendous potential for reducing existing gender disparities in rural areas in Afghanistan. Children are almost 50 per cent more likely to attend school if there is a community-based school available to them. Most importantly, the rate of girls' attendance increased 15 percentage points more than their male counterparts. *Proximity to school* was the key reason for these dramatic results cited by parents, teachers and community leaders. See Figure 1, below, for a representation of enrolment and proximity to school.

Figure 1: Enrolment and Proximity. The effect of geographic proximity of CBS on children's enrolment in school⁴⁹



In qualitative interviews that complemented the survey data, respondents repeatedly noted distance as the primary reason their children did not attend government school. Distance impacted girls and very young boys more significantly than boys aged 9 or older. Interviewees cited insecurity and propriety as the main reasons they kept girls home from school. Throughout the duration of our study in Ghor, although Taliban-related ideological violence was negligible, communitarian and criminal violence was reportedly prevalent. Parents and village leaders cited tribal and sub-tribal tensions between villages as sources of concern and insecurity. For example, tensions between Chesti and Palawan groups ignited clashes between local commanders and caused deaths on each side. Incidents of criminal violence (kidnapping and abuse of girls) were also cited, although fear of exposure and retribution likely suppressed these reports.

49 Reproduced from Burde and Linden 2009

Although this study did not evaluate community-based schools for their resilience in the event of violent attacks, it provides rich descriptive and contextual information about the way in which these schools work in Ghor Province. From these observations and available information about violent attacks on education in Afghanistan, I hypothesize about the ways in which community-based schools would fare in conditions of deteriorating security. In avoiding ideological or criminally motivated violence, a number of key attributes that affect both supply and demand side issues seem to enhance the ability of community-based schools to counter these risks.

On the supply side, I hypothesize that the same factors that increase the risk for government schools, addressed differently by community-based schools should serve to decrease risk:

- (i) *Infrastructure.* Community-based schools use existing infrastructure belonging to the community, or to a member of the community. For example, in this study, all community-based schools were housed in the village mosques, and the students attended from the surrounding houses.
- (ii) *Location/dispersion.* Community-based schools are located typically in the centre of a village or residential quarters. Since outsiders cannot easily arrive in villages unnoticed, threatening activity would draw attention. In addition, since each community-based school serves only the village in which it is situated, students and teachers are widely dispersed across small communities.
- (iii) *Links to the village inhabitants.* Firstly, in this study the teachers were well known to their communities. Nearly all the teachers were the village mullahs, hired (paid in-kind) and supported by the communities in which they lived. Secondly, NGOs typically encourage parents to join school management committees and play an active role in the schools – an attribute that I call the ‘witnessing effect,’ arising from links to community members and school management committees that may reduce the likelihood of anonymous threats and attacks. As NGOs often report, communities develop a sense of ownership over their community-based schools. In this study, many parents visited schools on a regular basis, checking attendance and observing the lessons. Attacking a community-based school could be a strategic mistake unless the attackers intended to wipe out the village. Although external support to community-based schools may raise questions regarding the degree of local ‘ownership’ of a school, in the study described here neither the communities nor the NGO (in this case, CRS), publicized their foreign support. Many inhabitants of the villages were not even aware that an international nongovernmental organization supported the community-based school.

On the demand side, I hypothesize that proximity is critical to reduce opportunities for attack and ensure access to services. In our study in Ghor Province, parents repeatedly cited proximity as one of the key benefits of community-based schools, and the average distance to school for these children was 3 miles.

It is important to explore these hypotheses further. Establishing databases that record key standard indicators of violence against education and that sort the information according to different types of schools will be an important first step for future research.

■ Conclusion

Claims about the benefits of community-based schools in relation to increasing children's safety and reducing attacks on education have yet to be empirically demonstrated. In addition, optimism about the ability of community-based schools to reduce the numbers of attacks on students, teachers, and education personnel and on educational infrastructure should be tempered by a note about the infrastructure required to support them and the weaknesses of these schools on other counts. Firstly, when security deteriorates to the extent that it has in many parts of Afghanistan, it is impossible for NGO or Afghan government staff to access these regions. Programmes that require significant external support cannot survive in these conditions. Humanitarian agencies would need to design creative ways to continue to support these schools in the event that they could not access them. Starting new community-based schools in conflict-ridden areas will require insightful planning.

Secondly, in the studies described here, the community-based schools primarily relied on teachers with limited training and education who were often local village mullahs. Mullahs have a complicated role in recent Afghan history. For example, the Taliban relied on local mullahs to enforce their rule during the 1990s. Many mullahs do not share the extreme views of the Taliban, Islamic education has a rich history, and mosque schools as a form of early childhood education are underappreciated among Westerners. Nonetheless, relying extensively on undereducated religious leaders as teachers of the Afghan national curriculum could bring unforeseen costs as well as benefits. And, as noted above, the large-scale use of community-based schools threatens to shift the burden of education to those least able to afford it. In a country with such high rates of poverty, this could have a negative impact on already struggling communities.

Thirdly, community-based schools currently serve only a small fraction of school-age children in Afghanistan. In addition, they provide principally early primary grades, and historically, NGOs have promoted them as a complement to the government system. PACE-A and the Afghan Ministry of Education have worked closely to integrate NGO-fostered community-based schools into the government system, discussing new forms of teacher certification and providing community-based school teachers' salaries from the government pay rolls.⁵⁰ Effective expansion of community-based schools will require a discussion regarding their role, among other things addressing whether they are intended to serve as a stop-gap measure or a permanent fixture on the educational landscape. Educational policy and investment should be structured accordingly.

Finally, as noted, the potential of community-based schools to mitigate violence in Afghanistan appears most promising in response to criminal and ideological attacks. Criminal violence that targets children and teachers en route to school would likely be curtailed if distance were eliminated. Among ideological actors, since the Taliban pursue persuasion and domination, not annihilation, attacking a community-based school, particularly in a Pashtun region, could undermine the Taliban's social base. In Ghor Province, however, where Taliban attacks were

50 For a thorough discussion of integrating community-based schools into the government system see Wendy Guyot, *Transition from Community Based Education to the Ministry of Education System in Afghanistan: An Investigation of the Integration Process for Students and Teachers in Selected Districts of the PACE-A Partnership* (Kabul: PACE-A Publication, 2007).

negligible at the time of this study, communitarian rivalries were more significant factors in spurring violence that affected education. In this case, the type of school – government or community-based – becomes irrelevant if the intention is to eliminate the community and the whole population is under attack.

Nevertheless, community-based schools have characteristics that should serve to deter violence, particularly the kind of violence – i.e. disrupting access to services – that serves as a cornerstone to the Taliban strategy. Community-based education may serve to eliminate schools as a target of ideological violence because of their links to the community, use of non-traditional structures and proximity to students and teachers. Above all, removing distance as a barrier to school has a multiplier effect, reducing opportunities for attacks on students and increasing children's access to learning. Community-based schools warrant further consideration.

Chapter 14.

Schools as Zones of Peace: Nepal case study in access to education during armed conflict and civil unrest

Melinda Smith¹

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■ Background

On the occasion of National Children's Day in 2001 during the height of the Maoist insurgency in Nepal, Nigel Fisher, then director of UNICEF's Regional Office for South Asia, wrote an editorial in the *Nepali Times* in which he urged:

Places where children congregate – schools especially – should be declared safe zones which no soldier or combatant will enter or occupy for any purpose, and which should not be used as

¹ This article acknowledges the pioneering work of the individuals and organizations in Nepal that have played a role in the National Network for Children as Zones of Peace and the Schools as Zones of Peace programme. These include Action Aid Nepal, Bal Chetana Samuha, CARE Nepal, Children at Risk Network Group, Center for Child Studies and Development (CCSD), Bak Bikash Samaj, Child NGO Federation, Child Nepal, Child Workers in Nepal (CWIN), Children-Women in Social Service and Human Rights (CWISH), Human Rights Organization in Nepal (HURON), Informal Sector Service Center (INSEC), Jagaran Nepal, Jagrati Youth Club, Maiti Nepal, NGO Federation, Nepal Red Cross Society, Nepal Rugmark Foundation, Partnership Nepal, Plan Nepal, Rural Reconstruction Nepal (RRN), Nepal SATHI Foundation, Sahara International Nepal, Save the Children Japan, Norway and US (now Save the Children Alliance), Seto Gurans, UNICEF, United Mission to Nepal (UMN), World Education, and World Vision International. Special thanks are due to Helen Sherpa of World Education, Sumnima Tuladhar of CWIN, Bhushan Shrestha of Partnership Nepal and Samphe Lhalungpa, former UNICEF Nepal Education Chief who helped initiate the pilot Schools as Zones of Peace.

recruitment centres for child combatants. ... If there is one shared hope for Nepal's future, it is that all children should be able to get a good quality education in a safe learning environment.²

Fisher's plea specifically called for the government and Maoists, as they considered meeting at the negotiation table after five years of conflict, to make schools as safe zones part of the negotiations as a symbol of the shared aspirations and common ground of both sides of the conflict.

The concept of children as 'zones of peace' or 'conflict-free zones' first emerged in the 1980s in a proposal to UNICEF by Nils Thedin, a member of UNICEF's Executive Board who asserted that children should be protected from harm and provided with the essential services to ensure their survival and well-being.³ The concepts of 'days of tranquillity' and 'corridors of peace' were first applied in negotiations between warring parties in the delivery of life saving medical aid and food to children in El Salvador, Sudan, Sri Lanka and Uganda. During the insurgency in the northeast of Sri Lanka, for example, UNICEF negotiated with the Tamil Tigers to stop using schools as centres for recruitment of child combatants. At the same time, UNICEF requested government forces to move out of schools occupied as military camps, and to move military guard-posts to at least 500 metres distance from school compounds.

Crisis of civil unrest and armed conflict

In Nepal the appeal for children as zones of peace gained support as political unrest increased. The country was plagued by political instability following an attempt to establish a multi-party democracy in the 1990s within a framework of a constitutional monarchy. Hopes of democratic governance were undermined by the failure of the elected government to respond to the historic neglect and discrimination against rural and excluded communities, which make up the majority of the population.⁴ Institutionalized economic and political corruption and a widening gap between rich and poor made the situation ripe for the Maoist Party to take up arms in 1996 to launch the 'People's War' with the stated goal of overthrowing the monarchy and establishing a republic.

While Nepal ratified the UN Convention on the Rights of the Child in 1990 and the Optional Protocol on Involvement of Children in Armed Conflict, these endorsements did not protect children from the decade-long Maoist insurgency, which lasted until a peace accord was signed in 2006. Both the Maoists and the Royal Nepalese Army targeted schools for political purposes, and students and teachers were literally and ideologically caught in crossfire between the Maoists and the army. Over 75 per cent of rural areas were affected by the Maoist insurgency, whose strategy was a takeover of rural institutions, including schools.

2 Nigel Fisher, "Put Children on the Agenda," *Nepali Times* 57, August 23-30, 2001, <http://www.nepalitimes.com/issue/2001/08/24/Nation/9210>.

3 United Nations Children's Fund (UNICEF), "Children in War," in *The State of the World's Children 1996* (UNICEF, 1996), <http://www.unicef.org/sowc96/>.

4 Watchlist on Children and Armed Conflict, *Caught in the Middle: Mounting Violations Against Children in Nepal's Armed Conflict* (Watchlist on Children and Armed Conflict, 2005), <http://www.watchlist.org/reports/pdf/nepal.report.20050120.pdf>.

Students and teachers were captured and taken to indoctrination camps. Maoists also attempted to change the curriculum to remove all references to the monarchy, to promote Maoist political ideology and to discontinue the teaching of Sanskrit. Ironically, some of the poorest and socially excluded children, who were attending school for the first time, were the most affected by school closures. The Maoists, in supporting an expansion of government schools, were opposed to private schooling and targeted community schools, which were supported by community and private donations separate from the government system. It was these schools, many of which enrolled ethnic minorities and rural children, that were targeted for strikes and closures.⁵

The army requisitioned schools for use as barracks and they became battlegrounds of armed conflict, with children killed and maimed in the crossfire. Children were recruited and abducted to serve in the insurgency, and it is estimated that up to 30 per cent of the Maoist forces were made up of children under eighteen. Both the army and the Maoists used children as informers. Girls were raped and subjected to other forms of gender-based exploitation by Maoists and the Nepali Army.⁶

Maoists pressed many teachers to pay 10 per cent or more of their salaries to support the insurgency. Teachers were also targeted by government forces, and those of them who complied with Maoist extortion were sometimes accused of being associated with Maoists, which could result in harassment, torture and death.⁷ Nearly 160 schoolteachers from all parts of Nepal were killed during the armed conflict.⁸

In some districts, the Maoists prohibited the payment of school fees on ideological grounds, yet under the government system fees were needed in order to pay teachers and keep schools open. In the case of Kailali, when the school fee prohibition was instated in 2004, over 1,800 teachers were threatened with job loss and over 200,000 students were threatened with loss of education, according to a report in the Nepali daily Samacharpatra.⁹

Many teachers came under pressure from both the Maoists and the government, causing anxiety and stress, and compromising their ability to focus on teaching and to assist students in coping with psychosocial issues. For example, both the Maoists and government security forces used blacklists to intimidate teachers. When teachers' names were put on government lists, they were likely to be interrogated by the security forces or called to the government security offices of the district for alleged Maoist activity. Ironically, this could result in the Maoists accusing the same teachers of being government informers because they were seen at the government offices and putting them on their own black lists. General strikes and occupation of schools resulted in prolonged school closures and many secondary school students fled to India to attempt to continue their education there. Government blockades prevented children from accessing essential services including education.¹⁰

5 Helen Sherpa, World Education, email correspondence with the author, July 31, 2009.

6 Watchlist on Children and Armed Conflict, *Caught in the Middle*.

7 Samay National Weekly, "Scared for Life," May 1, 2004, as cited in Watchlist on Children and Armed Conflict, *Caught in the Middle*.

8 Brendan O'Malley, *Education under Attack: A Global Study on Targeted Political and Military Violence Against Education Staff, Students, Teachers, Union and Government Officials, and Institutions* (Paris: UNESCO, 2007), <http://www.unesco.org/education/attack/educationunderattack.pdf>.

9 Samacharpatra, "Prohibition of Fees May Affect Education of 200,000 Students," May 11, 2004, as cited in Watchlist on Children and Armed Conflict, *Caught in the Middle*.

10 Watchlist on Children and Armed Conflict, *Caught in the Middle*.

The Maoists focused their military attacks on the police and the army, which responded with brutal attacks and political repression. According to Child Workers in Nepal (CWIN), 462 children were killed during the armed conflict and 524 injured. Thousands of children lost one or both parents and tens of thousands were displaced.¹¹ An estimated 145 teachers were killed and countless human rights violations committed by both the army and the Maoists, documented by Nepali human rights groups.¹² In a widely reported incident in 2004, six people were killed and others seriously injured in a helicopter raid on the premises of Bidhya Mandir Higher Secondary School in Binayak village, Achham district. The government opened fire from pod-mounted guns on a Maoist meeting on the school grounds, killing and injuring several children, and forcing other students to witness horrific violence and killing.¹³

At the height of the violence, in 2005, King Gyanendra seized power and disbanded Parliament. After a period of heightened unrest and agitation against absolute rule of the monarchy, the king relinquished power. In November of 2006, the government and the Maoists signed a Comprehensive Peace Agreement, which formally ended the 10-year armed conflict, reinstating the Parliament and leading the way to the election of a Constituent Assembly to be charged with writing a new constitution.

Children as Zones of Peace campaign

Advocacy for children as zones of peace in Nepal gained growing support after 2001 and in 2003 a full scale campaign was initiated by civil society with over 30 member organizations and four leading NGOs jointly launching a campaign, Children as Zones of Peace. Taking the lead in the network were Child Workers in Nepal, Institute of Human Rights and Communication Nepal, Centre for Victims of Torture and Save the Children Norway. The National Human Rights Commission and the International Committee of the Red Cross joined as observers.¹⁴ The campaign made a fervent appeal to all parties in the conflict to respect children's rights. This approach was based on the premise that the manner in which opposing groups treat children needs to be used as an important indicator of their credibility. The protection of children and their delineation as zones of peace must be an essential element of the platform of any government or opposition group that claims moral authority, or of any group which aspires to legitimate political leadership.¹⁵

11 Indo-Asian News Service, "Sex Abuse Rampant as Nepal Schools Turn into Barracks," June 28, 2006.

12 O'Malley, *Education under Attack*.

13 Himalayan News Service, «Schools Closed After Clashes», 2004, as cited in Watchlist on Children and Armed Conflict, *Caught in the Middle*.

14 According to the National Coalition for Schools as Zones of Peace (CZOP), current membership includes the following organizations: Action Aid Nepal, Center for Child Studies and Development (CCSD), Child Workers in Nepal (CWIN), Child NGO Federation, Child Nepal, Children-Women in Social Service and Human Rights (CWISH), Human Rights Organization of Nepal (HURON), Informal Sector Service Center (INSEC), Institute of Human Rights and Communication Nepal (IHRICON), Jagaran Nepal, Maiti Nepal, National Human Rights Commission-Nepal (NHRC) (observer), Nepal Red Cross Society (NRCS) (observer), Nepal Rugmark Foundation, Partnership Nepal, Plan International-Nepal, Rural Reconstruction Nepal (RRN), Saathi, Sahara Group, Save the Children (Japan, Norway, and United States of America), Seto Gurans, Underprivileged Children Education Program (UCEP), United Nations Children's Fund (UNICEF), United Mission to Nepal (UMN), World Education, and World Vision (CZOP, *A Mapping of SZOP Programs in Nepal* (CZOP, 2008), 25, <http://www.czop.org/reports/Mapping%20of%20SZoP%20Programs%20in%20Nepal.pdf>).

15 Helen Sherpa, World Education, email correspondence with the author, July 31, 2009.

CZOP focused efforts in 28 of the worst-hit districts in the country, through 14 local organisations, mostly Save the Children Norway's partners. CWIN was the lead organisation. The campaign emphasised that in order to protect children from the negative impacts of the armed conflict and to safeguard their health centres, immunization centres, hospitals, child development centres, day care centres, schools, playgrounds and homes, it was necessary to declare such areas as zones of peace without any further delay.¹⁶

One of the main objectives of the campaign was to provide psychosocial and material support to children affected by the ongoing Maoist insurgency and counter-insurgency. CWIN began doing advocacy at school, district and national levels. After every incident, CWIN would pressure the government to act and in some cases sent fact-finding teams to investigate incidents of gross child rights violations in schools. After a major strike called by the Maoists, which closed schools for a prolonged period in Doti district in 2003 preventing children from taking School Leaving Certificate exams, CZOP issued a media release calling for the Maoists and the government to allow the SLC examinations to be held without disruptions.

CZOP also began sending teams to investigate violations of children's rights and submit reports to the National Human Rights Commission. The Coalition called on the government to fulfil its obligations to the international treaties to which it is signatory, including the Convention of the Rights of the Child and the Optional Protocol of 2000. CZOP's advocacy work continued throughout the armed conflict and continues to the present.

Youth involvement was also a part of the advocacy work. At the community level in some of the most conflict-affected districts, CZOP member Save the Children US incorporated child advocacy activities into local child clubs. These activities included peace rallies, essay competitions on Children as Zones of Peace and street dramas to raise awareness of the concept of children as zones of peace.¹⁷

Schools as Zones of Peace 2004-2006

It was clear to the CZOP member organizations and school communities that advocacy alone could not protect schools and children from the armed conflict.¹⁸ UNICEF and partner organizations, including World Education, received feedback from schools and stakeholders in multiple districts that their efforts to implement a major quality education initiative would be completely stymied due to the impact of the armed conflict unless a major initiative in Schools as Zones of Peace was undertaken. They requested that a Schools as Zones of Peace module be developed as part of the Quality Education Resource Package being prepared as part of UNICEF and the government's initiative to enhance quality education.

16 Plan Netherlands, *Children as a Zone of Peace in Nepal* (2008), www.iss.nl/layout/set/print/content/download/16187/155281/.../Plan.doc

17 Save the Children, *Children in Conflict Annual Progress Report: October, 2002-September, 2003: Mitigating the Impact of the Maoist Conflict on Children and Youth in Nepal* (Save the Children US, 2003).

18 Helen Sherpa, World Education, email correspondence with the author, July 31, 2009.

Programme design

In response to this need, UNICEF supported World Education and NGO partners to create a programme design and a new module on Schools as Zones of Peace as part of the Quality Education Resource Package, with the following elements, drawing on best practices from the experiences from other conflict-affected countries along with new ideas to meet the needs of Nepal:

1. A model for negotiating and developing school codes of conduct to safeguard Schools as Zones of Peace, in which local community facilitators convene negotiations with the Maoists, army, civil society and other stakeholder groups to cease targeting schools
2. Mobilization of civil society coalitions to keep the conflict out of the schools, including use of local media, which monitored threats to schools through the educational journalists association
3. Provision of psychosocial and other support for students affected by the conflict
4. Provision of support and coping skills to teachers
5. Teaching of land mine awareness and protection

The module also contained practical methods for keeping the conflict out of schools, such as instructions for painting signs on roofs of schools to discourage the army from bombing them, posting codes of conduct, and creating hoarding boards and other signage.

The programme, implemented by World Education and its partner NGOs, was piloted in three of the most conflict-affected districts (Accham, Kavre and Udayapur) to safeguard schools from political activities and violence. It was integrated into the existing quality education activities. The SZOP module was distributed in close collaboration with CZOP and it was used by its partner NGOs at field level.

Code of conduct negotiation process

Developing an effective process for negotiating the codes of conduct was the most challenging aspect of the programme. At first World Education attempted to have local government act as conveners and negotiators but quickly learned that this would put them in direct confrontation with the Maoists. They then engaged civil society partners, NGOs and community-based organizations (CBOs) to serve as local community facilitators. World Education staff trained community facilitators to get all parties to the table. The facilitators played the central role in engaging both the government and the Maoists by putting social pressure on each to participate, playing on their desire to be seen in a positive light in the communities. Since the Maoists had brothers, sisters, nephews and nieces attending the local schools, they were convinced to support codes of conduct not only to help their relatives, but also to be consistent with the Maoists' message of universal free public education.¹⁹

19 Ibid.

Transparent negotiations with all parties were not possible because open negotiations with the Maoists could have jeopardized the negotiators. Rather, a backdoor and shuttle diplomacy process was used to enable stakeholders and facilitators to participate without fear of retribution. The community facilitators who managed the process were mostly women, possibly the most trusted members of the community. Stakeholders involved, in addition to the army and Maoists, were local government and education officials, police, community-based organizations, school management committee representatives and political parties. An important part of the process was the mobilization of civil society, including local media and representatives of the educational journalists' association, to act as monitors once codes of conduct were negotiated. Once the codes of conduct were agreed to by parties, they were often posted at the front of schools.

Among the lessons learned in the negotiation process, the most important was that backdoor negotiations with all parties protected the safety of negotiators and stakeholders alike. The issue of fear and danger in both students and teachers was a factor that needed to be addressed in the negotiation process. Community facilitators were essential in managing the negotiation process and involving civil society and the most difficult negotiations were left to local communities, who were trusted by all stakeholders. The government, which initially thought it could take on a facilitation role, had to step away from the process for fear of endangering teachers and staff. For this reason the UN and civil society assumed management, despite the absence of any existing UN framework for negotiations to use as guidance.

As the conflict escalated, the space for negotiation became smaller as groups were less willing to negotiate. Participants noted that there was a need to create district-wide codes of conduct to support and give credibility to the school-based codes of conduct. They also noted the need to develop peace education/conflict resolution modules for community and schools.

A sample code of conduct was included in the Schools as Zones of Peace module as a starting point for negotiations. Many of the schools adopted all of the points in the sample code.

Sample school code of conduct²⁰

1. No weapons in the perimeter.
2. No political rallies or other activities which are not included in the teaching programme.
3. No arrest or abduction of any individual within the premises.
4. No harassment to children in and outside schools.
5. No interference with normal development of education activities. (Strikes, teacher harassment, attacks on schools.)
6. No use of school uniforms or premises in warfare.
7. Never consider school premises as possible target, no use of school as armed base, no use of school uniforms for camouflaging purposes.
8. We request all the parties, the security forces and the Maoists respect these rules to help us make this school a Zone of Peace.

20 UNICEF, "Schools as Zones of Peace Module, Quality Education Package," as cited in UNICEF Nepal, *Netherlands Funding Report: Education in Emergencies* (November 2007).

The same negotiation strategies were used to implement a Welcome to School Campaign in 2004 at the height of the insurgency. UNICEF initiated the programme, which the Ministry of Education took over, to raise enrolments of girls and marginalized groups in primary education. Despite the impact of the conflict, community-based organizations reached out to Maoists to either support the initiative or at least not stand in the way of the campaign. The Maoists were compelled to support the campaign since it actually mirrored their education agenda.²¹ Over 63,000 teachers were mobilized in the campaign, nearly 24,000 schools participated and over 500,000 additional children were enrolled.²²

Results and impact

While three districts were targeted in the UNICEF/World Education initiative, only Kavre and Accham districts implemented the programme. Kavre district reported successful negotiations with Maoists, army and other stakeholders in 39 schools in six targeted Village Development Committees (VDCs) declaring schools as zones of peace and completed codes of conduct. A code of conduct was also negotiated at the district level. Local monitoring teams were created and reports from five schools in the Kavre district showed that all political activities, including the use of schools for rallies, trainings and mass programmes were halted as a result of the code of conduct. All political slogans were erased from walls and school buildings, and there was a commitment by all parties to keep them off. At the VDC level the community successfully lobbied to place election booths at community buildings instead of the school.²³

In a parallel SZOP initiative by Save the Children US in Palpa, Baglung, Kailali and Mahottari districts during the same period, interviews with teachers, child club members and other community members showed that there was a sense of enhanced safety and security in school without external interference. According to an NGO partner in Baglung, SZOP made people feel more secure since: 'they knew there was a mechanism' to bring them hope. SZOP helped to reduce the atmosphere of fear surrounding schools. As a teacher in Baglung said: 'Since the declaration of SZOP, access of students was ensured as parents felt secure in sending their child to school. There are no violent activities in school now.'²⁴

Political graffiti was eliminated from walls and buildings through the posting of codes of conduct. Child club members in Baglung stated that: 'Once some people from political parties came to write slogans on the school wall, but when they saw the SZOP hoarding board they went away.' Speaking about the negotiation process, one community member commented: 'The Maoists at first were not happy with the SZOP campaign but the communities argued with them to allow us to work here. We renegotiated and were able to restart work as an NGO.'²⁵

One of the shortcomings of the pilot programme was the lack of systematic monitoring across schools and districts and the lack of coordination among the implementing organizations.

21 Ibid.

22 UNICEF Nepal, *Netherlands Funding Report: Education in Emergencies* (November 2007).

23 Bhushan Shrestha, "School as Zones of Peace Campaign, Kavre," (presentation, 2007).

24 Save the Children, *Rewrite the Future Global Evaluation: Nepal Midterm Country Report* (International Save the Children Alliance, 2009), 19.

25 Ibid., 12.

Monitoring was not completed in some communities due to the lack of security.²⁶ In fact the security issues finally made the negotiation process increasingly more challenging as the conflict and violence deepened.

■ Post-conflict Schools as Zones of Peace: 2007 to present

New unrest and targeting of schools

During the post-conflict period after the Peace Accord was signed in 2006, schools faced new threats due to continued civil unrest that affected access to education. The locus of conflict moved to the plains area of Nepal called the Terai, a swathe of land running from southeast to the southwest along the Indian border. The Madesi Forum and other political parties began agitating for a greater role in the political process, feeling marginalized by the negotiations between the Maoists and seven major political parties. Ethnic minorities in the region began airing grievances, many concerning education, including lack of scholarships for Dalit girls, lack of mother tongue books and teacher support for the Maithili community, politicized school management committees, weak school governance, lack of textbooks, and cancellation of important school leaving exams. In fact, weak school governance and the absence of school management committees in many schools made them more prone to political interference by the emerging political and rebel groups.²⁷

Schools in the Terai began to experience the impact of renewed strikes, political interference and violence. Conflict between ethnic groups also spilled over into schools. Human rights' groups reported that 30 per cent of all schools were forced to close due to security concerns during 2007.

In 2007 UNICEF conducted assessments of the impact in some of the most affected districts. In Saptari, schools were closed up to 10 days a month and only 13 out of 35 staff were able to remain in the District Education Office due to harassment and threats to staff and students because of political affiliation or ethnic group. One of the District Education Officers was kidnapped and the office closed, and his replacement was beaten in his office. Teachers were kidnapped and victims extorted, out of fear, many teachers requested transfers to other districts while others did not report to work.²⁸

In Sunsari the District Education Office was shut down first by the Maoist student wing and then by the Madesi Forum. The teachers' union and other civil society stakeholders attempted unsuccessfully to negotiate the reopening of schools and the District Education Office during a prolonged Madesi strike. Schools remained closed for three months. A UNICEF staff member

26 Shrestha, "School as Zones of Peace Campaign, Kavre".

27 World Education, *Final Report on Schools as Zones of Peace* (January 2009).

28 Govind Kumar Chhetry, "Assessment Form: UNICEF Schools as Zones of Peace Initiative," Saptari District, December 2007.

recommended that to be effective codes of conduct should be negotiated by mobilizing local activists from the same caste and ethnic background of the conflicting parties and involving them in monitoring and follow up.²⁹ This was undertaken as part of the reformulated SZOP programme. Similar challenges were reported in the district of Siraha. Even with attempts by the teachers' union and local NGOs at informal interactions with rebel groups and Terai parties, and an orientation held for all groups to advocate for schools as zones of peace, about 200 of 369 schools were still closed during major strikes.³⁰

Reformulated programme

The Schools as Zones of Peace programme was reformulated to respond to these post-conflict challenges. The new programme addressed the need for a robust national campaign to gain the commitments of government, political parties, agitating groups and other stakeholders to support schools as zones of peace in order to provide external support to local negotiations. Multiple agencies undertook new initiatives in the Terai. The Informal Sector Service Centre (INSEC) and the Nepal Red Cross Society focused efforts in several districts and sponsored public stakeholder meetings to gain support for SZOP. Save the Children also undertook similar efforts in multiple districts and coordinated efforts with other programmes.

UNICEF supported three organizations, CWIN, World Education and Partnership Nepal, in designing and implementing a reformulated programme, which targeted 9 of the most affected districts in the Terai. It consisted of three levels: 1) national and district advocacy and media campaigns; 2) negotiation of district level codes of conduct; and 3) negotiation of school codes of conduct with endorsement at village level.

A SZOP training manual was prepared to implement a cascade training model, bringing together NGO leaders from the participating districts to learn a range of content and skills, including: peace promotion and conflict transformation techniques, field coordination, meeting facilitation, participatory community mobilization, negotiation and consensus building, and community-based monitoring. These trainers then returned to their districts to train implementing NGOs in the same skills in order to implement the programme at the VDC and school levels.

National and district level advocacy and media campaigns

An ambitious advocacy campaign was implemented by CWIN which included 1) national and district level public hearings to gain public endorsement for SZOP codes of conduct at these levels; 2) an aggressive media campaign to raise public awareness and support for SZOP; and 3) a national children's hearing, resulting in a 12-point policy programme presented to the government.

29 Dovan Lawati, "Assessment Form: UNICEF Schools as Zones of Peace Initiative," Sunsari District, December 2007.

30 Uma Rai, "Assessment Form: UNICEF Schools as Zones of Peace Initiative," Siraha District, December 2007.

The national media campaign flooded the radio airways with jingles on schools as zones of peace and with 12 episodes of an SZOP programme on a popular FM station. It distributed 40,000 posters, brochures and stickers in four Terai languages in the targeted districts. The campaign broadcast national and district public hearings on SZOP to raise awareness and support for the campaign. The messages were:

- Children should be able to study freely and in a safe environment.
- School closures hamper children's right to education.
- Children do not want political parties to use them for their purposes.³¹

A national public hearing, televised nationally by Kantipur Television on schools as zones of peace was held in Kathmandu in June 2008. It succeeded in involving hundreds of people and key political leaders from the major parties and Terai groups, and heads of the Nepal Parents' Association and Teachers' Union. These leaders publicly signed on to a national code of conduct during the hearing.³²

Similar public hearings were held in each of the districts and similar commitments were made to codes of conduct at the district level. To generate a consensus and social pressure for compliance CWIN held public hearings in the Terai districts. Large numbers of people attended these hearings at which the issues causing interference and closure of schools were discussed. As leaders identified the actions and commitments needed, these were documented to create district level codes of conduct. Local media closely followed these hearings, which were broadcast on local radio and reported in the print media. The Dhanusha district hearings were also covered on national television. The main political parties, unions and other groups signed the codes of conduct. However, the biggest obstacle to achieving consensus on the codes of conduct was the lack of participation and endorsement by underground rebel and criminal groups.³³

CWIN organized a national children's consultation, also carried by Kantapur Television, in November of 2008, with 97 children representing all 75 districts of the country. Facilitated by the children themselves, the programme focused on schools as zones of peace, as well as other children's issues such as health, child labour, discrimination, child participation and child protection. The children prepared a 15-point appeal, with two points addressing the children's demands regarding children and schools as zones of peace:

- Ensure the social rehabilitation of the conflict- and violence-affected children through education, health and vocational skills respecting the spirit of 'Children as Zones of Peace'.
- Eliminate the violence prevailing in the schools and translate the spirit of Schools are Zones of Peace into practice. We demand not to close down the schools even during the strikes and not to use the students and teachers to fulfil the political interest.

31 Child Workers Nepal (CWIN), *Final Report on Schools as Zones of Peace* (Kathmandu, December 2008).

32 Ibid.

33 World Education, *Final Report on Schools as Zones of Peace*.

The appeal was presented to the President in his office on 24 November 2008. The President told the children: 'I will do what I can to address your concerns.'³⁴

Negotiating district codes of conduct

To develop district codes of conduct it was necessary to bring together many different political and ethnic factions. As a nationally recognized children's rights organization and as one of the founders of CZOP, CWIN had the credibility to convene these district level negotiations. From June to September of 2008, public hearings took place in all nine programme districts with the purpose of gaining consensus on and commitment to the codes of conduct.

The codes of conduct differed from district to district but broadly covered: 1) political activities and violence in and around schools; 2) social, cultural and religious activities that disturb school operations; 3) activities within the schools that create conflict or psychological stress for students and teachers and prevent the creation of child-friendly learning environments; and 4) strikes and extortion activities that disturb schools.

CWIN publicized detailed information on these meetings and the codes of conduct as well as video and television footage of the events. The following is an example of a code of conduct from Bara district.

Sample district code of conduct (Bara District)³⁵

1. Schools will not be used for armed conflict under any pretext.
2. No students and teachers will be abducted from schools and face no torture.
3. No armed or violent activities affecting children in and around school area.
4. No activities affecting children's education, health and putting children's lives at risk in schools, and children should be freed from any direct political activities.
5. Schools will not be closed for political activities, fulfilling any group's demands and not hamper children's education through strikes.
6. Education should be made compulsory, free and easily accessible.
7. Do not damage school building, assets and vehicles used by children in any pretext.
8. Start listening and respecting children's views and feelings and promote child participation in schools. There should be child-friendly, creative and informative activities for children in schools.
9. Any activities in the community should not hamper children's education and schools should not be closed.

The signatories of the district statement, similar to those of other districts, were 1) political parties, including: CPN-Maoist, Nepali Congress, CPN-UML, Terai Madhes Loktantrik Party,

³⁴ CWIN, *Final Report on Schools as Zones of Peace*.

³⁵ Ibid.

Madhesi Janadhikar Forum, Nepal Sadhbhawana Party (Aanandidevi), and the Sadhbhawana Party; and 2) government agencies, including: District Administration Office, District Education Office, District Development Office, and the District Child Welfare Board.³⁶

Negotiation of school codes of conduct

With the dramatic political changes during the post-peace accord period, the approach taken to negotiating codes of conduct at the school level was very different. When managing negotiations with rebels and the army during the insurgency, community facilitators used a bottom-up approach. NGO partners worked at the school level where rebel representatives were present though not formally identified and were prevailed upon to sign codes of conduct as individuals, not Maoist representatives. On the other hand, the army commanders publicly committed to respect school codes of conduct. At the district level, the negotiators did not try to get a formal signed code of conduct as the Maoists were an underground force and it was not prudent to have them sign a code of conduct at this level. This would have jeopardized the NGO negotiators' relationship with the government.

The experience with the Terai civil unrest was different. The local level cadres of the political groups had little autonomy and were directed by their district level organizations. When partners attempted to negotiate school level codes of conduct, local leaders would not sign until they had a clear commitment from the central and district levels. It was not until the national level Code of Conduct for SZOP was signed in Kathmandu that many district leaders agreed to sign district codes of conduct. Local leaders waited until both the national and district leaders had signed before they agreed to sign.³⁷

To develop school level codes of conduct, partner NGOs worked with school management committees (SMCs) and parent/teacher organizations (PTOs) to organize community meetings in a four-step process:

- 1) Identification of stakeholders and securing agreements to participate in the process;
- 2) Community analysis process to build a shared understanding of the issues at the school level;
- 3) Consensus building to achieve common ground on what is needed to guarantee access to schools based on the analysis;
- 4) Development and ratification of a code of conduct.³⁸

At the community meetings trained facilitators, who had to be viewed as neutral parties respected by the community, helped stakeholders identify the issues and problems related to threats to schools that might be included in codes of conduct. Common themes emerged including the causes of school closures including political activity, strikes and teacher absenteeism; disputes;

36 Ibid.

37 World Education, *Final Report on Schools as Zones of Peace*.

38 Ibid.

fear of armed groups. teacher harassment and extortion by armed groups; other issues internal to the school community, such as use of school property by elite families for social or economic purposes; unfair allocation of temporary teachers; issues of school governance and unfair practices of SMCs; and conflicts based on caste and ethnic issues.

Facilitators helped build consensus on the identification of issues and the points of the code of conduct that addressed the issues. Among the most common provisions in school level codes were:

- Target number of instructional days;
- Types of activities that are prohibited to guarantee access to schooling and safety of students and teachers;
- Types of prohibited political and other activities on school grounds;
- Principles of good governance to counter unfair practices that advantage groups or families over others;
- Mechanisms for gaining community support for enforcing Prohibitions.³⁹

Community facilitators gained agreement by all stakeholders, committed agreements to writing, secured signatures and developed action plans to ensure implementation.⁴⁰

Still, there were dozens of underground political/criminal armed groups who did not sign the codes of conduct. However, in the Terai many of the members of these groups were known and invited to meetings as members of the 'school community', just as Maoist participation had been sought during the insurgency. The Terai groups were encouraged to honour these codes of conduct. In this way, social pressure was applied even though they were not formal signatories.⁴¹

Public awareness and advocacy were necessary for the success of the local negotiation processes. To ensure that the codes of conduct were adhered to, CWIN and the local NGOs mobilized the media to provide extensive coverage to make the public aware of stakeholder commitments and to create accountability. FM radio was particularly supportive in Siraha and Sunsari districts. Hoarding boards were erected in public locations to create an awareness of the commitments made and generate social pressure for compliance.⁴²

Compliance monitoring and response mechanism

World Education, CWIN, Partnership Nepal and the NGO partners in communities came up with a process and recommendations for handling complaints about violations of the codes of conduct at both the school and district levels. The school level codes of conduct were to be enforced at the local level if the source of the violation was local. For example, if a political group

39 Ibid.

40 Ibid.

41 Ibid.

42 Ibid.

interfered in a school's management committee selection process or damaged the school, the school community could demand a resolution.⁴³

If the violation was caused by outsiders such as a political party calling a strike and closing schools, then the response to the violation was reported to an *ad hoc* district SZOP committee. Members, all signatories to the district code of conduct, such as child rights' organizations, political parties, and the teachers' union, were responsible for managing the violation.⁴⁴

The chart below sets out the key differences between the negotiation approaches of the insurgency and post-peace accord processes.

Comparison of negotiation processes during insurgency and post-peace accord		
Elements of process	Process during insurgency	Process post peace accord
Negotiations	Back door shuttle diplomacy	Transparent, open community meetings National and district level hearings and agreements
Stakeholders	Army, police, Maoists, political parties, school management committees, child protection committees	Terai parties, major political parties (including Maoists), SMCs, PTAs, teachers, children, child protection committees, community members, other Terai armed groups (some of which did not come to the table)
Facilitators	Trusted community members, mostly women	NGO leaders of same caste and ethnic group as agitating parties
Motivation of perpetrators to participate	Maoists wanted to win support of local communities for their ideology and education policies. Army wanted credibility in communities.	Local Terai party activists endorsed codes of conduct after endorsement of their national and district level leaders Some armed groups and gangs not motivated to participate
Codes of conduct	School level codes of conduct negotiated Grassroots process	National and district level codes of conduct endorsed through televised public process VDC and school level codes of conduct negotiated Top down process
Use of advocacy	Use of advocacy at district and national levels	Systematic advocacy at national, district and school level with massive media campaign National advocacy needed to get local parties to endorse
Monitoring	Local monitoring teams, no formal process, education journalists reported violations	Formal process with designated community and district level monitoring committees

43 Ibid.

44 Ibid.

Results and impact of reformulated programme

The SZOP efforts helped communities keep schools open in 2008 and helped insulate them from the ongoing violence. The UNICEF-funded SZOP programme succeeded in negotiating codes of conduct in nine districts, 113 village development committees and nearly 450 schools. Save the Children and its partners reached an additional 600 schools according to its estimates. All major political parties made a nationally televised public commitment to SZOP, which laid the groundwork for commitments at district and local levels. The principles of SZOP were disseminated widely throughout the country and the Terai region through a public awareness campaign on radio, television, print media and educational materials. These actions created an environment conducive to the implementation and compliance of codes of conduct in the Terai.⁴⁵

Those parties that signed the codes of conduct have, in general, met their commitments. In Dhanusha District, the Madeshi Forum exempted schools when calling a district strike. Some armed political groups were respectful of the codes of conduct and there are fewer reports of extortion and interference in several districts. More strike organizers exempted schools from closure during the programme period. One of the worst-affected schools in Siraha district reported that in 2007 it was open for only 40 days out of the 220 target instruction days. In 2008 the school and many others reported being able to stay open. Police personnel were moved out of one school in the district as a result of the SZOP programme and political armed groups moved their camps out of schools.⁴⁶

Another result was the improved school governance in many schools due to the community process required in the negotiation of codes of conduct. Schools without functioning school management committees were more vulnerable to political interference. In order to implement the process in these schools, SMCs needed to be supported and in some cases reconstituted. As a result of SZOP the schools reported improved transparency about finances and decision-making, a more proactive role in addressing problems and mobilizing resources, and improved school functioning and resolution of internal conflicts. Two schools resolved conflicts over teacher absenteeism and many reported reduced absenteeism of both students and teachers. Teachers and school management committees are more proactive in addressing discrimination between caste groups. There has also been a reduction in misuse of school grounds and buildings. Many schools have been successful in reducing inappropriate use of school property for political programmes, agricultural activities, animal slaughter and weddings.⁴⁷

The reformulated Schools as Zones of Peace programme was able to reach some of the most conflict-affected communities in Nepal's southern border. The process of negotiating codes of conduct helped schools strengthen school governance, community involvement and youth participation, as well as protect education from conflict and disruption.

Programme implementation was nevertheless challenging due to lack of security, intimidation by hostile armed groups, both criminal and political, and transportation difficulties during strikes.

45 CWIN, *Final Report on Schools as Zones of Peace*.

46 Raj Kumar Dhungana, email correspondence with the author, August 2009, referring to Save the Children, *Building Peace and Democracy through Education* (December 2008).

47 World Education, *Final Report on Schools as Zones of Peace*.

The scaling up of the programme also created staffing demands involving repeated visits to communities, follow up on commitments and monitoring. In addition, some of the armed groups did not participate in the negotiation process, and bringing them to the table required intervention beyond the scope of the programme. The Terai continues to be severely disrupted by violence and political issues compared to the rest of Nepal. If UNICEF, World Education, other implementing organizations and the government are to be successful in improving education in the Terai districts a sustained effort to address the issues emerging from the SZOP programme will be needed.⁴⁸

48 Ibid.

Chapter 15.

Protecting through curriculum: A call for collaboration

Margaret Sinclair

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The Governments of the States Parties to this Constitution, on behalf of their peoples declare: that since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed...¹

This chapter was prepared as a contribution to the UNESCO seminar on 'Protecting Education from Attack.'² Attacks on educational institutions, staff and students occur in many countries that face civil conflict and insecurity.³ Fear of attack as well as the economic collapse that accompanies conflict mean that some 40 million children miss out even on primary school in conflict-affected fragile states,⁴ in the very places where the 'defences of peace' need construction most urgently. Many fighters are children themselves, members of armed forces and rebel groups that commit atrocities such as killing and mutilation of civilians, widespread rape and attacks on schools and colleges.⁵

The UNESCO seminar covered a range of protection mechanisms, including practical guidance on preventive actions for schools and colleges facing armed conflict and insecurity; ways of strengthening monitoring, evaluation and accountability mechanisms for education violations;

1 United Nations Educational, Scientific and Cultural Organization (UNESCO), *The Constitution of UNESCO*, preamble (London, November 16, 1945).

2 Held in Paris September 28 to October 1, 2009.

3 Brendan O'Malley, *Education under Attack: A Global Study on Targeted Political and Military Violence Against Education Staff, Students, Teachers, Union and Government Officials, and Institutions* (Paris: UNESCO, 2007). See also, Brendan O'Malley, "Education under Attack 2010: A summary," in *Protecting Education from Attack: A State-of-the-Art Review* (Paris: UNESCO, 2010), 37-54.

4 Victoria Turrent, *Last in Line, Last in School 2009: Donor Trends in Meeting Education Needs in Countries Affected by Conflict and Emergencies* (London: International Save the Children Alliance, 2009), 18.

5 The number of child soldiers is unknown but is thought to run into the hundreds of thousands (Coalition to Stop the Use of Child Soldiers, *Child Soldier Newsletter* 11 (2004), as cited in United Nations Children's Fund (UNICEF), *State of the World's Children 2005: Childhood Under Threat* (New York: UNICEF, 2004), 41-44). The term is used to include children associated with fighting forces in various roles, from combat to acting as porters or being used as sex slaves (Coalition to Stop the Use of Child Soldiers, *Child Soldiers Global Report 2008* (London: Coalition to Stop the Use of Child Soldiers, 2008)).

and longer term possibilities for strengthening the legal basis of protection. The present chapter addresses one aspect of prevention in fragile or conflict-affected states: are there education interventions which can reduce the chances that school leavers will become active supporters of civil conflict and atrocities, including attacks on education?

In certain circumstances, the answer to this question is 'yes'. Education can be a contributory driver of conflict or a tool for conflict mitigation. Education should 'Do No Harm'⁶ yet *inequitable access to educational opportunity* as between different ethnic or other groups enhances tensions that can give rise to civil conflict. *Curricula and textbooks* that privilege certain ethnic groups can have the same effect.⁷ If armed conflict breaks out or recurs in a fragile state, it is likely that the lives of children and young people will be adversely affected, as victims or misguided perpetrators of attacks on education and on civilians in general. In divided societies, specific measures can, however, be taken on access to education and on curriculum that can make education more 'conflict-sensitive' and reduce its contribution to dangerous social tensions. More effective education with less drop-out may also help reduce the incidence of conflict: there is some tentative research evidence that success in schooling reduces the likelihood of armed conflict – as suggested by the finding that higher proportions of students in secondary education are associated with lower levels of state fragility.⁸

The present paper focuses specifically on renewal of curriculum and pedagogy as a tool for peace (including a peaceful environment for education itself, the subject of the seminar). This renewal can include both the removal of past bias and initiatives to improve pedagogy and enrich the curriculum with skills, values and concepts in the area of conflict resolution, human rights, humanitarian principles and responsible citizenship. Such initiatives can have a positive impact on students' attitudes and behaviour.⁹

Questions have been asked regarding the relevance of such changes at personal or individual level to conflict between ethnic or other groups.¹⁰ Many educators believe that school and adult education programmes on themes such as peace and human rights can indeed have a positive

6 This concept has been emphasized in the humanitarian context in Mary B. Anderson, *Do No Harm: How Aid Can Support Peace – or War* (Boulder: Lynne Rienner, 1999).

7 For indications and indicators of how education may increase or mitigate the risk of conflict see, for example, Kenneth Bush and Diana Saltarelli, eds., *The Two Faces of Education in Ethnic Conflict* (Florence: UNICEF Innocenti Research Centre, 2000); Alan Smith and Tony Vaux, *Education, Conflict and International Development* (London: Department for International Development, 2003); Marc Sommers, "It Always Rains in the Same Place First": *Geographic Favoritism in Rural Burundi*, Africa Program Issue Briefing 1 (Washington, DC: Woodrow Wilson International Center for Scholars, 2005); USAID, *Education and Fragility: An Assessment Tool* (Washington, DC: USAID, 2006); Bilal Barakat et al., *Desk Study: Education and Fragility* (Oxford, Conflict and Education Research Group, 2008); Yolande Miller-Grandvaux, "Education and Fragility: A New Framework," *Journal of Education for International Development* 4, no. 1 (April 2009); and Jacqueline Mosselson et al., "Education and Fragility: A Synthesis of the Literature," *Journal of Education for International Development* 4, no. 1 (April 2009).

8 See Barakat et al., *Desk Study: Education and Fragility*, 7-8, for this and related research.

9 See n. 35 and n. 38 below.

10 Marc Sommers, for example, raised this question, citing Jo Boyden's paper on education in armed conflict, which in turn cited psychologist Ed Cairns who felt that children might get confused between peace messages at school and conflict-supporting messages at home and that this renders the peace education ineffective. Another difficulty raised was that changes in inter-personal relations might have little effect on inter-group relations that underlie social tensions or civil conflict. See Marc Sommers, "Peace Education and Refugee Youth," in *Learning for a Future: Refugee Education in Developing Countries*, edited by Jeff Crisp, Christopher Talbot, and Daiana Cipollone (Geneva: UNHCR, 2001), 172-173; and Jo Boyden and Paul Ryder, *The Provision of Education to Children Affected by Armed Conflict* (Oxford: Refugee Studies Centre, 1996), 55-56. These issues are revisited later in the chapter. Clearly it is preferable to reach adult populations with the same messages addressed to children, where possible, but schooling alone (messages to students, teachers and school management groups) nevertheless provides a strong communication tool.

impact at societal level. We may support this belief through the hypotheses (a) that leaders need the support of their group members, even though the leaders may not be formally elected, and (b) that education which enhances the ability of the group members to critically assess who will lose or gain from proposed violence, and to evaluate whether leaders are acting in the wider interest, may act as a brake on recourse to violent conflict.¹¹

How can conflict-sensitive and peace-promoting education programmes specifically help protect schools and colleges from attack – the theme of this State-of-the-Art Review? At present there are no research-based answers to these questions, but the following hypotheses are compatible with current discourse among education and protection specialists. In the short term, education measures aimed at conflict mitigation have the potential for lessening anger towards schooling amongst young people, a phenomenon seen worldwide in attacks on schools by recent school leavers and discontented students.¹² This could lead to fewer youngsters joining fighting forces. Moreover, if young fighters feel less anger towards school and even have respect for schooling, they may spare the schools and focus their attacks elsewhere.¹³ In the medium-term, if schools in a certain marginalized area generate a less angry and aggressive set of school leavers, then that area may experience less violent incidents, meaning that schools would be safer and that students and teachers could go to school with less fear of attack on the way. In the medium to longer term, providing equitable access to effective, unbiased and peace-promoting education as part of a multi-sectoral approach to peace building, might contribute to improved social cohesion and security at national level.¹⁴ Reduced levels of civil conflict would typically mean less attacks on education, and other social services. Moreover, the actual content of education designed to promote respect for peace and human rights, and conveying knowledge of ethical and legal limits on permissible means of warfare, might help protect institutions catering to children's and adults' rights to education and other basic services.

The term 'curriculum' has a wide range of interpretations, and in this paper a broad interpretation is used – curriculum as the sum total of all the learning experiences that are intended and that happen within educational institutions. This includes the learning objectives, syllabi, teaching methods, instructional materials, methods of assessment, whole school policies, the 'hidden' curriculum (messages that students pick up from the school setting), the 'real' curriculum (what is

11 These hypotheses could help inform the design of monitoring and evaluation tools for such programmes of curriculum enrichment (see Margaret Sinclair et al., *Learning to Live Together: Design, Monitoring and Evaluation of Education for Life Skills, Citizenship, Peace and Human Rights* (Eschborn: GTZ, 2008)). Anderson, *Do No Harm* noted that most people caught in civil conflict soon regret the recourse to violence but by then the extremist leaders are entrenched; the challenge is to help more people foresee the negative consequences ahead of time and seek non-violent solutions.

12 The attacks on Columbine School in the US are the most famous, but there have been many others; see, for example, a database for the US which reported eight deaths by shooting, 25 non-death shooting incidents and various other violent incidents in the school year 2008/2009 (National School Safety and Security Services, "School-Related Deaths, School Shootings and School Violence Incidents, 2008-2009 School Year Incidents," http://www.schoolsecurity.org/trends/school_violence08-09.html (accessed on November 22, 2009)). See also the reference to such behaviour in Sierra Leone in the next section of this chapter.

13 One of the seminar conclusions was the need for research on the motives for attacks on education in various conflict zones.

14 In many rural areas of developing countries, schools are the most prominent building in a village, and liable to attack as a symbol of the government, or to use by military forces as barracks, storerooms etc which prevents their use for schooling and leads to degradation of the infrastructure.

actually learned in the classroom as distinct from what appears in official curriculum documents), and supplementary activities including sports and clubs.¹⁵

The first section of this paper outlines some ways in which curriculum can make school or college and the wider society an unsafe place to be. The second section reviews some innovative curricular approaches that could make school and society safer. The final section suggests some priorities for action.

■ How the curriculum can make education and society unsafe

In countries falling into armed conflict, the curriculum is often outdated and teaching styles are authoritarian. This curriculum content and pedagogy may leave young people prey to those who preach violence as a solution to all their ills. Young people may build up resentment against a system which has failed them and join armed groups. Neither rebels nor government soldiers may see harm in attacking schools or colleges, teachers or students, or other civilians, or in participating in rape as a tool of or reward for war. Such actions cause many students and teachers to absent themselves from school or college because of insecurity. Ways in which the content and process of schooling can make education and society unsafe include:

- (a) Stimulating conflict and voluntary recruitment into armed groups through ineffectual schooling;
- (b) Creating bias;
- (c) Glorifying war and failing to teach the international laws governing armed conflict, and skills for peace; and
- (d) Weak education in human rights and citizenship, and poor modelling of a human rights-based culture.

It is clear that weak education provision and authoritarian education styles alone do not give rise to armed conflict; many countries with such education systems are politically stable. However, inequitable access to biased education that glorifies combat can be one factor contributing to the downward spiral into conflict, for example, when society has ethnically- or religiously-linked access to economic resources and jobs. Likewise, the education reforms discussed in section 2 below cannot themselves bring peace, but can *help mitigate* tendencies to conflict and *contribute to* multi-sectoral peace building efforts.

15 Sobhi Tawil and Alexandra Harley, "Assessing Curriculum Policy for Social and Civic Reconstruction," in *Education, Conflict and Social Cohesion*, edited by Sobhi Tawil and Alexandra Harley (Geneva: UNESCO IBE, 2004), 1-36.

(a) Stimulating unrest and voluntary recruitment into armed groups through ineffectual schooling

In many developing countries, children are taught by rote learning techniques in large classes with few reading or writing materials. Children of illiterate parents often fail to gain the basic skills of literacy and numeracy, may be treated harshly at school and eventually give up. In many places, the higher levels of schooling are also ineffectual, and many students who cannot afford private tuition fail their examinations and drop out, feeling themselves to be failures. (Others drop out due to inability to pay their fees, gender-based discrimination, etc., but this is not the topic of the present paper.) Thus inadequate teaching and learning methods, curriculum content and resources lead to unemployed young people feeling frustrated as they face a bleak future, while peers with better educational qualifications may enjoy salaried employment. Frustrated youth may be roused to violent behaviour against perceived enemies when disputes arise.¹⁶

Where an actual armed conflict is in process, these young people are prime targets for recruitment into armed forces, propelled also by economic insecurity.¹⁷ With little education beyond some rote learning, they can be ready pupils for insurrectionist rhetoric and may accept the rationale for mutilation, rape and killing as a way of life. They may blame the school system for their plight and take revenge. Young rebels in Sierra Leone targeted schools for destruction, and in some instances attacked teachers known for their cruel punishments:

The education system clearly also fed into the conflict. Significantly, educational establishments, including schools and colleges, were specifically targeted during the war. Some, like Njala University College, were attacked repeatedly... Hated teachers were sometimes targeted in rebel attacks.¹⁸

Every time plans were made to re-open the college [Njala University College], rebels re-visited and caused further destruction. ...The destruction which had been done to Bunumbu Teachers' College was so complete that observers remarked that: 'Whoever did this, wanted to make sure that nothing called education could ever take place here again'.¹⁹

Cream Wright, a senior educator from Sierra Leone, saw 'deep resentment of the elitist philosophy of education' as contributing to conflict and a need for changed approaches to access and curriculum:

the circumstances of civil war gave many young people a new sense of worth for the very first time in their lives. The power behind a gun has meant that many young people who had been confined to the fringes of society were now thrust into centre stage as rebel fighters or new recruits into the government army. [...] There is also a case for

16 An example is the 2008 post-election inter-ethnic violence in Kenya, which *inter alia* disrupted schooling directly and through population displacement.

17 Rachel Brett and Iris Specht, *Young Soldiers: Why They Choose To Fight* (Geneva and Boulder: ILO and Lynne Rienner, 2004).

18 David Keane, *Conflict and Collusion in Sierra Leone* (Oxford: James Currey, 2005), 70-72.

19 Cream Wright, "Reflections on Sierra Leone: A Case Study," in *Educational Destruction and Reconstruction in Disrupted Societies: Final Report and Case Studies of the Workshop, 15-16 May 1997*, edited by Sobhi Tawil (Geneva: UNESCO IBE, 1997), 25.

re-examining what education stands for and how it can be more inclusive in terms of recognizing and rewarding a wider range of abilities and talents for nation-building. [...] The challenge for education is how to infuse appropriate values and attitudes into the curriculum in order to promote a caring society.²⁰

(b) Creating bias

There are many countries with unstable demographics, having ethnic or religious groups who feel marginalized and are at risk of sparking armed conflict on the grounds of discrimination or past grievances. School curricula may support this discrimination, as happened in Rwanda prior to the 1994 genocide.²¹ Textbooks may show particular ethnic or religious groups as inferior, and may also ignore or downplay the role of women.²² Likewise teachers may reflect wider societal biases and their own education experiences, leading them to treat certain groups of students as inferior, discriminating between them on the basis of ethnicity, religious affiliation or gender; for example, by ignoring certain students during lessons or abusing them. Where societal tensions run deep, such bias may help lay the foundation for future conflict and for atrocities during conflict against those seen as inferior, as claiming superiority or as historical enemies.²³

(c) Glorifying war and failing to teach the international laws governing armed conflict, and skills for peace

Many textbooks celebrate and glorify battles won, while showing the enemy in a bad light rather than as fellow human beings. Textbooks fail to describe the starvation, disease, displacement and general suffering of civilians during warfare, or the sufferings of the wounded. There is negligible coverage of the long history of efforts to minimize suffering through international laws placing limits on the actions permitted during armed conflict, culminating in the Geneva Conventions and other international humanitarian law. Nor are history's peacemakers and the skills for conflict resolution often built into the curriculum.²⁴ In some situations, schools organized, supported or influenced by one party to an armed conflict may 'groom' students for insurrection through religious or political indoctrination. Schools can come under pressure to adjust their curriculum to suit the teachings of rebel groups or of government forces that are battling the rebels. This can

20 *Ibid.*, 26-28.

21 Anna Obura, *Never Again: Educational Reconstruction in Rwanda* (Paris: UNESCO-IIEP, 2003); John Rutayisire, John Kabano, and Jolly Rubagiza, "Redefining Rwanda's Future: The Role of Curriculum in Social Reconstruction," in *Education, Conflict and Social Cohesion*, edited by Sobhi Tawil and Alexandra Harley (Geneva: UNESCO IBE, 2004).

22 Vincent Greaney, *Textbooks, Respect for Diversity and Social Cohesion* (Washington, DC: World Bank, 2005).

23 Post-conflict Bosnia and Herzegovina provides an example of bias in textbooks, with the separate Serbian, Croat and Bosniak streams of schooling providing history education permeated by 'us-them' terminology, 'propagandistic materials, stereotypes and nationalistic orientation' Pilvi Torsti, "Segregated Education and Texts: A Challenge to Peace in Bosnia and Herzegovina," *International Journal on World Peace* 26, no. 2 (2009), 68; and Philip Stabback, "Curriculum Development, Diversity and Division in Bosnia and Herzegovina," in *Education, Conflict and Social Cohesion*, edited by Sobhi Tawil and Alexandra Harley (Geneva: UNESCO IBE, 2004), 37-84.

24 Lynn Davies, *Education and Conflict: Complexity and Chaos* (London: Routledge Falmer, 2004).

put rural schools in a very difficult position, if both parties are putting pressure on them (as in Nepal in recent years²⁵), giving rise to a real fear of attack from both sides.

(d) Weak education in human rights and citizenship and poor modelling of human rights

National curricula often have narrow civic education elements or indeed no citizenship or human rights education at all, nor education in international humanitarian principles and law. Schools may not model democratic and participative approaches to governance but rely on corporal punishment and authoritarian approaches to school organization. Teachers may violate human rights with impunity (sexual harassment, taking bribes, discrimination, excessive corporal punishment) – part of the ‘hidden curriculum’ in many school settings today. Even without these direct human rights violations, schools may fail to model a positive human rights culture, with minimal preparation for responsible citizenship. In these circumstances, if violence occurs, fighters will not consider the human right of access to education, and may instead attack schools as representative of a hated national government or use them for military purposes.

■ Building protection through curriculum renewal – it can be done

This section of the paper gives examples of efforts to change the content and process of schooling so that it meets basic standards, promotes international human rights and humanitarian standards and helps lay the foundations for peaceful citizenship and respect for human dignity, including the right to safe access to quality education.

Effective teaching and learning processes, positive discipline and participative school processes

As noted earlier, conventional teaching and learning processes in many developing country situations leave much to be desired in terms of gaining effective skills for literacy, numeracy and comprehension, as well as other learning objectives, with possibly destabilizing consequences. An important step forward is to introduce independent testing of literacy and numeracy acquisition through sample surveys, which can provide feedback on the adequacy or otherwise of educational materials and teaching methods. The international efforts on Early Grades Reading Assessment

25 See, for example, Melinda Smith, “Schools as Zones of Peace: Nepal case study of access to education during armed conflict and civil unrest,” in *Protecting Education from Attack: A State-of-the-Art Review* (Paris: UNESCO, 2010), 261-278.

(EGRA) and Early Grades Mathematics Assessment (EGMA) are opening up the territory.²⁶ Collaboration between agencies with specialist capacity and field organizations, perhaps through UNESCO for governments and through NGO coalitions, could move this forward. Interested countries could share experiences in seeking to meet the minimum requirements for effective learning – perhaps through trials of a new generation of lesson materials and a new focus in teacher training.

There have been many attempts in developing countries to train teachers in modern classroom approaches such as active learning and group work. They have often had limited impact due to a culture requiring silence in the presence of adults, the examination focus of parents and students, and the lack of resources (books and other reference materials) for teachers and students. Some teachers are responsive but there is often a lack of reinforcement training and ministry support that would embed these methods. An intermediate level of teaching methodology is often needed, which could be practicable in the prevailing circumstances. There could be a focus, for example, on skill acquisition and on comprehension – especially critical where the language of instruction is not the mother tongue. In practising the effective teaching of comprehension of ordinary school subjects, the teacher can also develop the skills for facilitating classroom discussion, crucial for education on more sensitive topics such as citizenship and gender issues. At the same time, there can be a move towards ‘child-friendly’ and ‘rights-respecting’ schools, including less reliance on corporal punishment and similar harsh punishments.²⁷ This requires teacher training in practical techniques of ‘positive discipline’, through encouragement and a focus on constructive activities.²⁸

26 The EGRA and EGMA tools originated in psychological and reading research in the USA and other affluent societies where children have a lot of stimulation from toys, verbal interaction, television, etc., from early childhood. They have been trialled in about 20 countries and show that in developing countries, third grade students studying in English (not their mother tongue) often read with only ‘about 10 to 20 correct words per minute, with virtually no comprehension in many countries.’ See Amber Gove, “The Early Grade Reading Assessment,” in International Reading Association, *Beyond Access: Effective Reading for All* (Washington, DC: International Reading Association, 2009), 13-14; and Research Triangle Institute (RTI) International, *Early Grades Reading Assessment (EGRA) Toolkit* (Research Triangle Park, NC and Washington, DC: RTI International and USAID/World Bank, 2009). The three-second reaction time used in the test may not be applicable in rural developing countries especially for crisis-affected children – research is needed on this. Liberia is experimenting (using control groups) with a six-month (25 study weeks) teaching model based on the EGRA phonics-based approach (see RTI International, *Early Grade Reading Assessment (EGRA) Plus: Liberia* (Research Triangle Park, NC: RTI International, 2009)). This timeframe may be ambitious for the difficult conditions in under-resourced post-conflict settings.

27 UNICEF, *Child-Friendly Schools Manual* (New York: UNICEF, 2009). There have been many initiatives to improve the effectiveness of teacher training in developing countries, but they tend not to be in the public arena, in terms of content or evaluation studies. The ‘healing classrooms’ approach developed by the International Rescue Committee (see Rebecca Winthrop and Jackie Kirk, “Teacher Development and Student Well-Being: IRC’s Healing Classrooms Initiative,” *Forced Migration Review* 22 (2005), 18-21) represents a step towards adapting in-service teacher training to take account of the psychosocial needs of students and teachers in crisis-affected populations, and *Associazione Volontari per il Servizio Internazionale* (Association of Volunteers in International Service) (AVSI) has likewise worked on the psychosocial dimension of education for those displaced by conflict (see Lucia Castelli et al., *Psychosocial Support for War-Affected Children in Northern Uganda: Lessons Learned* (Kampala: AVSI, 2005)). An inter-agency effort in this regard would be most useful, especially if it could link the academic worlds of teacher education, pedagogy and meeting psychosocial needs of those affected by conflict.

28 There is growing advocacy for an explicitly ‘rights-based’ approach, involving not only formal curriculum, but other features of the classroom and school environments affecting the human dignity of all members of the school community. The methodologies of learning, relationships among all school members, and decision-making processes and governance, can be analysed through a human rights lens – and in terms of building skills for peace.

The teacher training curriculum needs to incorporate responses to conflict and other contemporary crises. As an example, the 'emerging issues' module developed to enrich teacher training in Sierra Leone tackles pedagogical as well as thematic issues arising in a conflict-affected society. This additional course unit complements rather than replaces existing courses of pre-service and in-service training.²⁹

These approaches can help avoid the situation where ineffectual and harsh schooling is a reason for becoming a child soldier or may provoke attacks on schools. They can lay the foundation for teaching and learning the subject-matter relating to humanitarian limits on behaviour in time of war and building the 'defences of peace.'

Teaching the principles underlying international humanitarian law

It may be suggested that international humanitarian law is too complex for primary school students and teachers to follow.³⁰ Fundamental principles such as respecting the right to life and human dignity of non-combatants can be explored with students of any age or level of education, however, if teachers have adequate training and support materials.

Since the beginning of this century, the ICRC³¹ has developed a course for young people aged 14 and above, whether in secondary school or youth groups, called 'Exploring Humanitarian Law'.³² The ICRC has worked with Education Ministries in many countries to adapt the materials to local needs, train teachers and teacher trainers, and introduce the materials in schools, at least on a pilot basis. The course comprises five modules which can be taught as a separate course unit or included within school subjects. They comprise:

- The humanitarian perspective – responding to the life-threatening needs of strangers
- Limits in armed conflict – rules for protecting life and dignity during armed conflict

29 The course materials are being made available to international educators by the Sierra Leone Ministry of Education (MoE) through UNICEF (MoE and UNICEF staff, personal communication with the author). For an outline of course themes, see Pamela Baxter and Lynne Bethke, *Alternative Education: Filling the Gap in Emergency and Post-Conflict Situations* (Paris: UNESCO-IIEP, 2009), 191-192.

30 The Fourth Geneva Convention requires states 'in time of peace as in time of war' to 'disseminate the text of the present Convention as widely as possible in their respective countries, and in particular to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population' International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 75 UNTS 287 (August 12, 1949), art. 144. While the intended interpretation of the requirement for 'civil instruction' might be debated, the legal principle of interpreting international treaties according to the plain language meaning of the words, suggests that states should be disseminating humanitarian law through national schools, since these constitute the principal outreach mechanism of the state for purposes of national instruction. If this education conveys the message that civilians, civilian objects and systems of importance to the civilian population must be protected, the scene is set for protection of education systems, students and personnel.

31 The Geneva-based International Committee of the Red Cross (ICRC), which with the national societies comprises the International Red Cross and Red Crescent Movement.

32 See ICRC, *Exploring Humanitarian Law: Education Modules for Young People* (Geneva: ICRC, 2001), <http://www.icrc.org>, available on a 'virtual campus'.

- The law in action – real life situations and humanitarian law
- Dealing with violations – judicial and non-judicial options
- Responding to the consequences of armed conflict – devastation and humanitarian response

The focus of the materials is not directly on the protection of education, but education is included in the true stories around which the course is structured. 'Alone on the bench' tells how Elizabeth Eckford was nearly lynched for attempting to enter the segregated secondary school in Arkansas, USA, to which she and eight others were being admitted in 1957, and how a bystander helped her. The section on child soldiers includes discussion on the age of recruitment. Most importantly, the course uses real life examples to introduce the 'principle of distinction' (not attacking civilians or civilian objects, such as schools), of humane treatment of non-combatants, of limits on weapons and tactics, and of specific protection of particular groups of people such as children under 15 years, women and medical personnel. More examples could be added relating specifically to protecting education from attack, using these underlying principles. This would also meet the requirement of being relevant to students, since they are themselves situated within an education process.

Since EHL has been mainly an initiative of ICRC and national governments willing and able to promote this innovation, it has been under-represented in the work of UN agencies and NGOs responding to situations of armed conflict and insecurity. Moreover, these agencies have often focused on primary schools, while current EHL materials are designed for secondary schools and require teachers with a good educational background and participative teaching skills. There are institutional gaps here which need to be filled, on the basis of inter-agency collaboration.³³

Teaching skills and values for conflict resolution, peace and social cohesion

The International Save the Children Alliance has conducted research in recent years regarding the contribution of education to peace-building; leading to their recommendations that the content of schooling should be relevant and appropriate, avoiding biases in presentation that may have contributed to conflict, and developing psychosocial, conflict resolution and other material supportive of healing and constructive action.³⁴

33 For a guide to teaching about crimes of war, see also the Human Rights Education Associates website, <http://www.hrea.org/crimesofwar/>.

34 See Joanna Wedge, *Where Peace Begins: Education's Role in Conflict Prevention and Peacebuilding* (London: International Save the Children Alliance, 2008); and Kendra Dupuy, *Education for Peace: Building Peace and Transforming Armed Conflict Through Education Systems* (Oslo: International Peace Research Institute, 2008). The Alliance framework requires education that is inclusive and accessible; safe and protective; relevant and appropriate; and accountable (through participative and democratic processes within the classroom, school, school management committee, etc.). The Alliance also advocates for the inclusion of education in peace processes.

There are many programmes that teach skills for conflict reduction and peer mediation or 'peace education', and evaluation typically shows positive outcomes.³⁵ Implementation has been less frequent in developing country situations, though many post-conflict programmes mention peace education in a general way.³⁶ Conflict-affected populations have shown receptivity to effective programmes. The Peace Education Programme endorsed by the Inter-Agency Network for Education in Emergencies (INEE) and similar programmes have been implemented or adapted in refugee, internal displacement and reconstruction situations, in East Africa, West Africa and elsewhere.³⁷ The

- 35 See, for example, Baruch Nevo and Iris Brem, "Peace Education Programmes and the Evaluation of Their Effectiveness," in *Peace Education Around the World: The Concept, the Practice, the Research*, edited by Gavriel Salomon and Baruch Nevo (Mahwah, NJ: Lawrence Erlbaum Associates, 2002), 271-282; Tricia Jones, "Conflict Resolution Education: The Field, the Findings, and the Future," *Conflict Resolution Quarterly* 22, no. 1-2 (2004), 233-267; Tricia Jones, "Does CRE/SEL/PE Make a Difference?," Annotated Bibliography (presentation, *Western European Conference on the Role of NGOs and Civil Society in the Prevention of Armed Conflict*, Dublin, March 31-April 2, 2004); Carolyne Ashton, "Using Theory of Change to Enhance Peace Education Evaluation," *Conflict Resolution Quarterly* 25, no. 1 (2007), 39-53; Carolyne Ashton, *Identifying Theories of Change in the Design and Implementation of Three UNICEF Peace Education Programs* (PhD diss., George Mason University, 2007); and Wendy Garrard and Mark Lipsey, "Conflict Resolution and Antisocial Behavior in US Schools: A Meta-Analysis," *Conflict Resolution Quarterly* 25, no. 1 (2007), 9-38. This need not be at the expense of school performance: see, for example, Joseph E. Zins et al., "The Scientific Base Linking Social and Emotional Learning to School Success," in *Building Academic Success on Social and Emotional Learning: What Does the Research Say?*, edited by Joseph E. Zins, Roger P. Weissberg, Margaret C. Wang, and Herber J. Walberg (New York: Teachers College Press, 2004). See also Mieke T.A. Lopes Cardozo, "Sri Lanka: In Peace or in Pieces? A Critical Approach to Peace Education in Sri Lanka," *Research in Comparative and International Education* 3, no. 1 (2008), 19-35; Mieke T.A. Lopes Cardozo and Anika May, "Teaching for Peace – Overcoming Division? Peace Education in Reconciliation Processes in Sri Lanka and Uganda," in *Opportunities for Change: Education Innovation and Reform During and After Conflict*, edited by Susan Nicolai (Paris: UNESCO-IIEP, 2009), 210-217.
- 36 A World Bank review of its programmes including 12 country studies noted that several 'contained references to peace education programmes' but that there were few evaluations (see World Bank, *Reshaping the Future: Education and Post-Conflict Reconstruction* (Washington, DC: World Bank, 2005), 60). In at least one instance, an ambitious beginning led to weak impact due to lack of the needed teacher training and other follow-up activities. Pamela Baxter has observed that sometimes, 'The records say that every child receives peace education every day as it is fully integrated into all other subject areas – but if you monitor the teaching there is no evidence of the teaching and absolutely no evidence of learning. ... There is no real programme being implemented.' Pamela Baxter, "A Decade of Lessons Learned in Peace Education Programmes," (Paper presentation, National Conference on Peacebuilding, Katmandu, 2007), 14.
- 37 See UNESCO/United Nations Refugee Agency (UNHCR)/Inter-Agency Network for Education in Emergencies (INEE), *Inter-Agency Peace Education Programme: Skills for Constructive Living* (Paris: UNESCO, 2005), <http://www.ineesite.org>, for an overview and complete set of manuals; and Pamela Baxter and Victor Ikobwa, "Peace Education Programmes: Why and How?" *Forced Migration Review* 22 (2005), 28-29, by the authors who developed the programme, initially for UNHCR. The INEE materials and approach have been used (with support from UNICEF, UNESCO and/or UNHCR) as a resource for developing national programmes of peace education in Kenya especially for areas affected by post-election violence (see Ministry of Education (MoE) Kenya, *Peace Education Programme* (Nairobi: Kenya Curriculum Development Centre, MoE, 2008); Baxter and Bethke, *Alternative Education*, 124-126); Ministry of Education (MoE) Liberia, *Citizenship Education Resource Manual* (Monrovia, MoE, 2007) for post-conflict Liberia; Ministry of Education (MoE) Sierra Leone, *Teacher Education Programme: Emerging Issues* (Freetown: MoE, 2008) for in-service, pre-service and distance learning packages; Baxter and Bethke, *Alternative Education*, 118-124; Ministry of Education (MNE) Madagascar, *Peace Education Package* (Antananarivo: MNE, 2009); and in Burundi, 'Responsible Citizenship' pilot programme, including peace, human rights and human values, being developed in 2009 by the Ministry of Education in conjunction with the Refugee Education Trust (Nicolas Servas, personal communication with the author). An NGO programme based on the materials has been used with civic education teachers in Timor-Leste (see Lydia Allen et al., *The Peace Education Program Evaluation, A Study Conducted by a Team of Students at the School of International and Public Affairs* (New York: Columbia University, 2009), 12-14). UNICEF and Save the Children are working with the Ministry of Education in Nepal to develop peace education elements for each grade of primary and secondary schooling (Melinda Smith, personal communication with the author); see also Raj Kumar Dhunghana, *A Report on Peace, Human Rights and Civic Education Acceleration Workshop, 20-25 July 2009* (Kathmandu, Save the Children, 2009); and Baxter and Bethke, *Alternative Education*, 109-113). Peace education has been integrated in national curriculum in the Solomon Islands, with support from UNICEF (Melinda Smith and Carolyne Ashton, personal communications with the author). For comparative analyses, see Bill Lowry, Allen Harder, and Vachel Miller, *And the Children Shall Lead Them: An NGO Journey into Peace Education* (Monrovia, CA: World Vision International, 2005); and Margaret Sinclair, *Learning to Live Together: Building Skills, Values and Attitudes for the Twenty-First Century* (Geneva: UNESCO IBE, 2004).

INEE programme develops skills such as inclusion, two-way communication, unbiased perception, cooperation, appropriate assertiveness, problem solving, negotiation and mediation, based on values of empathy, peace and human rights, using a cyclic curriculum approach. Evaluations show such programmes decrease conflict within school and enhance pro-social activities: in one instance, young refugees who had completed INEE peace education courses in Kenya refused their elders' request to attack members of each others' ethnic group, while in Aceh, students from an Islamic peace education course de-escalated incipient physical conflicts in their own school and with another school.³⁸

In Sri Lanka, Education Ministry initiatives to introduce education for peace, supported in recent years by UNICEF, UNESCO, GTZ³⁹ and others, culminated in the development of a ten-point national policy on education for peace and social cohesion.⁴⁰ The Education Ministry now has a Unit for Social Cohesion and Peace, headed by an expert from a minority group, with field Peace Education Coordinators to promote implementation. The national policy includes strengthening the Social Cohesion and Peace Education Unit in the Education Ministry including provincial outreach; monitoring and research to strengthen relevant portions of the curricula and textbooks for Life Competencies and Citizenship (grades 6-9) and Citizenship Education and Governance (grades 10-11); development of related teacher education materials; related co-curricular activities; second national language policy; school culture and ethos; integration and twinning of schools; creation of a research network and of a monitoring and evaluation group.

Teaching the principles of human rights

Other educators have focused on education for human rights, incorporating some of the elements noted under peace education together with the historical development and application of human rights discourse and instruments. The UN Decade for Human Rights Education (1995-2004) has been followed by the World Programme for Human Rights Education (2005-ongoing), which in Phase One has focused on introduction of human rights education in schools. A draft UN declaration on human rights education is currently in preparation.⁴¹

Human rights education is intended to develop a range of competencies, linking knowledge and understanding, values and attitudes, skills and behaviours. At school level it is not intended to focus on international human rights standards *per se* but to help students examine their own life experiences through a human rights normative framework. As with peace education, the objectives

38 See Anna Obura, *UNHCR Peace Education Programme: Evaluation Report* (Geneva: UNHCR, 2002); and Carolyne Ashton, *Evaluation Report: Program Pedidikan Damai* (Jakarta: UNICEF, 2002). See also, Victor Ikobwa, Roxanne Schares, and Elias Omondi, *Evaluation of JRS Peace Education Program in Uganda and South Sudan* (Nairobi: Jesuit Refugee Service, 2005); Friederike Feuchte and Andreas Beelmann, *Getting Ready for a Future Without War: Implementation of a Peace Education Programme with Liberian Refugees* (Thesis, University of Jena, Germany, n.d.).

39 *Deutsche Gesellschaft für Technische Zusammenarbeit* (German Agency for Technical Cooperation)(GTZ).

40 Ministry of Education (MoE) Sri Lanka, Social Cohesion and Peace Education Unit (SCPEU), *National Policy and a Comprehensive Framework of Actions on Education for Social Cohesion and Peace* (Colombo: MoE SCPEU, 2008). It is difficult to locate other comprehensive policy documents covering education for peace and social cohesion adopted as official policy (Lynn Davies, personal communication with the author).

41 Preparatory meetings were held in July 2009 and consultations continue (United Nations Human Rights Council (UNHRC), *Report of the Advisory Committee on its Third Session, Geneva, 3-7 August 2009, A/HRC/AC/3/2* (Geneva: UNHRC, 2009).

of developing values and attitudes that have behavioural impact mean that the methodologies and examples need careful selection. Rote learning methods and concentration on content knowledge are not conducive to internalizing the principles of human rights, peace and non-discrimination.

Databases on human rights education are maintained by the OHCHR and the HREA⁴², and it is clear that there have been significant initiatives in human rights education in many countries, though often led by NGOs rather than government.⁴³ At school level, the emphasis is often on the shared responsibilities that we all have in ensuring each others' rights, including the right to education. However, international human rights treaties are basically guidelines for government action and tools for holding governments to account. This makes the term 'human rights education' sensitive in some settings, in which case the concept of 'citizenship education' may be more acceptable.

In addition to working with governments in revising or developing human rights-oriented curriculum and teacher training, human rights educators have sometimes taken a lead in auditing textbooks in terms of their compatibility with human rights treaties endorsed by government, and in assisting governments in developing more appropriate approaches. HREA conducted this exercise to support textbook revision in Morocco and a similar exercise was conducted in Turkey.⁴⁴ Sri Lanka constituted a series of respect-for-diversity review panels to identify bias or other sensitive issues in national textbooks.⁴⁵

International human rights treaties apply during peace and war.⁴⁶ It may be hypothesised that students, who are aware of these treaties and international humanitarian law, and their underlying principles, may be less likely to commit rape or other atrocities or to attack schools.

Teaching the principles of local, national and global citizenship

There are many reasons why educators hesitate to teach education for peace or human rights – in some settings, these terms can be controversial or seem to require specialist inputs that may not be readily available. 'Education for democracy' can be more acceptable, but 'democracy' may be seen as a loaded term in some settings. However, these hesitations do not apply to the same extent to the label of 'education for citizenship', a term which can be accepted by people of many political persuasions (and is therefore also less likely to be vulnerable to changes in government).

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- 42 United Nations Office of the High Commissioner for Human Rights (OHCHR); and Human Rights Education Associates (HREA), the leading human rights education advocacy group, <http://www.hrea.org>.
- 43 See Felisa Tibbitts and William Fernekes, "Human Rights Education," in *Teaching about Social Issues in the 20th and 21st Centuries: Innovative Approaches, Programs, Strategies*, edited by Samuel Totten and Jon Pederson (Charlotte, NC: Information Age Publishing, forthcoming).
- 44 Sinclair et al., *Learning to Live Together*, 62-64.
- 45 World Bank, *Reshaping the Future*, 53.
- 46 Governments' limitation of human rights entitlements (such as the right to education) during emergencies must be minimized to the extent possible under the prevailing circumstances. For a discussion of the relationship between human rights and humanitarian law, see the legal papers in the current volume, and, for example, Louise Doswald-Beck and Sylvain Vité, "International Humanitarian Law and Human Rights Law," *International Review of the Red Cross* 293 (1993), 94-110; and Cordula Droegge, "The Interplay Between International Humanitarian Law and International Human Rights Law in Situations of Armed Conflict," *Israel Law Review* 40 (2007), 310-355.

Education for citizenship in the contemporary sense includes developing knowledge, skills and attitudes for participation in society, and development of a sense of local, national and global identity.⁴⁷ An example is the 'Local and Global Citizenship' programme developed in Northern Ireland, which centres on issues of identity and diversity and how the Protestant and Catholic communities in Northern Ireland could live together in peace and prosperity in the future.⁴⁸

Citizenship teaching is more effective when classroom lessons are supported by student responsibilities in the classroom, school and community. This may entail school councils and service learning. Ideally there is a whole-school policy of participation, inclusiveness and community service. The latter can draw upon the knowledge and resourcefulness of the students, for example in helping bring marginalized children into school. Current trends in disaster risk reduction include a role for students in preparing local maps and contributing to ideas for prevention and response in the case of natural disasters. In times of violence and insecurity, older students could likewise help with prevention and preparedness planning in terms of security in school or college and regarding transit to and from the institution.

Education for global citizenship can easily embrace not only the development agenda and emergency response but also the rules of war. Not all nations may expect to be involved in armed conflict but many provide or fund peacekeepers or are otherwise involved in issues of armed conflict.

Developing a harmonized curriculum framework and resources for 'learning to live together', integrating respect for the principles of human rights and humanitarian law, and skills for peaceful citizenship

The challenge of conflict was noted in the Delors Report *Learning – the treasure within*, which identified four pillars of education for the twenty-first century: learning to learn, learning to do, learning to be and *learning to live together*.⁴⁹ 'Learning to live together' is a useful umbrella title for

47 See, for example, Cristian Cox, "The Experience of Chile," in *Education for Citizenship and Democracy in a Globalised World: A Comparative Perspective*, edited by Viola Espinola (Washington, DC: Inter-American Development Bank, 2005), 81-84. For an overview, see the annex on citizenship education in Sinclair et al., *Learning to Live Together*, 124-130.

48 See Michael Arlow, "Citizenship Education in a Divided Society: The Case of Northern Ireland," in *Education, Conflict and Social Cohesion*, edited by Sobhi Tawil and Alexandra Harley (Geneva: UNESCO IBE, 2004), 255-314. The key citizenship themes, a requirement for junior secondary education, are: diversity and inclusion; human rights and social responsibility; equality and social justice; democracy and active participation (see Northern Ireland Curriculum, "Learning for Life and Work: Local and Global Citizenship," matrix, http://www.nicurriculum.org.uk/key_stage_3/areas_of_learning/learning_for_life_and_work/local_and_global_citizenship.asp (accessed August 5, 2009).

49 The Northern Ireland Bill of Rights, which is viewed as a human rights document, is considered central to this citizenship approach and the goals of reconciliation (Felisa Tibbitts, personal communication with the author). UNESCO Task Force on Education for the Twenty-First Century, *Learning: The Treasure Within* (Paris: UNESCO, 1996).

curriculum work relating to peace, human rights, humanitarian law and active citizenship.⁵⁰ UNESCO's International Bureau of Education (IBE) in collaboration with GTZ took the lead in an inter-agency process to identify the underlying concepts and good practice, culminating in a resource-book on the design, monitoring and evaluation of 'learning to live together', intended primarily for use in situations of fragility and post-conflict renewal. This guide provides a prototype integrated curriculum framework and needs to be tested as a tool for curriculum and textbook development and review, as well as evaluation of existing and new school programmes and teacher training.⁵¹

As indicated in the Guide, there is a need for curriculum specialists to bring together themes such as conflict resolution, human rights, humanitarian law and citizenship that have different origins, and which individual schools and education programmes in crisis situations cannot be expected to research and integrate. Core themes include our common status as human beings and the need to respect the human dignity and rights of all without discrimination – the themes of inclusion, respectful communication and cooperative problem-solving that underlie education for conflict resolution, the themes of respect and non-discrimination that underlie human rights and citizenship, in peace and in war, and the themes of respect for non-combatants and civilian infrastructure that underlie humanitarian law. Practical approaches to peaceful problem-solving, respect for human dignity and the rule of law without discrimination underlie local, national and global citizenship.

Revision of history textbooks is of special importance in many post-conflict and fragile states, since historical narratives play an important part in the crystallisation of adolescent identities and attitudes (and hence in youth decisions on whether to join or support rebel groups and indeed attack schools). The modern approach to history teaching based on multiple viewpoints and narratives is especially important in this regard. It is important for historians and stakeholders from different sides of a conflict to reach consensus on the content and approach, though this can be politically very difficult.⁵² A recent review concludes that: 'There is a need for a meta analysis or

50 See, for example, UNESCO, *Forty-Sixth Session of the International Conference on Education: Education for All for Learning to Live Together; Contents and Learning Strategies, Problems and Solutions*, Geneva, 5-8 September 2001 (Geneva: UNESCO IBE, 2001); and Sinclair, *Learning to Live Together*.

51 Sinclair et al., *Learning to Live Together*. The Guide was pilot tested in Sri Lanka in late 2008 (Hajarjhan Khan, personal communication with the author). UNESCO has recently developed guidelines on textbook renewal and intercultural education. See UNESCO, *A Comprehensive Strategy for Textbooks and Learning Materials* (Paris: UNESCO, 2005); and UNESCO, *UNESCO Guidelines on Intercultural Education* (Paris: UNESCO, 2006).

52 The Georg Eckert Institute has done extensive work in this area (See the Georg Eckert Institute website, <http://www.gei.de>). Falk Pingel has analysed these and related activities. See, for example, Falk Pingel, "The Power of Curriculum," in *Education in Emergencies*, edited by Kevin Cahill (New York: Fordham University Press, forthcoming); and Falk Pingel, "Can Truth Be Negotiated? History Textbook Revision as a Means to Reconciliation," in *Transcending Boundaries: Essays by Falk Pingel* (Braunschweig: Georg Eckert Institute for International Textbook Research, 2009). For examples of history textbook revision and harmonisation in the Balkans see UNESCO, *Fostering Peaceful Co-Existence Through Analysis and Revision of History Curricula and Textbooks in Southeast Europe: Preliminary Stocktaking Report* (Paris: UNESCO, 2006); and UNESCO/Center for Educational Policy Studies (CEPS), *Stocktaking Study on Quality Assurance in Education and EDC: Country Reports* (UNESCO/CEPS, 2004). History teaching was discontinued in Rwanda after the events of 1994, but capacity-building has been undertaken in recent years to enable teachers to use the multiple perspectives approach. See, for example, Anna Obura, *Never Again: Educational Reconstruction in Rwanda*; and Sanne Bijlsma, "Teaching History: Looking for Unity in Rwanda's Classrooms," in *Opportunities for Change: Education Innovation and Reform During and After Conflict*, edited by Susan Nicolai (Paris: UNESCO-IIEP, 2009), 218-229. Felisa Tibbitts evaluated a similar capacity-building exercise in South Africa (Felisa Tibbitts, "Learning from the Past: Supporting Teaching through the Facing the Past History Project in South Africa," *UNESCO Prospects* 36, no. 3 (2006), 295-317). For an indication of the political sensitivity of curriculum renewal see Susan Nicolai, *Fragmented Foundations: Education and Chronic Crisis in the Occupied Palestinian Territories* (Paris: UNESCO-IIEP, 2007).

grand literature review of the current state of interdisciplinary knowledge about history teaching and learning. Scholars should share their research findings with policy makers and practitioners actively engaged in history education reform in post-conflict societies.⁵³ It would be ideal if academic historians and national history textbook writers could participate in skills- and values-based workshops on 'learning to live together' (peace, human rights, humanitarian law and citizenship education); this could facilitate reflection of the learning to live together approach in the teaching of history in conflict-affected societies. A pilot exercise of this type might provide useful insights.

Related to the teaching of history in general, is the current question of whether and how to include in school curricula a children's version of the reports of Truth and Reconciliation Commissions (TRCs). This can be problematic since such reports may be negative towards some of the ethnic or other groupings in the population, and even the version prepared for schools can be politically sensitive.⁵⁴ It might be preferable that TRC reports recommend the development of a curriculum framework for sequential and cyclic learning of skills and themes relating to learning to live together in the future, to be developed jointly by a group of educators from the various groups in the post-conflict society and having due regard to the findings of the TRC while utilizing a multiple perspectives approach.

In all cases, there needs to be an experiential pedagogy that conveys interpersonal and intrapersonal life skills and attitudes for respectful behaviour; linking to the skilful interaction and respect between individuals that is also critical to HIV/AIDS education and the fight against gender-based and sexually-based violence.

This framework needs to be integrated in a coherent manner and sequenced with a 'cyclic curriculum' approach – by school year or cycle of schooling. Such sequencing has been attempted in developed countries, as in the UK citizenship curriculum framework, and the CASEL framework for social and emotional development adopted in Illinois.⁵⁵ It would be useful if some governments in the developing world, perhaps in post-conflict states, would submit their curricula and textbooks to analysis in terms of such criteria, and would cooperate in developing and implementing coherent frameworks for their respective nations.

Before moving on, it may be useful to revisit the question of whether 'learning to live together' programmes for children and adolescents are viable if adults are not also targeted with the same message; and if peace education programmes aimed at educating individuals can be helpful when there is civil conflict between groups. Regarding the conflict between home and school, it is clear that most children grow up in a world where various relatives, family friends and neighbours behave in different ways. The child learns to navigate these differences and to identify his or

53 See the United States Institute for Peace overview by Elizabeth Cole and Judy Barsalow, *Unite or Divide: The Challenge of Teaching History in Societies Emerging from Violent Conflict*, Special Report 163 (Washington, DC: United States Institute for Peace, 2006).

54 Julia Paulson, personal communication with the author. See also Julia Paulson, *Conflict, Education and Truth Commissions and Truth Commissions and National Curriculum: The Case of the Recordandonos Resource in Peru*, http://www.unicef-irc.org/knowledge_pages/resource_pages/tj_conference/ex_summary_paulson.pdf (accessed on August 7, 2009).

55 See the Collaborative for Academic, Social and Emotional Learning (CASEL) website, <http://www.casel.org>; and the Qualifications and Curriculum Development Agency, 'National Curriculum,' <http://curriculum.qcda.gov.uk>, for the citizenship curriculum for England and Wales.

her personal preferences. Likewise, students worldwide observe that their teachers differ in the extent to which they show empathy to students and exercise 'positive discipline' (effort and good behaviour inspired by the teacher) or rely on corporal and other unpleasant punishments, and between teachers who are seen as 'fair' or 'unfair.' Students learn to live with these differences while forming views as to which model of behaviour they prefer. The aim of education for peace, human rights and citizenship is to offer students another behavioural model: a set of concepts, skills and values to add to their personal toolbox for perception, analysis and action. It may bear fruit immediately, or during adolescent relationships, and/or at a later time when students are decision-making adults themselves.⁵⁶

It is also of course sensible to reach out to adults with the same messages of peace, human rights and citizenship that are given to students, and this sometimes happens, e.g. through trainings given to school management committees and parent-teacher associations, which introduce and reinforce innovative curriculum content. In the UNHCR peace education programme in Kenyan refugee camps, there was enthusiastic uptake by adults of a 'community education workshop' programme that replicated the school-based peace education programme, using methods appropriate to adults.⁵⁷ Curriculum renewal should not be limited to situations where such community-wide programming is possible, however. Consideration may be given to the use of informal education such as radio for reaching the adult population.

Regarding the value of educating individuals when there is conflict between groups, as noted earlier there are many individual-based channels of communication which may influence group leaders. In traditional society, favoured children or grandchildren may have the ear of family elders and the potential to talk about ideas from school. There may be communication between youth and adults with their 'year-groups' or 'classmates.' Family elders may communicate within a local group of elders; these elders decide on support they may give to sub-clan or clan leaders on a particular matter and so on. Leaders may then tailor their decisions to meet the views of their supporters. An example might be the behaviour of Taliban 'commanders' leading different communities, some of whom agreed to their supporters' demands for girls' schooling when it was officially forbidden; similar diversity in policy can be seen today.⁵⁸ Where there are elections, it may be hypothesized that young people who have been taught to look at their own and others' emotions, biases and stereotypes, at problem-solving and win-win solutions, may be a little better able to see when a candidate for election is seeking personal power or riches, and to identify candidates who will build bridges between former enemies and implement practical measures to improve life conditions for the voters. It would of course be useful to conduct research on young people's response to peace-oriented schooling and citizenship education, to see if the above assumptions are realistic.⁵⁹

56 The long-term outcomes of such programmes are rarely evaluated, but this is true of much of schooling – there is inadequate research on the long-term impact of traditional school subjects in terms of knowledge, skills and attitudes. More research focus on medium- and long-term impacts is desirable.

57 As noted in Anna Obura, *UNHCR Peace Education Programme: Evaluation Report*.

58 See, for example, Morten Sigsgaard, *Education and Fragility in Afghanistan: A Situational Analysis* (Paris: UNESCO-IIEP, 19).

59 See Sinclair et al., *Learning to Live Together*.

Use of multiple channels of communication

Global awareness of environmental issues has been developed over the last two decades through multiple channels, from school classrooms to media, cinema, social and government action. Awareness on gender discrimination and on HIV/AIDS has likewise been raised through these channels. However, there has been much less awareness-raising on conflict resolution, citizenship and respect for all human beings in line with the ideals underlying human rights and humanitarian law.

Where possible, school programmes relating to peace and conflict resolution, humanitarian and human rights law and citizenship should be complemented by non-formal and informal education channels at community as well as national level. This can be complemented by trainings for media personnel, civil servants, law enforcement and military professionals. Radio programmes have been used in several countries to build trust between ethnic groups that were previously in conflict. Interactive radio instruction can also help teachers convey new messages to their students. For example, the themes of respect for all human beings, peace, human rights and humanitarian law as well as other life skills have been included in the Education Development Center's interactive radio instruction programmes for Somalis.⁶⁰

Enhanced monitoring and evaluation of current and innovative programmes, and research on young people's attitudes, values and behaviours

A necessary foundation for systematic work on protection through curriculum is more knowledge about how children and youth in conflict-affected societies perceive the world around them, including education and conflict. Contributions from anthropology show that international and even national professional staff may be scarcely aware of the factors underlying students' behaviour, from inter-ethnic tensions to religious beliefs and practical constraints.⁶¹ Participative research involving youth themselves can help identify frustrations and grievances that may destabilize society and perhaps drive young people towards violent conflict.⁶² Such in-depth research, as well as more conventional monitoring and evaluation, is needed for baseline studies and impact assessment of innovative approaches to education for peace, human rights, citizenship and protection during armed conflict.⁶³

60 Abdechafi Boubkir and Said Yasin, personal communication with the author.

61 As an example, male students were found to be dropping out of secondary school in Rwanda because of the high cost of roofing materials needed to erect a house and get married (Marc Sommers, personal communication with the author). This is unlikely to feature in education reports, but has sectoral and cross-sectoral implications, important for peace building.

62 For examples of youth-led research, see Women's Commission for Refugee Women and Children, *Youth Speak Out: New Voices on the Protection and Participation of Young People Affected by Armed Conflict* (New York: Women's Commission for Refugee Women and Children, 2005).

63 For suggestions on monitoring and evaluation, see Sinclair et al., *Learning to Live Together*.

■ Building a critical mass for protection from violence through curriculum

The twenty-first century is showing signs of being a century of violence and conflict, as anticipated by the Delors Report. Major stresses are foreseen especially in developing countries due to high levels of unemployment and under-employment among youth. This will be aggravated by the likely effects of climate change and rising sea levels on agriculture and coastal cities, the effects of population growth and economic development on supplies of fresh water, and so on, leading to local scarcities of food, water, shelter and other basics of life. Societies and regions where particular groups perceive themselves as suffering disproportionately may succumb to armed conflict and insecurity, especially where there are concurrent religious or political tensions, and fear of losing a community's identity. 'Learning to live together' peacefully and in constructive citizenship – local, national and global – is thus, as predicted by the Delors Commission, a priority goal for the twenty-first century.

The Dakar World Education Forum, held in the year 2000, reflected these concerns in its Education for All 'Framework for Action'.⁶⁴ Governments committed themselves, *inter alia*, to the goal of 'Improving all aspects of the quality of education and ensuring excellence of all so that recognized and measurable learning outcomes are achieved by all, especially in literacy, numeracy and essential life skills.'⁶⁵ The Dakar Framework notably included a commitment to 'meet the needs of education systems affected by conflict, natural calamities and instability and conduct educational programmes in ways that promote mutual understanding, peace and tolerance, and that help to prevent violence and conflict.'⁶⁶ Young people should be prepared 'to participate fully in their society.'⁶⁷ The 'Expanded Commentary' on the Framework added that schools should be respected and protected as sanctuaries and zones of peace, while the curriculum should help build peaceful societies: 'Education programmes should be designed to promote the full development of the human personality and strengthen respect for human rights and fundamental freedoms as proclaimed in the Universal Declaration of Human Rights (Article 26). Such programmes should promote understanding, tolerance and friendship among all nations, and all ethnic and religious groups; and they should be sensitive to cultural and linguistic identities, and respectful of diversity and reinforce a culture of peace. Education should promote not only skills such as the prevention and peaceful resolution of conflict, but also social and ethical values.'⁶⁸

How can we move towards these agreed curriculum goals, supporting a peaceful society, in which education itself can proceed in peace? One problem is that curriculum specialists can be inward-looking, focused on their particular national education history and traditions as well

64 World Education Forum, *Dakar Framework for Action: Education for All; Meeting Our Collective Commitments* (Paris: UNESCO, 2000).

65 *Ibid.*, para. 7(vi).

66 *Ibid.*, para. 8(v).

67 *Ibid.*, para. 34.

68 World Education Forum, *Expanded Commentary on The Dakar Framework for Action* (Paris: UNESCO, 2000), para. 58. Similar obligations are placed on states by United Nations General Assembly (UNGA), *Convention on the Rights of the Child (CRC)*, 1577 UNTS 3, A/44/49 (November 20, 1989), art. 29, covering the qualitative aspects of the right to education.

as political concerns. Topics which should be of shared international concern are treated under different labels in different settings, and the connections are not made. Developing countries, in particular, are encouraged to look to the developed world for education models, but may not find what is needed, as far as 'learning to live together' in situations of actual or potential conflict is concerned. Fragile states, almost by definition, lack well-functioning education faculties that can develop and disseminate solutions on their own. What can be done to activate the curriculum agenda, on the lines discussed here? How can the international community – national governments, academics, UN agencies, NGOs and donors – work together on this?

One suggestion might be to form a consortium of interested academics, field practitioners – including staff of interested governments, NGOs and UN agencies, and donors, to advance the Dakar-Delors curriculum goals in the specific context of conflict and fragile states. Activities could include those indicated below.

- 1. Strengthen research and international discourse on achievement of the core Dakar curriculum goals of literacy, of numeracy and of life skills (including skills for citizenship, human rights, humanitarian law, peaceful resolution of conflicts as well as the more familiar health and safety life skills); and assemble curriculum resources suited for use by education professionals in developing countries including nations at risk of conflict and insecurity.**

▶ **Literacy and numeracy**

Some first steps towards assessment of achievements in literacy and numeracy were described above (EGRA, EGMA). This work needs to be expanded and adapted to situations in fragile states, for refugees and internally displaced populations and other marginalized groups. Further assessment methodologies should be developed, to help illuminate causes of weak learning achievements and to identify ways of improving the effectiveness of teaching and learning. Research and pilot programmes should identify practicable ways of improving teacher training and support, and of improving textbooks and other teaching aids under adverse conditions. Accessible professional resources should be developed for educators in resource-poor and fragile contexts, covering methodology, assessment, teacher training and textbook development.

Research should include the societal context in which some students succeed while others fail (e.g. where private tuition is needed to compensate for poor standards of schooling), and the learning experiences and difficulties of drop-outs, including, where applicable, those who volunteered at a young age to serve with rebel and government military forces.

► Life skills/learning to live together

UNICEF and UNESCO have taken initiatives in these areas, together with other UN agencies such as the Office of the UN High Commissioner for Human Rights, UNHCR, the World Health Organisation, NGOs including ICRC and other organisations. However, a stronger international discourse is needed, to cover the whole field of what Dakar called 'life skills' and what UNESCO calls 'learning to live together', and include key themes of respect for human rights and humanitarian law, active citizenship and peace-building, as well as life skills applied to other personal challenges confronting young people.

Follow up is needed to the recent UNESCO/GTZ initiative on design, monitoring and evaluation of learning to live together and life skills education.⁶⁹ The approach to an integrated curriculum framework emerging from this process needs to be debated, and alternatives developed for different field realities and diverse cultural settings. Links need to be established between the education in emergencies community and the flourishing centres of excellence in the US and elsewhere covering education for social and emotional development and life skills, conflict resolution and citizenship, together with ongoing international initiatives such as the World Programme of Human Rights Education and the ICRC's Exploring Humanitarian Law (EHL).

Research is needed into the perceptions of education, of interpersonal relationships, conflict, peace and human rights, among young people in conflict-affected and at-risk populations, including those who have joined fighting forces and their younger siblings, their classmates at risk of joining, together with those who have rejected this option. This would help in developing approaches and baselines for new initiatives and in assessing the impact of existing ones. Good practice programmes bearing on life skills and learning to live together should be identified and brought to the attention of the international community, as well as subjected to sophisticated evaluation of immediate and longer term impact, with the possibility of broadening their content to include the full spectrum of education for conflict resolution, peace, human rights, humanitarian law and active citizenship.

A critical mass of research and evaluation, together with conceptual clarification is needed. This could generate a database, a shared discourse, and resources for curriculum and textbook development, teacher training and support, assessment, monitoring and evaluation, and training of master trainers. This would help move this aspect of 'protection through education' – education for life skills and learning to live together – from the shadows into the heart of international strategies to implement the Dakar Framework for Action on Education for All.⁷⁰ Educators cannot ask others to bring peace to their societies unless they make an effort to contribute to conflict mitigation themselves; in the absence of peace they may face the threat of violence in their schools and colleges, their travel and daily lives.

69 Sinclair et al., *Learning to Live Together*, Table 4.5. See also Sinclair, *Learning to Live Together*.

70 Specifically, a consortium is needed comprising committed agencies active in education for peace, human rights, humanitarian law, citizenship, and life skills more generally, to develop detailed curriculum frameworks and assemble teaching learning resources that integrate these themes, and to conduct pilot programmes in interested countries with a view to scaling up.

2. Support capacity-building and curriculum renewal in interested fragile or post-conflict states

Complementary to strengthening international efforts to develop scholarship and resources on curricula that can help prevent conflict and breaches of international humanitarian and human rights law and can actively support peace-building, it is critical that some committed national governments come forward to pilot an integrated life skills and learning-to-live-together framework or to link their ongoing efforts to the wider international context. These countries would commit to research, curriculum and textbook development, monitoring and evaluation, and to pilot programmes which integrate the life skills approach and the learning to live together approach, as discrete curriculum elements and/or integrated into particular school subjects, together with teacher training in these fields.⁷¹ New initiatives could begin with an evaluation of traditional curricula and textbooks, and of stakeholder perspectives.⁷²

3. Specifically promote education in international humanitarian law at all levels of education

Protection of education during conflict relies heavily on the general principles of international humanitarian law, which prohibits attacks targeted on, or causing disproportionate collateral harm to, civilians or civilian infrastructure, including students, teachers, schools and colleges. Military recruitment of under-age children, systematic rape of civilians, and other abuses are also forbidden. This needs to be taught in schools, as well as in training for the military, police, law courts, and of course, teachers, as a step towards the 'civil instruction' required under the Fourth Geneva Convention. One step would be to strengthen linkages between ICRC and the UN agencies and NGOs active in education in emergencies, so that the ICRC's existing modules on Exploring Humanitarian Law are used in secondary schools, colleges, including teacher training colleges, and in non-formal education. An optional additional module on protecting education itself might be considered. A second urgent step would be to develop modules suited for use in primary and lower secondary schools in conflict-affected and at-risk populations, perhaps in a form complementary to the INEE Peace Education Programme.

71 This would complement or enrich ongoing initiatives supported by UNICEF and others to develop child-friendly, rights-based approaches at classroom and institutional level.

72 The exercise would essentially be one of capacity-building and support for national educators, beginning with curriculum and textbook analysis and audit, then local generation of improved content and approaches, then introduction of new content through piloting, teacher training and textbook revision or supplementation. The exercise can be low profile if the political situation is sensitive, or higher profile if a new government has taken office and seeks curriculum reform.

4. Advocate with donors to place greater emphasis on educational content and effectiveness as well as access, especially in states affected by or at risk of recurring conflict

Donor involvement is often critical; the inter-agency pilot programme of education for peace, human rights and citizenship in Liberia has been hampered by funding problems, for example. The recent development of an 'emerging issues' teacher training module in Sierra Leone with UNICEF support will require a second phase of work on enriching the school curricula. Long-term commitment of donors is vital; it was the years of cooperation on teacher training in Sri Lanka that built the trust between government and donor partner GTZ that allowed their collaboration in 2007-2008 on developing a national education policy for social cohesion and peace. Initiatives on 'learning to live together' or peaceful citizenship will each need a decade or more of modest but continuing support for in-depth evaluation and renewal of curricula and textbooks and improved preparation and support of teachers, if they are to have a useful impact.⁷³

In conclusion, we may note that the ultimate issue is one of political will. Commitment is needed to help governments meet their obligations under the Universal Declaration of Human Rights, the World Programme of Human Rights Education, the Convention on the Rights of the Child, the Fourth Geneva Convention and other treaties requiring education that promote respect for others, peace, humanitarian values and personal fulfilment. This is not a luxury but a strategy to help countries strengthen their national fabric for a century of immense change, and to mitigate fragility.⁷⁴ Such education would likewise help protect civilians and civilian infrastructure should armed conflict erupt – including protection of education itself.

73 In terms of international organizations, UNICEF advocates for child-friendly, rights-observing schools as a general policy, and often supports efforts for peace education in post-conflict situations, but on a decentralized basis. UNESCO supports education for peace and learning to live together but its Headquarters and International Bureau of Education have limited resources to make progress in this area of curriculum. UNHCR, though willing, does not have a cadre of education staff to actively follow up its earlier initiative in peace education. ICRC has taken a lead on education in the principles of international humanitarian law, for older students. The Office of the High Commissioner for Human Rights leads the World Programme for Human Rights Education, in collaboration with UNESCO and other agencies. For an important international civil society initiative, see the Conflict Resolution Education Connection website, <http://www.creducation.org>; an international 'policy summit' in 2009 focused on the interrelation, implementation and sustainability of programmes in social and emotional learning, education for conflict resolution, peace and citizenship. This built on a 1997 Inter-American Summit on Conflict Resolution Education sponsored by UNDP and the Organisation of American States.

74 See, for example, Bilal Barakat et al., *Desk Study: Education and Fragility*; and Miller-Grandvaux, "Education and Fragility: A New Framework."

■ APPENDIX I.

Agenda. 'Protecting Education from Attack':
an international expert seminar. Paris, France.
28 September – 1 October 2009.

Monday 28 September 2009

8:30-9:00 **Registration**

9:00-9:30 **Welcome addresses**

Mark Richmond, UNESCO

Abdullatif Al-Shayef, Office of Her Highness Sheikha Mozah Bint Nasser Al-Missned, Qatar

9:30-9:45 **Seminar purpose and organization**

Christopher Talbot, UNESCO

9:45-10:30 **Opening plenary**

Relationship of education to protection concerns during conflict and insecurity:
Attacks on education and the broader protection agenda
Neil Boothby, Columbia University

Establishing standards of good practice for education in emergencies,
reconstruction and fragile situations: A continuing collaborative process
Allison Anderson, Inter-Agency Network for Education in Emergencies

Chair: Ellen van Kalmthout, UNICEF

10:30-11:00 **Coffee break**

EDUCATION UNDER ATTACK: THE PROBLEM

11:00-13:00 **Education under attack: The problem**

Nature, scope, motives and impacts
Brendan O'Malley, Journalist

Attacks on teachers and trade unionists
Dominique Marlet, Education International

Attacks on higher education communities
Robert Quinn, Scholars at Risk

Attacks on humanitarian and development education workers
Mario Novelli, University of Amsterdam

Chair: Mark Richmond, UNESCO

13:00-14:00 **Lunch**

Monday 28 September 2009

EDUCATION UNDER ATTACK: THE PROBLEM

14:00-15:00 Small group discussions on gaps in our knowledge and questions about the nature, scope, impact and motives of:

Attacks on learners and infrastructure

Attacks on teachers and trade unionists

Attacks on higher education communities

Attacks on humanitarian and development education workers

Facilitator: Michael Gibbons

MONITORING AND REPORTING

15:00-16:00 Monitoring attacks on education: Overview and gaps

Zama Coursen-Neff, HRW

Chair: Lucia Withers, Coalition to Stop the Use of Child Soldiers

Followed by a short exercise for buzz group discussion

16:00-16:30 Coffee break

16:30-18:30 Monitoring and reporting of attacks on education through the Monitoring and Reporting Mechanism (MRM) on Children and Armed Conflict

Overview of the MRM

Alec Wargo, OSRSG/CAAC, and Lara Scott, UNICEF

What does the MRM mean for education?

Lara Scott, UNICEF

Lessons learned on the effectiveness and challenges of the MRM

Severine Chevrel, Watchlist on Children and Armed Conflict

Opportunities to strengthen monitoring and reporting of education-related violations

Alec Wargo, OSRSG/CAAC

Chair: Zama Coursen-Neff, HRW

19:00-20:30 Welcome reception

Tuesday 29 September 2009

MONITORING AND REPORTING

9:00-10:30 **Capturing and using the data: Additional mechanisms for and uses of monitoring and reporting**

Monitoring and reporting mechanism of INSEC
Prekshya Ojha, INSEC

Data on scholar protection worldwide: SRF's Academic Oppression Index
Henry Jarecki and Daniela Kaisth, Scholar Rescue Fund

Use of data to support ministries of education in fragile states
Joel Reyes, World Bank

Chair: Louise Haxthausen, UNESCO

10:30-11:00 Coffee break

WORKING TO STRENGTHEN ACCOUNTABILITY, DIMINISH IMPUNITY AND DETER ATTACK

11:00-11:30 **Painful and inconvenient: Accountability for attacks on education**

Bede Sheppard, HRW

Chair: Michael Gibbons

11:30-13:00 **Strengthening the legal protection of education systems in times of conflict and insecurity**

Overview of international law and the protection of education
Bruce Abramson, Human rights lawyer

The ambiguous protection of schools under the law of war - time for parity with hospitals and religious buildings
Gregory Bart, Commander, U.S. Navy

The application of international humanitarian law to attacks on education in intrastate conflicts
Peter Rowe, Lancaster University

Applications of international human rights law to attacks on education
Michael Bochenek, Amnesty International

Chair: Rob Quinn, Scholars at Risk

13:00-14:00 Lunch

14:00-15:30 **Encouraging compliance with the law**

Promoting adherence to the law of armed conflict: National armed forces
Kurt Brubaker, Colonel, U.S. Marine Corps

Tuesday 29 September 2009

WORKING TO STRENGTHEN ACCOUNTABILITY, DIMINISH IMPUNITY AND DETER ATTACK

continued...

Training international peacekeeping forces in child protection
Ann Makome, DPKO

Increasing respect for international humanitarian law among non-state armed actors in armed conflict
Sylvain Vité, ICRC

Inclusive engagement of armed non-state actors: The Deed of Commitment and the Geneva Call experience
Jonathan Somer, Geneva Call

Chair: Bede Sheppard, HRW

15:30-16:00 Raising the political stakes: The role of the media

Brendan O'Malley, Journalist

Chair: Eli Rognerud, UNESCO

16:00-16:30 Coffee break

PROGRAMMATIC RESPONSE AND PREVENTION OF ATTACKS ON EDUCATION

16:30-18:00 Physical security

Provision of physical security for education by communities in Northern Liberia
Daniel McVitalis, Save the Children

Physical security of Colombian educators: An integrated approach
Mario Novelli, University of Amsterdam

Kidnapping and assassinations in higher education: Lessons from Iraq, 2003 to the present
John Akker, CARA

Chair: Christopher Talbot, UNESCO

Wednesday 30 September 2009

PROGRAMMATIC RESPONSE AND PREVENTION OF ATTACKS ON EDUCATION

9:00-10:30 Dialogue between stakeholders

Sectarian attacks on schools in Northern Ireland: The Holy Cross Incident
Alan Smith, University of Ulster

School Protection Committees in Afghanistan
Lailuma Hassani, Save the Children

Wednesday 30 September 2009

PROGRAMMATIC RESPONSE AND PREVENTION OF ATTACKS ON EDUCATION

continued...

Schools as Zones of Peace, Nepal

Melinda Smith, Consultant, and Raj Kumar Dhungana, Save the Children

Chair: Anita Anastacio, IRC

10:30-11:00 Coffee break

11:00-12:00 **Adaptation of Learning**

Community-based schools in Ghor province, Afghanistan

Dana Burde, New York University

Bush schools in the Central African Republic

Nathalie Fiona Hamoudi, UNICEF

Chair: Dean Brooks, NRC

12:00-12:30 **Programmatic response and prevention: What do we need to learn?**

Facilitator: Christopher Talbot, UNESCO

12:30-13:30 Lunch

BUILDING AN AGENDA FOR ACTION

13:30-14:00 **Putting it all together: Review of key seminar themes**

Facilitator: Michael Gibbons

14:00-16:00 **Building an agenda for action: Working groups to develop recommendations**

Recommendations for further research, advocacy and policy development to strengthen the protection of education

Facilitator: Michael Gibbons

16:00-16:30 Coffee break

16:30-18:00 **Taking it one step further: Working groups to enhance on-going processes**

Evaluation for evidence-based programming on protecting education from attack

Facilitator: Neil Boothby, Columbia University

Wednesday 30 September 2009

BUILDING AN AGENDA FOR ACTION

continued...

Integrating protection of education from attack in the work of humanitarian clusters

Facilitators: Susan Nicolai, Save the Children, and Christine Knudsen, UNICEF

Charting legal options in greater depth

Facilitators: Gregory Bart, Commander, US Navy, and Michael Bochenek, Amnesty International

Thursday 1 October 2009

BUILDING AN AGENDA FOR ACTION

9:00-10:30 Taking it one step further: Working groups to enhance on-going processes

Integrating protection of education from attack in the INEE Minimum Standards revision process

Facilitators: Allison Anderson and Marian Hodgkin, INEE

Strengthening the monitoring and reporting of education-related violations within the MRM on Children and Armed Conflict

Facilitators: Lara Scott, UNICEF, Alec Wargo, OSRSG/CAAC, and Severine Chevrel, Watchlist for Children and Armed Conflict

Integrating protection of education from attack in the work of Education and Fragility initiative

Facilitators: Yolande Miller-Grandvaux, USAID, and Lyndsay Bird, IIEP/UNESCO

10:30-10:45 Coffee break

10:45-11:45 Towards an agenda for action

Recommendations for further research, advocacy and policy development to strengthen the protection of education

Highlights from the working groups

Facilitator: Michael Gibbons

11:45-12:30 Closing speeches

Muhammad Suleman Kakar, Co-operation for Peace and Unity, and the Ministry of Education, Afghanistan

Abdullatif Al-Shayef, Office of Her Highness Sheikha Mozah Bint Nasser Al-Missned, Qatar

Mark Richmond, UNESCO

Chair: Christopher Talbot, UNESCO

Participating organizations included:

Amnesty International

Brookings Institution – Center for Universal Education

Coalition to Stop the Use of Child Soldiers

Council for Assisting Refugee Academics (CARA)

CPC Learning Network

Co-operation for Peace and Unity

Education International (EI)

Geneva Call

Global Campaign for Education

Human Rights Watch (HRW)

Institute of International Education/
Scholar Rescue Fund

Inter-Agency Network for Education in
Emergencies (INEE)

International Committee of the Red Cross
(ICRC)

International Institute for Educational
Planning, UNESCO (IIEP)

Informal Sector Service Centre (INSEC)

International Rescue Committee (IRC)

Lancaster University, Law School

Mailman School of Public Health, Columbia
University

Norwegian Refugee Council (NRC)

Office of Her Highness Sheikha Mozah Bint
Nasser Al-Missned, Qatar

Office of the Special Representative of the
Secretary-General for Children and Armed
Conflict

Open Society Initiative for Southern Africa

Save the Children

Scholars at Risk

Steinhardt School of Culture, Education and
Human Development, New York University

United Nations Department of Peacekeeping
Operations (DPKO)

United Nations Office for the Coordination
of Humanitarian Affairs (OCHA)

United Nations Educational, Scientific and
Cultural Organization (UNESCO)

United Nations Children's Fund (UNICEF)

United States Agency for International
Development (USAID)

University of Amsterdam

University of Ulster, School of Education

Watchlist on Children and Armed Conflict

World Bank

In situations of armed conflict and insecurity, deliberate attacks on and threats against learners, academics, teachers and education facilities are both a barrier to the right to education and a serious protection issue. These violent incidents involve the use of force in ways that disrupt and deter educational provision, putting educators and learners at risk in environments that should be safe, secure and protective.

Building on a growing momentum of engagement around these issues, UNESCO convened an international expert seminar, 'Protecting Education from Attack', in Paris, from 28 September to 1 October 2009, with generous support from the Office of Her Highness Sheikha Mozah Bint Nasser Al-Missned of Qatar, UNESCO Special Envoy for Basic and Higher Education. The purpose of the seminar was to provide highly engaged specialists from all over the world, who have been working on this theme within different professional disciplines and political contexts, with the opportunity to explore information, research, policy and advocacy gaps and to generate solutions jointly.

This State-of-the-Art Review presents some of the key recommendations emerging from the seminar, a detailed review of the seminar's principal findings and discussion points and thirteen background papers, commissioned to document the rich experiences and varied viewpoints of researchers and practitioners active in the field of protecting education from attack. The papers, together with the discussions and findings of the seminar, provide insight into the current state of knowledge on this theme and offer direction towards an agenda for action

