

PROTECTION OF SCHOOLS DURING ARMED CONFLICT

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ABSTRACT

Schools have been targets of attacks in many armed conflicts worldwide. 2014 alone witnessed unprecedented numbers of children killed and schools damaged or destroyed as a result of such attacks. While International Humanitarian Law (IHL) recognises the protection of children, protected persons and schools under its general provision on the protection of civilians and civilian objects, additional endeavours by the international community tend to imply different levels of protection. This Brief attempts to assess the protection of schools during armed conflict, by framing the issue of attacks against schools, analysing the applicable IHL rules, highlighting the international community's efforts on this topic and identifying potential points of contention related to the protection of schools.

I. FRAMING THE ISSUE OF ATTACKS AGAINST SCHOOLS

Armed conflicts around the world are witnessing an increasing trend in the number of attacks against schools.¹ Schools have been bombed and children, students, teachers and auxiliary staff have been killed, maimed, abducted or otherwise subjected to inhuman treatment.² The consequences of such attacks can include deprivation of children's right to education,³ right to health,⁴ and, in some cases, right to life.⁵ Various reports by the United Nations Secretary General (UNSG) focusing on 'children and armed conflict'⁶ documented that, in almost all ongoing armed conflict situations worldwide, schools have been attacked, bombed, or used

¹ Security Council Meeting Records, S/PV.7466, 18 June 2015, p. 29.
http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/spv_7466.pdf.

² Global Coalition to Protect Education from Attack, Safe Schools Declaration, May 2015, p.1, http://www.protectingeducation.org/sites/default/files/documents/safe_schools_declaration-final.pdf.

³ International Covenant on Economic, Social and Cultural Rights, 16 December 1966, art. 13, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.

⁴ *Ibid.*, art. 12.

⁵ International Covenant on Civil and Political Rights, 16 December 1966, art.6, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

⁶ Report of the Secretary-General on Children and armed conflict, A/66/782-S/2012/261, 26 April 2012, UNSC, <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/CAC%20S%202012%20261.pdf>; Report of the Secretary-General on Children and armed conflict, A/67/845-S/2013/245, 15 May 2013, UNSC,

http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2013_245.pdf; Report of the Secretary-General on Children and armed conflict, A/68/878-S/2014/339, 15 May 2014, UNSC, http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2014_339.pdf; Report of the Secretary-General on Children and armed conflict, A/69/926*-S/2015/409*, 5 June 2015, UNSC,

http://www.un.org/ga/search/view_doc.asp?symbol=A/69/926&Lang=E&Area=UNDOC.

for military purposes. As the latest UNSG report highlighted, in 2014, extreme violence rose to unprecedented levels, leading to a dramatic increase of grave violations against children.⁷

In March 2015, during an open debate on the plight of children in armed conflict, the United Nations (UN) Special Representative for Children and Armed Conflict, Leila Zerrougui, talked about ongoing patterns of attacks against schools.⁸ On the military use of schools, she stated that: "schools and education facilities are being systematically used as barracks, firing positions, detention centres and torture chambers both by regular armed forces and by armed non-State opposition groups, endangering children and rendering them vulnerable to attack".⁹ Finally, during the meeting for the adoption of the United Nations Security Council (UNSC) Resolution 2225 (2015), various¹⁰ members and permanent observers of the UNSC indicated that, in 2014, as a result of the 50-day war in Gaza, "the number of Palestinian children killed was the third highest in the world and the number of schools damaged or destroyed was the highest in the world".¹¹

On a background of increased hostilities against schools, triggered by different motivations, as well as unprecedeted levels of violence against children and protected persons, it is timely and of utmost necessity to assess the level of protection afforded to schools in armed conflict. To this end, this Brief will analyse, in its first part, IHL provisions regulating the conduct of combating parties to armed conflict, in order to understand the legal framework applicable to attacks against schools. In the second part, the efforts and approaches of the international community on this matter will be outlined, as inferred from relevant UN sources. While not exhaustive, the UN sources addressed in this research allow a general overview of the international approach to the level of protection afforded to schools in armed conflict. The Brief will then put forward a discussion about the protection of schools and conclude by highlighting some important developments on this topic.

It is important to establish from the outset that, in this Brief, the level of protection of schools during armed conflict is evaluated on the basis of IHL rules relating to (threat of) attacks against schools and protected persons, as well as various IHL interpretations used in UN

⁷ Cf. 2015 Report of the Secretary-General on Children and armed conflict, para. 11.

⁸ Security Council Meeting Records, S/PV.7414, 25 March 2015, p. 68,
http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_7414.pdf.

⁹ *Ibid.*

¹⁰ For instance, the representatives of the UK, the Bolivarian Republic of Venezuela, the League of Arab States, Palestine and also the President of the UNSC himself, in his capacity of Minister for Foreign Affairs of Malaysia.

¹¹ Security Council Meeting Records, above n. 1, p. 10.

sources. Furthermore, the current research is based on the terminology used across all UN sources investigated: children are “human beings below the age of eighteen years”,¹² entitled under IHL rules to general protection, as persons taking no part in hostilities, and to special protection, as persons who are particularly vulnerable.¹³ Additionally, protected persons include teachers, as well as other educational personnel, but also students.¹⁴

II. INTERNATIONAL HUMANITARIAN LAW APPLICABLE TO ATTACKS AGAINST SCHOOLS DURING ARMED CONFLICT

IHL establishes that civilians and civilian objects must enjoy general protection against dangers arising from military operations.¹⁵ Hence, the rule of distinction requires that: “[i]n order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.”¹⁶ Schools also enjoy general protection as they are civilian objects and accommodate civilians on their premises and, whereby, parties to a conflict are prohibited from targeting or attacking schools. A deliberate attack against a school is, therefore, unlawful, violating the rule of distinction and constituting a grave breach of IHL.¹⁷ However, civilians and civilian objects may temporarily lose their protective status. When a civilian takes direct or active participation in hostilities, the respective person loses his/her protection as a civilian, regardless of his/her age.¹⁸ Similarly, a civilian object, such as a school, loses its protective status when it is used for military purposes, for example, to host artillery, soldiers, or is transformed into a command post, that school can become a targetable military objective.¹⁹ The possibility of converting schools to military objectives is addressed by Art. 52(3) of the Additional Protocol I to the Geneva Conventions (hereinafter referred to as ‘API’)²⁰ which states that, in case of doubt whether “(...) a school, is being

¹² Convention on the Rights of the Child, 2 September 1990, art. 1,
<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

¹³ D. Plattner, ‘Protection of Children in International Humanitarian Law’, *International Review of the Red Cross*, No. 240, <https://www.icrc.org/eng/resources/documents/misc/57imat.htm>.

¹⁴ Guidance note on Security Council Resolution 1998, Office of the Special Representative of the Secretary-General for Children and Armed Conflict, p. 9,
<https://childrenandarmedconflict.un.org/publications/AttackonSchoolsHospitals.pdf>.

¹⁵ Additional Protocol I to the Geneva Conventions, 8 June 1977, arts. 51 and 52,
<https://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?action=openDocument&documentId=D9E6B6264D7723C3C12563CD002D6CE4>.

¹⁶ *Ibid.* art. 48.

¹⁷ Geneva Convention IV, 1949, art. 147; Additional Protocol I to the Geneva Conventions, art. 85;

¹⁸ Additional Protocol I to the Geneva Conventions, art. 51(3).

¹⁹ *Ibid.* art. 52.

²⁰ *Ibid.*

used to make an effective contribution to military action, it shall be presumed not to be so used”.

Two issues have been raised with regard to these rules. Firstly, Sheppard and Kizuka flagged the concern that schools, which have been used as military objectives and have been subsequently vacated, can still run the risk of being attacked by combatants, due to lack of information on the factual situation.²¹ As Bart, Judge Advocate General’s Corps with the United States Navy, importantly observed, “such [military] use [of schools] increases the likelihood that an opposing army will confuse converted and unconverted schools and wrongfully attack one that shelters children and other civilians.”²² This concern was further echoed by Grover, who emphasised that the military use of schools creates challenges for combatants when trying to identify legal targets (i.e. differentiating the schools which have been converted to military objectives from those which have not been converted), thus creating the risk of injury or death for children still attending schools or those living near schools.²³

Secondly, also connected to the concern on the situational use of a school during armed conflict, heated debate exists regarding the practice of turning schools into military objectives as such.²⁴ As mentioned above, in the case that uncertainty exists as regards the use of a school, whether it is used to make an effective contribution to military action, the general presumption should favour the civilian use of a school.²⁵ Furthermore, Art. 53 of API expressly prohibits the military use of cultural objects and of places of worship.²⁶ While the possibility of converting schools to military objectives is left to the discretion of combatants, this is clearly not the case of cultural objects and religious buildings.

Bart attempted to offer an interpretation²⁷ to these rules by stating that, in accordance with Art. 51 of API which lays down rules regarding the protection of the civilian population, the military use of a school is prohibited only to the extent that civilians and non-combatants are

²¹ B. Sheppard, K. Kizuka, ‘Taking armed conflict out of the classroom: international and domestic legal protections for students when combatants use schools’, *International Humanitarian Legal Studies*, 2011, p. 297.

²² G. R. Bart, ‘The Ambiguous Protection of Schools under the Law of War – Time for Parity with hospitals and religious buildings’, *Georgetown Journal of International Law*, 2009, p. 405.

²³ S.C. Grover, *Schoolchildren as Propaganda Tools in the War on Terror*, Berlin Heidelberg: Springer-Verlag 2011, p. 140.

²⁴ G. R. Bart, above n. 22, pp. 405-446; See also S.C. Grover, above n. 23, pp. 139-206.

²⁵ Additional Protocol I to the Geneva Conventions, art. 52(3).

²⁶ *Ibid*, art. 53.

²⁷ G. R. Bart, above n. 22, p. 429.

present on the premises.²⁸ This is contrary to the express prohibition on the military use of religious buildings, regardless of whether civilians and non-combatants are present. However, Grover argued²⁹ that the military use of schools is prohibited inasmuch as the military use of religious buildings is prohibited, by putting forward the argument that under IHL children are afforded ‘special protection’.³⁰ According to Art. 77(1) of API, “[t]he parties to the conflict shall provide children with care and aid they require, whether because of their age or for any other reason [emphasis added].”³¹ Conversely, should a school be employed for military purposes, as explained above, children are placed at risk of harm, as opposed to care. Against these considerations, Grover argued that, because of the special protection afforded to children under IHL, schools should benefit from a higher standard of protection than other civilian buildings.³² Such protection would involve a total prohibition on the military use of schools, regardless of the presence of civilians and non-combatants. Furthermore, she reasoned,³³ the special protection of children would be consistent with the provisions of Art. 52(3) of API, according to which, the assessment as to whether a school is a civilian object or a military objective requires extreme caution. In case of doubt, a school should be presumed civilian, as opposed to many other civilian buildings where the doubt need not be resolved in favour of the building being presumed civilian, as long as everything feasible has been done to check that the object is in fact a military objective.³⁴

The special protection of children affected by armed conflict and their right to access to education and healthcare, as well as to be evacuated from areas of combat for safety reasons, was also recognised by customary international law.³⁵ This tends to confirm the aforementioned argument, according to which, the military use of schools should be prohibited, regardless of the presence of civilians or non-combatants, on the basis of the special protection afforded to children.

To sum up, IHL rules protect schools, children and protected persons in relation to schools on the basis of their civilian character and, as such, their targeting or attack is prohibited as long as they maintain their civilian character. The protection of a school is temporarily lifted

²⁸ *Ibid.*

²⁹ S.C. Grover, above n. 23, p. 140.

³⁰ E. Wilmshurst, S. C. Breau (eds.), *Perspectives on the ICRC Study on Customary International Humanitarian Law*, Cambridge: University Press 2011, p. 198.

³¹ Additional Protocol I to the Geneva Conventions, art. 77(1).

³² S.C. Grover, above n. 23, p. 175.

³³ *Ibid.* p. 141.

³⁴ *Ibid.* p. 142.

³⁵ J.-M. Henckaerts, L. Doswald-Beck, *Customary International Humanitarian Law, Volume I: Rules*, Cambridge: University Press 2005, p. 479.

when it is turned into a military objective. The use of a school for military purposes must take place strictly on the basis of military necessity. However, even when the IHL rules are observed, it has been suggested³⁶ that, at all times, a clear-cut differentiation should be made between schools (i.e. a demarcation between those employed and those not employed for military use in armed conflict). Conversely, a higher standard of protection based on children's special status under IHL may be regulated, to ensure that the risk of injury of children as a result of attacks against schools is mitigated.

III. EFFORTS AT THE INTERNATIONAL LEVEL REGARDING THE PROTECTION OF SCHOOLS DURING ARMED CONFLICT

At the international level, the matter of attacks against schools gained momentum following the UNSC Resolution 1998 (2011),³⁷ according to which, the UNSG was asked to include in his reports on 'children and armed conflict' those parties to armed conflict which engage in recurrent attacks or threats of attacks against schools, as well as against protected persons in relation to schools. Two other UNSC resolutions followed, Resolution 2143 (2014) and Resolution 2225 (2015), expressing deep concern about attacks against schools³⁸ and strongly condemning all violations of applicable international law in relation to attacks against schools.³⁹

In respect of the protection of schools in armed conflict, as inferred from the aforementioned UNSC Resolutions on the matter, two possible issues can be distinguished: 1) the military use of schools; and 2) the protection from attacks or threat of attacks against schools and persons in relation to schools.

All three UNSC Resolutions warn against the military use of schools,⁴⁰ acknowledging that such use may render schools legitimate targets of attack, thus jeopardising children's and teachers' safety and the right to education. In addition, a change of approach with regard to the level of protection afforded to schools in armed conflict is seemingly noticed: while the first resolution dealing with attacks against schools, Resolution 1998 (2011), urges all parties

³⁶ S.C. Grover, above n. 23, p. 140.

³⁷ Resolution 1998 (2011), UNSC, para. 3.

³⁸ Resolution 2143 (2014), UNSC, para. 17; Resolution 2225 (2015), UNSC, para. 7.

³⁹ Resolution 2143 (2014), UNSC, para. 1; Resolution 2225 (2015), UNSC, para. 1.

⁴⁰ Resolution 1998 (2011), UNSC, para. 4; Resolution 2143 (2014), UNSC, para. 18; Resolution 2225 (2015), UNSC, para. 7.

to armed conflict to refrain from the ‘military use’ of schools in contravention of IHL,⁴¹ Resolution 2143 (2014) went even further to clarify that the parties to armed conflict need to respect the “civilian character of schools, in accordance with international humanitarian law”.⁴² Finally, Resolution 2225 (2015) introduced the term ‘civilian character of schools as such [emphasis added]’, which may imply acknowledgment of the *inherent* civilian character of schools.

Additionally, as suggested by the wording of Resolution 1998 (2011)⁴³ and Resolution 2143 (2014),⁴⁴ the protection from (threat of) attacks against schools applies to schools and protected persons in relation to schools. Moreover, both UN Resolutions⁴⁵ “strongly condemn all violations of applicable international law involving (...) attacks against schools (...) committed against children in situations of armed conflict”. While not specified *per se*, what can be interpreted from the aforementioned UNSC Resolutions is that schools could benefit from two levels of protection: 1) on the basis of the fact they are schools; and 2) on the basis that an attack may impact children and/or protected persons in relation to schools. These UNSC Resolutions do not simply mention, for instance, the protection of schools and its civilians, but reiterate concern vis-a-vis children and/or protected persons in relation to schools. Against this background, it could be implied that, while not specified *per se*, a higher standard of protection could be afforded to schools, potentially on the basis of the special protection of children.

However, further guidance on the scope of Resolution 1998 (2011) can be inferred from the ‘Guidance note on Security Council Resolution 1998’ (hereinafter referred to as ‘Guidance note’) prepared by the Office of the UN Special Representative of Children and Armed conflict.⁴⁶ The document provides guidelines on the implementation of the aforementioned resolution and practical tools for the better protection of schools and protected persons. It also sets out the applicable international legal framework and stresses the need to enhance the monitoring and reporting operations, as well as the dialogue with parties to the conflict.⁴⁷ Furthermore, the Guidance note provides further clarification regarding the wording of the

⁴¹ Resolution 1998 (2011), UNSC, para. 18.

⁴² Resolution 2225 (2015), UNSC, preamble.

⁴³ *Ibid*, para. 3.

⁴⁴ Resolution 2143 (2014), UNSC, para. 17.

⁴⁵ Resolution 1998 (2011), UNSC, para. 1; Resolution 2143 (2014), UNSC, para. 1.

⁴⁶ Guidance note on Security Council Resolution 1998, above n. 14.

⁴⁷ The Six Grave Violations Against Children During Armed Conflict: The Legal Foundation, Office of the Special Representative of the Secretary-General for Children and Armed Conflict, October 2009, p. 19, https://childrenandarmedconflict.un.org/publications/WorkingPaper1_SixGraveViolationsLegalFoundation.pdf.

resolution, conveying that the UNSC based its resolutions on ‘children and armed conflict’ on applicable international law and that ‘violations’ in the Council’s language are actually violations of international legal protections afforded to children.⁴⁸ In addition, it clarifies that “while there is no explicit general prohibition on the military use of schools in international law”,⁴⁹ all parties to a conflict have “the obligation to, at a minimum, not interfere with or obstruct the right to education, and should therefore remove children and use schools for military purposes as a measure of last resort [emphasis added]”. The Guidance note has, therefore, shed light on the meaning of Resolution 1998 (2011)’s provisions relating to the protection afforded to schools during armed conflict: schools can be employed for military purposes, as a measure of last resort, and do not benefit from specific protection under IHL.

Furthermore, relevant information on the protection of schools can also be inferred from the UNSG annual reports on ‘children and armed conflict’. Following Resolution 1998 (2011), these reports include in their annexes “those parties to conflict that engage in recurrent attacks on schools (...) or in recurrent attacks or threats of attack against protected persons in relation to schools (...).”⁵⁰ The UNSG reports are based on information gathered by the UNSC Monitoring and Reporting Mechanism (MRM) which has the mandate to systematically monitor, document and report on six grave violations to children’s rights, including those as a result of attacks against schools in situations of concern around the world.⁵¹ The MRM is not only a tool to ‘name and shame’ parties that violate children’s rights, but also, through its systematic gathering of accurate and reliable information, it has the primary goal to inform better responses and also push for the accountability of parties to a conflict.⁵² For the purpose of MRM, incidents falling within these categories are being listed and reported on: attacks on schools, attacks on education personnel, threats of attacks, military use of schools, and other interference with education. However, each incident should be carefully examined to determine whether it fits the purpose of MRM.⁵³ MRM has also its limitations as it is only implemented in 14 countries,⁵⁴ has specific monitoring and reporting definitions to the six grave violations of children’s rights, and its transparency has been

⁴⁸ Guidance note on Security Council Resolution 1998, above n. 14, p. 4.

⁴⁹ *Ibid*, p. 15.

⁵⁰ Report of the Secretary-General on Children and armed conflict, A/66/782-S/2012/261, 26 April 2012, UN Security Council, para. 3.

⁵¹ The Six Grave Violations, Office of the Special Representative of the Secretary-General for Children and Armed Conflict, <https://childrenandarmedconflict.un.org/effects-of-conflict/six-grave-violations/>.

⁵² Briefing on the MRM, Child Rights International Network and Child Soldiers International, p. 1, http://www.child-soldiers.org/user_uploads/pdf/20150724csicrinjointmrmpaperfinal8759585.pdf.

⁵³ *Ibid*, p. 6.

⁵⁴ Guidance note on Security Council Resolution 1998, above n. 14, p. 5.

recently challenged due to its alleged failure to apply MRM standards to Israel, following the attacks in Gaza in the summer of 2014.⁵⁵

To date, four UNSG reports based on MRM data have been issued,⁵⁶ with the June 2015 Report marking “unprecedented challenges with regard to the protection of tens of millions of children growing up in situations affected by conflict”.⁵⁷ As far as the protection of schools is concerned, all the reports warn against the military use of schools but do not offer any further clarification as to which level of protection should be employed. However, progress was noticed with the release of the 2013 Report, which stressed that “compliance with international human rights and humanitarian law, with their emphasis on *special protection for children*, remains key to preventing grave violations against children [emphasis added]”.⁵⁸ Finally, the 2015 Report acknowledged that the “special protection afforded to schools”⁵⁹ needs to be respected. As exemplified above, while some UNSG reports raise concern on the military use of schools,⁶⁰ other reports promote the special protection of schools and/or children.⁶¹ However, it can be noticed that there is a lack of consistency on the level of protection afforded to schools during armed conflict across the four UNSG reports.

Furthermore, other cues on the protection afforded to schools during armed conflict can be inferred from UNSC as well as the Committee on the Rights of the Child⁶² expressed concern on the military use of schools.⁶³ For instance, the Committee on the Rights of the Child, when presented with reports on the military use of schools in Columbia and Sri Lanka, urged these States to “immediately discontinue the occupation of schools by the armed forces and strictly ensure compliance with humanitarian law.”⁶⁴ Additionally, in a statement delivered by the President of the UNSC, the UNSC called upon the parties to armed conflict

⁵⁵ Security Council Meeting Records, above n. 1.

⁵⁶ 2012 Report of the Secretary-General on Children and armed conflict; 2013 Report of the Secretary-General on Children and armed conflict; 2014 Report of the Secretary-General on Children and armed conflict; 2015 Report of the Secretary-General on Children and armed conflict.

⁵⁷ 2015 Report of the Secretary-General on Children and armed conflict, para. 5.

⁵⁸ 2013 Report of the Secretary-General on Children and armed conflict, para. 213.

⁵⁹ 2015 Report of the Secretary-General on Children and armed conflict, para. 111.

⁶⁰ 2012 Report of the Secretary-General on Children and armed conflict, para .168; 2014 Report of the Secretary-General on Children and armed conflict, para. 210.

⁶¹ 2013 Report of the Secretary-General on Children and armed conflict, para. 213; 2015 Report of the Secretary-General on Children and armed conflict, para. 111.

⁶² The body monitoring the implementation of the Convention on the Rights of the Child and its Optional Protocol.

⁶³ Human Rights Watch, ‘Schools and Armed Conflict: A Global Survey of Domestic Laws and State Practice Protecting Schools from Attack and Military Use’, p. 47, <https://www.hrw.org/report/2011/07/20/schools-and-armed-conflict/global-survey-domestic-laws-and-state-practice>.

⁶⁴ *Ibid*, pp. 47-48.

to “refrain from actions which impede children’s access to education, in particular (...) the use of schools from military operations”⁶⁵

The protection of schools during armed conflict was also tackled by the International Safe School Declaration, endorsed by 49 States worldwide.⁶⁶ The Declaration was opened for endorsement in a conference in Oslo, in May 2015, when the endorsing States agreed to support and use the Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict (hereafter referred to as ‘the Guidelines’). The Guidelines were developed over several years of consultations with experts from various governments, militaries, UN agencies, and international and human rights organisations spearheaded by the Global Coalition to Protect Education from Attack in 2012, and finalised in December 2014 under the leadership of Norway and Argentina.⁶⁷ As far as the protection of schools is concerned, the Guidelines call for the parties to armed conflict to avoid using educational buildings or making them targets of attack.⁶⁸ In addition, they set clear-cut standards of protection to be afforded to schools; namely, their protection is to be offered on the basis of their civilian character as they are considered “ordinarily civilian objects”⁶⁹ The Guidelines also convey that schools are not entitled to any special protection, emphasising that when trying to achieve a similar military advantage (to that of the opponent) “other buildings should be regarded as better options and used in preference to school and university buildings, even if they are not so conveniently placed or configured, except when such buildings are specially protected under International Humanitarian Law (e.g. hospitals)”.⁷⁰ Yet, through the Guidelines, the “parties to armed conflict are urged not to use schools and universities for any purpose in support of their military effort [emphasis added]”⁷¹ The Guidelines, however, are not legally binding, and for this reason parties to an armed conflict have discretion whether or not they incorporate the Guidelines into doctrine, military manuals, rules of

⁶⁵ Statement by the President of the Security Council, 6114th meeting of the Security Council, S/PRST/2009/9, 29 April 2009.

⁶⁶ Afghanistan, Argentina, Austria, Brazil, Bulgaria, Central African Republic, Chad, Chile, Costa Rica, Cote d'Ivoire, Czech Republic, Ecuador, Finland, Georgia, Greece, Honduras, Iceland, Ireland, Italy, Jamaica, Jordan, Kazakhstan, Kenya, Lebanon, Liberia, Liechtenstein, Luxembourg, Madagascar, Malaysia, Montenegro, Mozambique, Netherlands, New Zealand, Niger, Nigeria, Norway, Palestine, Panama, Poland, Portugal, Qatar, Sierra Leone, South Africa, South Sudan, Spain, Sweden, Switzerland, Uruguay and Zambia. ‘Safe Schools Declaration Endorsements’, Global Coalition to Protect Education from Attack, <http://www.protectingeducation.org/guidelines/support>.

⁶⁷ *Ibid.*

⁶⁸ ‘37 Countries Start Process of Protecting Schools and Universities during Conflict’, Global Coalition to Protect Education from Attack, <http://protectingeducation.org/news/countries-join-safe-schools-pact>.

⁶⁹ Guidelines for Protecting Schools and Universities from Military Use During Armed Conflict, Global Coalition to Protect Education from Attack, Guideline 3,

http://protectingeducation.org/sites/default/files/documents/guidelines_en.pdf.

⁷⁰ *Ibid.* guideline 2.

⁷¹ *Ibid.* preamble.

engagement, operational orders, and other military instruments, to encourage appropriate practice throughout the chain of command.⁷² Nonetheless, while their implementation in practice is voluntary, the Safe Schools Declaration marked an important landmark on the protection of schools, as it captured States' commitment to shed light on the status of schools during armed conflict and their protection thereto.

Finally, the importance of the Safe School Declaration has been also reinforced by the UN Special Representative for Children and Armed Conflict, who applauded the initiative of those States which have already endorsed the Declaration, and expressed her commitment to advocate on behalf of children in conflict situations to persuade other States to commit to the Guidelines.⁷³ Leila Zerrougui also expressed concern with regard to the military use of schools, highlighting that “[w]hile some claim there is a military logic to using schools, Governments and military commanders must also be cognizant of the grave repercussions such commandeering has on children's right to education”.⁷⁴ In addition, she outlined once again the risks of transforming schools into military objectives: schools become immediate targets, thereby endangering the lives of children, and risking structural damage which could render the school unusable as an educational establishment for many years.⁷⁵

IV. REMARKS

Attacks against schools have been documented on various occasions⁷⁶ and attracted concern in relation to the military use of schools,⁷⁷ violation of human rights of children and protected personnel in relation to schools,⁷⁸ as well as the level of legal protection afforded to schools.⁷⁹ As explored in this Brief, there are various types of sources devoted to addressing attacks against schools in armed conflict, which highlight that the protection of

⁷² *Ibid*, guideline 6.

⁷³ Statement of Leila Zerrougui delivered at “Side-Event” of Human Rights Council: Protecting Education from Attack, Office of the Special Representative of the Secretary-General for Children and Armed Conflict, <https://childrenandarmedconflict.un.org/statement/statement-of-leila-zerrougui-delivered-at-side-event-of-human-rights-council-protecting-education-from-attack/>.

⁷⁴ *Ibid*.

⁷⁵ *Ibid*.

⁷⁶ A UNESCO report in 2010 documented that, worldwide, attacks on education have occurred in at least 31 countries from 2007 to 2009. See B. O’Malley, ‘Education under Attack 2010: A summary’, UNESCO, 2010, pp. 37-39, <http://unesdoc.unesco.org/images/0018/001867/186732e.pdf>; Another comprehensive study focusing on ‘education under attack’ revealed that, between 2009 and 2013, attacks against education have occurred, in 70 countries around the globe, of which, in 30 countries a pattern of deliberate attacks has been identified. See Global Coalition to Protect Education from Attack, EDUCATION UNDER ATTACK, 2014, p. 113, http://protectingeducation.org/sites/default/files/documents/eua_2014_full_0.pdf.

⁷⁷ Statement of Leila Zerrougui, above n. 73.

⁷⁸ Security Council Meeting Records, above n.1, p. 38.

⁷⁹ Human Rights Watch, above n. 63.

schools and related persons is of great concern to the international community. However, three issues with regard to the protection of schools during armed conflict came to the fore throughout this research.

Firstly, IHL recognises that military necessity may lead to the transformation of schools into military objectives. Additionally, as inferred from the existing literature on the topic, the lack of differentiation between schools which have been converted to military objectives from those which have not been converted creates challenges for combatants. The same holds true for the case of schools which are vacated after their military use, with the risk that the combatants may be unaware of the change of their status. As highlighted in this research, Grover pointed out that the lack of demarcation between schools as civilian objects or military objectives creates challenges for combatants when trying to identify legal targets, while Bart drew attention to the fact that this confusion may mistakenly lead to attacks against schools which are not employed for military reasons. To this end, Bart put forward a pertinent solution to tackle this challenge in practice. He argued that there is a need to create a universally recognised distinctive emblem that would inform combatants on the status of a school.⁸⁰ This solution may indeed help tackle the lack of differentiation between schools and the challenges thereto, but only in the case that States would agree on such an emblem and it would also become (universally) accepted by combatants.

Secondly, while IHL is clear that the protection of schools and related persons is assessed on the basis of their civilian character, various UN sources may imply different standards of protection. For instance, Resolution 1998 (2001) and its Guidance note, as well as Resolution 2143 (2014), make reference to the ‘civilian character of schools, in accordance with IHL’. They also emphasise the protection of schools and protected persons in relation to schools, and condemn attacks against schools which result in violations of children’s rights. Additionally, Resolution 2225 (2015) introduced protection on the basis of the ‘civilian character of schools as such’, while the UNSG reports put forward the notions of ‘special protection afforded to schools’ and ‘special protection for children’, without providing clarification on the meaning of the word ‘special’ in the construction. It can, thus, be implied that, across different UN sources, there may be different standards of protection afforded to schools during armed conflict. As Grover proposed, schools benefit from a special protection on the basis of the special protection of children under IHL. As children are entitled to care, under IHL any form of harm visited upon them by means of attacks against schools is strictly

⁸⁰ G. R. Bart, above n. 22, p. 437.

prohibited. Additionally, UN sources, such as the UNSG reports, tend to support the thesis put forward by Grover. Be that as it may, the different terminology, without further explanation on the choice of wording, used to describe the protection afforded to schools during armed conflict across various UN sources seems to perpetuate this confusion. Instead, a consistent wording throughout all the sources may help shed light on the actual level of protection and avoid blurred interpretation.

Thirdly, two rather controversial approaches to the protection of schools during armed conflict can be identified across this research. On the one hand, there are several sources, such as, for instance, the Guidance note to Resolution 1998 (2011), the Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict as well as the International Safe School Declaration, which acknowledge that schools should be employed for military use only ‘on the basis of military necessity’ or as a ‘measure of last resort’. On the other hand, the President of the UNSC, the Committee on the Rights of the Child and the UN Special for Children and Armed Conflict, as highlighted in section III of the Brief, expressed concern on any military use of schools and the subsequent impact on children. These two different approaches to the protection of schools during armed conflict seem to add to the confusion on the level of protection. In order to tackle this issue, consistency in interpreting the IHL rules relating to the protection of schools during armed conflict, across both UN sources as well as States’ expression of commitment, such as the Safe School Declaration, may help avoid future controversy on this topic.

V. CONCLUSION

Attacks against schools during armed conflict rose to unprecedented levels of violence in 2014, as highlighted by the high number of children killed, as well as schools damaged or destroyed. Justified by various reasons, combatants in numerous armed conflicts have either attacked or threatened to attack schools and protected persons in relation to schools, or employed schools for military use. It is beyond doubt that IHL, the body of law governing the conduct of parties during armed conflict, recognises the protection of schools, children and protected persons on the basis of their civilian character (and the presence of civilians on their premises), as opposed to the special protection afforded to hospitals and religious buildings. Furthermore, at the international level, the matter of protecting schools against armed attacks on schools gained momentum. Since 2011, numerous sources dealing with the protection of schools during armed conflict emerged. However, as highlighted by the

present Brief, there is a lack of consistency as regards the level of protection afforded to schools. The Brief identified three potential setbacks to the protection of schools, one practical and two conceptual: 1) the lack of differentiation between schools which have been converted into military objectives from those which have not been converted creates serious challenges in practice; 2) the use of inconsistent terminology across various documents to describe the protection afforded to schools; and 3) on the one hand, the existence of a clear-cut legal basis for the protection of schools (because of their civilian character) and the possibility of employing them for military purposes only on the basis of military necessity; and, on the other hand, concern regarding the military use of schools – two rather controversial approaches. Finally, the Brief identified three potential solutions to enhance the level of protection afforded to schools during armed conflict by: firstly, reaching agreement on an emblem to make a differentiation between schools employed for military purposes from those not employed; secondly, using a coherent terminology across various sources dealing with attacks against schools in order to avoid controversy in interpretation; and thirdly, maintaining consistency in the interpretation of IHL rules relating to the protection of schools during armed conflict.