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PROTECTING SCHOOLS WITHIN CONFLICT ZONES IN GAZA STRIP UNDER INTERNATIONAL HUMANITARIAN LAW

Abstract: *The paper has discussed the violation against education facilities in Gaza Strip from the International Humanitarian Law (IHL) perspective¹, explaining the challenges and the impact of armed conflict on education rights. The paper will identify those violations and will propose methodologies to improve the adoption of the IHL against them. Moreover, it will discuss the policies to decrease the impact of those violations and propose techniques to respond to the threats against children's rights within the war duration. It will be analyzed the applied IHL in the protection of the education system in Gaza Strip from the attack which happened in 2021 by exploring the efficiency of the IHL impartially.*

In this research, a qualitative approach has been adopted as a primary source in exploring how educational institutions should be protected within IHL (which should be respected) during attacks. As per the descriptive study, the research will investigate the importance of protecting children's educational institutions in armed conflict situations. The assessment of child protection was considered in the escalation of Israeli attacks on the Gaza Strip in May 2021. The main source of data has been collected using different media such as Telephone-based semi-structured interviews, E-mail correspondence, documentary review, and agencies working in child protection in Gaza Strip; in addition, other secondary sources have been considered, such as desk review, reliable journalism, and published academic research.

Continuous military operations throughout Gaza Strip compose dramatic challenges to getting highly qualified education in a safe environment for children.

¹ Safe School Declaration, 2015, Safe Schools Declaration – An inter-governmental political commitment to protect students, teachers, schools, and universities from the worst effects of armed conflict (protectingeducation.org).

The air strikes and rocket attacks prevented 637,195² students from being in school in a safe environment (Jeanne, 2008). Other reports addressed that Israeli airstrikes destroyed over 184 schools in 2021³ and caused partial or severe damage to others. As addressed in other reports, the students and the academic staff have suffered from different cases of depression and expressed their fears of asymmetric warfare in addition to being under blockage (OCHA, May 2021).

Regarding the laws governing educational facilities and institutions' protection, IHL still has some space for improvement that can be addressed and applied in the future to enhance them (Adam, 2011). It is known that numerous kid fatalities and schools suffered partial or total destruction as a result of military activities. On the same, it is documented that the levels of violence against educational organizations and schools hit unheard-of levels in the last ten years⁴.

Keywords: *Child protection, IHL, Violence against children, school attacks, oPt, PCHR.*

I. INTRODUCTION

Education is a fundamental right of all societies. Every child has the legal right to free primary education. Article 28 of the 1989 Convention on the Rights of the Child advances this right and the expansion of accessible secondary education (resolution, 1989). This right is critical to developing future-ready citizens. Unfortunately, this right is often lost in war zones and armed conflict. In these conflicts, there's no exception, schools have been the target of many armed conflicts worldwide. Such attacks have killed an unprecedented number of children and damaged or destroyed schools over the past decade; attacks targeting educational and military purposes rose by a third in 2021 compared to a few years ago. Under its general guidelines for safeguarding civilians and civilian property, International Humanitarian Law recognizes the protection of minors, protected individuals, and educational institutions (Tavassoli Naini Manuchehr, 2011).

Even though IHL generally protects schools, experience demonstrates that armed conflict still severely impacts them, and the situation in Gaza presents this. The International Committee Red Cross (ICRC) notes that armed Palestinian and Israeli groups have utilized numerous schools and either destroyed or damaged them (ICRC, 2021).

² *Education Cluster Report on Damage in Educational Facilities Gaza Strip*, Gaza Strip: oPt.

³ Global Coalition to Protect Education from Attack, May 2015, p.1., Global Coalition to Protect Education from Attack, Safe Schools Declaration.

⁴ Global Coalition to Protect Education from Attacks, "Practical Impact of the Safe School Declaration: Fact Sheet," January 2022, Global Coalition to Protect Education from Attack (protectingeducation.org)

Schools are sometimes wholly safe during armed conflict. However, if schools are often destroyed or used for military operations, it might have severe consequences for the civilian populace.

Palestinians are one of several nations that have had many kids and teachers endangered, hurt, or murdered by indiscriminate attacks or targets. Palestinians have seen attacks for decades, and hundreds of schools have been destroyed or damaged by conflict. For instance, the UN claimed that during 11 days of intense fighting in May 2021, Israel's strikes in Palestine damaged approximately 180 educational facilities in Gaza. In one incident, an airstrike hit two UNRWA (United Nations Relief and Works Agency) schools in Gaza, causing damage to 29 classrooms and the wall (News, May 2022).

The schools in Gaza Gather strive wars and wantonness for a decade of blockade. Teachers and students take on being killed while the construction of the schools has been attacked, rebuilt, and destroyed again.

This Paper investigates the extent to which International Humanitarian Law has been affected by analyzing one of the six main domains of child protection and reviewing the experiences of violations from attack schools' protection in the Gaza Strip during the military operations in the 2021 War.

The provisions used to protect the educational facilities from attack during the conflict in IHL are minimal, and we have a few that expressly protect the educational facilities. This Paper showed that the IHL still needs to safeguard the education system as one of the most important rights for child protection.

Specifically, we can find that IHL forbids targeting facilities for education. The Paper will examine the principles and the critical rules of IHL, focusing on the four Geneva Conventions and their two Additional Protocols.

Evaluating the level of protection provided to schools during armed conflict is urgent and essential. In its first section, this essay will examine IHL laws that govern how combatants behave in armed conflict to clarify the legal framework governing attacks on educational facilities. The second section will explain the efforts and strategies the international community uses to address this issue. The third section will talk about Gaza Strip as a case study. The brief will next present a discussion regarding safeguarding schools before highlighting some crucial advances.

II. THE ATTACK AGAINST SCHOOL FACILITIES DURING THE ARMED CONFLICT FROM THE IHL PERSPECTIVE

The primary purpose of IHL or the law of war is to limit the destruction of war⁵, the injured, and the death by focusing on the rules being a compromise

⁵ ICRC, 1977. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, Geneva: INTERNATIONAL COMMITTEE OF THE RED CROSS.

between military necessity and the needs of humanity, as we cannot forbid war (ICRC, 2022). However, at least we can limit violence; Human suffering should be minimized. Based on this vision, the state derived three basic rules.

International Humanitarian Law stipulates those Civilians and civilian property must be generally protected from risks associated with military activity. The rules of distinction, therefore, require: “*To ensure respect for and protection of civilians and civilian objects, Parties must engage in conflict, always Make a distinction between combatants and civilians, as well as between civilian objects and military targets, and only act violently when attacking military targets.*” Since the schools are civilian structures that citizens use, schools also benefit from general protection (ICRC, 2010).

Any combatants must not attack schools. Therefore, deliberate attacks on schools are illegal, violating the principle of discrimination and severely violating International Humanitarian Law. However, protected status for persons and civilian property may be temporarily lost. If a civilian is directly or actively involved in combat operations, that person loses protection as a civilian, regardless of age. Likewise, civilian objects such as schools lose their protected status if used for military purposes, such as storing artillery pieces.

The possibility of converting schools into military objectives is governed by The Geneva Conventions’ Additional Protocol I, Article 52(3)[2], which states that when in doubt, “*(a school is used to contribute effectively to military operations, it shall be presumed not to be so used)*”⁶ (ICRC, 1977).

Two questions were raised about these rules. First, Sheppard and Kizuka expressed concern that schools that were used as military targets and subsequently evacuated could still be at risk of being attacked by fighters because of a lack of information. Importantly, as U.S. Naval Advocate General Bart stated, “The probability that hostile forces may mistakenly identify modified and unmodified schools and unfairly harm children and their schools increases as a result of this [military] use of [schools] “and” this concern was also echoed by Grover, who emphasized that the use of schools for military poses challenges for combatants when trying to identify legitimate targets (i.e., distinguishing between schools that have been converted to military objectives and those that have not been converted to military purposes, military target schools, Reconstructed). This target puts children in or near the school at risk of injury or death.

Second, related to concerns about the situational use of schools in armed conflict, there is a heated debate about using schools as military targets (Secretary-General, 2014). As noted above, where there is uncertainty about the use of schools to contribute to military operations effectively, the general presumption should support the civilian use of schools On-site.

⁶ ICRC, 1977. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, Geneva.

Article 51 of API This contradicts the explicit prohibition of the military use of religious buildings, whether there are civilians or non-combatants. However, Grover contends that the ban on religious structures makes employing schools for military purposes illegal, arguing that children enjoy “special protection” under international humanitarian law. According to Art.77 (1) of API, “The parties to the dispute shall ensure that children receive the care and assistance they require, regardless of their age (ICRC, 1977). Conversely, children are at risk of harm if schools are used for the military, as noted above, instead of care.

In response to these Considerations, Grover argues that since IHL provides children with special protection, Schools should have a higher level of protection than other public structures. Such protection would include a total ban on the military use of schools, regardless of the presence of civilians and non-combatants in schools. In addition, she believed that special protection for children would align with API Article 52 (3), under which the assessment of whether a school is a civilian or a military object requires extra care (ICRC, 1977). Extreme care must be taken when determining if a school is a civilian or military goal⁷. Unlike many other civilian structures where the doubt need not be resolved in favor of the building being deemed civilian if everything practical has been done to check that the object is a military objective, a school should be presumed to be civilian in case of doubt. Additionally, customary international law recognized the special protection of children impacted by armed conflict and their rights to education, healthcare, and evacuation from fighting zones for their safety (ICRC, 1977).

This appears to support the argument made above. It should be illegal for the military to use schools for any purpose, including training, regardless of whether civilians or non-combatants are present. In conclusion, schools, children, and other protected individuals about schools are protected by IHL standards because of their civilian character⁸. As a result, targeting or attacking them is forbidden as long as they maintain that character (Smith, 2002). When a school is made a military target, its protection is momentarily removed.

A school may only be used for military operations when it is necessary. But even when the IHL guidelines are followed, it has been recommended that there should always be a distinct distinction between schools (i.e., a line drawn separating those who are and are not used for military purposes during armed conflict). In contrast, a more significant threshold of protection based on children’s unique status under IHL may be regulated to reduce the danger of injury to children due to assaults against schools.

⁷ OCHA, July 2015. Gaza Strip: Humanitarian Impact of Blockade – OCHA factsheet/ infographic, Gaza Strip: Office for the Coordination of Humanitarian Affairs.

OCHA, May 2021. Gaza Strip : Escalation of Hostilities, Gaza Strip: UN Office for the Coordination of Humanitarian Affairs

⁸ *Security Council calls for ‘full adherence’ to Gaza ceasefire, focus on two-State solution*, Gaza Strip: [UN News](#).

III. INTERNATIONAL EFFORTS TO PROTECT SCHOOLS DURING ARMED CONFLICT

Following United Nations Security Council (UNSC) Resolution 1998 (2011), which requested the United Nations Security-General (UNSG) to include in its reports on “children and armed conflict” those armed conflict parties who participate in recurrent assaults on schools and threats of attacks against protected individuals in schools, the issue of attacks against schools gained momentum on a global scale (Security Council, 2011). Following Resolution 2143 (2014), two more UNSC resolutions—Resolution 2225 (2015) and Resolution 2143 (2014) – expressed grave concern over attacks on schools and vehemently denounced all contraventions of applicable international law in connection with such attacks.

Two potential concerns can be distinguished concerning the protection of institutions in armed conflict, as implied by the UNSC Resolutions on the subject: 1) The use of schools for military purposes; and 2) Defense against assaults on, or threat of assaults against⁹, schools and those related to it.

The UNSC Resolutions caution against using schools for military purposes and acknowledge that doing so might make them legitimate targets of attack, endangering the safety of students and teachers and the right to an education.

Resolution 1998 (2011), the first resolution addressing attacks on schools, urged all parties to refrain from using schools “militarily” in contravention of international humanitarian law; however, Resolution 2143 (2014) made it clear that parties to an armed conflict must uphold the “civilian character of schools, following the principles of international humanitarian law.” “Civil character of schools as such” was first used in Resolution 2225 (2015) and may be used to acknowledge the intrinsic civilian nature of schools (Kimberly A, et al., 2011).

Additionally, as implied by the language of Resolutions 1998 (2011) and 2143 (2014), both schools and protection individuals concerning schools are covered by the protection against (threat of) assaults. The two UN Resolutions also “strongly oppose such attacks on schools that target children and violate any valid international law in times of armed conflict.” Although not stated explicitly, it can be inferred from the UNSC Resolutions that schools may be entitled to two degrees of protection: 1) because they are schools; and 2) because an attack may hurt children and other protected individuals who attend schools.

These UNSC Resolutions express concern for children and protected individuals regarding schools, for example, rather than simply mentioning the safety of schools and their civilians. Considering this, it can be inferred that, although not explicitly stated, a higher standard for protection could be given to schools, considering the specific protection of children.

⁹ *Gaza conflict intensifies with rocket barrages and air strikes*, Gaza Strip: [Reuters](#).

However, the “Information note on Security Council Resolution 1998” (hereafter referred to as the “Guidance note”) published by the Office of the UN Special Representative for Children and Armed Conflict provides additional guidance on the scope of Resolution 1998 (2011). The booklet offers instructions for putting the decision into practice and valuable instruments for enhancing the safety of schools and protecting individuals (resolution, 1989). Additionally, it lays out the relevant international legal framework and emphasizes the necessity of improving the monitoring and reporting procedures and communicating with the opposing sides of the conflict. The Guidance note further clarifies the resolution’s wording by stating that the UNSC’s resolutions on “children and armed conflict” were based on valid international law, and the “violations” the Council refers to in its wording are violations of the protections granted to children under international law.

IV. CASE STUDY GAZA STRIP

Decades of occupation, hostilities, and siege have significantly impacted the Gaza Strip’s context. In 1967, Israel invaded and occupied Gaza; it left Gaza Strip in 2005. Israel imposed a land, air, and sea embargo on Gaza in 2007, shortly after Hamas took over the territory (OCHA, July 2015). This communication cutoff between Gaza and the rest of the world chokes off the local economy.

The assertion that Israel has disengaged from its occupation contradicts the reality of Israeli control over the region through the siege. Over 85% of Gazans depend on food aid due to five conflicts that ravaged the area from 2008 to 2022, reversing developmental progress (UNRWA, 2019). Agricultural, water, and electrical infrastructure have been attacked, severely affecting people. The blockade prevented the effective movement of supplies, labor, and people required for reconstruction after each bloody round of hostilities¹⁰. Although not exceptional in every way, Gaza’s siege and embargo make it an unusual war environment and a severe illustration of isolation during the conflict, which profoundly affects schooling (Najjar, 2021). Numerous research on education in the Gaza Strip has been conducted.

In this research, the focus will be on the attack on school facilities in the 2021 period. The intensity of violence in Gaza since 2014 peaked during an 11-day escalation of hostilities in 2021, even though it was lower than in prior years between Israeli forces and Palestinian armed groups in Gaza in 2020. According to the UN, Israeli airstrikes totaled more than 1,500 between May 10 and 21, 2021. In addition, 15,000 housing units in Gaza Strip were damaged, along with water,

¹⁰ *The time of Israel*. [Online] Available at: <https://www.timesofisrael.com/photos-show-hamas-tunnel-dug-underneath-courtyard-of-unwra-school-in-gaza>

sewage, and other civilian facilities, and the conflict resulted in the deaths of over 260 Palestinians, including 67 children (OCHA, 2021, May 28,). The United Nations Relief and Works Agency for Palestine Refugees in the Near East runs schools where around 113,000 internally displaced individuals found shelter (UNRWA) (UNRWA, 2021).

According to the Occupied Palestinian Territory (oPt) Education Cluster, the violence significantly impacted Palestinian children's access to education during an 11-day flare-up in Gaza in May 2021, when fighting damaged over 265 educational facilities, including private, public, and UNRWA schools and kindergartens ((oPt), 2021). As a result of the escalation, schools had to close to protect students and teachers, interrupting the education of about 600,000 children. Attacks on schools in Gaza, for instance, included:

- Near Deir al-Balah, Gaza, on May 11, 2021; airstrikes struck the Ahmed Harb al Kurd school and the al-Sayedah Khadijah Girls' School. According to Palestinian Centre for Human Rights (PCHR), the 550-student Ahmed Harb Al-Kurd School was demolished, and the 400-student Sayedah Khadija School suffered damages (PCHR, May 20, 2021).
- The UN and media claimed on May 11 and 12, 2021 that Israeli airstrikes struck two UNRWA schools in Gaza. At least 29 classrooms were severely damaged, in addition to the wall of the schools, by the strikes (Nidal Al-mughrabi & Helle, May 14, 2021).
- Airstrikes damaged the Ministry of Education building and a boys' secondary school on May 13, 2021, directed at the Ministry of Interior security headquarters in the al-Sheikh Zayid neighborhood of Gaza (PCHR, May 20, 2021).

In the second instance of alleged military use, which took place in Gaza in May 2021, it was claimed that Palestinian armed groups dug tunnels beneath schools to facilitate their activities, For example:

- According to the UN and Israeli media, Palestinian armed organizations dug a tunnel around 7.5 meters below a UNRWA compound that houses two boys' schools. An Israeli soldier discovered the tunnel (STAFF, 2021).
- According to the UN: On an unknown date between May 13 and May 15, 2021, saw an air force landed at the school's courtyard and revealed a tunnel (STAFF, 2021).

In addition to the above-mentioned, there were more attacks on higher education institutions in 2021, particularly considering the resumption of hostilities in Gaza. 12-higher education facilities were damaged during the renewed fighting in Gaza, according to a human rights monitor's report from May 2021. Global Coalition to Protect Education from Attack (GCPEA) documented that two out of four attacks on university facilities took a place in Gaza as below:

- Al Quds University and a Vocational Institution in northern Gaza were destroyed by an airstrike on May 13, 2021, according to PCHR (PCHR, May 20, 2021).

- According to Reuters and local media, airstrikes struck a multi-storey building in Gaza city on May 14, 2021, which has educational facilities belongs the Islamic University and other institutions (Al-mughrabi, May 25, 2021).

V. RESULT

Attacks on schools have been repeatedly documented. Concerns have been raised about using schools for military purposes, violations of the human rights of children and protected persons in schools, and the level of legal protection provided to schools. There are different sources for addressing attacks on schools in armed conflict, highlighting the importance to the international community of protecting schools.

Firstly, IHL acknowledges that schools may become military targets due to military necessity. There is no clear differentiation between schools adapted for military use and those that do not, presenting a problem to fighters, as is clear from the current literature on the subject.

The same is valid for military-themed schools; Combatants may need to realize their identities have changed; according to Grover and Butter, mentioned in this research, it is difficult for combatants to identify valid targets when schools are not classified as civilian or military objects (Nakhle, 2021). This difficulty frequently results in attacked schools suspected that they are military sites being used for military matters.

To achieve the protection goal, Bart suggests a practical solution to this problem. He thinks soldiers must develop a globally recognized symbol to know the school's standing. Such a solution could address the absence of differentiation between schools and the problems it causes, but only if states agree on such a sign, which would be (universally) acceptable to combatants.

Second, while it is clear that schools are protected due to their status as civilians, various UN sources could suggest different degrees of protection [23]. Resolutions 1998 (2001), which further emphasized the protection of school facilities and protected individuals associated with schools, as well as resolution 2143 (2014), which condemned attacks on schools that result in violations of children's rights, are two examples of references to "the civilian character of schools, according to International Humanitarian Law."

VI. CONCLUSION

The research studied the legal framework governing schools' safety during hostilities. International Humanitarian Law aims to protect schools, children, and individuals based on civilian character and give hospitals and religious buildings

special protection. In theory, the general protection provided for schools by IHL would be adequate. However, the conflict in Gaza Strip shows that many schools have been destroyed or utilized for other military reasons, and the situation becomes worse and worse, which means that extra protection is highly required.

This research has shown that there is a need to improve the level of protection of schools and education facilities.

Five potential barriers exist to protect schools as mentioned in the study; two of which are practical, and the other three are theoretical. These barriers are:

1) Failing to distinguish between educational institutions that have been used for military purposes and those that are not;

2) Contradictory phrasing is used to explain how schools are protected through multiple sources;

3) Due to their civilian nature, schools are protected by law, however, for military necessity reasons the law allows utilizing schools for military purposes;

4) The absence of a neutral or secure location during the armed conflict that houses educational facilities;

5) The principle of distinction serves as the core IHL protection provided to educational facilities during the armed conflict. When educational institutions are considered civilian objects, they are safe from intentional and direct attacks. However, if their nature, location, purpose, or use effectively supports military operations, they may become military objects and lose their protection rights. IHL does not outright forbid the military from using educational institutions, and because it does not, in specific situations, this usage is allowed.

The paper concludes and elaborates on potential suggestions that would improve the protection level of schools and educational institutions in the conflict zones and/or within military operations.

Firstly, design and use a symbol or a sign to identify the educational facilities and civil buildings.

Secondly, standardize the terminologies between all sources of information that are used in the attack zones to avoid misleading interpretations.

Thirdly, it should a protocol that is discussing and explaining how to protect the educational institutions and facilities within the IHL during military operations in the attacked zones.

Fourthly, during military operations where students cannot access their schools or educational institutions, it is suggested to establish a “Safety” zone (neutralized and demilitarized Zone) where students can access them and practice their rights in education.

Fifthly, IHL must address that educational facilities are forbidden to be used by all means for military purposes.

The targets of the above-mentioned discussion and suggestions are to increase the awareness of educational institutions’ protection, to improve the current level

of protection, and to provide a safe educational environment for students to practice their education right.

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Заштита школа у зонама сукоба у Појасу Газе према међународном хуманитарном праву

Сажетак: Ради објашњења изазова и утицаја које оружани сукоб има на осиваривање права на образовање, у раду је анализирано насиље које је предузето против школских објеката у Појасу Газе из перспективе међународног хуманитарног права (МХП). У раду су идентификоване врсте насиља и предложени су начини за унапређење примене МХП на плану њиховог спречавања. Штавише, размотрана је политика која има за циљ смањење утицаја тог насиља и предложени су начини решавања на облике угрожавања децијих права у току рата. У раду је објективно саљедана ефикасност МХП које је примењено на плану заштитне образовне система у Појасу Газе од напада који су се десили 2021. године.

У раду је коришћен квалитативни приступ као примарни метод истраживања на који начин образовне институције у току оружаног сукоба треба да буду заштићене према МХП. У раду је описан значај заштитне образовних институција које похађају деца за време оружаног сукоба. Процена угрожености деце размотрана је у контексту ескалације израелских напада на Појас Газе у мају 2021. године. Највише података прикуљено је коришћењем различитих медија као што су телефонски интервјуовани и интервјуи и комуникација путем е-поште, затим анализом оригиналних докумената, као и од удружења која се баве заштитом децијих права у Појасу Газе; поред тога, размотрени су и други секундарни извори, као што су анализа преходно прикуљених података, цитирани новински извори и објављена научна истраживања.

Континуиране војне операције широм Појаса Газе представљају озбиљну претњу по безбедносно окружење у коме деца треба да стекну висококвалификовано образовање. Ваздушни и ракетни напади довели су у питање безбедност 637.195 ученика. Други извештаји говорили су о томе да су израелски ваздушни напади уништили преко 184 школе током 2021. године и нанели делимичну или озбиљну штету другим. У другим извештајима наведено је да су ученици и наставно особље доживели различите облике депресије, а поред страх збој блокаде, посебно су показали страх од асиметричног решавања.

Испираживање је показало да постоји доста простора да се у будућности ради на унапређењу норми МХП које регулишу управљање образовним објектима и њихову заштити. Познато је да су бројна деца поинула и школе преириеле делимично или потпуно уништење као резултат војних активности. Истовремено, документиовано је и да је ниво насиља према образовним установама и школама достигао незапамћен ниво у последњих десет година.

Кључне речи: *Заштита деце, Међународно хуманитарно право, Насиље над децом, Окупране палестинне територије, Палестински центар за људска права.*

Датум пријема рада: 02.05.2023.

Датум достављања коначне верзије рада: 13.07.2023.

Датум прихватања рада: 14.11.2023.