

Draft Lucens Guidelines

for Protecting Schools and Universities from Military Use
during Armed Conflict

Global Coalition to

Protect Education from Attack



NOTE:

This document is in the process of being reviewed by organizations and individuals. This version of the text was produced on July 8, 2013. Further minor amendments are likely. Readers are advised to contact GCPEA (gcpea@protectingeducation.org) if they require clarification on the review and endorsement process.



Global Coalition to **Protect** **Education from Attack**

The **Global Coalition to Protect Education from Attack (GCPEA)** was established in 2010 by organizations from the fields of education in emergencies and conflict-affected fragile states, higher education, protection, international human rights, and international humanitarian law who were concerned about ongoing attacks on educational institutions, their students, and staff in countries affected by conflict and insecurity.

GCPEA is governed by a Steering Committee made up of the following international organizations: The Council for Assisting Refugee Academics, Education Above All, Human Rights Watch, the Institute of International Education, Save the Children International, UNESCO, UNHCR, and UNICEF. GCPEA is a project of the Tides Center, a nonprofit 501(c)(3) organization.

These guidelines were prepared by an external consultant commissioned by GCPEA, based on consultations with representatives from governments, militaries, UN agencies, and inter-governmental and non-governmental organizations, some or all of which have direct and indirect contact with non-state actors. The guidelines are independent of the individual member organizations of the Steering Committee of GCPEA and do not necessarily reflect the views of the Steering Committee member organizations.

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PREFACE

Around the world, in places experiencing armed conflict, schools and universities are being transformed into a part of the battlefield. Despite broad international law requiring parties to armed conflicts to spare civilians as much as possible the hazards of war, the lack of explicit standards or norms protecting schools and universities from use in support of the military effort means that fighting forces often make use of such education institutions for various purposes. Parties to armed conflict have converted schools into bases by encircling playing fields with barbed wire, and filling classrooms with sleeping cots for soldiers. They have established fortifications atop of school buildings from which to survey the surrounding area, and they have positioned snipers in classroom windows. They have stacked rifles in hallways, hidden grenades under desks, and parked armoured vehicles in gymnasiums. Not only have parties to armed conflict taken children's schools by force, they have also established themselves inside institutions of higher education and put kindergartens and day care centres to use in their campaigns. The result is that students are forced to either stay at home and interrupt their education, or study alongside armed fighters while potentially in the line of fire.

Every individual's right to education is recognized in the *International Covenant on Economic, Social, and Cultural Rights*. Children in particular are profoundly important beneficiaries of this right and the *Convention on the Rights of the Child* reinforces this by setting out detailed obligations on states, compliance with which is essential for the right to education to be adequately realized. The right to education means little if students cannot safely attend school or university. The law of armed conflict (also known as international humanitarian law) also recognises the importance of providing education to children during armed conflict, offering specific protection to children, and acknowledging that educational facilities are ordinarily civilian objects not to be targeted unless they are turned into military objectives.

The use of schools and universities as bases, barracks, firing positions, and armouries may transform these places of learning into legitimate military objectives under international law, thus endangering students and teachers, and rendering their educational infrastructure and materials vulnerable to attack. Moreover, the presence of the fighting forces of parties to armed conflict in schools and universities often leads to students dropping out, reduced enrolment, lower rates of transition to higher levels of education, and overall poorer educational attainment. Girls are often disproportionately affected.

These Guidelines have been drawn up with the aim of reducing the use of schools and universities by parties to armed conflict in support of their military effort, and to minimise the negative impact that armed conflict has on students' safety and education. They are intended to serve as guidance for those involved in the planning and execution of military operations, in relation to decisions over the use and targeting of institutions dedicated to education. These Guidelines may also serve as a tool for inter-governmental and non-governmental organisations engaged in monitoring, programming, and advocacy related to the conduct of armed conflict.

States and intergovernmental bodies are urged to encourage all parties to armed conflicts to act in accordance with these Guidelines, and help enable them to do so.

The Guidelines have been formulated taking into account the following basic considerations:

- The Guidelines respect international law as it stands; they do not propose changes to it. They are not legally binding in themselves and do not affect existing obligations under international law. The Guidelines are intended to lead to a shift in behaviour that will lead to better protections for schools and universities in times of armed conflict and, in particular, to a reduction in their use by the fighting forces of parties to armed conflict in support of the military effort. States and non-state parties to armed conflicts are invited to adopt the Guidelines in the spirit in which they are promulgated, and to adapt them in practice to suit their specific circumstances.
- The Guidelines are based on what is practically achievable. They acknowledge that parties to armed conflict are invariably faced with difficult dilemmas requiring pragmatic solutions.
- The Guidelines reflect evidence of good practice already applied by some parties to armed conflict for the protection of schools and universities during military operations. This evidence includes statements of intended practice contained in such documents as training handbooks, promulgated doctrine, and legal manuals.
- The Guidelines have been produced for the use of all parties to armed conflict. They are intended, therefore, for wide dissemination and implementation by both states and non-state parties to armed conflicts.
- While the Guidelines have been produced specifically for application during armed conflict, they may also be useful and instructive for post-conflict situations and other comparable situations, including those with the potential to turn into armed conflict.

DEFINITIONS

“Schools and universities”

This term should be understood in a broad sense to mean places used principally for education, whatever they are called in the local context. It includes, for example, pre-primary or early childhood education centres, primary or secondary schools, learning centres, and tertiary education centres such as universities, colleges, or technical training schools. The term also includes any land or grounds attached to the institutions. Not included, however, are institutions dedicated to the training and education of personnel who are, or who will become, members of the fighting forces of parties to armed conflict (e.g. military colleges and other training establishments).

“Fighting forces of parties to armed conflict”

This is a term that encapsulates both the armed forces of states and the fighting forces of non-state parties to armed conflicts.

“Use in support of the military effort”

This refers to the broad range of activities in which the fighting forces of parties to armed conflict may engage with the physical space of a school or university in support of the military effort, whether temporarily or on a long-term basis. The term includes, but is not limited to, the following uses: as barracks or bases; for offensive or defensive positioning; for storage of weapons or ammunition; for interrogation or detention; for military training or drilling of soldiers; for military recruitment of children contrary to international law; as observation posts; as a position from which to fire weapons (firing position) or to guide weapons onto their targets (fire control). The term does not include instances in which forces are present in the vicinity of schools and universities to provide for the school’s protection, or as a security measure when schools are being used as election polling stations or other non-military purposes.

THE DRAFT GUIDELINES

Parties to armed conflict are urged not to use schools and universities for any purpose in support of the military effort. While it is acknowledged that certain uses would not be contrary to the law of armed conflict, all parties should endeavour to avoid impinging on students' safety and education, using the following as a guide to responsible practice:

Guideline 1: Functioning schools and universities should not be used by the fighting forces of parties to armed conflict in any way in support of the military effort, either for immediate tactical advantage or for longer term purposes.

- (a) This principle extends to schools and universities that are temporarily closed outside normal class hours, during weekends and holidays, and during vacation periods.
- (b) Parties to armed conflict should neither use force nor offer incentives to education administrators to evacuate schools and universities in order that they can be made available for use in support of the military effort.

Guideline 2: Abandoned schools and universities should not be used by the fighting forces of parties to armed conflict for any purpose in support of the military effort except only when, and for as long as, no choice is possible between such use of the school or university and another feasible method for obtaining a similar military advantage. Appropriate alternative premises should be presumed to be a better option, even if they are not as convenient or as well positioned for the desired military purpose, although all feasible precautions should be taken to protect all civilian objects from attack. The fighting forces of parties to armed conflict should be mindful that they may not have full knowledge of the potential negative consequences of their use of a school, including its effect on a civilian population's willingness to return to an area.

- (a) Any such use of abandoned schools and universities should be for the minimum time necessary.
- (b) Abandoned schools and universities that are used by the fighting forces of parties to armed conflict in support of the military effort should always remain available to allow educational authorities to re-open them as soon as practicable, provided this would not risk endangering the security of students and staff.
- (c) Any evidence or indication of militarisation or fortification should be completely removed following the withdrawal of fighting forces, and any damage caused to the infrastructure of the institution should be promptly and fully repaired. All munitions and unexploded ordnance or remnants of war must be cleared from the site.

Guideline 3: Schools and universities—be they in session, closed for the day or for holidays, evacuated, or abandoned—are ordinarily civilian objects. They must never be destroyed as a measure intended to deprive the opposing parties to the armed conflict of the ability to use them in the future.

Guideline 4: Use of a school or university by the fighting forces of parties to armed conflict in support of the military effort may have the effect of turning it into a military objective subject to attack. Parties to armed conflict should consider all feasible alternative measures before attacking a school or university that has become a military objective, including warning the enemy in advance that an attack will be forthcoming unless it does not cease its use.

- (a) Prior to any attack on a school that has become a military objective, the parties to armed conflict should take into consideration the duty of special care for children, and the potential long-term negative effect on a community's access to education posed by the damage or destruction of the school.
- (b) The use of a school or university by the fighting forces of one party to a conflict in support of the military effort should not serve as justification for an opposing party that captures it to continue to use it in support of the military effort. As soon as feasible, any evidence or indication of militarisation or fortification should be removed and the facility returned to civilian authorities for the purpose of its educational function.

Guideline 5: The fighting forces of parties to armed conflict should generally not be employed on security tasks related to schools and universities except when the risk to those institutions is assessed as high; if alternative means of reducing the likelihood of attack are not feasible; if evacuation from the high risk area is not feasible; and if there are no alternative appropriately trained civilian personnel available to provide security.

- (a) If such fighting forces are engaged in security tasks related to schools and universities, their presence within the grounds or buildings of the school should be avoided if at all possible, to avoid compromising its civilian status and disrupting the learning environment.

Guideline 6: All parties to armed conflict should, as far as possible and as appropriate, incorporate these Guidelines into their doctrine, military manuals, rules of engagement, operational orders, and other means of dissemination, to encourage appropriate practice throughout the chain of command.

Annex I: APPLICABLE INTERNATIONAL LEGAL FRAMEWORK

The legal framework applicable to the targeting of schools and universities, and the use of schools and universities in support of the military effort, during armed conflicts is found primarily in the law of armed conflict (also known as international humanitarian law), which is the body of law that regulates conduct in international and non-international armed conflicts. While the law of armed conflict contains all the rules governing targeting, it is less focused on the use of schools in support of the military effort, which is also affected by international human rights law. It is, therefore, important to acknowledge at the outset that the law of armed conflict is complemented by international human rights law, and both are discussed below.

Law of Armed Conflict (International Humanitarian Law)

The law of armed conflict restricts the targeting of schools and universities, and the use of schools and universities in support of the military effort, but it does not prohibit such use in all circumstances and allows for the targeting of schools and universities when they become military objectives.

Schools and universities are normally civilian objects and, as such, shall not be the object of attack unless they become legitimate military objectives.¹ Indeed, to intentionally direct attacks against them when they are not legitimate military objectives would constitute a war crime. Military objectives are defined as 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.² In case of doubt whether a school or university is being used to make an effective contribution to military action, it shall be presumed not to be so used and thus to be a civilian object.³

The law of armed conflict requires the parties to a conflict to take precautions against the effects of attack. To the extent that schools and universities are civilian objects, parties to an armed conflict shall, to the maximum extent feasible, a) avoid locating military objectives within or near densely populated areas where schools and universities are likely to be located; b) endeavour to remove the civilian population, individual civilians and civilian objects under their control from the vicinity of military objectives; and c) take the other necessary precautions to protect those schools and universities under their control against the dangers resulting from military operations.⁴ These rules have important implications for schools and universities.

Turning a school or university into a military objective (for example, by using it as a military barracks) subjects it to possible attacks from the enemy that might be lawful under the law of armed conflict. Locating military objectives (a weapons store, for example) near a school or university also increases the risk that it will suffer incidental damage from an attack against those nearby military objectives that might be lawful under the law of armed conflict.

Those schools and universities that can be characterised as being of great importance to the cultural heritage of every people are afforded additional protection by the 1954 *Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict* and its 1999 *Second Protocol*, and also by corresponding rules of customary law. In particular, the use of such education institutions for purposes which are likely to expose them to destruction or damage is prohibited, unless imperatively required by military necessity.⁵

In rare cases, those educational institutions that can be characterised as being of great importance to the cultural or spiritual heritage of peoples, enjoy additional special protection in the Additional Protocols to the Geneva Conventions.⁶ This would be the case, for example, if schools and universities are located within buildings of particular cultural or heritage importance, in which case, and in particular, the use of such institutions in support of the military effort is prohibited. So also are acts of hostility against them, including their targeting as measures of reprisal.

According to the ICRC Customary Law Study, schools and universities invariably benefit from special protection as cultural property under customary law. Rule 38 of the ICRC Study reflects the assessment that each party to the conflict must respect and protect buildings dedicated to education which are included in the scope of cultural property.⁷ This implies a duty of special care to avoid damage to buildings dedicated to education (unless they are military objectives) as well as the prohibition of all seizure of, or destruction or wilful damage done to, institutions dedicated to education.⁸

The abovementioned rules must not be read in a void. Account must be taken of other relevant rules and principles of the law of armed conflict.⁹ Among these rules are those affording a special protection to children in armed conflict situations.¹⁰ If education institutions are fully or partially used for military purposes, the life and physical integrity of children might be at risk¹¹ and access to education is restricted or even impeded either because children may not go to school for fear of being killed or injured in an attack by the opposing forces, or because they have been deprived of their usual educational building.

Under the Fourth Geneva Convention, applicable during international armed conflicts, an occupying power—that is, the force that has established control and authority over hostile territory—shall, with the cooperation of the national and local authorities, “facilitate the proper working of all institutions devoted to the care and education of children.”¹²

Under Additional Protocol II, applicable during non-international armed conflicts, it is a “fundamental guarantee” that children shall receive an education, in keeping with the wishes of their parents.¹³

The presence of civilians—children, students, teachers, academics and school staff—around schools and universities shall not be used to shield military objectives from attacks or to shield military operations.¹⁴

As a consequence, before using a school or university in support of the military effort, consideration should be given to all relevant rules and principles of the law of armed conflict, in particular the obligation to take precautions against the effects of attack, the special protection afforded to educational institutions that also constitute cultural property, the importance of ensuring access to education in armed conflicts, the prohibition of human shields, and the special protection afforded to children in armed conflicts.

International Human Rights Law

International human rights law is applicable at all times, subject to lawful derogations. As such, it protects students, teachers, academics, and all education staff during peace, armed conflict, and situations of internal disturbances and tensions, although a state can derogate from its ICCPR obligations under Article 9 during an emergency.¹⁵ A number of international human rights law provisions are relevant to the issue of the military use of schools and universities.

International human rights law guarantees students, teachers, academics, and all education staff the right to life,¹⁶ personal liberty, and security.¹⁷ States shall also ensure to the maximum extent possible the survival and the development of children.¹⁸

As children, students under the age of 18 receive special protections under international human rights law. According to the *Convention on the Rights of the Child*, in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.¹⁹

Everyone has the right to education.²⁰ With a view to achieving the full realisation of this right, states shall make primary education compulsory and available free to all; secondary education generally available and accessible to all; and higher education equally accessible to all on the basis of capacity.²¹ The material conditions of teaching staff shall be continuously improved.²² States shall also take measures to encourage regular attendance by children at schools and the reduction of child drop-out rates.²³ With respect to children, states shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.²⁴

The *Convention on the Rights of the Child*, one of the main international treaties guaranteeing the right to education for children, contains no provision for derogation or suspension.²⁵

Relevant International Treaty Provisions

“States Parties ... recognize the right of everyone to education... [W]ith a view to achieving the full realization of this right: (a) Primary education shall be compulsory and available free to all; (b) Secondary education in its different forms ... shall be made generally available and accessible to all by every appropriate means ... [and] (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means...” – International Covenant on Economic, Social, and Cultural Rights, art. 13.

“States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: (a) Make primary education compulsory and available free to all; (b) Encourage the development of different forms of secondary education, ... [and] make them available and accessible to every child... (c) Make higher education accessible to all on the basis of capacity by every appropriate means; ... (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.” – Convention on the Rights of the Child, art. 28(1).

“Parties to [an armed] conflict shall, to the maximum extent feasible: (a) ... endeavour to remove the civilian population, individual civilians and civilian objects under their control from the vicinity of military objectives; (b) avoid locating military objectives within or near densely populated areas; (c) take the other necessary precautions to protect the civilian population, individual civilians and civilian objects under their control against the dangers resulting from military operations.” – 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 58.

“Children shall be provided with the care and aid they require, and in particular ... they shall receive an education ... in keeping with the wishes of their parents, or ... of those responsible for their care...” – 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), art. 4.

“The Occupying Power shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children.” – 1949 Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, art. 50.

“The property of ... institutions dedicated to ... education, ... even when State property, shall be treated as private property. All seizure of, ... or wilful damage done to institutions of this character ... is forbidden, and should be made the subject of legal proceedings.” – 1907 The 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 (Hague Regulations), art. 56.

“[E]ducational ... institutions shall be considered as neutral and as such respected and protected by belligerents ... The same respect and protection shall be accorded to ...

educational ... institutions in time of peace as well as in war.” – Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments (Roerich Pact), 1935, art. 1.

Relevant International Guidance

“The Security Council ... urges parties to armed conflict to refrain from actions that impede children’s access to education, in particular ... the use of schools for military operations.” – Statement by the President of the United Nations Security Council, 6114th meeting of the Security Council, S/PRST/2009/9, April 29, 2009.

“[The Security Council] Urges parties to armed conflict to refrain from actions that impede children’s access to education.” – United Nations Security Council Resolution 1998, S/Res/1998 (2011), July 12, 2011, para. 4.

“There is a strong presumption of impermissibility of any retrogressive measures taken in relation to the right to education... If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the State party's maximum available resources.” – UN Committee on Economic, Cultural, and Social Rights, “General Comment No. 13: The right to education,” E/C.12/1999/10, December 8, 1999, para. 45.

“[M]ilitary presence in the vicinity of schools significantly increases the risk of exposing school children to hostilities and retaliations by illegal armed groups... The Committee urges the State party to immediately discontinue the occupation of schools by the armed forces and strictly ensure compliance with humanitarian law and the principle of distinction. The Committee urges the State party to conduct prompt and impartial investigations of reports indicating the occupation of schools by the armed forces and ensure that those responsible within the armed forces are duly suspended, prosecuted and sanctioned with appropriate penalties.” – UN Committee on the Rights of the Child, Concluding observations, CRC/C/OPAC/COL/CO/1, 2010, paras. 39-40.

“Immediately discontinue military occupation and use of the schools and strictly ensure compliance with humanitarian law and the principle of distinction ... Ensure that school infrastructures damaged as a result of military occupation are promptly and fully restored.” – UN Committee on the Rights of the Child, Concluding observations, CRC/C/OPAC/LKA/CO/1, 2010, para. 25.

“[S]top using schools as detention centres, and ... strictly ensure compliance with humanitarian law and the principle of distinction.” – UN Committee on the Rights of the Child, Concluding observations, CRC/C/SYR/CO/3-4, 2012, para. 52.

“Cease ... use of schools as outposts and detention centres ...” – UN Committee on the Rights of the Child, Concluding observations, CRC/C/ISR/CO/2-4, 2013, para. 64.

“Ensure that schools are not disrupted by State military and paramilitary units and are protected from attacks by non-state armed groups.” – UN Committee on the Rights of the Child, Concluding observations, CRC/C/THA/CO/3-4, 2012, para. 85.

“Special care must be taken in military operations to avoid damage to buildings dedicated to ... education ... unless they are military objectives.” – ICRC Customary International Humanitarian Law Study, Rule 38.

“All seizure of or destruction or wilful damage done to institutions dedicated to ... education ... is prohibited.” – ICRC Customary International Humanitarian Law Study, Rule 40.

“[S]ecurity in schools, meaning not only physical, psychological and emotional safety but also an uninterrupted education in conditions conducive to knowledge acquisition and character development, forms part of the right to education. This means that States have a responsibility to punish perpetrators and devise effective methods of protection.” – Report of the UN Special Rapporteur on the Right to Education, A/HRC/8/10, 20 May 2008.

Annex II: EXAMPLES OF GOOD DOMESTIC LAW, GUIDANCE, AND PRACTICE

Legislation

“Public forces cannot enter the national universities without prior written order from a competent court or a request from the lawfully constituted university authority.” – Higher Education Act, Law No. 24,521, July 20, 1995, art. 31 [**Argentina**].

“The campuses of universities and polytechnics are inviolable... When the protection of public forces is needed, the legal representative of the institution will request the relevant assistance... Those who violate these campuses will be sanctioned in accordance with law.” – Higher Education Law, 2010, art. 19 [**Ecuador**].

“[N]o property or part thereof ... exclusively used ... as a school, ... or for the purpose of accommodation of persons connected with the management of ... such school, ... shall be requisitioned.” – Requisitioning and Acquisition of Immovable Property Act, Act No. 30 of 1952, March 14, 1952, art. 3 [**India**].

“Nothing in this section [on military manoeuvres] shall authorize ... the entry on or interference with (except to the extent of using any road) any ... school...[or] ground attached to any ... school...” – Defence Act, May 13, 1954, art. 270 [**Ireland**].

“Autonomy confers ... [t]he inviolability of the university campuses. The public forces can only enter them with written authorization from the competent university authorities.” – Law on Autonomy for Institutions of Higher Education, 1990, art. 9 [**Nicaragua**].

“Public infrastructure such as schools ... shall not be utilized for military purposes such as command posts, barracks, detachments, and supply depots...” – RA No. 7610, An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation, and Discrimination, Providing Penalties for its Violation and Other Purposes, June 17, 1992, art. X(22)(e) [**Philippines**].

“The following types of real property are not subject to temporary quartering: ... real property of institutions of higher education...” – Armed Forces of Poland Accommodation Act, No. 86, item 433, June 22, 1995, as amended, chapter 7, art. 64(1) [**Poland**].

“The university grounds are inviolable. The monitoring and maintenance of order within them falls within the competence and responsibility of the university authorities; it may only be searched to prevent a crime or to enforce decisions of the courts.” – Universities Act, September 8, 1970, art. 7 [**Venezuela**].

Peacekeeping Doctrinal Guidance

“Schools shall not be used by the military in their operations.” - United Nations Infantry Battalion Manual, 2012, section 2.13 [**United Nations Department of Peacekeeping Operations**].

Guidance in Military Manuals and Doctrine

“The property ... of institutions dedicated to ... education ... is treated as private property and any seizure ... of that property is prohibited. If that property is located in any area which is subject to seizure or bombardment, then it must be secured against all avoidable damage and injury.” – Manual on Law of Armed Conflict, 2006, sec. 7.44 [**Australia**].

“Considering International Humanitarian Law norms, it is considered a clear violation of the Principle of Distinction and the Principle of Precaution in attacks and, therefore a serious fault, the fact that a commander occupies or allows the occupation by his troops, of ... public institutions such as education establishments...” – General Commander of the Military Forces, order of July 6, 2010, official document Number 2010124005981 / CGFM-CGING-25.11 [**Colombia**].

“Both sides agree to guarantee that the right to education shall not be violated. They agree to immediately put an end to such activities as capturing educational institutions and using them, ... and not to set up army barracks in a way that would adversely impact schools...” – Comprehensive Peace Agreement concluded between the Government of Nepal and the Communist Party of Nepal (Maoist) (2006) [**Nepal**].

“To attain this objective, all [Armed Forces of the Philippines] personnel shall strictly abide and respect the following: ... Basic infrastructure such as schools, hospitals and health units shall not be utilized for military purposes such as command posts, barracks, detachments, and supply depots.” – Armed Forces of the Philippines Letter Directive No. 34, GHQ AFP, November 24, 2009, para. 7 [**Philippines**].

“The AFP [Armed Forces of the Philippines] strictly abide and respect the following: ... Public infrastructure such as schools ... shall not be utilized for military purposes such as command posts, barracks, detachments, and supply depots...” – Human Rights-Based Intelligence Operations: Rules of Behavior for Military Intelligence Personnel, 2011, ch. 3.6 [**Philippines**].

“All SPLA members, personnel, and units are unconditionally prohibited from ... [o]ccupying schools, interfering with or disrupting school classes or activities, or using school facilities for any purpose, to include but not limited to storing equipment, billeting, or taking cover from ongoing or prospective enemy attack... [A]ll incidents of ... school occupation shall be investigated with a view to severe judicial and administrative action resulting in imprisonment, fine, and punitive or administrative discharge from active duty service in the SPLA.” – General Order No. 0001, Chief of General Staff, August 14, 2013 [**South Sudan**].

“This act of occupation [of schools by our army] is deplorable and it is [in] violation of our law of land. Besides, you are depriving our children from the much needed education... I hereby order you to urgently evacuate the ... schools occupied by the forces under your direct commands... Failure to evacuate the above mentioned schools will lead to severe disciplinary actions and the act is a serious violation of the law of our land which shall bear regrettable implications...” – Order from Deputy Chief of General Staff for Moral Orientation, April 16, 2012 [**South Sudan**].

“The parties specifically commit themselves to... refrain from endangering the safety of civilians by ... using civilian facilities such as ... schools to shield otherwise lawful military targets...” – Agreement between the Government of the Republic of Sudan and the Sudan People’s Liberation Movement to protect non-combatant civilians and civilian facilities from military attack (2002) [**Sudan**].

“[T]he better view is that the law also prohibits: ... the use of cultural property for purposes which are likely to expose it to destruction or damage in armed conflict, unless there is no feasible alternative to such use... Cultural property includes ... institutions dedicated to ... education...” – United Kingdom Ministry of Defence, Joint Service Manual of the Law of Armed Conflict, Joint Service Publication 383 (2004) [**United Kingdom**].

“The United States and certain of the American Republics are parties to the so-called [Roerich] Pact, which accords a neutralized and protected status to ... educational ... institutions in the event of war between such States.” – Field Manual 27-10: The Law of Land Warfare, Department of the Army Field Manual, July 18, 1956, para. 57 [**United States**].

“Any school falling within the Northwest Zone and the Armored Division shall be swiftly and decisively evacuated of any military presence.” – Order of Commander of the Northwest Zone, April 9, 2011 [**Yemen**].

Jurisprudence

“[T]he city’s mayor should prevent members of the State security forces from entering the school premises to conduct practices, trainings or to mount weapons, ammunition or deploy armed personnel, as this would increase the danger to the student community.” – *Yenys Osuna Montes v. the Mayor of Zambrano Municipality*, SU-256/99, Constitutional Court, April 21, 1999. *See also Wilson Pinzón and others v. the Mayor of La Calera*, T-1206/01, Constitutional Court of Colombia, November 16, 2001 [**Colombia**].

“[W]e ... direct[] the State/respondents to deliver back the possession of the ... schools... [T]he cost of consumption of the electricity in those schools by the police personnel will be borne out by the State Government in no time.” – *Paschim Medinipur Bhumij Kalyan Samiti v. West Bengal*, W.P. No. 16442(W) of 2009, High Court at Calcutta, judgment of November 24, 2009 [**India**].

“[I]t should be ensured that the school buildings and hostels are not allowed to be occupied by the armed or security forces in future for whatsoever purpose...” – *Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India and others*, W.P. (Criminal) No. 102 of 2007, Supreme Court of India, order of September 1, 2010 [**India**].

“There shall be a direction ... to ensure that the security forces vacate all the educational institutions, school buildings and hostels...” – *Nandini Sundar and others v. The State of Chhattisgarh*, W.P. (Civil) No. 250 of 2007, Supreme Court of India, order of January 18, 2011 [**India**].

Governmental Guidance

“In order to assure the learning rights of students and provide easier access to a well-managed and peaceful environment as well as the continuous operation of schools without hindrance to learning, implement according to the decision [it is decided to] declare schools a ‘Zone of Peace.’” – Decision of the Government of Nepal, May 25, 2011 [**Nepal**].

“To keep the school free from armed activities and other kinds violence refers to the following conditions: (a) No armed activities in the school premises and in its periphery; (b) No presence of armed group or conflicting parties in the school premises; (c) No use of school for any armed activities.” – Schools as Zones of Peace National Framework and Implementation Guideline, Ministry of Education, promulgated under rule no. 192(3) of Education Regulation (2002), 2011 [**Nepal**].

Practice of Non-State Parties to Armed Conflicts

“We will ... avoid using for military purposes schools or premises primarily used by children.” – Geneva Call, Deed of Commitment under Geneva Call for the Protection of Children from the Effects of the Armed Conflict (2010), art. 7. As of August 6, 2012, the Karenni National Progressive Party/Karenni Army (KNPP/KA) and the New Mon State Party/Mon National Liberation Army (NMSP/MNLA) have signed this instrument [**Burma/Myanmar**].

“Children’s right to education will not be restricted.” – Kurdistan Workers’ Party/People’s Defence Forces (PKK/HPG), Rules for the Conduct of Warfare, 2011 [**Turkey**].

NOTES AND REFERENCES

¹ See Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (“Additional Protocol I”), art. 52(1). This rule is also part of customary law for international and non-international armed conflicts. See Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law: Rules*, vol. 1, International Committee of the Red Cross (“ICRC Customary IHL Study”), rule 9 and 10.

² See Additional Protocol I, art. 52(2). This rule is also part of customary law for international and non-international armed conflicts. See ICRC Customary IHL Study, rule 8. See also ICTY, Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia, The Hague, 14 June 2000, §41.

³ See Additional Protocol I, art. 52(3). The principle of presumption of civilian character in case of doubt is also contained in Amended Protocol II to the Convention on Certain Conventional Weapons. The customary character of this rule is not fully established, but it is clear that in case of doubt, a careful assessment has to be made. See ICRC Customary IHL Study, commentary to Rule 10.

⁴ See Additional Protocol I, art. 58(a), (b), and (c). These rules are also part of customary law for international and non-international armed conflicts. See ICRC Customary IHL Study, rules 22-24. See also: ICTY, *Kupreskic case*, Judgment, Trial Chamber, 14 January 2000, §§524-525.

⁵ See the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, art. 4(1), and ICRC Customary IHL Study, rule 39.

⁶ See Additional Protocol I, art. 53(1), and Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (“Additional Protocol II”), art. 16.

⁷ ICRC Customary IHL Study, rules 38-40. There are a number of national laws and military manuals that include education institutions as objects enjoying a special protection alongside other cultural objects. In the consultation process, which led to the drafting of the present guidelines, however, not all States agreed that all schools and universities are to be considered as cultural property.

⁸ *Ibid.* See also the Regulations Respecting the Laws and Customs of War on Land annexed to the Fourth Hague Convention of 18 October 1907 (“the Hague Regulations of 1907”), art. 56.

⁹ This is a traditional rule of interpretation. See Vienna Convention on the Law of Treaties, art. 31(1): “A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”

¹⁰ On the special protection afforded to children in armed conflicts, see Geneva Convention relative to the Protection of Civilian Persons in Time of War (“Fourth Geneva Convention”), art. 14, 17, 23, 24, 38, 50, 82, 89, 94, 132; Additional Protocol I, art. 70, 77, 78; Additional Protocol II, art. 4 and 6.

¹¹ It should be noted in particular that the law of armed conflict foresees the creation of safety zones and localities so organized as to protect from the effects of war children under fifteen (See Fourth Geneva Convention, art. 14.) This indicates that the law of armed conflict puts a particular emphasis on the protection of children from the effects of attacks.

¹² Fourth Geneva Convention, art. 50.

¹³ Additional Protocol II, art. 4(3)(a).

¹⁴ See Fourth Geneva Convention, art. 28; and Additional Protocol I, art. 51(7). The prohibition of human shields belongs to customary law as well for both international and non-international armed conflicts. See ICRC Customary Law Study, rule 97.

¹⁵ See Advisory Opinion, *Legality of the Threat or Use of Nuclear Weapons*, ICJ, 8 July 1996, para. 25; Advisory Opinion, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ, 9 July 2004, para. 106; Judgment, *Case Concerning Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda)*, ICJ, 19 December 2005, para. 216; Merits and Judgment, *Bámaca Velásquez vs. Guatemala*, IACtHR, 25 November 2000, para. 207; see also Louise Doswald-Beck & Sylvain Vité, “International Humanitarian Law and Human Rights Law,” 293 *IRRC* 94 (1993).

¹⁶ International Covenant on Civil and Political Rights (“ICCPR”), art. 6. See also African Charter on Human and Peoples’ Rights (“ACHPR”), art. 4; European Convention on the Protection of Human Rights and Fundamental Freedoms (“ECHR”), art. 2; American Convention on Human Rights (“IACHR”), art. 4; Arab Charter on Human Rights (“Arab Charter”), art. 5; and Human Rights Committee, *General Comment 6: the Right to Life* (1982).

¹⁷ ICCPR, arts. 9 & 10. *See also* ACHPR, art. 6; ECHR, art. 5(1); IACHR, art. 7; and Arab Charter, art. 14(1).

¹⁸ Convention on the Rights of the Child (“CRC”), art. 6.

¹⁹ CRC, art. 3(1).

²⁰ International Covenant on Economic, Social, and Cultural Rights (“ICESCR”), art. 13; and CRC, art. 28. *See also* ACHPR, art. 17; African Charter on the Rights and Welfare of the Child, art. 11; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, arts. 13 & 16; Additional Protocol I to the European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 2; Arab Charter, art. 41.

²¹ ICESCR, art. 13(2)(a)-(d); and CRC, art. 28(a)-(d).

²² ICESCR, art. 13(e).

²³ CRC, art. 28(e).

²⁴ CRC, art. 4.

²⁵ CRC. Similarly, the ICESCR provides no derogation provision; however, article 4 permits states to limit rights when proscribed by law to the extent compatible with the nature of the right and for the purpose of promoting general public welfare. The Committee on Economic, Social, and Cultural Rights has noted that in regard to the right to education, “[Article 4] is primarily intended to be protective of the rights of individuals rather than permissive of the imposition of limitations by the State. Consequently, a State party which closes a university or other education institution on grounds such as national security ... has the burden of justifying such a serious measure in relation to each of the elements identified in article 4.” Committee on Economic, Social, and Cultural Rights, *General Comment No. 13 – The Right to Education*, para. 42.

Lucens is a village in the canton of Vaud in Switzerland.
On November 26-28, 2012, experts from around the world met there to discuss
developing international guidelines to protect schools and universities from military use.

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