

NOTES

MILITARY USE OF EDUCATIONAL FACILITIES DURING ARMED CONFLICT: AN EVALUATION OF THE GUIDELINES FOR PROTECTING SCHOOLS AND UNIVERSITIES FROM MILITARY USE DURING ARMED CONFLICT AS AN EFFECTIVE SOLUTION

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I. INTRODUCTION

War should not force children to forfeit their education or risk exposure to sexual violence, forced labor, forced recruitment, injury, or death.¹ International law requires that civilians be spared the hazards of war.² Moreover, the Convention on the Rights of the Child (Children's Convention),³ the most widely ratified international human rights treaty, implicates the child's right to education.⁴ However, a quarter of a century after the adoption of the Children's Convention, the right to education "remains merely aspirational," as one nongovernment organization has recognized.⁵ Armed forces continue to use schools and universities during armed conflict, disrupting education around the world and putting both teachers and students at substantial risk of harm.⁶ There is a clear conflict

¹ Bede Sheppard, *Guest Post: Protecting Schools and Universities from Military Use*, OPINIO JURIS (Dec. 16, 2014, 7:00 AM), <http://opiniojuris.org/2014/12/16/guest-post-protecting-schools-universities-military-use/> (noting that these dangers arise when armed groups convert schools and universities into bases, barracks, firing positions, or places to cache weapons and ammunition).

² Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, 1125 U.N.T.S. 3 [hereinafter Additional Protocol I]. There are 196 states party to the 1949 Geneva Conventions and 173 states party to both the 1949 Geneva Conventions and the 1977 Additional Protocol I. See *States Parties: Protocol Additional to the Geneva Conventions*, INT'L COMM. OF THE RED CROSS (ICRC), https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesParties&xp_treatySelected=470. Syria ratified Additional Protocol I on November 14, 1983, without attaching any reservations or declarations relevant to the question under review. *Id.*

³ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter Children's Convention]. This treaty, which entered into force on September 2, 1990, has 196 parties, including two nonmembers of the United Nations, the Holy See and the State of Palestine. See U.N. Treaty Collection, *Convention on the Rights of the Child*, <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-11.en.pdf>. The only nonparty states are the United States and Somalia, both of which have signed the treaty but not deposited instruments of ratification, along with the United Nations' newest member state, South Sudan. *Id.* Syria ratified the 1989 Children's Convention on July 15, 1993, without attaching any reservations or declarations relevant to the question under review. *Id.*

⁴ Press Release, Global Coalition to Protect Education from Attack (GCPEA), 25 Years after Landmark Treaty, Children's Rights Still Violated with Impunity in Conflict (Nov. 20, 2014), <http://protectingeducation.org/news/25-years-after-landmark-treaty-children%E2%80%99s-rights-still-violated-impunity-conflict>.

⁵ *Id.*

⁶ GCPEA, COMMENTARY ON THE "GUIDELINES FOR PROTECTING SCHOOLS AND UNIVERSITIES FROM MILITARY USE DURING ARMED CONFLICT" 4-5 (2014) [hereinafter

between the vision of protecting access to education and the reality of what young people experience in countries impacted by the turmoil of war.⁷

The need for explicit standards and norms to protect schools from use by military forces resulted in the release of the Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict (the Guidelines) in 2014.⁸ This document, which provides recommendations to avoid the use of schools during armed conflict, emerged as a potential solution.⁹ This Note will evaluate the potential effectiveness of the Guidelines in protecting schools and universities from military use during armed conflict. Part II will demonstrate the inherent problems arising from the military use of schools during armed conflict as evidenced by its effect in Syria. It will also discuss the creation of the Guidelines, the content of the Guidelines, and the Guidelines' desired effect. Part III will address the gap in preexisting written and enforceable law. Part IV will analyze the effectiveness of the Guidelines by first comparing the advantages and disadvantages of hard law and soft law. Second, it will evaluate the Guidelines against key criteria set out by the Global Coalition to Protect Education from Attack, the nongovernment organization that effectuated the Guidelines. Lastly, this Note will recommend that states adopt the Guidelines, and suggest amendments and additions to the Guidelines, namely inclusion of a reparations structure and accountability mechanisms.

COMMENTARY ON THE GUIDELINES], *available at* http://www.protectingeducation.org/sites/default/files/documents/commentary_on_the_guidelines.pdf.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 7. The Guidelines were released on December 16, 2014 in Geneva, Switzerland, and represent "the culmination of over two years of extensive consultations with governments, militaries, UN agencies, and civil society to develop guidance to keep armed parties out of schools and universities." *New International Guidelines Address an Insidious Gap in Protecting Education during War*, GCPEA (Dec. 16, 2014), <http://www.protectingeducation.org/news/new-international-guidelines-address-insidious-gap-protecting-education-during-war>.

II. PROBLEM AND PROPOSED SOLUTION: THE MILITARY USE OF SCHOOLS, ESPECIALLY IN SYRIA, AND THE GUIDELINES FOR PROTECTING SCHOOLS AND UNIVERSITIES FROM MILITARY USE DURING ARMED CONFLICT AS A POSSIBLE SOLUTION

A. Military Use of Schools Has Been Extremely Grave during Syria's Civil War

1. Overall Problem

Some men came to our village. I tried to escape, but they took me to jail. Except it wasn't a jail—it was my old school. It's ironic—they took me there to torture me, in the same place I used to go to school to learn. . . . They had taken over the school and made it into a torture center.¹⁰

This quote, from a fifteen-year-old boy from Syria, a country plagued by civil war since 2011,¹¹ exemplifies the problems arising from armed forces' utilization of schools and universities during times of war. This section will present statistics and examples that illustrate the staggering gravity of this exploitation of school property. These ill effects make apparent the looming need for a quickly adoptable and effective solution.

The toll experienced by children during armed conflict is multifold.¹² As has been well publicized, children are being recruited and used by armed forces.¹³ In response to this conflict, Leila Zerrougui, the Special Representative of the Secretary-General for Children and Armed Conflict joined with the U.N. International Children's Emergency Fund, popularly known as UNICEF, to initiate "Children, Not Soldiers," a global campaign seeking support to end the recruitment of children for armed conflict by

¹⁰ GCPEA, PROTECT SCHOOLS AND UNIVERSITIES FROM MILITARY USE 6 (2013), http://www.protectingeducation.org/sites/default/files/documents/protect_schools_and_universities_from_military_use.pdf.

¹¹ Anthony Shadid, *Syria Escalates Crackdown as Tanks Go to Restive City*, N.Y. TIMES, Apr. 25, 2011, at A1.

¹² Press Release, Security Council, Gains Made Protecting Children in Situations of Armed Conflict Overshadowed by New Global Crises, Special Representative Tells Security Council, U.N. Press Release SC/11552 (Sept. 8, 2014) [hereinafter U.N. S.C. Press Release].

¹³ *Children, Not Soldiers*, U.N. Office of the Special Rep. of the Secretary-General for Children and Armed Conflict, <https://childrenandarmedconflict.un.org/children-not-soldiers/>.

targeting eight states.¹⁴ But another detriment experienced by children as a result of armed conflict is less well known: it is the armed forces' use of schools and universities, resulting in the injury and killing of children, as well as disrupting their education.

Leading the campaign against such use has been the Global Coalition to Protect Education from Attack (the Coalition), a joint effort of eight leading nongovernment organizations such as the Council for At-Risk Academics, Human Rights Watch, UNICEF, and the United Nations Educational, Scientific and Cultural Organization.¹⁵ Bede Sheppard, the Deputy Children's Rights Director at Human Rights Watch and chair of the Coalition's group on protecting schools and universities from military use, explained in a mid-2014 statement that "[a]rmies and armed groups are turning places of learning into battlefields by using them for military purposes."¹⁶ Between 2005 and 2013, schools and universities were utilized by national armed forces in over twenty-three countries across Africa, Asia, Europe, the Middle East.¹⁷ Included were countries such as Afghanistan, Burma/Myanmar, Central African Republic, Chad, Colombia, Côte d'Ivoire, Democratic Republic of Congo, Georgia, India, Iraq, Libya, Mali, Nepal, Occupied Palestinian Territory/Israel, Pakistan, Philippines, Somalia, South Sudan, Sri Lanka, Sudan, Syria, Thailand, Uganda, and Yemen.¹⁸ After being overtaken by armed forces, schools and universities were used as bases, barracks, detention facilities, interrogation and torture centers, defensive or offensive positions, observation posts, military training facilities, and weapons and ammunition storage.¹⁹ Sheppard recalled that while researching the issue, he had seen: soldiers' bunk-beds in teachers' and principals' rooms in India; roadblocks outside of a school occupied by army soldiers in Yemen's capital; barbed wire surrounding a school in Thailand where paramilitary forces had taken over classrooms; and soldiers guarding a school's entryway in the Democratic Republic of the Congo.²⁰

¹⁴ *Id.*

¹⁵ COMMENTARY ON THE GUIDELINES, *supra* note 6, at 2.

¹⁶ *Norway: Leading Way to End Military Use of Schools*, HUMAN RIGHTS WATCH (June 13, 2014), <http://www.hrw.org/news/2014/06/13/norway-leading-way-end-military-use-schools>.

¹⁷ GCPEA, LESSONS IN WAR IN 2015: MILITARY USE OF SCHOOLS AND UNIVERSITIES DURING ARMED CONFLICT 32 (2015); PROTECT SCHOOLS AND UNIVERSITIES FROM MILITARY USE, *supra* note 10, at 5.

¹⁸ PROTECT SCHOOLS AND UNIVERSITIES FROM MILITARY USE, *supra* note 10, at 10–11.

¹⁹ *Id.* at 5.

²⁰ Bede Sheppard, *From Sagene to Sanaa*, HUMAN RIGHTS WATCH (Oct. 7, 2013), <http://www.hrw.org/news/2013/10/07/sagene-sanaa>.

Military use of schools and universities has resulted in a decline of student attendance and enrollment and in the availability of teachers.²¹ Further, the presence of armed forces in schools and universities leads to students dropping out, lower rates of transition into higher education, and overall poorer educational attainment.²² The ensuing damage and destruction caused to educational buildings has led to long-term school closures and the displacement of students into schools from home; this too reduces enrollment.²³ In some cases, only part of the school is taken over, exposing students to sexual violence and forced labor.²⁴ Most notably, military occupation of schools and universities has resulted in the injury and death of students and teachers alike.²⁵

2. Syria

During the armed conflict in Syria, for example, both government forces and opposing armed groups have used schools for military purposes.²⁶ According to the 2014 Report of the Secretary-General on Children and Armed Conflict in the Syrian Arab Republic, the military use of schools and attacks on schools in Syria “severely disrupted children’s right to access to education.”²⁷ Government forces and armed opposition groups alike have damaged or destroyed school buildings.²⁸

Schools in Syria have been used as barracks, operational bases, sniper postings, and detention facilities—all while classes were in session.²⁹ Over twenty percent of Syria’s schools were transformed into shelters, depriving almost 2 million students of their right to an education.³⁰ Government statistics estimated that, as of October 2013, 2.26 million children in Syria either were not attending school or were attending irregularly.³¹ Similarly, over 52,500 teachers and 523 school counselors in Syria did not attend

²¹ *Id.*

²² COMMENTARY ON THE GUIDELINES, *supra* note 6, at 4.

²³ PROTECT SCHOOLS AND UNIVERSITIES FROM MILITARY USE, *supra* note 10, at 5.

²⁴ *Norway: Leading Way to End Military Use of Schools*, *supra* note 16.

²⁵ PROTECT SCHOOLS AND UNIVERSITIES FROM MILITARY USE, *supra* note 10, at 5.

²⁶ *Syria: Attacks on Schools Endanger Students*, HUMAN RIGHTS WATCH (June 6, 2013), <http://www.hrw.org/news/2013/06/05/syria-attacks-schools-endanger-students>.

²⁷ U.N. Secretary-General, *Report of the Secretary-General on Children and Armed Conflict in the Syrian Arab Republic*, ¶ 39, U.N. Doc. S/2014/31 (Jan. 27, 2014).

²⁸ *Id.*

²⁹ *Id.* ¶ 44.

³⁰ *Id.* ¶ 46.

³¹ *Id.* ¶ 40.

work.³² More than 3,000 Syrian schools had been destroyed.³³ Not only did such uses occupy space that was meant for students, and thus force students to conduct their learning elsewhere, these uses also converted schools and universities into military targets under the laws of war, making both teachers and students vulnerable to attack.³⁴

Schools fell under attack from all parties to the war, including government forces and armed opposition groups.³⁵ Teachers and students who fled Syria described instances in which students had been interrogated and beaten by state security agents for allegedly engaging in anti-government activity.³⁶ Security forces and pro-government militias also assaulted otherwise peaceful student demonstrations.³⁷ Interrogations, arrests, and raids at schools resulted in children staying home from school out of fear.³⁸ Students also recalled instances when government snipers shot, injured, and killed children at school.³⁹

An elementary school student from Aleppo city was forced to take refuge after an April 2014 attack on his school.⁴⁰ Ahrar Al Sham, an armed coalition participating in the Syrian war, had occupied his school since 2012.⁴¹ On April 30, 2012, this young boy and his brother attended an art exhibition and singing event for children with their teacher at an elementary school in Al Ansari Al Sharqi.⁴² Approximately 400 people filled the school by 9 a.m., and hundreds more were expected to arrive.⁴³ At about 9:05 a.m., however, the roar of a warplane preceded a force that thrust the boy back against the wall.⁴⁴ When he regained consciousness, he saw that the schoolroom was destroyed, with shattered glass and large holes in the ceiling, and a fourth-grade female student sitting on a chair, either

³² *Id.*

³³ *Id.* ¶ 46.

³⁴ COMMENTARY ON THE GUIDELINES, *supra* note 6, at 4.

³⁵ *Report of the Secretary-General on Children and Armed Conflict in the Syrian Arab Republic*, *supra* note 27, ¶ 39.

³⁶ *Syria: Attacks on Schools Endanger Student*, *supra* note 26.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Report of the Secretary-General on Children and Armed Conflict in the Syrian Arab Republic*, *supra* note 27, ¶ 41.

⁴⁰ Human Rights Council, 27th Sess., Selected Testimonies from Victims of the Syrian Conflict, U.N. Doc. A/HRC/27/CPR.1, at 10 (Sept. 16, 2014).

⁴¹ *Id.*

⁴² *Id.* at 10–11.

⁴³ *Id.* at 11.

⁴⁴ *Id.*

unconscious or dead.⁴⁵ The boy was bleeding from his head, among other injuries, but was quickly rescued by three men. When he finally returned home, he learned that his younger brother had been killed in the incident.⁴⁶

The boy's father heard a loud explosion and saw smoke coming from the elementary school.⁴⁷ He rushed to the school, arriving within ten minutes.⁴⁸ He said that the school building was severely damaged and "pools of blood and dead bodies were scattered everywhere."⁴⁹ The father searched among the students trapped beneath rubble and the bodies and severed body parts for his children. He finally located his youngest son at the nearby hospital with a serious head injury, but the child died while being transferred to Turkey for medical treatment.⁵⁰

The war in Syria has also disrupted higher education. The damage the war has caused to universities has stripped students of the ability to attend classes in those buildings.⁵¹ Increasing dangers prompted students to stay home from school.⁵² It is likely that the education of hundreds of thousands of students has been disrupted, and that thousands more have been prevented from even beginning their pursuit of higher education.⁵³

"Syrian children have had to face things in the horrors of war that no child should have to bear—interrogated, targeted, and attacked," stated Priyanka Motaparthi, a children's rights researcher at Human Rights Watch, in a 2013 report.⁵⁴ "Schools should be havens," she continued, "but in a country that once valued schooling, many Syrian children aren't even getting basic education and are losing out on their future."⁵⁵

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at 11–12.

⁵¹ KEITH WATENPAUGH, ADRIANNE FRICKE & JAMES KING, THE WAR FOLLOWS THEM 9 (June 2014), available at http://www.protectingeducation.org/sites/default/files/documents/the_war_follows_them_iie-uc_davis_study_on_syrians_in_lebanon_and_higher_education_june_2014.pdf.

⁵² *Id.*

⁵³ *Id.* at 9–10.

⁵⁴ *Syria: Attacks on Schools Endanger Students*, *supra* note 26.

⁵⁵ *Id.*

B. Response to Military Use of Schools: The Guidelines

1. Development Leading to Adoption of the Guidelines

In 2013, the Coalition released a report detailing how armed forces utilize schools and universities in armed conflict and the resulting consequences of this practice.⁵⁶ One such consequence is students being deprived access to education and being put at risk when educational facilities become legitimate military targets under international law.⁵⁷

In May 2012, the Coalition organized an expert consultation that was hosted by the Geneva Academy of International Humanitarian Law and Human Rights in Geneva, Switzerland.⁵⁸ As a result of encouragement from the May 2012 consultation attendees,⁵⁹ a larger group of experts from around the world met in November 2012 in Lucens, a village in the canton of Vaud in Switzerland, to discuss the development of guidelines to protect schools and universities from military use.⁶⁰ Representatives from eleven states, along with nongovernment organizations and U.N. agencies, reviewed and provided significant feedback to the initial draft of the guidelines.⁶¹ This initial draft was prepared by Dr. Steven Haines, a former senior officer in the British Armed Forces, former chair of the editorial board of the United Kingdom's Joint Service Manual on the Law of Armed Conflict, and a professor at the University of Greenwich.⁶² Dr. Haines then incorporated revisions, formed a drafting committee for their review, and held consultations for additional input.⁶³ As a result of this process, in June 2013 the Coalition released the Draft Lucens Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict (Draft Guidelines).⁶⁴ Subsequently, the Coalition sought support from states, multilateral institutions, and other organizations to finalize, and then adopt, endorse, and implement these guidelines.⁶⁵

⁵⁶ PROTECT SCHOOLS AND UNIVERSITIES FROM MILITARY USE, *supra* note 10, at 3.

⁵⁷ *Id.*

⁵⁸ COMMENTARY ON THE GUIDELINES, *supra* note 6, at 6.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

The Draft Guidelines were met with considerable support. At a September 2014 Security Council meeting, Yoka Brandt, the Deputy Executive Director of UNICEF, encouraged all member states to support and implement the Draft Guidelines.⁶⁶ Public statements in support of the Draft Guidelines were issued or endorsed by Algeria, Argentina, Australia, Austria, Croatia, Chile, Cote d'Ivoire, Denmark, Ecuador, Estonia, European Parliament, Finland, France, Iceland Japan, Liberia, Liechtenstein, Lithuania, Luxembourg, Mexico, Montenegro, the Netherlands, New Zealand, Nigeria, Norway, Portugal, Qatar, Senegal, Slovenia, South Africa, South Sudan, Spain, Sweden, Switzerland, as well as the Special Representative to the Secretary-General for Children and Armed Conflict, the Security-General, the U.N. Special Envoy for Global Education, Gordon Brown, the Global Partnership for Education, the International Committee of the Red Cross, and UNICEF.⁶⁷ According to the Coalition, this support indicates a "growing international interest in protecting schools and universities from military use during armed conflict."⁶⁸

In support of their acceptance of the Draft Guidelines, Austria, Croatia, and Slovenia issued a joint statement in March 2014 declaring that they are "gravely concerned about the use of schools for any military purposes since it is detrimental to the children's rights to education, jeopardizing their chances for the future."⁶⁹ They continued by expressing their desire to "underline the right and access to education as a fundamental human right," and called the Draft Guidelines "a very concrete step forward" towards achieving protection for educational institutions during times of conflict.⁷⁰ Statements issued from each of the countries similarly expressed a deep concern for the state of access to education in times of conflict.⁷¹ The statements further contain expressions of welcome and commitment to the Draft Guidelines.⁷²

The finalized version of the Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict was publicly released

⁶⁶ U.N. S.C. Press Release, *supra* note 12.

⁶⁷ *Public Statements in Support of the Guidelines and Safe Schools Declaration*, GCPEA, <http://www.protectingeducation.org/support-process>.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

on December 16, 2014 at an event in Geneva, Switzerland.⁷³ Fifty-four states have since endorsed and committed to implementing the Guidelines.⁷⁴

2. *Content of the Guidelines*

The Guidelines urge parties to armed conflict to refrain from using schools and universities in any way supporting their military efforts, even uses that would not be contrary to the law of armed conflict.⁷⁵ It urges parties to avoid “impinging on students’ safety and education,” and instead use the Guidelines as a tool to avoid such situations.⁷⁶ The Commentary on the Guidelines provides an introduction, and the document itself contains six actual guidelines. The introduction and the Guidelines include the following:

Introduction: The introduction to the Guidelines details the military use of schools and universities during armed conflict.⁷⁷ It gives information on the right to education and the need to protect schools and children from the effects of armed conflict.⁷⁸ The introduction further explains that the Guidelines were drafted “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.”⁷⁹

Guideline 1 [Injunction against Use of Functioning Schools]: This guideline states that functioning schools and universities should not be used by parties to armed conflict in any way that supports the military initiative, even when the school or university is temporarily closed, at times outside of school hours, or on weekend, holidays, and vacation periods.⁸⁰

Guideline 2 [Efforts to Avoid Using Abandoned or Evacuated Schools]: This guideline states that schools or universities that have been abandoned or evacuated should not be used for military purposes unless there is no viable

⁷³ COMMENTARY ON THE GUIDELINES, *supra* note 6, at 7.

⁷⁴ *Safe Schools Declaration Endorsements*, GCPEA, <http://protectingeducation.org/guidelines/support>.

⁷⁵ GCPEA, GUIDELINES FOR PROTECTING SCHOOLS AND UNIVERSITIES FROM MILITARY USE DURING ARMED CONFLICT (2014) [hereinafter THE GUIDELINES], http://protectingeducation.org/sites/default/files/documents/guidelines_en.pdf.

⁷⁶ *Id.*

⁷⁷ COMMENTARY ON THE GUIDELINES, *supra* note 6, at 4–5.

⁷⁸ *Id.* at 4.

⁷⁹ *Id.*

⁸⁰ THE GUIDELINES, *supra* note 75.

alternative to obtaining a similar military advantage.⁸¹ Even if the alternative building is not as conveniently placed or configured, the guideline contends that the alternative site should be regarded as a better option.⁸² These schools should only be occupied for the minimum necessary time, and should always be available for re-opening as an educational institution as soon as practical.⁸³ Furthermore, any damage to the school or university should be repaired as soon as possible, and all remnants of war should be removed from the site.⁸⁴

Guideline 3 [Injunction against Destroying Schools to Deprive Use]: This guideline explains that schools and universities are “civilian objects,” and as such 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.”⁸⁵

Guideline 4 [Efforts to Avoid Attacking Schools]: This guideline explains that using schools and universities for military purposes may subject those institutions to attack.⁸⁶ The guideline continues that parties should consider “all feasible alternative measures before attacking [schools], including, unless circumstances do not permit, warning the enemy in advance that an attack will be forthcoming unless it ceases its use.”⁸⁷ This guideline further recommends that parties to armed conflict take into consideration the special protection afforded to children and the negative effect an attack could have on the community’s access to education if the school were to be damaged or destroyed.⁸⁸ It states that the use of a school or university “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,” and that as soon as possible the educational facility should be vacated and returned to its educational function.⁸⁹

Guideline 5 [Efforts to Avoid Employing Parties to Armed Forces as School Security]: This guideline advises that parties to armed conflict should not be employed to provide security for schools and universities unless

⁸¹ *Id.*

⁸² *Id.* The guideline states that buildings otherwise protected under International Humanitarian Law, such as hospitals, are not to be regarded as better options.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

alternative means are not available, and that, if possible, civilian personnel should be in these positions.⁹⁰ The guideline continues that if such fighting forces engage in security tasks at schools and universities, they should stay away from the school grounds and buildings to the extent possible in order to protect its civilian status and learning environment.⁹¹

Guideline 6 [Requirement to Incorporate the Guidelines]: This guideline states that all parties to armed conflict should, to the extent possible and appropriate and through the most appropriate method, incorporate the 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.⁹²

The Commentary on the Guidelines also provides the applicable international legal framework, examples of domestic law, guidance, practice, and notes and references.⁹³ The section titled “Analysis of the International Legal Framework Relating to Military Use of Schools during Armed Conflict” provides the legal framework “applicable to the targeting of schools and universities,” focusing on International Humanitarian Law.⁹⁴ This section also provides information on International Human Rights Law, a list of quotes from relevant international treaty provisions, and relevant international guidance.⁹⁵ The next section, titled “Examples of Relevant Domestic Law, Guidance, and Practice” provides evidence of good practice already applied by some states and non-state parties to protect schools and universities during armed conflict.⁹⁶ It begins with legislation from various countries protecting educational institutions, typically requiring written authorization for use of schools during armed conflict.⁹⁷ It continues to include peacekeeping doctrinal guidance, relevant guidance in military manuals and doctrine, jurisprudence, governmental guidance, and practice of non-state parties to armed conflict.⁹⁸ The Commentary on the Guidelines concludes with a list of notes and references.⁹⁹

⁹⁰ THE GUIDELINES, *supra* note 75.

⁹¹ *Id.*

⁹² *Id.*

⁹³ COMMENTARY ON THE GUIDELINES, *supra* note 6.

⁹⁴ *Id.* at 9.

⁹⁵ *Id.* at 9–13.

⁹⁶ *Id.* at 14.

⁹⁷ *Id.*

⁹⁸ *Id.* at 15–17.

⁹⁹ *Id.* at 22.

3. *Intended Impact of the Guidelines Take Effect*

According to the Coalition, the Guidelines were created “to provide concrete guidance to states and non-state armed groups on how to reduce the use of schools and universities by armed parties and to minimize the negative impact that armed conflict has on students’ safety and education.”¹⁰⁰ In December 2014, Sheppard wrote that the Guidelines are “intended to respond to the practice of government forces and non-state armed groups converting schools and universities into bases or barracks, or using them as firing positions or places to cache weapons and ammunition.” Specifically, the document is intended to guide individuals involved in planning and implementing military operations as they consider whether to use schools and universities.¹⁰¹ The Guidelines are similarly meant to help intergovernmental and nongovernmental organizations monitor activity related to the conduct of armed conflict and the military use of schools.¹⁰²

The Guidelines provide suggested actions that each government should implement to end the military use of schools.¹⁰³ The Guidelines are not meant to change international law and are not legally binding in themselves.¹⁰⁴ Rather, they are intended to “lead to a shift in behavior that will lead to better protections for schools and universities in times of armed conflict”¹⁰⁵ The Guidelines acknowledge that parties to armed conflict face difficult dilemmas that require pragmatic solutions; aiming to achieve what is practical, they suggest that states adopt the Guidelines “in the spirit in which they are promulgated, and to adapt them in practice to suit their specific circumstances.”¹⁰⁶ The Guidelines are intended for wide dissemination and implementation, and have therefore been crafted for use by all parties to armed conflict.¹⁰⁷

¹⁰⁰ *Public Statements in Support of the Guidelines Process and Safe Schools Declaration Process*, *supra* note 67.

¹⁰¹ THE GUIDELINES, *supra* note 75.

¹⁰² *Id.*

¹⁰³ U.N. S.C. Press Release, *supra* note 12.

¹⁰⁴ COMMENTARY ON THE GUIDELINES, *supra* note 6, at 5.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

III. THE INTERNATIONAL LEGAL FRAMEWORK

A. *Binding International Law Governing Education and Armed Conflict*

1. *International Education-Rights Law*

International law guarantees the child's right to an education.¹⁰⁸ Adopted in 1948, the Universal Declaration on Human Rights, proclaimed in Article 26 that "[e]veryone has the right to education."¹⁰⁹ The right to education has since been widely recognized internationally, and has been further elaborated upon within the Children's Convention.¹¹⁰ Moreover, the right to education has also been adopted into regional treaties, and is protected by many national constitutions.¹¹¹

The Children's Convention explicitly recognizes education as a legal right.¹¹² Article 28 states:

1. 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 . . . ;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.¹¹³

¹⁰⁸ *Understanding Education as a Right*, RIGHT TO EDUCATION PROJECT, <http://www.right-to-education.org/node/3>.

¹⁰⁹ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, art. 26, U.N. Doc. A/RES/217 (III) (Dec. 10, 1948). Syria was one of forty-eight votes in favor of adopting the Universal Declaration of Human Rights. 1948 U.N.Y.B. 524, U.N. Sales No. 1950.I.2.

¹¹⁰ Children's Convention, *supra* note 3, art. 28.

¹¹¹ *See generally* RIGHT TO EDUCATION PROJECT, INTERNATIONAL INSTRUMENTS – RIGHT TO EDUCATION (2014), available at http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/RTE_International_Instruments_Right_to_Education_2014.pdf (listing both the international and regional instruments that guarantee the right to education).

¹¹² Children's Convention, *supra* note 3, art. 28

¹¹³ *Id.*

2. *International Humanitarian Law*

International humanitarian law, also called the law of armed conflict, restricts the means and methods of warfare to protect people who are not participating in hostilities.¹¹⁴ In Article 52, Additional Protocol I states:

1. Civilian objects shall not be the object of attack or of reprisals. Civilian objects are all objects which are not military objectives as defined in paragraph 2.
2. Attacks shall be limited strictly to military objectives. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose, or use make an effective contribution to military action and whose total or partial destruction, capture, or neutralization, in the circumstances ruling at the time, offers a definite military advantage.
3. In case of doubt whether an object which is normally dedicated to civilian purposes, such as . . . a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used.¹¹⁵

The Guidelines acknowledge that “educational facilities are ordinarily civilian objects,” and, as such, are “not to be targeted unless they are turned into military objectives.”¹¹⁶ The military may therefore transform these learning institutions into legitimate military objectives under international law by using them as an “effective contribution to military action.”¹¹⁷

The intentional attack of an educational building is also listed as a war crime punishable by Article 8 of the Rome Statute of the International Criminal Court.¹¹⁸ However, the statute makes an exception for schools that have become military objectives:

2. For the purpose of this Statute, “war crimes” means:

¹¹⁴ *What is International Humanitarian Law?*, ICRC, https://www.icrc.org/eng/assets/files/other/what_is_ihl.pdf.

¹¹⁵ Additional Protocol I, *supra* note 2, art. 52.

¹¹⁶ COMMENTARY ON THE GUIDELINES, *supra* note 6, at 4.

¹¹⁷ Additional Protocol I, *supra* note 2, art. 52(2).

¹¹⁸ Rome Statute of the International Criminal Court, art. 8, July 17, 1998, 2187 U.N.T.S. 3.

(ix) Intentionally directing attacks against buildings dedicated to . . . education . . . provided they are not military objectives.¹¹⁹

As the Guidelines point out, “[t]he right to education means little if students cannot safely attend school or university.”¹²⁰

B. Gap in the Law: Neither Education-Rights nor Humanitarian Law Treaties Expressly Ban All Military Use of Schools

Traditional sources of international law include international conventions, or treaties, establishing expressly recognized rules by states, international custom evidenced by general practice accepted as law, general principles of law recognized by civilized nations, and judicial decisions and scholarly teachings.¹²¹ As stated above, some treaties establish the child’s right to an education and protect educational facilities from attack; some of these guarantees also qualify as customary international law.¹²² While deliberate attacks on schools are prohibited, passive military uses of these facilities often transform them into military objectives.¹²³ Consequently, once a school becomes a military objective it becomes exposed to attack.¹²⁴ There is no written law, nor any clear custom, protecting schools from military use during armed conflict, creating a gap in the law that has put schools, students, and teachers in danger. By guiding individuals involved in the planning of military operations to avoid the use of school buildings, the Guidelines intend to reduce the use of schools and universities by armed parties and close this dangerous gap in the law.¹²⁵

¹¹⁹ *Id.*

¹²⁰ COMMENTARY ON THE GUIDELINES, *supra* note 6, at 4.

¹²¹ Statute of the International Criminal Court of Justice, art. 38, June 26, 1945, 33 U.N.T.S. 993.

¹²² COMMENTARY TO THE GUIDELINES, *supra* note 6, at 9–10.

¹²³ *Id.* at 4.

¹²⁴ *Id.*

¹²⁵ *Id.*

IV. EVALUATION OF THE DEGREE THAT THE GUIDELINES MIGHT HELP END THE MILITARY USE OF SCHOOLS

A. *The Guidelines as Soft Law*

The devastating effects in Syria from the military use of schools and universities during armed conflict demonstrate a gap between the laws that protect the child's right to an education and those that protect educational facilities from attack.¹²⁶ This gap allows the military, under international law, to transform learning institutions into legitimate targets for attack by turning those facilities into military objectives.¹²⁷

One potential solution to this gap would be to establish and implement a multilateral treaty regulating the military use of schools during armed conflict. Treaties are often a preferred form of law for a variety of reasons.¹²⁸ First, treaties have identifiable content,¹²⁹ and plainly provide the terms of international legal rules.¹³⁰ In addition, treaties also reflect the formal consent of states to be bound by the instrument's terms,¹³¹ and thus establish legal rights and duties that carry an expectation of obedience between sovereign states.¹³²

Nevertheless, the legal status, clarity, and pressure of compliance associated with treaties are combatted by disadvantages of using these instruments within the arena of international law.¹³³ For example, treaties often require cumbersome procedures of approval and ratification,¹³⁴ which necessarily entail formal negotiation and express consent; processes that could be circumvented through alternative forms of international law.¹³⁵ Moreover, treaties are also limited instruments in that they may fail to meet the needs of a changing situation, and are only binding on those states that

¹²⁶ PROTECT SCHOOLS AND UNIVERSITIES FROM MILITARY USE, *supra* note 10.

¹²⁷ COMMENTARY TO THE GUIDELINES, *supra* note 6, at 4.

¹²⁸ JEFFREY DUNOFF, INTERNATIONAL LAW: NORMS, ACTORS, PROCESS 36 (3d ed. 2010).

¹²⁹ *Id.*

¹³⁰ MARK A. JANIS, AN INTRODUCTION TO INTERNATIONAL LAW 11 (4th ed. 2003).

¹³¹ DUNOFF, *supra* note 128, at 36.

¹³² JANIS, *supra* note 130, at 9–10.

¹³³ DUNOFF, *supra* note 128, at 93.

¹³⁴ *Id.*

¹³⁵ *Id.*

ratify and consent to their encompassed terms.¹³⁶ Lastly, treaties can be more difficult to amend than other forms of international law.¹³⁷

Given these drawbacks, and in the absence of the traditional international law sources, states have resorted to nontraditional forms of lawmaking to regulate international activity.¹³⁸ Often called "soft law," these forms can be an attractive alternative when the traditional forms of international law recognized in the Statute of the International Court of Justice, such as treaties and custom, are insufficient to regulate the issue at hand.¹³⁹ Soft law's advantages over hard law include the fact that soft law instruments are not confined to those states who consent to ratification, and as a result may also be used to induce participation from non-consenting states.¹⁴⁰ Moreover, soft law can be adopted more rapidly because it does not require the formal procedures of approval necessary to establish binding hard law.¹⁴¹

Soft law, however, also has disadvantages when compared to its hard law counterparts. Soft law instruments are not legally binding.¹⁴² Moreover, since soft law is not binding, it is controversial with respect to the legal force it is afforded.¹⁴³ Soft law alternatives are also frequently created by non-state actors, such as nongovernment agencies. Such doubtful law-making authority can render soft law instruments variable and elusive.¹⁴⁴

The Guidelines were created as a soft law instrument to govern the military use of schools during armed conflict.¹⁴⁵ As mentioned above, the Guidelines are primarily the work of nongovernmental organizations, who then prodded U.N. officials and representatives of states to join.¹⁴⁶ Since soft law approaches, like the Guidelines, offer both advantages and disadvantages when compared to hard law approaches,¹⁴⁷ it is important to assess whether the underlying goals of the Guidelines are furthered by soft law advantages sufficient to overcome the disadvantages of not choosing a hard-law alternative.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.* at 73.

¹³⁹ *Id.* at 93.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.* at 94.

¹⁴⁴ *Id.*

¹⁴⁵ COMMENTARY TO THE GUIDELINES, *supra* note 6, at 4.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

It is gravely evident by the situation in Syria that the military use of schools during armed conflict is a problem that calls for timely response.¹⁴⁸ If remedy of this situation were sought in the form of a treaty, burdensome procedures in search of approval could take a substantial amount of time. This would allow the military use of schools to continue. Consequently, students would continue to have their education disrupted and their lives endangered by these circumstances,¹⁴⁹ while lawmakers take steps to create binding law.¹⁵⁰ Soft law is generally adopted much more rapidly because it does not entail the procedures that render hard law binding.¹⁵¹ Therefore, the Guidelines will better serve the timely needs of the military use of schools during armed conflict than a treaty would.

In addition, an issue that often arises from attempting to regulate international activity is the willingness of countries to become amenable to the regulation. Since treaties require the affirmative consent from each state party,¹⁵² states may be less likely to join a treaty out of fear of repercussion stemming from a failure to adhere to the express terms of a particular instrument.¹⁵³ It is therefore persuasive that the Guidelines, as soft law, will meet the desire of “wide dissemination”¹⁵⁴ and greater participation by states and non-state actors better than a hard law alternative.

Another consideration is the textual confinement of a treaty. Treaties are difficult to amend, and can fail to meet the changing needs of the situation.¹⁵⁵ It could be detrimental to criminalize the military use of schools during armed conflict because the needs of war change. In some narrow circumstances, the greater good may be satisfied by the military use of schools. In this way, the flexible nature and fluidity of the Guidelines renders it more conducive to the ever-changing needs of situations impacted by armed conflict.

Another particular concern with soft law instruments is that they are, by definition, not law.¹⁵⁶ Such instruments therefore lose the pressures for

¹⁴⁸ *Report of the Secretary-General on Children and Armed Conflict in the Syrian Arab Republic*, *supra* note 27, ¶¶ 40, 46.

¹⁴⁹ *Id.*

¹⁵⁰ DUNOFF, *supra* note 128, at 93.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ COMMENTARY TO THE GUIDELINES, *supra* note 6, at 5.

¹⁵⁵ DUNOFF, *supra* note 128, at 93.

¹⁵⁶ *Id.* at 94.

compliance associated with treaties.¹⁵⁷ This brings up grave concerns of enforceability. However, wide implementation of the Guidelines may, over time, become customary international law, and thus imply state consent through state practice.¹⁵⁸ It is settled that by “the general assent of civilized nations,” that a practice may become “of universal obligation.”¹⁵⁹ This enforceability, however, requires a ripening over time.¹⁶⁰ Nevertheless, it is evident that a soft law approach in the form of the Guidelines best satisfies the remedial needs of the military use of schools during armed conflict, regardless of their lack of enforceability, because they do not preclude a more binding alternative from forming.

After consideration of the advantages and disadvantages of using the Guidelines to remedy the military use of schools during armed conflict, as opposed to a hard law approach, it is evident that the need for a rapidly adaptable, changeable, and more inclusive form of lawmaking prevails over the accountability benefits that a hard law approach could provide. It is now pertinent to conclude whether this soft law approach satisfies the recommendations and goals set forth by the Coalition to end the military use of schools during armed conflict.

B. Evaluating This Soft-Law Option against Key Criteria

The Coalition, before the release of the finalized Guidelines in December 2014, set out a list of proposed criteria for the Guidelines in the form of recommended solutions and goals.¹⁶¹ The proposed criteria included: recognition that the military use of schools during armed conflict is a common practice in need of a remedy; adherence to international law, including international humanitarian law and international human rights law; promoting implementation of the Guidelines’ ban; the monitoring and reporting of activity; and encouraging the mitigation of harm.¹⁶² In addressing whether, and to what effect, the Guidelines will remedy the military use of schools during armed conflict, it is first pertinent to determine

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 77 (describing customary international law as law that “results from general and consistent practice of states followed by them from a sense of legal obligation”).

¹⁵⁹ *The Paquete Habana*, 175 U.S. 677, 711 (1900).

¹⁶⁰ DUNOFF, *supra* note 128, at 85.

¹⁶¹ PROTECT SCHOOLS AND UNIVERSITIES FROM MILITARY USE, *supra* note 10, at 13.

¹⁶² *Id.*

whether the Guidelines further the recommendations and goals issued by the Coalition.

1. Raising Awareness of the Scope and Gravity of the Problem

The Coalition suggested that recognition of the negative impact caused by military use of schools during armed conflict would aid in stop the practice.¹⁶³ Specifically, governments, non-state armed groups, and other actors “should acknowledge that military use of schools and other education institutions is a common practice in armed conflict that requires a concerted response at both the national and international level.”¹⁶⁴

This recommendation is first addressed in the introduction to the Guidelines.¹⁶⁵ The introduction promotes awareness of the gravity of the problem by explaining how and why the military uses schools during armed conflict and the resulting dangers and disruption to children’s education.¹⁶⁶ The introduction also provides a means to increase exposure by stating that the Guidelines are meant for wide dissemination and implementation¹⁶⁷ and asserting that greater access to the Guidelines would increase awareness. Further, the sixth guideline calls for incorporation of the Guidelines into military documents to increase dissemination throughout the chain of command and raise awareness for those best situated to implement the Guidelines.¹⁶⁸

What the introduction does not do, however, is sufficiently emphasize the gravity of the situation. Data and statistics, such as the number of schools that have been used and the number of students consequently denied access to their education, could help emphasize the extent of the problem and its need for address. Data of this nature inevitably change as time passes; nevertheless, physical numbers may be more effective in helping readers to recognize the impact that military use of schools has had. Perhaps it would also be more persuasive to use concrete examples of instances, such as in Syria, in which the gravity of the effects of the use of schools has manifested

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ COMMENTARY TO THE GUIDELINES, *supra* note 6, at 4.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ THE GUIDELINES, *supra* note 75.

in a clear way.¹⁶⁹ On the other hand, the Guidelines may be disserved by singling out a specific country or countries.

In sum, the Coalition desires acknowledgment that military use of schools is a common practice in need of an international response, but does not adequately demonstrate that this practice is common. While the introduction does clearly state how the military use of schools impacts education, it does not express the extent to which schools are being impacted and the devastating number of students who have experienced disruption in their education.¹⁷⁰ Information of this nature may help both to increase the knowledge and understanding of the degree to which the military use of schools affects education, and to induce implementation of the Guidelines.

2. *Advancing Adherence to Applicable Binding Law*

Another solution recommended by the Coalition is to promote adherence to current international law, including international humanitarian law and international human rights law.¹⁷¹ The Coalition describes adherence to these laws as taking “all feasible precautions to protect the civilian population and civilian objects, including schools and universities, against the effects of attacks.”¹⁷² The Coalition continues that, at a minimum, adherence “means prohibiting the military use of schools and universities while they continue to be used as education institutions.”¹⁷³

Applicable binding international laws are recognized in the introduction to the Guidelines and also described in great detail in the Commentary on the Guidelines.¹⁷⁴ The Commentary on the Guidelines also provide relevant treaty provisions and international guidance, such as resolutions from the Security Council.¹⁷⁵ The Guidelines sufficiently explain these laws and the rights they afford. Further, the Guidelines provide statements from states that have vowed to adhere to international law and prohibit the military use of schools. The President of the Syrian Opposition Coalition and Chief of Staff of Supreme Military Council in the Free Syrian Army signed a Declaration in April 2013 that states: “[O]ccupation [of schools] by military

¹⁶⁹ *Report of the Secretary-General on Children and Armed Conflict in the Syrian Arab Republic*, *supra* note 27, ¶¶ 40, 46.

¹⁷⁰ *Id.*

¹⁷¹ PROTECT SCHOOLS AND UNIVERSITIES FROM MILITARY USE, *supra* note 10, at 13.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ COMMENTARY ON THE GUIDELINES, *supra* note 6, at 4, 9–13.

¹⁷⁵ *Id.*

forces represents a direct violation of domestic and international law. . . . [T]he Free Syrian Army today states its official position prohibiting the militarization of schools”¹⁷⁶ It appears that the Guidelines satisfy the recommendation to advance adherence to applicable binding law.

3. *Promoting Implementation of the Guidelines’ Ban*

The Coalition stated that the Guidelines should assist servicemen “in their decision-making during battlefield situations and military operations.”¹⁷⁷ The Guidelines also assist commanders and military planners to prepare ahead and lessen the need to use schools and universities.¹⁷⁸ Specifically, the recommendation suggests that parties to armed forces “amend their military manuals, train their personnel, and issue military orders in line with good practice, including prohibiting armed forces from using schools and universities.”¹⁷⁹

Guideline 6 specifically calls for the implementation of the Guidelines into “doctrine, military manuals, rules of engagement, operational orders, and other means of dissemination, to encourage appropriate practice throughout the chain of command.”¹⁸⁰ The Guidelines suggest prohibiting the use of schools by armed forces and includes examples of good practices.¹⁸¹ The Guidelines thus give specific instructions on how the Guidelines’ ban of the military use of schools is to be implemented into military protocol. The President of Syrian Opposition Coalition of the Free Syrian Army pledged to comply with this recommended implementation in a signed Declaration.¹⁸² The Declaration stated that the statement prohibiting the military use of schools “will be circulated among all of our battalions and guide the actions of our members.”¹⁸³ As made clear by the language of the Guidelines and the resulting Declaration by Syria, the Guidelines adequately fulfill the recommendation of strengthening legal standards by promoting the implementation of the Guidelines’ ban.

¹⁷⁶ *Id.* at 17.

¹⁷⁷ PROTECT SCHOOLS AND UNIVERSITIES FROM MILITARY USE, *supra* note 10, at 14.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* at 13.

¹⁸⁰ THE GUIDELINES, *supra* note 75.

¹⁸¹ COMMENTARY ON THE GUIDELINES, *supra* note 6.

¹⁸² *Id.* at 17.

¹⁸³ *Id.*

4. *Monitoring Compliance*

Another of the Coalition's recommendations is to "give greater attention to monitoring and reporting on military use of schools and education institutions . . . whenever it occurs."¹⁸⁴ This recommendation is especially important, because without knowledge that the Guidelines' ban on the military use of schools has been violated, it is impossible to take measures to remedy that violation.

The introduction to the Guidelines merely suggests that the Guidelines are used "as a tool for inter-governmental and non-governmental organisations engaged in monitoring, programming, and advocacy related to the conduct of armed conflict."¹⁸⁵ The Guidelines themselves do not give any guidance on how local organizations, states, and agencies should monitor and report violations of the Guidelines. Similarly, the Declaration in Syria states that "[a]ny individuals found to violate the principles listed in our proclamation will be held accountable . . ."¹⁸⁶ However, violators will only be held accountable if their violations are discovered. The Guidelines merely suggest that governments "credibly and impartially investigate and prosecute" violators.¹⁸⁷ Suggestions on a specific monitoring structure may have been helpful in assuring proper enforcement of the Guidelines. Instead, the Guidelines left it up to each state to create a monitoring system.

5. *Encouraging Mitigation of Harm*

The Coalition stated that the Guidelines will assist "[g]overnments and international and domestic organizations in . . . mitigating the harmful consequences when parties to a conflict do use schools."¹⁸⁸ The Guidelines require parties to armed conduct to completely remove traces of their use of the school and make every effort to remedy any damage caused to school buildings. Unfortunately, the Guidelines' remedial measures only focus on fixing the building, and show no concern for the students who have been deprived of their education for years.

Just as the Guidelines require that the military remedy any damage done to school buildings, the Guidelines should also require that the government

¹⁸⁴ PROTECT SCHOOLS AND UNIVERSITIES FROM MILITARY USE, *supra* note 10, at 13.

¹⁸⁵ COMMENTARY ON THE GUIDELINES, *supra* note 6, at 4.

¹⁸⁶ *Id.* at 17.

¹⁸⁷ PROTECT SCHOOLS AND UNIVERSITIES FROM MILITARY USE, *supra* note 10, at 13.

¹⁸⁸ *Id.* at 14.

take steps to provide the educational opportunities that have been forfeited by students. As demonstrated by both the Guidelines¹⁸⁹ and the Children's Convention,¹⁹⁰ education is an invaluable tool in maintaining and furthering society. Preserving the right to education is of great importance, but ensuring that the students who have been deprived of their education receive an opportunity to make up those lost years is similarly important.

Upon requiring that governments address the years of education lost by students, the Guidelines should also provide suggestions to governments on how to do so. These suggestions on how to remedy the years of education lost would likely serve a parallel purpose of promoting re-enrollment in schools. For example, the Guidelines could suggest that a maximum age for grade school be extended. Similarly, the Guidelines could suggest that governments create an accelerated educational program for students who were deprived of their education for some period of time. The Guidelines could also suggest that university students be incentivized to return to their voluntary academic pursuits. Regardless of what suggestions are made, it is pertinent that the generation gap in education resulting from the military use of schools during armed conflict is not ignored.

Lastly, it is important to address whether the Coalition's recommendations are, in themselves, useful to end the military use of schools and universities during armed conflict. The recommendations provide a comprehensive approach that covers raising awareness of the problem, encouraging recognition of the right to education, promoting adherence to the laws that seek to prevent attacks on educational institutions vis-à-vis implementation of the Guidelines, and monitoring and punishing violations.¹⁹¹ The recommended criteria adequately flesh out the elements necessary for an effective and comprehensive approach to ending the military use of schools during armed conflict. However, it appears that the Guidelines may fall short of fully satisfying these recommendations. In particular, the Guidelines fall short of satisfying the recommendation that they provide specific guidance on monitoring for violations and holding violators accountable.

¹⁸⁹ THE GUIDELINES, *supra* note 75.

¹⁹⁰ CHILDREN'S CONVENTION, *supra* note 3.

¹⁹¹ PROTECT SCHOOLS AND UNIVERSITIES FROM MILITARY USE, *supra* note 10, at 13.

C. Additional Measures to Improve This Soft-Law Regime

This Note has addressed potential shortcomings of the Guidelines by comparing the Guidelines with the recommendations for remedying the military use of schools during armed conflict issued by the Coalition.¹⁹²

The Guidelines fall short of the Coalition's recommendations in two very important ways. First, the Guidelines do not adequately emphasize the gravity of the consequences that occur as a result of the military use of schools during armed conflict. Servicemen may be more likely to avoid using schools if they fully understand the devastating effects such a decision could have on children's safety and access to education. In response to this potential shortcoming, this Note suggests that the Guidelines stress, in greater detail, the gravity of the effects resulting from the military use of schools during armed conflict.

Second, the Guidelines should take strides to provide adequate information on how to monitor and report activity that violates the Guidelines or ways to investigate and prosecute these violations. The ability to monitor and report violations is crucial to determining who to hold accountable for these violations, and the ability to prosecute these violators is crucial to ensuring that the Guidelines are enforced. Therefore, the Guidelines need to address these issues directly, rather than in passing, to help a country such as Syria to effectively and efficiently put an end to the military use of schools during armed conflict. As one potential solution to this shortcoming, the Guidelines could suggest that an oversight committee be established within the chain of command to be responsible for identifying violations of the Guidelines.

Lastly, and potentially most importantly, is the Guidelines' failure to suggest that governments should, or how governments could, remedy the years of education that have been forfeited as a result of the military use of schools during armed conflict. Without action, an entire generation will fall victim to an educational gap, even after the military use of schools has ceased. A reparations structure should be developed to provide an education to the children who have been deprived one.

The Guidelines could also recommend that each state create provisions for criminal prosecution for violations of the Guidelines. National provisions of this kind would deter violations and increase adherence to the Guidelines.

¹⁹² *Id.*

V. CONCLUSION

As a result of conflict around the world, armed forces are using schools and universities to further military objectives, thereby disrupting students' education and turning schools into legitimate military targets.¹⁹³ The Guidelines were created to stop the military use of schools during armed conflict.¹⁹⁴ This Note evaluated the effectiveness of the Guidelines by first determining that the Guidelines met most of the Coalition's recommended solutions and calls for action. It also determined that authoritative soft law, such as the Guidelines, is a better remedy for this problem than a hard law alternative.

Although the effects of the military use of schools in Syria have been devastating, the Guidelines have inspired the Syrian military to take preventative strides by prohibiting such actions and seeking to end the military use of schools. These strides could save the lives of children, lessen their exposure to sexual violence, forced labor, and injury, and restore their ability to pursue an education. There are, however, a few ways in which the Guidelines could further these initiatives. This Note suggests that one such way to improve the effectiveness of the Guidelines is for the Guidelines to emphasize the gravity of the consequences that result from the military use of schools during armed conflict. This could motivate servicemen to give greater deference to the Guidelines. Next, the Guidelines should provide suggestions on how to monitor and report violations of the Guidelines to increase accountability. The Guidelines should also require governments to take measures to remedy the years of education lost and suggest a reparation structure for governments to implement. These suggestions could further the effectiveness of the Guidelines in putting an end to the military use of schools in Syria and remedying the damage it causes.

Finally, this Note urges governments to adopt the Guidelines and join the initiative to end the military use of schools during armed conflict, and allow children to attend school without fear.

¹⁹³ *Id.* at 5.

¹⁹⁴ THE GUIDELINES, *supra* note 75.