



PEOPLE CHANGING THE WORLD

# Protection of education under IHL during military occupation

Workshop to the Education Cluster and Child Protection Working Group  
and partners

4 September 2014

# outline

- IHLRC
- IHL and occupation – the basics
- The education system under occupation
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# IHL Resource Centre

We work to **increase the respect** for and the implementation of international law, specifically IHL, in the Israeli-Palestinian conflict.

Our vision is to protect life and human dignity in Israel and the occupied Palestinian territory (oPt) through **providing objective and strategic information and analysis** on international law and to **develop tools** for relevant stakeholders (CSO's, media, decision-makers) in order to act to increase respect for the law.

**Legal analysis, information and trainings, support monitoring, advocacy to decision makers**



# IHL and the law of occupation - the Basics

- The goal: alleviate human suffering in armed conflicts – balancing military necessity vs. humanitarian protection
- Regulates:
  - protection of civilians and hors de combat
  - Limitations on the use of means and methods of warfare - unnecessary suffering
- Applicability: Intl. vs. non-intl. armed conflict; in bello vs. ad bello;
- Occupation is based on practical assessment (42 Hague Regulations)
- Rules concerning hostilities (combat) vs. occupation (law enforcement), not disturbances

# Core Principles of IHL

- **DISTINCTION** between combatants and civilians
- **PROPORTIONALITY** commonly in hostilities/attacks: the expected incidental damages to civilian life should not be excessive to the anticipated concrete and direct military advantage (51 First Additional Protocol, rule 14 ICRC Study)
- **PRECAUTIONS IN AND DURING ATTACKS** – obligation of care to spare civilians and their objects, minimize incidental loss to life and damage to civilian objects (57IAP, rules 15-24 ICRC)
- **MILITARY NECESSITY** The balance between military goals and humanity stemming from the need to minimize human suffering during armed conflicts.



# IHL vs. Human Rights – distinct, complement

## IHL

- Between states - rights/ duties
- IHL is applicable in times of armed conflict.
- The humanitarian benefits can be limited if a genuine military necessity exists or for security of civilians .

## IHRL

- Between states-duties and people - rights
- Human rights are applicable at all times – in war and peace.
- Some rights can be limited (e.g. the freedom of expression during State of emergency).
- *A number of fundamental rights, such as the right to life, prohibitions against slavery and torture, can never be derogated from.*

# The education system under occupation

- Occupation is **temporary** (42, 55 Hague) – education system cannot be controlled by the occupying power as an independent lawful sovereign – content, structure, operation.
- The obligation to **respect local laws**, unless there is a necessity to amend them (43 Hague, 64 IVGC).
- The obligation to respect **fundamental rights of protected persons which include respect for their persons, customs and manners** (article 27 IGVC)
- The obligation to ensure **public order, civilian life and safety** including human rights includes the right to education (43 Hague)

# The education system cont.

- Obligation to ensure the provision of **basic needs** to the fullest extent of the means available to it (55 IVGC, 69 IAP) is contextual and includes education needs especially in long term occupation
- There is a specific obligation to **ensure the proper working of educational institutions for children during occupation** (50 IVGC)
- An obligation to **cooperate with the national and local authorities** to ensure facilitation of educational institutions for children (50IVGC) and must encourage the education of **internees especially of children and young people** (94IVGC)



# Protection students and staff

- **General protection for all civilians** - against dangers arising from military operations ((51)(1)IAP). Protected persons are entitled in all circumstances to respect for their persons, their honor, their family rights, their religious convictions and practices, and their manners and customs (27IVGC)
- **Specific protections:**
  - Collective punishment is prohibited (33IVGC, 50 Hague)
  - Forced transfer and deportations are prohibited; temporary evacuations limited (49IVGC)
- **Special protection for vulnerable groups – students and staff:**
  - Children, women and girls, Sick and wounded, disabled, elderly, displaced persons

- **Children** – The right for special care and protection (rule 135 ICRC); includes priority in relief (70(1)IAP, 23 IVGC) and in shelter (14IVGC)
- **Orphans and separated under 15 years** - parties to an international armed conflict must take ‘the necessary measures’ to ensure the education of children under 15 years, who have been orphaned or separated from their families as a result of armed conflict. Their education shall, as far as possible, be entrusted to persons of a similar cultural tradition (24 IVGC, 50 IVGC).
- **Internees** - The detaining power must encourage the education of internees and provide facilities to ensure education, especially for children and young people (94 IVGC)

# Access to schools

- Right to movement under human rights law is also considered under IHL – respect for protected persons, their honor, family rights (27 IVGC)
- However, movement during armed conflict may be suspended due to security reasons (27 IVGC). Examples: temporary evictions to ensure safety of protected persons (78 IVGC).
- But, movement should not be generally suspended (27 IVGC, ICRC commentaries)
- Access to schools is part of public order and safety (43 Hague) and
- the obligation to ensure the proper working of schools (50 IVGC) as well as
- of children's' right to special care and protection under IHL

# ICJ Advisory Opinion on the Wall 2004

The construction of the wall in the oPt including in and around East Jerusalem, and its associated régime, are contrary to international law ;

**Israel is under an obligation to:**

- a) Terminate its breaches of International Law;
- b) Cease forthwith the works of construction of the Wall in the oPt.
- c) Make reparation for all damages caused by the construction of the Wall.

**States are under an obligation to:**

- a) Not recognize the illegal situation resulting from the construction of the Wall;
- b) Not render aid or assistance in maintaining the situation.

# Settler violence

- The occupying power is under an obligation to **respect and ensure respect for IHL** even by private individuals (common article 1 to the Geneva Conventions)
- Obligation to take all the measures in its power to **restore, and ensure, as far as possible, public order and safety** (43 Hague).
- In IHRL - **obligation to take due diligence** to prevent human rights violations including by third parties i.e. to take appropriate actions to prevent violations, and punish the perpetrators.
- If the state knew or ought to have known, that there is a real risk that a violation will take place in a territory under its control, and did not prevent the violation, it violates its own international responsibility.
- Note: analysis should take place as part of the right to education and to access schools.

# General protection of educational facilities

- **Obligation to respect and protect civilian property, especially private**  
- civilian property, immovable or movable, particularly private, must be respected and protected – not attacked and its function not unnecessarily impeded (23(g), 46, 52 Hague; 53 IVGC; 52 IAP; rules 7, 10, 51 ICRC).
- **In IHRL** - respect and protection of private property i.e. as part of the right to family life, right to privacy and right to adequate standard of living.
- **Obligation to ensure the provision of basic needs** - to the fullest extent of the means available to it.
- **Schools as part of teachers rights under IHRL** - the material conditions of teaching staff shall be continuously improved (art. 13(2)(ICESCR)). School buildings in rural areas are part of teachers rights (UNESCO-ILO Recommendation Concerning the Status of Teachers (1966))

# Destruction and Seizure – general rules

- **During hostilities** - Destruction is regulated by the core principles of IHL – distinction, proportionality, precautions, military necessity

“It is especially prohibited to destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war” (23(g) Hague).

- **What is a lawful military objective?** the object must make an effective contribution to military action, and its seizure or destruction must offer a definite military advantage (51 IAP).

# Destruction general cont.

- **During occupation** - “Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.” (53IVGC)
- ICRC commentaries (art. 53 IVGC) clarify that:
  - The destruction should be essential to the military goal and
  - Pass the test of proportionality.



# Seizure and requisition

- **Seizure and requisition is the temporary taking of the entire or part of the property** - in return for compensation if may be used for military purposes (seizure) or needed by the occupying forces (requisition) (52, 53 Hague).
- Conclusion: generally there is no exception to the protection of educational establishments in occupied territory outside the existence of actual fighting.
- Administrative seizure or destruction were not envisioned by IHL and are therefore unlawful. Any regulation of construction should be according to by public order for the benefit of the local population and in accordance with human rights considerations.

# Specific obligations for educational facilities

- **Obligation to facilitate the proper working of institutions dedicated to the care and education of children (50IVGC)**

Therefore the above infers a prohibition not destroy/seize it (55 IVGC, 69 IAP) i.e. structures serving basic needs regardless who constructed them and whether they serve relief, other humanitarian or development needs.

- **Schools as cultural property (rules 38-40, 147 ICRC):**
  - **The obligation of special care** to avoid damage to buildings dedicated to religion, art, science, education or charitable purposes, and historic monuments provided they are not used for military purposes.
  - Seizure, destruction or willful damage done to cultural institutions is prohibited unless imperatively demanded by the necessities of the conflict.

- **Educational facilities enjoy protection from seizure, destruction and damage during occupation** (56 Hague) – also during hostilities (ICTY Strugar case).
- **War Crime** – art. 8 (2)(e)(iv) Rome Statute - intentionally directing attacks against buildings dedicated to education provided they are not lawful military objectives.
- **Facilities administered by relief agencies** (70IAP, rule 55 ICRC).
- Humanitarian relief objects i.e. administered by local or international relief organizations - must be respected and protected (rule 32 ICRC).
- Destruction of relief objects is corollary of deliberately impeding humanitarian relief. This includes prohibition on destruction, misappropriation and looting as well as an obligation to ensure their safety (ICRC customary law study).

# Illegality of the Israeli planning regime in Area C

1. Unlawful changes made to the local legislation (no justification under public order or military necessity)
2. Facilitate unlawful policies (Wall, settlements, annexation of EJ)
3. Institutional discrimination
4. Enforcement: Unlawful destruction and forced transfer
5. Violation of due process
6. Violation of the obligation to ensure basic needs and exercise human rights
7. Changes last beyond the occupation



Impede self-determination

# Undermining Palestinian curriculum in EJ

- The OP should respect the local education system according to the local customs and manners in the occupied territory (27 IVGC) including in EJ.
- Education of children shall, as far as possible, be entrusted to persons of a similar cultural tradition (24,50 IVGC).
- The proper work of educational institutions (50 IVGC) should be interpreted in light of IHRL.

# Palestinian curriculum in EJ

## cont.

- The child's education should be directed to the development of respect for the child's family, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for other civilizations (29 CRC).
- The state should not interfere with the liberty of locals to establish and direct educational institutions subject also to such minimum standards as may be laid down by the State (29 CRC)

# Humanitarian Assistance

- **The obligation on states including parties to the conflict to allow entry, passage and distribution of humanitarian and development aid**
  - All states parties to the Geneva Convention including the parties to the conflict must allow and facilitate rapid and unimpeded passage of all relief consignments, equipment and personnel (23 IVGC, 70IAP)
  - In occupation – when OP is unable or unwilling to provide for the needs (55 IVGC, 69 IAP) it has the obligation to agree to and facilitate relief by all the means at its disposal (59 IVGC).
  - OP is also under obligation to facilitate development aid (43 Hague, 27 IVGC). **In IHRL** – obligation on states to cooperate internationally to realize the economic, social and cultural rights of people under their jurisdiction, also as states party to HR conventions (CESCR, General Comment 3 re arts. 55, 56 of the UN Charter; 2(1) ICESCR)

- **The obligation of the occupying power to respect and protect relief personnel (71IAP, rule 31 ICRC)**
  - Parties to the conflict must respect and protect relief personnel and assist to the fullest extent practicable in carrying out their relief mission. Only in case of imperative military necessity may their activities be limited/their movements temporarily restricted.
  
- **The right of the parties to the conflict to regulate aid delivery**
  - Put conditions on aid delivery to ensure that there are no serious reasons for fearing that (23IVGC):
    - The relief may be diverted from its destination.
    - That the control will not be effective.
    - That the enemy will enjoy a definite advantage to its military or economy from the relief.
  - Prescribe the technical arrangements regarding times and routes (59 IVGC)



# How does international law regulate the delivery of aid?

## OCCUPYING POWER:

- Primary obligation to ensure basic needs
- If unable or unwilling, must agree and facilitate rapid and unimpeded aid
- Right to prescribe the technical details to ensure its genuine security considerations and effectiveness
- Consent must not be refused on arbitrary and unlawful grounds

## THIRD STATES:

- Obligation to coordinate and seek consent with the OP
- Right to demand a lawful coordination mechanism for the delivery of aid
- Not illegal to provide aid while abstaining from unlawful coordination mechanism
- Illegal to condone a serious breach of pre-emptory norm i.e. violation of the right to self-determination

# Benchmarks for a lawful coordination

Restrictions based on security reasons must be:

- **Militarily necessary** to achieve a definite advantage
- **Proportional** to the expected harm to the civilian population
- **Temporary**
- **Preceded by due process**
- **Lawful** i.e. not sustain an unlawful situation or undermine rights of protected persons under IHL/IHRL (settlements, Wall, annexation of EJ)

General benchmarks for technical coordination must be:

- **Reasonable** i.e. time-wise
- **Effective** i.e. ensure provision of basic needs
- **To the fullest extent possible**
- **Non discriminatory**
- Conducted in **good faith**
- If used as the coordination mechanism, **local laws cannot justify violations of IHL**
- **Lawful**

# Thank you!

**For the presentation and more information :**

**[www.diakonia.se/ihl](http://www.diakonia.se/ihl)**

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