THE PROTECTION OF CIVILIAN EDUCATIONAL INSTITUTIONS DURING THE ACTIVE HOSTILITIES OF INTERNATIONAL ARMED CONFLICT IN INTERNATIONAL HUMANITARIAN LAW

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Introduction

This article will explore the possibilities presently available for the protection of civilian educational institutions in International Humanitarian Law (IHL) during the hostilities of international armed conflict. The article will examine these legal mechanisms for protection in five distinct categories:

I. The general legal protection of Civilian educational institutions as civilian objects or containing protected persons;

II. The legal protection of the Civilian educational institutions or their contents by, with reference to, or with inference from cultural property protections;

III. The legal protection of Civilian educational institutions in connection with states general legal obligation to educate the civilian population in IHL;

IV. The legal possibilities of Red Cross Provision of Civilian Education Institutions during International Armed Conflict (IAC);

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V. The legal Protection of Civilian educational institutions in Specially Provided IHL Zones.

Although there exist special IHL provisions relating to the possibility of the protection of educational institutions in non-international armed conflicts and during an occupation regime this article will be restricted to dealing with general and special protection of civilian educational institutions during the hostilities of an international armed conflict. It also will not address special religious educational facilities such as Sunday schools since in addition to the protections described in this article they may be subject to supplementary protections. Within the above framework the article will evaluate the protection of educational institutions’ facilities from the narrowest possible perspective to its wider meaning. It will examine protecting narrow and specific types of schools or places of instruction, for instance those providing education in the Law of Armed Conflict (LOAC), ordinary civilian schools and universities. It will also deal with the wider meaning of educational institutional facilities within cultural property protections or institutions containing that property which provide educational services such as museums or libraries. While the protection of educational institutions in conflict situations may contribute to the implementation of the “Right to Education” in time of conflict it should not be taken to be analogous to the protection of the ICESCR Human Rights, “Right to Education”. This article will consider and identify the means and mechanisms available to affording international legal protection to the buildings or facilities\(^1\) of the educational institution, rather than addressing the protections or available to persons benefiting from education, the continuance of education in wartime, or the education itself and its contents.

1. The General Legal Protection of Civilian Educational Institutions as Civilian Objects or Containing Protected Persons

*The right of belligerents to adopt means of injuring the enemy is not unlimited.*\(^2\)

\(^1\) Throughout the article the terms facilities, institutions, educational institutions, structures, and buildings for education will be used interchangeably to mean the buildings or structural components making up the facility for the educational institutions and their immovable non-living contents. The plethora of terms shall not have any of their other potential or ordinary meanings in relation to education. However it should be understood that sometimes, especially in relation to cultural property it is the educational nature of the structure which protects the facility or affords it a higher degree of protection rather the general protection of the civilian object itself.