



Education Under Occupation: Obligations of the Occupying Power

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Abstract: *This article is part of the series Education under Occupation, which explores the legal responsibilities of Israel with respect to the Palestinian population living under the military occupation. In the first part, we considered the framework of International Humanitarian Law, including a short tour through its history and applicable normative bodies. In the present article we will explore the obligations of the occupying power with specific attention to children's access to education and we will present data and statistics reflecting daily restrictions to the realisation of the right to education. This study pertains to the situation in Israel and Palestine, specifically to the military occupation of Palestine by Israeli forces.*

Keywords: *Palestine, military occupation, International Humanitarian Law*

I. INTRODUCTION

This study analyses the obligations and responsibilities of the occupying power towards the civilian inhabitants of the occupied territory. In particular, we will study the obligation to guarantee access to education. In any of its forms, war has been, is and will always be the worst and most destructive expression of human conflict, which establishes the most unfavourable conditions for reaching a just and enduring solution to controversy.

There are a large number of bilateral agreements and customary norms that regulate the behaviour of combatants and armies on the battlefield, restrict the exercise of certain war practices, and limit the equipment and weapons allowed. However, history shows that these norms are consistently transgressed by armies and their leaders. Modern warfare has not been an exception when it comes to violations of these rules and has provoked increased suffering and horror for civilian populations in every corner of the world. Over time, customary rules and bilateral agreements have been rearranged in several multilateral normative bodies in the context of Public International Law, that has been explored in the first of the two-part series of Education Under Occupation. This legal system does not prohibit the use of armed force but limits its use to cases of self-defence. Moreover, it explicitly establishes limits to the harm inflicted on both combatants and civilian populations, seeking to reduce the amount and severity of permanent damage caused by armed force.

The Israeli–Palestinian conflict, sadly, represents a good example of the challenges to duly implementing IHL, and in particular the law of occupation, when one of the parties to the conflict wilfully disregards its basic tenets, such as the temporary nature of occupation and the prohibition of transferring sovereign rights onto the Occupying Power. This should be a lesson for the future: ensuring respect and implementation of IHL is paramount in order to preserve the value of the law and its ability to protect civilians and their rights from the effects of armed conflicts (Jabrain, 2013).

Educating the mind without educating the heart is no education at all

Aristotle

II. ACCESS TO EDUCATION

The General Assembly and the Security Council of the UN issued a large number of resolutions broadening the protection of children in conflict situations and specifying concrete obligations of the belligerent powers. The obligation of the international community is to respect and ensure respect of those provisions.

General Assembly Resolution 64/290 on the right to education in emergency situations reaffirms "...that everyone shall enjoy the human right to education..." and recalls the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the 1951 Convention relating to the Status of Refugees, the Geneva Convention relative to the Protection of Civilian Persons in Times of War of 1949 among others. It also highlights that the Convention on the Rights of the Child "...must constitute the standard in the promotion and protection of the rights of the child and that the requirements for the realization of the right to education, pertinent also to emergency situations...". Moreover, the General Assembly acknowledges that the protection of schools and the provision of education in emergency states should remain a key priority and urges the Member States to implement policies and strategies to ensure the realization of the right to education, respecting the obligation with the International Law and the International Law of Human Rights.

Domestic legislation must be adapted in order to combat impunity and to criminalize the attacks against "...buildings dedicated to religion, education, art, science or charitable purposes..." considered to be grave violations of the Geneva Conventions and war crimes according to the Rome Statute of the ICC, article 8.b-ix.

In 1985 the General Assembly approved resolution 40/161 that reaffirms that a military occupation itself "...constitutes a grave violation of the human rights of the civilian population of the occupied Arab territories;" and condemns the "...continued and persistent violation by Israel of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and other applicable international instruments...". In particular, the resolution condemns a series of practices and policies executed by Israel like collective punishment,



interference with the educational system and social, sanitary and economic development and interference with the freedom of movement of individuals. Security Council resolution 1998/2007 – unanimously adopted – further expands the protection of children in armed conflicts. The 1994 Oslo Accords enabled the creation of the Ministry of Education within the newly created Palestinian Authority, developing the educational sector for Palestinian children. Enrolment in schools substantially increased, school construction and rehabilitation became a priority, and the Ministry of Education made progress towards greater inclusiveness in schools – particularly for girls and children with disabilities. The Ministry also addressed early childhood education programmes, as well as technical and vocational training (WCC-EAPPI, 2013).

DAILY VIOLENCE DETERS RIGHTS REALISATION

However, today thousands of children still face difficulties exercising their right to education due to the military checkpoints, the harassment and violence of soldiers and illegal Israeli settlers. Continuous conflict and the military occupation difficult – or even forbid – the proper access of children to the schools. Recurrent incursions of the military into the schools impose delays or early suspension of the class day. The use of teargas to quell spontaneous rock throwing towards the checkpoints has a great impact on the activities of the neighbouring schools, affecting children and teachers (DCI - Palestine, 2016). In only 8 months of the year 2012, there have been 12 registered incidents that impede or denied access to schools in the Gaza Strip and in the West Bank. As an example, hostilities in November 2012 damaged 43 educational facilities preventing 25000 children from returning to school. Another 285 school buildings suffered damage as a result of airstrikes (UNICEF, 2012) and (Education Cluster, 2014).

Violence and attacks towards school children has been constantly monitored and reported by several organizations on the ground. Only in the H2 area of the city of Hebron/Khalil, southern West Bank, between December 2014 and March 2015, there were over 65 instances where the Israeli forces used tear gas, stun grenades and, to a lesser extent, rubber bullets and live ammunition. Approximately 80% of the incidents occurred at times and places in which children walked to and from school. In that same period of four months and only in 2 of the many checkpoints in H2 area in Hebron/Khalil, Israeli forces shot at least 400 tear gas canisters, some 150 stun grenades. Also 2 rubber bullets and 1 live ammunition were reported.

The most common scenario for these incidents was the Israeli soldiers or border police response to a handful of school children throwing stones, that pose a negligible threat to the Israeli forces compared to the disproportionate use of force. Palestinian children in Hebron have been both witness to, and subject to the violence and humiliation carried by the occupation for their entire lives. Years of frustration, violations, and the absence of safe places to play, lead some to pick up a stone and throw it at the bunker-like, towering checkpoints and military towers that litter the city (CPT-Palestine, 2015).



Figure 1 - Nowhere to run. Young Palestinians scramble to find safety from tear gas (CPT - Palestine 2015)

The UN Monitoring and Reporting Mechanism (MRM) noted that only in 2015 there were 156 reported attacks on education Palestine affecting nearly 20 thousand students. Those attacks, committed by Israeli settlers and/or the Israeli military include vandalism, harassment or physical violence towards commuting students, military raids of schools, use of schools as interrogation or detention centres, use of tear gas, stun grenades, rubber bullets and live ammunition in and around school facilities. A case of confiscation of education material has been reported at the As-Sawiyeh Al Lubban School during the academic year 2014-2015.

However, these statistics can only show the facts. The attacks on education facilities and against the students result in a sensible deterioration of a healthy and safe environment for learning, a reduction in time for learning leading to poorer academic achievements, a lack of attendance and increase dropout rates. Fearful parents pull their children out from school which disproportionately affects boys and girls, being the latest more likely to stop attending when faced with harassment or physical abuse (WCC-EAPPI, 2016).

Restrictions to movement also affect teachers who, on a daily basis, pass by or pass through the Israeli military checkpoints on their way to or after work. In 4 months during 2015, 31 teacher IDs were checked from the same school in Hebron, although soldiers recognize the every-day passing teachers by their faces. A teacher from the Ibrahimi School in Hebron/Khalil shares his experience: Every day Israeli Border police would ask me to pass through the metal detector twice and then ask for my ID for checking. They know I am a teacher; I used to be stopped every day for more than an hour at the mosque checkpoint. [...] It affects my performance in school and how I start my working day.



Figure 2 - Palestinian teachers are stopped, often times delayed and searched regularly at the Checkpoints (WCC-EAPPI/M.Knoblauch 2013)

Schools are supposed to be peace zones, protected places – even during belligerent times – that keep children safe and provide them with necessary tools to become peace advocates. However, according to Israel's Manual on the Laws of War, the status of schools may change from civilian to military depending on the situation and the military needs of the Israeli forces. In a world where security needs rapidly redefines the status and actions, Israeli forces have exploited the concept and taken it to the limit. Between the 29th of January and the 2nd of February 2015, two military incursions happened in the Ibrahimi School in Hebron/Khalil. The first attempt was prevented by the principal and the teachers, whereas in the second attempt a unit of 6 soldiers managed to raid the school and arrested a 14-year-old boy under the claim that he had been photographed throwing stones.

CHILDREN DETENTION

In occupied Palestine, the threat of arrest and detention applies also to children. As of August 2016, 316 children (between 12 and 17 years old) were held in Israeli military detention and statistics elaborated by Military Court Watch show a trend in franc and steep increase.

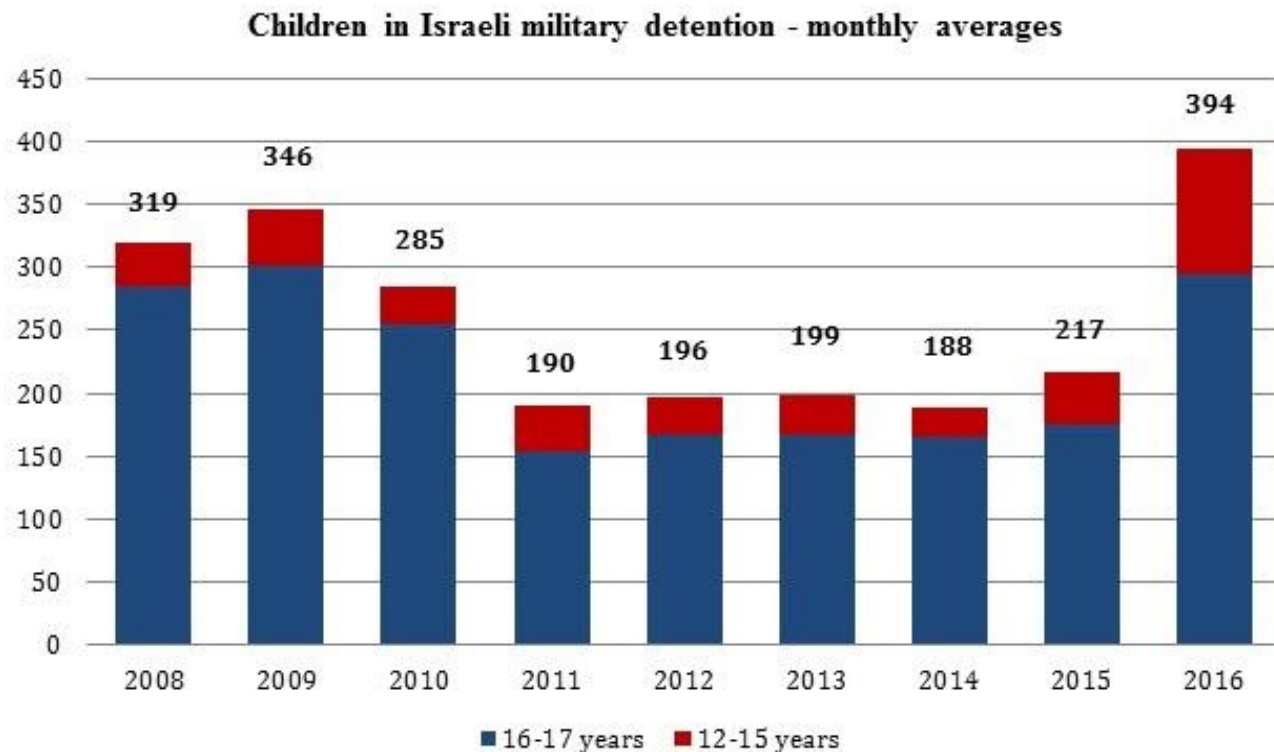


Figure 3 - The annual trend shows an increase in the number of children detained by Israeli military. Children as young as 12 years old are detained. Statistics generated based on official data from the Israeli Prison Service (Military Court Watch, 2017)

Although Israel holds an open controversy in the diplomatic and political arena regarding the applicable rules in occupied Palestine, International Law and Israeli domestic law present no controversy whatsoever. Even breaking their own internal rules, Israeli forces detain or arrest children younger than 12. According to CPT report, only between December 2014 and March 2015, at least 4 children under 12 have been detained in violation of an Israeli military order (CPT-Palestine, 2015). According to Defense for Children International, "Israel is the only country in the world that automatically prosecutes children in military courts that lack basic and fundamental fair trial guarantees. Since 2000, at least 8,000 Palestinian children have been arrested and prosecuted in an Israeli military detention system notorious for the systematic ill-treatment and torture of Palestinian children.



Figure 4 - Israeli settlers said that children were throwing stones: no need to investigate any further for evidence. Israeli soldiers detained two Palestinian children, obliged them to sign documents in Hebrew, handcuffed and blindfolded them and drove them to the military base (WCC-EAPPI/M. Knoblauch 2013)

Around 500-700 Palestinian children are arrested, detained and prosecuted in the Israeli military court system each year. The majority of Palestinian child detainees are charged with throwing stones, and three out of four experience physical violence during arrest, transfer or interrogation. No Israeli child comes into contact with the military court system" (DCI - Palestine, 2016).

Detention practices include night incursion to houses, arresting children while the family is asleep which has severe and long-lasting psychological consequences, induce trauma in the children and their family and leaves the community in shock and fear. Half of the children report physical and psychological abuse during arrest, transfer and interrogation (Military Court Watch, 2016).

Conviction rates are alarming. Statistics show that over 99% of cases in the military courts end in conviction. Moreover, in 2016 40% of the minors and 86% of the adults were transferred and detained in Israeli territory, which constitutes a war crime under art. 8.2-vii of the Rome Statute.



VI. CONCLUSION

The effects of war – in all its forms – are devastating and it is not possible to mention one armed conflict that has brought any positive, long lasting outcomes or common benefit to us as a species. Today, more than ever in human history, it is clear that war is not solely an expression of conflict but a modus operandi of the concentrated, authoritarian power and of war economics. Conflict is perhaps a face of our human nature but the ways we act and address conflict are certainly social, political and economic constructs. Never before in human history have we invested so many resources in the accumulation of war potential and in the development of new forms of combat and weapons. The outcome of these processes has never been a lasting just peace but a continuous growth of military tension.

In this context, the International Humanitarian Law plays a fundamental role providing a framework to limit damage. Unfortunately, the rights and their realization – justice – come often too late. It has been 50 years since the beginning of this military occupation – perhaps the longest in our modern history – which seems to have no end in the short term.

Considering the first article of the Education Under Occupation series, with the apparent controversy debunked, the IV Geneva Convention, the Resolutions of the Security Council and the General Assembly of the UN are very clear with respect to the responsibilities of the occupying power with respect to the civilian population living under that rule. The occupying power is responsible for the maintenance of public order and the conduction and administration of the education system for all the children living under military occupation.

The 1993 bi-lateral agreements known as Oslo Accords led to the creation of the Palestinian Authority that has, however, limited government capabilities. The effects and consequences of the persistent military occupation – which include severe restrictions to the freedom of movement, harassment from the military forces, illegal settlers and restrictions to get construction permits for new schools – prevents any possible realization of the right to education by the Israeli authority nor the Palestinian Authority.

The right to education has already been consecrated in article 26 of the 1948 Universal Declaration of Human Rights, which has become part of the consuetudinary law, therefore applicable regardless of the ratification status of other international treaties.

According to official reports, education facilities have been damaged or destroyed due to Israeli attacks (UNICEF, 2012) and (UNRWA, 2016) .The Rome Statute of the ICC states that these practices are severe violations to laws applicable in times of armed conflict. Unfortunately, Israel has not ratified the Rome Statute which prevents the ICC prosecutor from investigating violations. In early 2015, the State of Palestine ratified the Rome Statute accepting the jurisdiction of the International Criminal Court allowing therefore investigations committed in its territory and by foreign – Israeli – forces.



The fate of the civilian population living under military occupation and in armed conflicts depends on the observation by the belligerent powers of the international treaties. But a large responsibility lies also in the hands of the international community as all the international treaties require respect of the rules and oblige all Parties to ensure respect.

A political, cultural and economic formulation is indispensable to prevent any belligerent actions from stepping into the pool of possible solutions of a controversy. The protection of life, the wellbeing and the guarantee of a fruitful future for children and their families is the fundamental mandate that we, as human beings, have agreed to hold as sacred.

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