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## AN ANALYTICAL REVIEW OF INTERNATIONAL CRIMINAL RESPONSIBILITY IN TARGETING EDUCATIONAL INFRASTRUCTURE: NOVEL APPROACHES OF THE INTERNATIONAL CRIMINAL COURT

### CASE STUDY OF THE ATTACK ON SHAJAREH TAYEBEH SCHOOL IN MINAB, IRAN

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**Abstract:** *The protection of educational institutions and students is among the most fundamental norms of international humanitarian and criminal law, rooted in deep ethical and customary foundations. Nevertheless, in contemporary armed conflicts, schools are frequently targeted under ambiguous doctrines such as “dual-use” and broad interpretations of the “principle of proportionality”. Adopting a descriptive-analytical approach and focusing on the Rome Statute and the jurisprudence of the International Criminal Court (ICC), this article examines the substantive and evidentiary challenges of establishing individual criminal responsibility in attacks against educational infrastructure. The principal novelty of this research lies in elucidating the concept that the presence of students in schools shifts the nature of the crime from a mere “violation of civilian property rights” to a “crime against persons and children”. The findings demonstrate that the deliberate targeting of schools lacking military function—such as the Minab Schools, Iran—particularly during school hours, in the initial stages of a conflict, and without granting an “effective advance warning” for evacuation, not only renders the assessment of the “principle of proportionality” moot but also serves*

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*as the most compelling presumption for establishing dolus directus (direct intent) and the perpetrators' intent to inflict maximum civilian casualties. By leveraging the strategic policies of the Office of the Prosecutor (OTP) regarding children and drawing an analogy (mutatis mutandis) from the Al Mahdi case, the ICC is transitioning towards a "person-centric" approach. In this context, the strategy of "cumulative charging" can pave the way for a more effective prosecution of perpetrators under Articles 8(2)(b) of the Rome Statute, and potentially elevate the charges to crimes against humanity (Article 7).*

**Keywords:** Educational Infrastructure, Mens Rea, Principles of Distinction and Proportionality, Cumulative Charging, War Crimes against Children, Shajareh Tayebbeh School of Minab.

## ANALYSE DE LA RESPONSABILITÉ PÉNALE INTERNATIONALE EN CAS DE CIBLAGE DES INFRASTRUCTURES ÉDUCATIVES : NOUVELLES APPROCHES DE LA COUR PÉNALE INTERNATIONALE.

### ÉTUDE DE CAS : L'ATTAQUE CONTRE L'ÉCOLE SHAJAREH TAYEBEH À MINAB (IRAN)

Résumé : La protection des établissements d'enseignement et des élèves figure parmi les normes fondamentales du droit international humanitaire et pénal, ancrée dans des fondements éthiques et coutumiers profonds. Pourtant, dans les conflits armés contemporains, les écoles sont fréquemment prises pour cibles en vertu de doctrines ambiguës telles que la notion de « double usage » et des interprétations extensives du « principe de proportionnalité ». Adoptant une approche descriptive et analytique et s'appuyant sur le *Statut de Rome* et la jurisprudence de la Cour pénale internationale (CPI), cet article examine les difficultés de fond et de preuve liées à l'établissement de la responsabilité pénale individuelle dans les attaques contre les infrastructures éducatives. L'originalité principale de cette recherche réside dans la mise en lumière du fait que la présence d'élèves dans les écoles transforme la nature du crime, d'une simple « violation des droits de propriété des civils » en un « crime contre les personnes et les enfants ». Les conclusions démontrent que le ciblage délibéré d'établissements scolaires sans vocation militaire – tels que les écoles de Minab, en Iran – en particulier pendant les heures de classe, au début d'un conflit et sans préavis d'évacuation effectif, non seulement rend caduque l'appréciation du principe de proportionnalité, mais constitue également la présomption la plus convaincante pour établir le *dolus directus* (intention délibérée) et la volonté des auteurs de faire un maximum de victimes civiles. En s'appuyant sur les politiques stratégiques du Bureau du Procureur concernant les enfants et en établissant une analogie (*mutatis mutandis*) avec l'affaire Al Mahdi, la CPI évolue vers une approche centrée sur la personne. Dans ce contexte, la stratégie de l'accumulation des chefs d'accusation peut permettre de poursuivre plus efficacement les auteurs de ces crimes en vertu de l'article 8(2)(b) du Statut de Rome et, potentiellement, de les requalifier en crimes contre l'humanité (article 7).

**Mots-clés :** Infrastructure éducative, Mens Rea, Principes de distinction et de proportionnalité, Facturation cumulative, Crimes de guerre contre les enfants, École Shajareh Tayebbeh de Minab.

ARMED CONFLICTS IN THE CONTEMPORARY ERA have undergone fundamental structural and substantive transformations; the transfer of the battlefield from open spaces to densely populated urban areas has exposed civilian infrastructure to unprecedented harm (Dinstein, 2022). In this context, educational institutions (schools and universities) often become focal points of conflict due to their dual-use potential and strategic location within urban fabric. From the perspective of international humanitarian law (IHL), educational infrastructure enjoys the general immunity of civilian property based on the “principle of distinction”. Nevertheless, the systematic destruction of these institutions is not merely physical damage. The occurrence of such attacks during school hours or when schools are used as shelters for civilians frequently leads to massive human casualties and the tragic death of students. This lethal consequence not only violates the “right to education” but, by fundamentally undermining the “right to life”, elevates the nature of the act from a crime against property to a crime against persons (Manuchehr, 2011).

Despite the clarity of international instruments, translating these combined violations into “individual criminal responsibility” before the International Criminal Court (ICC) faces numerous theoretical and practical challenges. The *Rome Statute*, in Articles 8(2)(b)(ix) and 8(2)(e)(iv), criminalizes intentionally directing attacks against buildings dedicated to education, and simultaneously, in Article 8(2)(b)(i), considers intentionally directing attacks against civilians (including schoolchildren) a war crime (UN General Assembly, 1998). The issue of protecting civilian institutions and civilian casualties has previously received attention in legal doctrine. Dinstein (2022) emphasizes the absolute nature of the principle of distinction, classifying schools as civilian property. Capone (2025) has examined the doctrine of “dual-use” and the change in status of civilian property to military objectives. On the other hand, Manuchehr (2011) has explored the intersection of IHL and international human rights law (IHRL) regarding the denial of children’s right to education. In the realm of jurisprudence, Hathaway (2024) has dissected the challenges of assessing the “principle of proportionality”. Furthermore, recent policies of the ICC Office of the Prosecutor (ICC-OTP, 2023), with a special focus on crimes against children and their heightened vulnerability in attacks on schools, have been considered a strategic document. Despite the richness of the above-mentioned research, the dominant focus of these studies has been on state responsibility. The fundamental innovation of this article is its focus on the mechanism for establishing “individual criminal responsibility”

before the ICC, particularly in complex scenarios where an attack on a school with a “dual-use” status results in the killing of students.

This research fills the gap in legal literature regarding the method of “concurus of crimes” for destruction of property and killing of civilians, and demonstrates how the Court, in assessing the principle of proportionality, weighs the loss of children’s lives against the claimed “military advantage”. The case study of a significant case, referred to as the “Minab Schools, Iran”, while analyzing the legal statuses, provides a clear picture of this legal situation. Accordingly, the main research question is: How does the ICC, by adopting novel interpretative approaches, overcome the conceptual and evidentiary challenges arising from the targeting of educational infrastructure, especially in cases leading to the killing of schoolchildren? To answer this question, using a descriptive-analytical method, foundational documents and judicial practice are examined.

Roadmap of the article: Section one examines the normative framework for protecting educational institutions (and the lives of students) from ethical roots to positive law. Section two analyzes the substantive challenges of the dual-use doctrine and proportionality assessment when human casualties occur. Section three dissects the Court’s novel approaches regarding the concurus of crimes. Section four assesses evidentiary obstacles, and finally, section five analyzes the situation of the Shajareh Tayebbeh School incident in Minab, Iran.

## **1. Normative Framework for Protecting Educational Institutions in International Law: From Ethical Roots to Codification in Positive Law**

To accurately understand the criminal mechanisms concerning the targeting of schools, one must first analyze the normative evolution of the protection of these institutions and, more importantly, the persons within them (children and students). This normative framework is the product of an evolution that began with fundamental ethical-religious teachings and crystallized in the hard instruments of IHL and IHRL.

### ***1.1 Ethical and Historical Foundations: Convergence of Religions and the Martens Clause***

Prior to the codification of modern treaties, the limitation of violence in hostilities was rooted in value systems and the teachings of Abrahamic religions, which acted as indirect sources of customary practice (Hathaway et al., 2011). In Islamic

jurisprudence, the rules of warfare established by the Prophet Muhammad explicitly emphasize the absolute immunity of children, women, and religious/educational places from military attack, and prohibit any unnecessary destruction of public property under the prohibition of “corruption on earth” (Bassiouni, 2014).

In the Jewish tradition, the doctrine of “*bal tashchit*” (prohibition of wanton destruction), initially established to preserve fruit-bearing trees during siege, has been interpreted by Jewish scholars as a general principle for preserving vital infrastructure and places of Torah study (as sacred educational spaces) (Walzer, 2015). Similarly, in Christian theology, the “just war” doctrine, developed by Augustine and Aquinas, formed the basis of the modern “principle of distinction”; principles that deem the intentional targeting of innocent persons, including children, inherently illegitimate (O'Donovan, 2003).

This shared ethical heritage is not merely of historical value; it entered positive law through the Martens Clause, first introduced in the Hague Conventions of 1899 and 1907. This clause stipulates that in cases of legal gaps, civilians remain under the protection of “the principles of international law derived from established custom, from the principles of humanity, and from the dictates of public conscience” (Cassese, 2017). Today, the public conscience of the international community considers attacks on schools and the killing of schoolchildren as the most flagrant violation of these dictates of humanity.

### ***1.2 Codification in Positive Humanitarian Law: The Principle of Distinction and Dual Immunity***

In the modern architecture of IHL, the protection of schools and students rests on two main pillars: the general protection of “civilian property” and the special protection of “children”. Article 52(1) of Additional Protocol I (1977) to the *Geneva Conventions* (1949) defines civilian property negatively and stipulates that anything that is not a military objective is civilian property and shall not be the object of attack. Schools, universities, and kindergartens inherently fall into this category. Rule 7 of the Customary IHL Study also absolutely prohibits directing attacks against civilian property (Solf, 2023).

Nevertheless, the significance of schools is not limited to their physical structure (bricks and mortar). When a school is attacked during school hours, we are confronted with a grave breach of Article 51(2) of Additional Protocol I and Customary Rule 1 (immunity of civilians from attack) (Downes, 2011). Moreover, IHL, in Article 77 of Additional Protocol I, mandates “respect and special

protection” for children. The killing of students in such attacks constitutes a violation of this “dual immunity” and changes the nature of the crime from property destruction to the commission of a massacre of civilians (Krill, 1992).

### ***1.3 Intersection of IHL and IHRL: Human Casualties and the Safe Schools Declaration***

In recent decades, legal doctrine has moved away from a purely humanitarian approach towards convergence with IHRL. The UN Human Rights Committee, in General Comment No. 36 (2018), stated that the right to life (Article 6 of the International Covenant on Civil and Political Rights) is not suspended during armed conflicts, and any killing of civilians that violates IHL is simultaneously considered an arbitrary deprivation of life under human rights law (UNHRC, 2018).

Therefore, an attack on a functioning school simultaneously violates two fundamental human rights: the “right to education” (Article 13 of the International Covenant on Economic, Social and Cultural Rights) through infrastructure destruction, and the “right to life” if students are killed (Manuchehr, 2011).

In response to the inadequacy of classic rules to prevent schools from becoming military targets, the international community developed the Safe Schools Declaration and UN Security Council Resolution 1998 (2011). Although these instruments have a “soft law” nature, they indicate the formation of a powerful “legal conviction” (*opinio juris*) among states regarding the illegitimacy of the military use of schools and the necessity of criminalizing attacks that lead to the killing of students (Zwanenburg, 2021). This cross-cutting normative framework provides the necessary basis for the ICC to adopt a restrictive interpretation based on the protection of children’s lives when faced with “dual-use” challenges.

## **2. Substantive and Conceptual Challenges: The Dual-Use Doctrine and Assessing the Principle of Proportionality**

Translating the abstract rules protecting schools into the field realities of hostilities, especially in modern urban warfare, faces fundamental legal challenges. The most complex of these challenges arises when an educational institution, due to the presence of military forces or equipment, loses its purely civilian character and enters the ambiguous realm of “dual-use objectives” (Rizer, 2001). However, the change in the physical status of a building by no means implies disregarding the right to life of the persons (students) within it.

## ***2.1 Change of Status of Schools and the Dual-Use Dilemma***

Under Article 52(2) of Additional Protocol I, civilian property (such as a school) loses its immunity only when two conditions are cumulatively met: first, the property, by its “nature, location, purpose or use”, makes an “effective contribution” to military action; and second, its total or partial destruction, in the circumstances ruling at the time, offers a “definite military advantage” (Lev, 2025).

Legal doctrine specifies that the loss of this immunity is temporary and strictly conditional. If a party to the conflict uses a schoolyard to launch projectiles, the school building temporarily becomes a military objective (Henderson, 2009). Nevertheless, IHL, in Article 52(3), establishes a “legal presumption in favor of civilian status”; meaning that in case of doubt regarding the military use of an institution normally dedicated to civilian purposes, it shall be presumed to remain civilian (Capone, 2025).

## ***2.2 Principle of Proportionality and the Heavy Weight of Students’ (Children’s) Lives in the Military Balance***

Assume the conditions of Article 52(2) are met, and the school has become a military objective. Does this authorize an attack on it during school hours? The answer of ICL to this question, through the lens of the “principle of proportionality”, is absolutely negative.

Article 51(5)(b) of Additional Protocol I prohibits and deems unlawful an attack which may be expected to cause incidental loss of civilian life, which would be “excessive” in relation to the “concrete and direct military advantage anticipated”. Assessing proportionality is always a difficult quantitative and qualitative calculation, but modern IHL doctrine emphasizes that the value of human lives is not equal; the weight of the loss of children’s and students’ lives in the proportionality equation is significantly heavier than other variables (Andersson, 2022).

If a combatant takes shelter in a school (military advantage), targeting the entire building while hundreds of students are present in classrooms is a manifest and unjustifiable violation of the principle of proportionality. In such a scenario, the military advantage of eliminating a single hostile force pales in comparison to the catastrophe of killing students, and the attack transforms from a tactical measure into an unlawful massacre (Palarczyk, 2023).

### **2.3 Individual Criminal Responsibility before the ICC: The “Clearly Excessive” Threshold and Concursus of Crimes**

The main challenge before the ICC is converting the violation of proportionality (which pertains to state responsibility) into the actus reus and mens rea of a war crime for a military commander.

The *Rome Statute*, in Article 8(2)(b)(iv), criminalizes intentionally launching an attack knowing that it will cause incidental loss of civilian life, and that such loss will be “clearly excessive” in relation to the military advantage (Schabas, 2017).

The qualifier “clearly excessive” in the *Rome Statute* raises the criminal evidentiary threshold compared to IHL. However, the killing of students in an educational environment is one of the few scenarios that legal doctrine unanimously considers a clear instance of crossing this threshold (Ambos, 2021). A military commander cannot claim ignorance in their defence; because the nature of a school during daytime creates “presumed knowledge” of the presence of children.

Here, the ICC must employ the mechanism of concursus of crimes. When an attack on a dual-use school results in the death of students, the Prosecutor should not merely file charges under Article 8(2)(b)(ix) (attack on educational buildings), as this article applies when the building has not become a military objective. Instead, the Prosecutor should combine Article 8(2)(b)(i) (intentional attack on civilians) and Article 8(2)(b)(iv) (disproportionate attack resulting in civilian deaths) (Werle & Jeßberger, 2020).

This concursus of crimes reflects the “severity of the catastrophe” and demonstrates that the Court, when faced with the dual-use of schools, shifts its focus from “property destruction” to “the killing of specially protected persons”.

## **3. Novel Approaches of the ICC: From Jurisprudence to Strategic Policies of the Office of the Prosecutor**

The ICC, as the permanent judicial body of the international community, plays an irreplaceable role in translating abstract IHL rules into concrete criminal judgments. Given the substantive challenges examined in the previous section, the Office of the Prosecutor (OTP) and the Pre-Trial and Trial Chambers have adopted new strategies to combat “impunity” for targeting schools and killing students.

### ***3.1. Drawing Analogy from the Al-Mahdi Case: The Intrinsic Value of Cultural and Educational Institutions***

Although the Court has not yet issued a case exclusively focused on the physical destruction of schools, a milestone in the Court's jurisprudence regarding the interpretation of Articles 8(2)(e)(iv) and 8(2)(b)(ix) (attack on buildings dedicated to religion, education, art, science or charitable purposes) was achieved in the case of *Prosecutor v. Ahmad Al-Faqi Al-Mahdi* (2016) (Sadowski, 2022). This case, concerning the destruction of historic tombs and mosques in Timbuktu (Mali), saw the Court adopt a novel approach that is fully applicable to schools.

The Trial Chamber, in its judgment, emphasized that the criminalization of attacking these sites is not solely due to the material and physical value of the buildings but is rooted in the “identity, spiritual life, and social bonds” of the community (ICC, *Al Mahdi Judgment*, 2016). Legal doctrine, drawing an analogy from this judgment, argues that schools are also not merely a collection of classrooms and equipment; rather, they are the centers for nurturing the next generation and guaranteeing the intellectual and social survival of a nation. Therefore, the intentional destruction of schools, even beyond physical harm, is considered an “identity and structural attack” on the civilian population, which significantly increases the gravity of the crime for the purpose of admissibility before the Court.

### ***3.2 Strategic Policies of the OTP: Prioritizing “Children” in Prosecution Strategy***

In addition to jurisprudence, the OTP, recognizing the dual vulnerability of students, has initiated a paradigm shift in its prosecution policies. The publication of the important “Policy on Children” by the OTP demonstrates a transition from the traditional view of children as “collateral damage” towards recognizing them as rights-holders with special needs (Melnychuk et al., 2022).

According to this policy document, the OTP is committed to adopting a “child-sensitive approach” in assessing war crimes and crimes against humanity. This means that if an attack is carried out against infrastructure (such as a school), the OTP will consider the direct (killing and injury) and indirect (deprivation of education, severe psychological trauma) impacts of the attack on children as an aggravating factor during the investigation and indictment phases (ICC-OTP, 2016). This strategic policy, along with the OTP's recent updates in 2023 and 2024 regarding gender-based crimes and crimes against children, has paved the way for the independent prosecution of perpetrators of the killing of students (Munzhelele et al., 2025).

### ***3.3 Evidentiary Challenges of the Mental Element (Mens Rea) and Pattern Analysis***

One of the serious obstacles to convicting military commanders for attacking schools is proving the mental element (specific or general intent) under Article 30 of the *Rome Statute*. Accused persons often claim that the destruction of the school or the killing of students was a “miscalculation” or an “unintended consequence” of targeting a legitimate military objective (Pisani, 2003).

To overcome this evidentiary challenge, the OTP, in its modern practice, employs the technique of “pattern analysis”. As seen in the *Prosecutor v. Ntaganda* case (2019), the Court emphasized that although proving intent in a single attack may be difficult, when attacks on hospitals or schools occur systematically, repeatedly, and in a defined pattern of behavior, the Court can inductively establish the “knowledge” and “intent” of high-ranking commanders.

In this scenario, the repetition of attacks on schools and the continuous occurrence of casualties among students discredit the claim of “miscalculation” and prove that these attacks were part of an “organizational or state policy”. This, in addition to war crimes, can provide the basis for charging “crimes against humanity” (under Article 7 of the *Rome Statute* as a widespread or systematic attack against a civilian population) (Frahma, 2025).

## **4. Evidentiary Obstacles in Establishing Criminal Responsibility: From Battlefield Ambiguity to Digital Evidence Challenges**

To overcome evidentiary hurdles, the ICC needs to adopt novel approaches in evaluating evidence.

### ***4.1 Challenge of Attribution and Proving Command Responsibility***

One of the greatest evidentiary obstacles is establishing the causal link between the pilot or soldier who pulled the trigger and high-ranking commanders or political officials of states.

Under Article 28 of the *Rome Statute*, the Prosecutor must prove that the commander “knew or should have known” of the attack on the school and failed to take necessary measures to prevent it. In modern, decentralized military structures, proving this chain of command is very difficult.

In systematic attacks on educational infrastructure, the Joint Criminal Enterprise (JCE) doctrine is a more effective tool than command responsibility for attributing crimes to political and military leaders (Danner & Martinez, 2005).

#### ***4.2 Evidentiary Hurdle of the Mental Element and Rebutting the “Miscalculation” Claim***

Under Article 30 of the *Rome Statute*, the Prosecutor must prove that the accused acted with “intent and knowledge”. If the accused claims they mistook the school for an ammunition depot (under Article 32), the burden of proving the contrary rests on the Prosecutor.

The Prosecutor can use “pattern analysis” to show that when multiple schools are attacked within a short period, the probability of miscalculation statistically approaches zero, and this pattern proves “direct intent” (*dolus directus*) (Kuczynska, 2024).

#### ***4.3 Challenges of Authenticating Digital Evidence and Open-Source Information (OSINT)***

Today, in the absence of international inspectors on the battlefield, proving crimes is heavily dependent on citizen-journalist videos, satellite imagery, and artificial intelligence. The Court faces the dilemma of the “chain of custody” and the risk of “deepfakes” in admitting such evidence.

Referring to the “Berkeley Protocol on Digital Open Source Investigations”, which the Court has recently cited for authenticating images of school destruction, is an appropriate solution (Human Rights Center, UC Berkeley, 2020).

#### ***4.4 Dilemmas of Child Testimony: Balancing Truth-Seeking and the Non-Re-traumatization principle***

The primary witnesses to school bombings are the surviving students. Summoning children to The Hague to testify risks re-traumatization. On the other hand, defence counsel typically question the credibility of the memory of traumatized children.

Applying Rule 68 of the Rules of Procedure and Evidence, which allows for the admission of previously recorded testimony to protect children’s psychological well-being, while preserving the accused’s right to examine witnesses, partially addresses this issue (Klamberg, 2013).

### **5. Case Study: Attack on the Minab Schools, Iran**

The “Shajareh Tayebbeh” Educational Complex in Minab, which includes a girls’ primary school and a boys’ primary school, was targeted on the first day of

the US-Israeli attacks on Iran, On 28 February 2026 (9 Esfand 1404). According to the Prosecutor of Minab County, as the responsible official: “Following thorough investigations, the final death toll of this incident has been determined to be 156”. After a detailed review of documents and evidence, the final count of martyrs was announced as 156. Among the martyrs are 120 students—73 boys and 47 girls—26 teachers, all of whom were women, seven parents of students (four men and three women), one school bus driver, one pharmacy technician from a clinic adjacent to the school, and one six-month-old fetus. One of the martyred teachers, named “Zohreh Shahrari”, according to medical records, was six months pregnant at the time of her death, and her six-month-old fetus also perished alongside her in the attack. Out of the total 156 martyrs from this incident, 155 have been identified and confirmed, and after burial permits were issued by the forensic medicine authority, they have been given funeral rites and buried. One of the student martyrs, named “Makan Nasiri”, has not yet been identified even through DNA testing and remains on the list of those missing from this incident<sup>3</sup>.

### ***5.1 Fundamental Violation of the “Principle of Distinction”***

In the incident at the Shajareh Tayebbeh school, the school had absolutely no military use whatsoever. Although the school is located adjacent to a complex of military buildings belonging to the Naval Forces of the Islamic Revolutionary Guard Corps (IRGC), there was no evidence of any military use of the school building, and the classrooms and schoolyard are separated from the IRGC base by a wall. Furthermore, the wall paintings and playground markings visible in satellite images indicate the civilian nature of the building. As a result, the legal issue becomes much simpler, yet criminally much more serious.

According to a report by Human Rights Watch, the attack on the Shajareh Tayebbeh girls’ school in Minab was not caused by a weapons error or accident, but was a completely deliberate and precise attack using guided munitions. After analyzing satellite imagery, this independent organization emphasized that although the school was located adjacent to the IRGC naval military compound, it was completely separated from the military section by a wall and had its own independent entrance facing the street. The most important finding and emphasis of this report is that no evidence was found of any military use of this school, and the site was used solely for educational purposes. Human Rights Watch, noting the direct targeting of the school, has called for an immediate and independent

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3. <https://www.asriran.com/fa/news/1154967>

investigation by the United States and Israel so that those responsible for this attack can be held accountable for committing a possible war crime and targeting civilians. Additionally, Sophia Jones, an open-source researcher at Human Rights Watch's Digital Research Lab, has called on the allies of the US and Israel to compel these two countries to answer for the attack on civilian infrastructure, before more civilians, including children, are unlawfully killed<sup>4</sup>.

The Shajareh Tayebbeh School had a purely educational function and constituted a “purely civilian objective”. Under customary international law and the *Rome Statute*, a direct attack on a civilian objective is a grave breach of the principle of distinction. No justification based on “military necessity” is admissible here.

### ***5.2 The “Principle of Proportionality” Rendered Moot***

The principle of proportionality only comes into play when an objective has acquired a military nature (e.g., militants hiding in a school). However, since the Shajareh Tayebbeh School lacked any military function, the attack on it was “unlawful ab initio” (from the start). Under international criminal law, one cannot invoke proportionality for an attack on a 100% civilian objective. If the matter were brought before an international criminal court, the Prosecutor would not need to prove the “clearly excessive” nature of the casualties; the mere fact of carrying out the attack constitutes a completed crime.

### ***5.3 Establishing the “Mental Element” through the “Timing of the Attack”***

The attack on this school occurred precisely during “school hours”. In judicial practice, conducting an operation at a time of maximum presence of students and teachers is the strongest evidence for proving the “knowledge and awareness” and “intent” of military commanders to cause civilian casualties.

In IHL, Article 57(2)(c) of Additional Protocol I (1977) and the ICRC's customary rules establish a principle called “precautions in attack”. This principle explicitly stipulates that if an attack may affect the civilian population, “effective advance warning” shall be given, unless circumstances do not permit. Attacking a school (even in the impossible hypothetical that it had a military justification) without prior warning is a clear violation of this principle. The failure to grant the educational staff and students an opportunity to evacuate assists the ICC

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4. <https://www.hrw.org/news/2026/03/07/us/israel-investigate-iran-school-attack-as-a-war-crime>

Prosecutor in arguing that the perpetrators not only intended to destroy the building but also “deliberately” disregarded human lives as part of their operational strategy.

In military doctrine, the early hours of a war are typically used to paralyze the enemy’s key military infrastructure and create “shock and awe”. If, in these very early hours (where surprise is the norm), a purely civilian school is targeted, this attack was not a “miscalculation” but rather part of a pre-determined strategy to create “terror and public panic” among civilians. Choosing the early hours, when society is still in a normal state and schools are full of students, is the strongest evidence that the perpetrator sought the highest possible rate of civilian casualties.

Any reasonable military commander knows that in the early hours of a work/school day, without prior declaration of a state of war, schools are at their maximum human capacity. An attack precisely at such a time demonstrates “direct intent” (*dolus directus*). That is, targeting civilians was not a mere side effect but likely the main objective of the operation – to break the will to resist of the opposing side.

In international criminal trials, defence counsel for military accused typically resort to defences such as “mistaken target identification”, “presumption that the target was evacuated”, or “human shields”. When an attack occurs in the “early hours” and “without warning”, defence counsel cannot claim that the commanders thought the school was evacuated (because there was no time for evacuation). Furthermore, claiming that military equipment was deployed in that short period in an active, functioning school is much more difficult and implausible than for schools left abandoned for months in war zones.

From an ICL perspective, the occurrence of an attack on an active school in the early hours of a conflict, deliberately depriving the opportunity for evacuation, is not only unjustifiable but also serves as an aggravating factor; a powerful tool proving that the killing of civilians and students was a “systematic criminal plan” with the highest level of *mens rea*.

#### ***5.4 Multiple Criminal Charges and Concursus of Crimes***

In this case, the strategy of *concursum* of crimes can be employed, simultaneously bringing several serious charges against the commanders and perpetrators:

Article 8(2)(b)(i): Intentionally directing attacks against the civilian population (due to targeting students and teachers).

Article 8(2)(b)(ii): Intentionally directing attacks against civilian objects (destruction of the school building).

Article 8(2)(b)(ix): Intentionally directing attacks against buildings dedicated to education (a specific criminal charge focusing on the intrinsic value of the educational institution, analogous to the Al-Mahdi case jurisprudence).

### ***5.5 Potential for Elevation to “Crimes against Humanity”***

Since this attack was not an isolated or random event but was part of a “widespread or systematic attack directed against any civilian population” with knowledge of the attack (Article 7 of the *Rome Statute*), the nature of the crime goes beyond a war crime and can be prosecuted as a “crime against humanity” (including murder under Article 7(1)(a)).

Conclusion: From the perspective of ICL, the deliberate attack on a school with a purely civilian function during school hours, resulting in mass killing, constitutes one of the most flagrant, unjustifiable, and serious instances of “war crimes”. In this scenario, all complexities concerning defences by the accused (such as dual-use and proportionality) disappear, and establishing individual criminal responsibility becomes much easier and possible.

## **Conclusion**

The protection of educational infrastructure and the preservation of the lives of students during armed conflicts is not merely an obligation arising from modern treaty-based positive law; it is rooted in the deepest ethical and historical beliefs of humanity (including the teachings of Islam, Christianity, and Judaism), which have always emphasized the immunity of cultural sites and civilians. Nevertheless, the evolution of the nature of wars towards asymmetric urban conflicts has exposed these fundamental rules to complex challenges. The present article, focusing on the intersection of IHL and ICL, has demonstrated that the concept of “dual-use” of schools by no means implies the suspension of fundamental human rights and the right to life of the students present in those premises.

The findings of this research indicate that the ICC is on a path of transition from a “property-oriented” approach to a “person-oriented” approach. The destruction of a school, although prosecutable under Article 8(2)(b)(ix) of the *Rome Statute*, undergoes a fundamental metamorphosis in the nature of the crime when such attacks result in the killing of students. In such circumstances, even if

the school has become a legitimate military objective, the weight of children's lives in the balance of the "principle of proportionality" tips the scale heavily towards the unlawfulness of the attack.

The Court has shown that by employing mechanisms such as the "concursum of crimes" and invoking the "clearly excessive" threshold in Article 8(2)(b)(iv), it can establish the individual criminal responsibility of commanders, regardless of claims of tactical military necessity.

Furthermore, the Court's jurisprudence (drawing an analogy from the Al-Mahdi case) and the OTP's modern policies on "crimes against children" demonstrate the hidden capacities of the *Rome Statute* to combat impunity. Proving the mental element (*mens rea*), which has always been a serious obstacle to convicting senior military officials, has now been facilitated through "pattern analysis" and establishing systematic attacks on schools; an approach that can also pave the way for elevating charges from war crimes to crimes against humanity (Article 7).

However, to fully fill the normative and procedural gaps, the international community needs to adopt proactive and remedial measures. Accordingly, the following strategic recommendations are proposed:

**Conceptual Development of the *Rome Statute*:** It is recommended that the Assembly of States Parties (ASP) to the ICC, through the development of interpretive instruments, specify that "children and students", as groups with dual vulnerability, carry a higher weight coefficient in assessing the principle of proportionality. This would prevent accused persons from expansively interpreting the concept of "military advantage" to justify human casualties in schools.

**Strengthening Independent Fact-Finding Mechanisms:** Given the difficulty of proving dual-use and distinguishing between military and civilian objectives in urban areas, the UN and the Court should establish specialized fact-finding mechanisms focused on harm to educational infrastructure to accelerate the documentation of behavioral patterns for the OTP.

**Integrating the Safe Schools Declaration into Military Manuals:** States should explicitly integrate the principles of the "Safe Schools Declaration" into their domestic laws and armed forces' rules of engagement. The absolute prohibition of stationing forces or weapons in schools (even abandoned schools) is the first and most important step to prevent these sites from becoming dual-use objectives and subsequently to prevent the killing of students.

Ultimately, the protection of educational infrastructure in ICL is not merely about safeguarding bricks and mortar; it is about preserving the future, identity, and hope of a society in the darkest moments of its history – a trust that, in the case of the Minab Schools, Iran, was tragically broken. ■

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