The War Is over but the Battle Has Just Begun: Enforcing a Child's Right to Education in the Wake of Armed Conflict

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I. Introduction

The word "war" conjures up images of destruction, despair and lost lives. Indeed, a country's entire infrastructure can be destroyed in just a few days of armed conflict. As wars come to an end, world leaders focus on rebuilding the area and returning the country to its pre-war state. While many leaders and organizations focus on reconstructing the system of governance, buildings, and economic systems, education is a vital area that is often put on hold or not prioritized. The education of children deserves more time, attention, and funding. The existence of an effective educational system is an integral foundation to building a new economy.¹

¹ The thriving system of education in Japan following World War II is firm evidence of the vital role education can play in the reconstruction of a country following war. The education system in Japan "played a central part in enabling the country to meet the challenges presented by the need to quickly absorb Western ideas, science and technology, and it was also a key part in Japan's recovery and rapid economic growth in the decades following the end of World War II." AsianInfo.org, Summary of Japanese Education and Literacy, available at http://www.asianinfo.org/ asianinfo/japan/pro-education.htm (last visited May 26, 2004). One study reports that the illiteracy rate in Japan is zero and that 100 percent of children are enrolled in compulsory elementary education. About, The Japanese Education System, available at http://japanese.about.com/library/weekly/ aa061000.com (last visited May 26, 2004).

Dr. Ala'din Alwan, the current Minister of Education in Iraq, has also emphasized the value of "restoring quality, proficiency and excellence to [the] educational system" in a country's efforts at building a new economy. Coalition Provisional Authority, Ministry of Education—Iraq (2003), at http://www.cpa-iraq.org/ministries/ education.html (last visited January 25, 2004) [hereinafter Iraq Ministry].

Likewise, the Afghan Ministry of Higher Education recognizes the value that a reinvigorated education system "will contribute immensely to the emergence, strengthening, and consolidation of a viable, progressive, pluralistic, democratic, stable
Currently the world’s attention is focused on the ongoing conflicts in Iraq and Afghanistan. New leaders have emerged in both countries and these individuals are working in tandem with countless organizations to rebuild these countries’ infrastructures. Although the current leaders and constitutional documents of Iraq and Afghanistan recognize the civil society in the country.” Afghanistan Higher Education Reconstruction, available at http://afghanhighered.lib.calpoly.edu/ (last visited June 28, 2004) [hereinafter Afghanistan Education].

2. Following Saddam Hussein’s downfall in 2003, a twenty-five member Iraqi Governing Council (IGC) was named to create a new interim constitution. The 1990 Iraqi “Interim” Constitution is no longer in force. International Computers Ltd. referred to the constitution as “interim” because its terms were used effectively as rules, though the document was not yet complete. International Computers Ltd., Iraq Index, at http://www.oefre.unibe.ch/law/icl/iz_index.html (last visited June 28, 2004) [hereinafter Iraq Index]. The 1990 constitution did acknowledge the right to education in Article 27, which provided in part:

(a) The State undertakes the struggle against illiteracy and guarantees the right of education, free of charge, in its primary, secondary, and university stages, for all citizens. (b) The State strives to make the primary education compulsory, to expand vocational and technical education in cities and rural areas, and to encourage particularly night education with enables the popular masses to combine science and work.


3. Hamid Karzai, President of the Transitional Islamic State of Afghanistan, stressed the “need to rebuild Afghanistan’s education system, severely damaged under the country’s former Taleban [sic] rulers” in a speech given the day he was sworn in as Afghanistan’s new leader. Karzai takes power in Kabul, BBC News, Dec. 22, 2001, at http://news.bbc.co.uk/1/hi/world/south_asia/1724641.stm (last visited June 28, 2004).

importance of education, the leaders must make continuous education for children a priority especially following turmoil. Not only will education facilitate overall reconstruction efforts, but also such efforts will benefit children whose early years are dominated by conflict.

The benefits of an uninterrupted and thorough education, especially for children, are well recognized and numerous. The Declaration of the Rights of the Child [hereinafter DRC] recognizes that children need a basic education that will promote their general culture, enable them to develop their abilities, individual judgment, and sense of moral and social responsibility, and allow them to become useful members of society. Throughout their youth, children develop morals, self-esteem, and the educational background necessary to develop their abilities and ease the transition into adulthood.

In areas of armed conflict, children are especially vulnerable. An understanding of the basis for conflict is necessary to enable children to make their own conclusions and decisions pertaining to the war. A lack of knowledge concerning the reasons for conflict is detrimental because uneducated children often blindly follow the lead of terrorist organizations. Children in Iraq are particularly at risk, as voluntary

that the state “shall adopt necessary measures for promotion of education in all levels. . . .” More specifically, Article 43 provides:

1. Education is the right of all citizens of Afghanistan, which shall be provided up to the level of B.A. (lisâns), free of charge by the state. (2) The state is obliged to devise and implement effective programs for a balanced expansion of education all over Afghanistan, and to provide compulsory intermediate level education. (3) The state is also required to provide the opportunity to teach native languages in the areas where they are spoken.

Education for women and the elimination of illiteracy are discussed in Article 44, and higher education is provided for in Article 46. AFG. CONST.


5. See id.


7. CRC, supra note 4, at pmbl. The preamble of the CRC provides:

[R]ecognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding, Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality, and solidarity.

8. In part of what has been described as a “culture of terrorism,” Palestinian children have been used in increasing numbers as suicide bombers. NBC News Chief Legal Correspondent Dan Abrams commented on this practice, stating, “When children are involved, they are being used and manipulated by adults who have indoctrinated them.” MSNBC, Turning a blind eye to child suicide bombers, available at
recruitment into the armed forces begins at age fifteen. In addition to participating in hostilities, those without a basic education do not have the knowledge or the ability to escape war-laden areas for a better life.

Around the world, there is great interest in protecting the welfare of children. Members of nongovernmental organizations and drafters of treaties and covenants have long recognized that children living in exceptionally difficult conditions, such as in areas of armed conflict, need special consideration. However, despite the recognized importance of education for children, human rights groups most often focus on the rights of adults. Therefore, scores of children in war-torn areas do not learn reading, writing, and arithmetic, nor do they understand their country’s history and the basis for conflict.

Iraq, for example, was well recognized as having a remarkably strong system of education prior to the Gulf War. However, after a decade of war, estimates show that a meager one in four children between the ages of six and eighteen is receiving adequate education.


10. ISABELLE ROGER, EDUCATION FOR CHILDREN DURING ARMED CONFLICT AND POST-CONFLICT RECONSTRUCTION (2002). Schooling has been recognized as being of the highest importance for children and families in times of crisis, as education provides an efficient means to promote reconciliation and peace.


Although not directly stated in this report, children who live in war-affected areas frequently become members of one or more additional categories due to the dangerous and often uncertain environment created by armed conflict.


14. Id.

15. Id.
Likewise in Afghanistan, the latest conflict has caused further deterioration of an already failing education system. Recent figures estimate that only 51.9% of men and 21.9% of women over the age of fifteen are literate, and that only roughly thirty percent of Afghan children are enrolled in school. The infrastructure of these countries will remain unstable if education is not prioritized during reconstruction.

Of particular importance with respect to the enforcement of children's rights are international human rights law, international humanitarian law, and customary international law. Within these broad areas are a variety of specific provisions relating to education and the conditions created by armed conflict.

The United Nations, as the leading international body, should be proactive and adopt a document that provides for the prioritization of and enforcement of the education rights of children during the reconstruction of war-torn nations. In an effort to explain the ravaging effects that war has on a country's education system, Part II of this comment will explore the history of conflict in Iraq and Afghanistan and the detrimental impact it has had on the educational systems in both countries. Part III will then present the applicable law and give a brief introduction to the efforts of...
select organizations to enforce such laws with respect to education. Finally, Part IV will offer several provisions that should be incorporated into a declaration on the right to education for children living in areas that have been destroyed by armed conflict. Concerned organizations should present this information to the United Nations Commission on the Rights of the Child and urge its members to recognize the unique situation created by war and the necessity of education. Ultimately, the declaration provisions can be used as the basis for a general treaty on the protection of children’s fundamental rights following war, with a focus on the right to education.

II. Historical Background

With shifting political control and continuing conflict over the course of decades, few, if any, educational institutions have remained intact in Iraq and Afghanistan. An overview of the evolution of the political systems in each country provides insight into why the educational establishments in those areas are so unstable.

A. The Evolution of the Iraqi Government and the Education System from 1980 to the Present

Iraq has been in a state of war almost constantly since 1980 when it went to war with neighboring Iran over a border dispute. Prior to the war, Iraq’s gross enrollment rate for primary education was close to 100 percent. By 1988, a cease-fire was reached allowing Iraq to rebuild. Despite the years of war, Iraq’s infrastructure was still disturbed only slightly and the country’s social programs continued to advance throughout the 1980s. Although the war with Iran affected the availability of resources in Iraq, the country’s educational system was considered one of the best in the region prior to 1990. Even after the Iran-Iraq war, primary enrollment had only decreased to 85 percent.

21. See Subki, supra note 13. The children of Iraq, who compose almost half of the total Iraqi population, have been living in war three times in just twenty years. Likewise, children in Afghanistan have been living in war almost constantly since the 1960s.
22. Iraq—Country Profile, Middle E. Rev. World of Info (October 8, 2003), 2003 WL 65922873 [hereinafter Iraq Profile].
24. Iraq Profile, supra note 22.
25. Id. Among the social programs that advanced during this time period were Iraq’s education and health systems.
27. Id.
Following the 1980-1988 war between Iran and Iraq, and the Gulf War in 1991, school attendance fell severely\(^2\) and Iraq’s educational system began its substantial downfall.\(^2\) The United States responded to the Gulf War invasion of Kuwait by leading the international movement to deploy armed forces to Saudi Arabia.\(^3\) The following year, the combined international forces\(^3\) commanded Iraq’s acceptance of all UN resolutions concerning Kuwait and Kuwait was liberated.\(^3\)

With strict sanctions banning all imports and exports and all forms of external assistance except basic food and medicine, however, Iraq was unable to export oil\(^3\) and could not bring in enough funds to provide basic necessities for its population, much less rebuild its damaged infrastructure.\(^4\) As a result, the education system experienced a rapid deterioration, attributed to a number of effects of the war, including damaged educational facilities, a critical shortage of teaching and learning materials, and the loss of qualified teachers due to a lack of funds for compensation.\(^5\)

The UN Inter-Agency Humanitarian Program for Iraq intervened from 1992 to 1997 to assist Iraq in rebuilding its system of education.\(^6\) Despite extensive efforts, this UN intervention was not enough to meet the needs of Iraq in its post-war stages.\(^7\) Therefore, the UN Security Council established the "Oil-For-Food" Program, which permitted the sale of oil to fund the acquisition of humanitarian provisions, including classroom supplies.\(^8\)

A new series of disputes arose between Iraq and the UN in 1998 in response to the request that UN inspectors be permitted to enter Iraq to

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28. *Iraq Profile, supra* note 22.
29. *Id.*
30. *Id.*
31. *Id.* Thirty countries from around the world joined the United States, including Syria, Egypt and Morocco.
32. UNITED NATIONS EDUCATIONAL, SCIENTIFIC, AND CULTURAL ORGANIZATION, SITUATION ANALYSIS OF EDUCATION IN IRAQ 5 (2003) [hereinafter UNESCO].
33. *Id.*
34. *Id.*
35. *Id.* Ultimately, education is not the only area that was adversely affected. A number of sectors were impacted, from electricity and sanitation systems to health institutions.
36. *Id.*
37. *Id.*
38. *Id.* The UN Security Council was acting under Chapter VII of the United Nations Charter when it created this program. The Oil-For-Food program was intended as a temporary measure to provide Iraq with the opportunity to sell oil to finance the purchase of humanitarian goods (including educational supplies) and various mandated activities in Iraq. Under this arrangement, money earned by the sale of oil was placed into a holding account managed by the UN from which humanitarian supplies could be funded.
verify termination of the country’s nuclear, biological, and chemical weapons programs.39 When Saddam Hussein40 did not allow the UN inspectors to enter, the U.S. and United Kingdom launched the largest military attack against Iraq since the early-1990s.41

In 2002, the UN Security Council unanimously voted to revise UN sanctions on Iraq.42 That same year, Hussein’s rule was extended for seven years43 and Iraq was again confronted by the possibility of war.44 Forces from the US and UK invaded Iraq in 2003 after giving up on their diplomatic efforts to force Iraq to disarm.45 Hussein’s government collapsed less than a month later as U.S. forces took control of central Baghdad.46 As a result, the UN Security Council and the U.S. lifted economic sanctions against Iraq.47

While the new Iraqi leadership attempts to create an effective system of governance, the UN is receiving the assistance of many international aid organizations to provide humanitarian assistance to citizens of Iraq.48 The U.S. Office of Reconstruction and Humanitarian Assistance has taken on the daunting task of administering reconstruction efforts in Iraq.49

Educational reconstruction efforts are even more crucial to the long-term success of Iraq as recent estimates show that children comprise 48.5% of the total Iraqi population, with 11.1 million children under the age of eighteen.50 However, as a result of regular conflict and dwindling

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39. *Iraq Profile*, supra note 22.
40. *Id.* Saddam Hussein appointed himself prime minister in 1994, and his self-appointment was supported by almost exactly one hundred percent of the Iraqi population in a forced vote.
41. *Id.* In response to Iraqi attempts to target and shoot down their military aircraft, the US and UK responded by engaging in sporadic bomb raids throughout Iraqi territory.
42. *Id.* The new sanctions were aimed at helping the Iraqi population and preventing Hussein from building weapons of mass destruction.
43. *Iraq Index*, supra note 2. As evidence of the strong hold Hussein had over Iraqi citizens despite worsening conditions and a failing economy, official election results showed that all but approximately 3,300 voters were unaccounted for out of a population of 8.4 million. Actual figures reveal a 99.47% percent voter turnout with a 99.96% ‘yes’ vote in favor of extending Hussein’s rule.
44. *Iraq Profile*, supra note 22. After learning that Iraq had links with terrorist organizations, US President George Bush demanded that Hussein allow UN weapons inspectors to verify that Iraq had disposed of their weapons of mass destruction. However, once inspectors were allowed in, the information they gathered was not enough to prove that the weapons had been disposed of.
45. *Id.*
46. *Id.*
47. *Id.*
49. *Id.*
50. Watchlist, *supra* note 9. The difficulty in obtaining and verifying statistics in areas of armed conflict has been recognized by several agencies. *Id.*
resources, nearly one in four children between the ages of six and eighteen are not receiving an education.\textsuperscript{51} Only sixty-five percent of men and forty-five percent of women were literate in 2000.\textsuperscript{52} Compulsory education for children between the ages of six and twelve and free education to those between the ages of six and eighteen were no match for war.\textsuperscript{53}

Creative Associates, a partner organization to the U.S. Agency for International Development (USAID), is assisting the Iraqi Minister of Education with the restructure and reorganization of their Ministry of Education.\textsuperscript{54} Additionally, USAID granted $2 million to provide immediate educational needs in June 2003.\textsuperscript{55} Though this and similar attempts have been made to re-build Iraq's education system since the 2003 Iraq War,\textsuperscript{56} the reconstruction process has been difficult due to a shortage of funds, supplies, qualified teachers, textbooks, and school buildings.\textsuperscript{57}

B. The Evolution of Government Structure and Education in Afghanistan Since 1980

Afghanistan has been invaded by foreign powers for centuries due to its "strategic location at the heart of central Asia."\textsuperscript{58} Enforcing the system of education in Afghanistan, although similarly destroyed by armed conflict, presents greater difficulty. Unlike Iraq, which had a strong education system before recent wars, statistics drawn from Afghanistan dating back to 1976 confirm that the education system has been weak for decades.\textsuperscript{59}

\begin{itemize}
\item[51.] Subki, supra note 13. Subki breaks this statistic down into 31.2\% of girls and only 17.5\% of boys.
\item[52.] Iraq Profile, supra note 22 at 5.
\item[53.] Id.
\item[54.] U.S. Department of State International Information Programs, The New Iraq Progress & Accomplishments (2004), at http://usinfo.state.gov/regional/nea/newiraq/governance.htm (last visited January 25, 2004). Creative Associates began their review of Iraq's Ministry of Education in late 2003. The organization is reviewing multiple aspects of the Ministry's units, including their individual missions, tasks, units and personnel. The results of their research will be used to determine the staffing needs of individual units.
\item[55.] Iraq Profile, supra note 22. In addition to donating funds towards reconstructing Iraq's education system, USAID is working with the Coalition Provisional Authority under Ambassador Paul Bremer to help deliver "essential services" such as education and restoring the country's damaged infrastructure. As of September 11, 2003, USAID was in the process of implementing $1.5 billion in reconstruction and humanitarian assistance.
\item[56.] Id.
\item[57.] UNESCO, supra note 32.
\item[58.] Afghanistan Profile, supra note 16 at 1.
\item[59.] AFGHANISTAN'S EDUCATION SYSTEM ASSESSED IN SPECIAL REPORT BY ADB AND PARTNERS (2002), at http://www.adb.org/Documents/News/2002/nr2002123.asp (last
In 1976, a demographic study estimated that eighty-one percent of the population over the age of six had never attended school. Most astonishingly, those who conducted this survey reported that, despite the low percentage of the population attending school, the number of Afghans attending school had increased two-fold since the mid-1960s when their survey was first conducted.

Afghanistan and the Soviet Union had a close relationship until 1979 when the nationalist foreign minister, Hafizullah Amin, ousted prominent leader Noor Taraki. In retaliation, the Soviet Union invaded Afghanistan. By 1989, the Soviet Union had withdrawn from Afghanistan after their ten-year presence.

Afghanistan was declared an Islamic republic in 1992. Two years later, the Islamic fundamentalist Taliban formed in southern Afghanistan and attempted to overthrow the country’s legal government. Although not recognized by the UN, the Taliban ousted the government of Burhanuddin Rabbani and gradually took control of the entire country. For the six years while the country was under the extremist Taliban rule, girls were deprived of their right to education. Additionally, the Taliban burned many books, sometimes eliminating entire libraries, and strictly limited what books could be sold in bookstores.

Hostilities between the Taliban and the militias of the United National Islamic Front for the Salvation of Afghanistan (UNIFSA) visited June 28, 2004) [hereinafter AFGHANISTAN SYSTEM]. In this report, a multi-donor team concluded that Afghanistan’s system of education was nearly in ruins after twenty-five years of war. This team consisted of education specialists from the Asian Development Bank, World Bank, the Islamic Development Bank, the European Community, USAID, and the United Nations group represented by UNICEF and UNESCO.

60. Afghanistan Girls, supra note 16. This statistic breaks down into seventy-one percent male and ninety-three percent of females.

61. Id.

62. Afghanistan Profile, supra note 16. Noor Taraki was originally the leader of the Communist People’s Democratic Party of Afghanistan, established in 1965. In 1978, Taraki led a coup against the government, which resulted in the assassination of a number of prominent Afghans. Consequently, Taraki was declared president.

63. Id.

64. Id.

65. Id.


69. Afghanistan Profile, supra note 16 at 3. UNIFSA is also known as the Northern Alliance.
increased in the late-1990s.\textsuperscript{70} The Taliban captured Mazar-i-Sharif in 1998, thereby taking control of every major city in Afghanistan.\textsuperscript{71} The U.S. responded by launching missiles at training camps belonging to the Saudi dissident Osama Bin Laden\textsuperscript{72} and his group, Al-Qaeda.\textsuperscript{73}

In 1999, the UN introduced economic sanctions against the Taliban and Afghanistan for harboring Bin Laden.\textsuperscript{74} This combination of strict sanctions and constant turmoil reduced education opportunities even further. Estimates by the UN reveal that approximately 48.1\% of men and 78.1\% of women aged fifteen years or over were illiterate in Afghanistan in 2000.\textsuperscript{75} Between 1994 and 2000, World Bank estimates that the total primary school enrollment was near sixty-four percent for boys and a meager thirty-two percent for girls.\textsuperscript{76}

As a further blow to the country's infrastructure, the US launched air strikes against the Taliban and Al-Qaeda in October 2001.\textsuperscript{77} The following month, UNIFSA was able to take advantage of the weakened Taliban to re-capture most of its previously held territory.\textsuperscript{78}

Following the fall of the Taliban, the UN sponsored talks concerning the state of Afghanistan in Bonn, Germany.\textsuperscript{79} Among those involved in the negotiations were Afghan military commanders, representatives of Afghanistan's various ethnic groups, expatriate Afghans, and representatives of the overthrown leadership.\textsuperscript{80} After a great deal of pressure from other states, these talks resulted in the Bonn Agreement,\textsuperscript{81} which set out a clear path for Afghan people to rebuild.\textsuperscript{82} The delegates of all factions made a commitment to "ending the tragic conflict and promoting reconciliation as well as lasting peace and

\begin{itemize}
  \item \textsuperscript{70} Id.
  \item \textsuperscript{71} Id.
  \item \textsuperscript{72} Id. Bin Laden was blamed by the US for masterminding embassy bombings in Africa. He had been a guest of the Taliban since 1996.
  \item \textsuperscript{73} Id.
  \item \textsuperscript{74} Id.
  \item \textsuperscript{75} Afghanistan Profile, supra note 16 at 5.
  \item \textsuperscript{76} Id. Under the extremist Taliban rule, girls were forbidden from attending school.
  \item \textsuperscript{77} Id. These air strikes followed the Taliban's refusal to hand over Bin Laden after he was blamed for the September 11, 2001 terrorist attacks in the US.
  \item \textsuperscript{78} Id.
  \item \textsuperscript{79} Id.
  \item \textsuperscript{80} Human Rights Watch, Afghanistan's Bonn Agreement One Year Later, at http://www.hrw.org/backgrounder/asia/afghanistan/bonn1yr-bck.htm (last visited June 28, 2004).
  \item \textsuperscript{81} Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions, available at http://www.uno.de/frieden/afghanistan/talks/agreement.htm (last visited June 28, 2004).
  \item \textsuperscript{82} Cao Lijun and Gao Shan, Afghanistan makes great strides on way of national reconstruction, XINHUA NEWS AGENCY (December 11, 2002), available at 2002 WL 104813517.
\end{itemize}
stability in the country.”

In December 2001, power was handed over to Hamid Karzai, Chairman of the new Afghan Interim Administration.\(^8\) Since the establishment of the interim government, the government has acknowledged that “the revival of the Afghanistan’s national education system is an essential component in the reconstruction process of other developing sectors of the country.”\(^9\) Although the Interim Administration had little to work with\(^,\) an international conference on reconstruction assistance in 2002 resulted in pledges of almost US $5 billion over a six-year period.\(^7\) Thus far, the interim government has used the available funding and supplies to identify and prioritize education projects that are likely to provide a quick and effective impact.\(^8\) This initiative has “triggered a number of development projects and programs in primary [and] secondary” education sub-sectors, including the distribution of textbooks around the country, renewal of the education curriculum, and training for many teachers and administrators.\(^9\)

In an effort to see that all Afghans are able to recognize their right to receive an education, UNICEF became involved and helped three million girls and boys go back to school in 2002.\(^9\) However, even with students returning to school, the problem of illiteracy remains, as many students are not being taught effectively in the classroom.\(^9\)

Currently, the UN Educational, Scientific and Cultural Organization (UNESCO) has the intention of assisting the Afghan interim government in their reconstruction efforts.\(^9\) With respect to education, UNESCO plans to promote primary education especially for girls and to increase access to secondary education.\(^9\) UNESCO is also working directly with

83. Id.
84. Id. Karzai joins five vice chairs and twenty-four cabinet members in the new Afghan Interim Administration.
86. Id. When the Interim Administration took over, they had very few resources, no real national army or security force, and had fractured and decentralized disposition of power throughout the country.
87. Id. Despite this large pledge amount, UN Secretary-General Kofi Annan reported that reconstruction assistance required at least ten billion dollars over a ten-year period.
88. Id.
89. Revival, supra note 85.
90. Campaign, supra note 67 at 1.
91. Center for Protection, supra note 11.
92. Afghanistan Profile, supra note 16 at 6.
93. Id.
the Afghan ministers of education in Kabul to rehabilitate school and academic libraries, to assist in printing textbooks, and to help develop methods of reaching people outside formal education.\textsuperscript{94}

III. Applicable Law

Human rights standards appear in three primary areas of law: international human rights law, international humanitarian law, and customary international law.\textsuperscript{95} Provisions relating to education can be found within each of these areas of law. The basis for international human rights standards is found in the UN Charter, which recognizes that education is a necessary right.\textsuperscript{96}

A. Human Rights Law

With over eighty human rights treaties and declarations currently implemented, international human rights law is the most codified area of international law.\textsuperscript{97} Because education is considered essential for life as a human being, many of these treaties and declarations include provisions mandating free education for all.

1. Universal Declaration of Human Rights

The Universal Declaration of Human Rights (hereinafter UDHR) expounds upon the basic provisions of the UN Charter and presents a specific list of fundamental freedoms sought to be protected.\textsuperscript{98} Article 26 of the UDHR provides that everyone has a right to education, and that education should be free and compulsory in the elementary stage.\textsuperscript{99} Such education should be "directed to the full development of the human personality and to the strengthening of respect for human rights and

\textsuperscript{95} WEISSBRODT, supra note 20, at 28-29.
\textsuperscript{96} See U.N. CHARTER, art. 13. Article 13 states:
With a view to the creation of conditions of stability and well being which are necessary for peaceful and friendly relations among nations based on respect for the principles of equal rights and self determination of peoples, the United Nations shall promote ... (b) solutions of international economic, social, health, and related problems, and international cultural and educational cooperation...
\textsuperscript{97} Id. at 9-10.
\textsuperscript{98} Id. at 9. The UDHR was adopted by the UN General Assembly in 1948 in response to events in the 1940s that placed many fundamental rights at risk. The provisions reaffirm the UN Charter's recognition of the dignity and self worth of all humans, and offers specific examples of what freedoms are fundamental.
fundamental freedoms." Critical to providing education to children in the wake of armed conflict, the UDHR mandates that education "shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace." Nearly thirty years after the UDHR was adopted by the UN General Assembly, the International Covenant on Economic, Social and Cultural Rights (hereinafter ICESCR) was entered into force. The provisions in the ICESCR regarding education mirror those in the UDHR.

2. Declaration of the Rights of the Child

Partly based upon the United Nations proclamations in the UDHR, the Declaration of the Rights of the Child creates special safeguards for children. It calls upon parents, individuals, voluntary organizations, local authorities and national governments to observe the rights of children as set forth in the declaration so that children may enjoy their childhood and have the benefit of the rights and freedoms granted therein. Among the rights and freedoms granted to children is the right to receive education. The DRC provides for free and
compulsory education designed to develop a child's character and help him to become a useful member of society.  

3. Convention on the Rights of the Child

The Convention on the Rights of the Child [hereinafter CRC] is the most important legal instrument for the protection of children's rights under international law. The CRC ensures all children the rights set forth in the treaty to the fullest extent, without discrimination of any kind. Because Iraq and Afghanistan are parties to the CRC, both states are bound to observe its provisions relating to education. 

The CRC contains several provisions designed to guarantee children's access to an adequate education. States that have ratified the CRC recognize that children should be required to attend school at the primary level and that such education should be free. Additionally, a child's education should contribute to the development of his identity.

endeavor to promote the enjoyment of this right.

108. Id.

109. CRC, supra note 4.

110. Symposium, The Protection of Children's Rights and the United Nations Convention on the Rights of the Child: Achievements and Challenges, 22 ST. LOUIS U. PUB. L. REV. 235 (2003). The CRC, which is the human rights treaty with the greatest coverage, was adopted unanimously by the United Nations General Assembly on November 20, 1989. Of the 194 States in the world, 192 have ratified the treaty. Somalia and the United States are the two States that have not yet joined the CRC. Of the other human rights treaties, no other has nearly this much universal acceptance.

111. CRC, supra note 4, at art. 2, pt. 1. Article 2, part 1 of the CRC provides that discrimination based on the child's or his parent's or legal guardians race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status is prohibited.


113. CRC, supra note 4, at art. 28, pt. a. Article 28, part a of the CRC provides:

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, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need; (e) take measures to encourage regular attendance to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention; ...

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

114. Id. at art. 29. In Article 29, the CRC states:
B. International Humanitarian Law

The field of international humanitarian law governs the interactions between combatant forces and between those forces and noncombatants during military conflict. The primary source of international humanitarian law derives from the four Geneva Conventions of 1949.

1. Geneva Conventions

The Third and Fourth Geneva Conventions and Additional Protocol I apply only to international armed conflicts. Both Iraq and Afghanistan have ratified all four of the Geneva Conventions.

The Fourth Geneva Convention relates specifically to the Protection of Civilian Persons in Time of War. It states that the occupying power must facilitate the proper working of all institutions devoted to the care and education of children. Whenever possible, this education should be led by individuals sharing the child's nationality, language and religion. Additionally, the occupying power must make arrangements

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1. States Parties agree that the education of the child shall be directed to:
   (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential; (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations; (c) The development of respect for the child's parents, 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 civilians different from his or her own; (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; (e) The development of respect for the natural environment.

115. This paper is intended to focus upon the provision of education during reconstruction. As such, international humanitarian law (as it relates to education) does not apply to the situation under consideration. However, this information has been included in an effort to present a thorough overview of the international human rights standards that pertain to education.

116. Red Cross, supra note 19.

117. WEISSBRODT, supra note 20, at 21. Aside from the UN Charter and the CRC, the Geneva Conventions have been ratified by more governments than any other human rights treaties. Although this area is distinct from international human rights law, the areas often overlap with one another. Additionally, a number of the Geneva Convention provisions are widely accepted as customary international law.


119. Id.

120. AMNESTY INTERNATIONAL, supra note 112.


122. Id.
for the maintenance and education of children who are orphaned or separated from their parents as a result of the war.\footnote{123}{Id.}

A child's right to an education is recognized as a fundamental guarantee in Additional Protocol II to the Fourth Geneva Convention.\footnote{124}{ICRC, supra note 118.} This portion of the Geneva Convention provides that children “must be provided with the care and aid they require, and in particular: (a) they must receive an education, including religious and moral education.”\footnote{125}{Id.} However, because neither Iraq nor Afghanistan has ratified Additional Protocol I or II, they are not bound to the provisions except to the extent that they also represent customary international law.\footnote{126}{Id.}

C. Customary International Law

International custom evolves into a source of international law when there is widespread acceptance of a particular practice.\footnote{127}{AMNESTY INTERNATIONAL, supra note 112.} Such acceptance does not have to be unanimous, but all governments are bound by customary norms unless they expressly and persistently object to their expansion.\footnote{128}{WEISSBRODT, supra note 20, at 22.} A consistent pattern of “gross violations of internationally recognized human rights” gives rise to customary international law protection.\footnote{129}{Id. at 23.} The right to education, especially for children, is considered to be a fundamental right across the world and is included in numerous treaties, from the DRC to the CRC.\footnote{130}{See CRC, supra note 4; DRC, supra note 6.} Because there is no evidence that the current leaders in Iraq or Afghanistan have expressly or persistently objected to the development of a child's right to education, there is no reason why either should not be bound to uphold such law.\footnote{131}{See Iraq Ministry, supra note 1 and accompanying text for the views of current Iraqi leaders; see Afghanistan Education, supra note 1 and accompanying text for the views of current Afghan leaders.}

In fact, because only two states have not ratified the CRC,\footnote{132}{See WEISSBRODT, supra note 20, at 57.} virtually all states that may be involved in armed conflict are subject to the same customary norms regarding the education of children.

While the Taliban was in control in Afghanistan, there was express objection to the education of women. However, the Taliban was never recognized by the UN as the official government of Afghanistan and none of the Taliban leaders remain in positions of authority. Taliban closing only office in United States, CNN.com, Feb. 21, 2001, available at http://www.cnn.com/2001/US/02/14/us.taliban (last visited June 28, 2004).\footnote{133}{Id.}
D. Organizations Involved in the Effort to Enforce Children's Right to Education

Countless organizations are involved in the reconstruction efforts taking place in Iraq and Afghanistan. This section will focus on select organizations from three different sectors: (1) a department of the Iraqi and Afghan government, (2) an advocacy-based non-governmental organization and (3) a United Nations human rights organization. These groups are representative of the broad range of organizations involved in the movement to ensure that all children receive the education to which they are entitled.

1. Ministry of Education—Iraq

The Iraqi Ministry of Education is responsible for the management and implementation of pre-school, primary, and secondary education, the latter including teacher training, fine arts institutes, and technical/vocational schools.\(^\text{133}\) Departments within the Ministry are responsible for the implementation and follow-up of educational policies and education plans, the recruitment and human resources management of teaching staff, the supervision of schools, and the preparation of necessary school buildings.\(^\text{134}\)

Dr. Ala’din Alwan, a native of Baghdad who was named as a member of the Governing Council of Iraq in 2003, leads Iraq’s Ministry of Education.\(^\text{135}\) Dr. Alwan’s initial plans involved conducting “an accurate and in-depth assessment of the current situation and helping to design a participatory process for the development of the new vision and strategy and the new curriculum.”\(^\text{136}\)

2. Ministry of Education—Afghanistan

The Afghan Ministry of Education has reached an agreement with a multi-donor team\(^\text{137}\) led by the Asian Development Bank as to the preliminary steps towards reconstruction.\(^\text{138}\) Among other goals, the Afghan Ministry aspires to increase enrollment in basic education institutions, promote the education of girls in hopes of remedying past injustices, and building the capacity of Afghan institutions so that they

133. UNESCO, supra note 32, at 9.
134. Id.
135. Iraq Ministry, supra note 1.
136. Id.
137. AFGHANISTAN SYSTEM, supra note 59. The multi-donor team consisted of the Asian Development Bank, World Bank, the Islamic Development Bank, the European Community, USAID, UNICEF, and UNESCO.
138. Id.
do not become dependent on external aid.  

3. Watchlist on Children and Armed Conflict Watchlist

Watchlist is an advocacy-based group that seeks to raise awareness of the impact of armed conflict on the well being of children. The group distributes information to policy makers, the media and the public through letter-writing campaigns, sponsored events, and by contributing an annual statement to the United Nations Security Council during their debates regarding children and armed conflict.

In the past, the Watchlist has made recommendations to the UN Security Counsel on behalf of children in both Iraq and Afghanistan. Recently, the Watchlist has requested that the UN Security Counsel ensure that the rights of children and adolescents—including their right to education—are given a high priority at the outset of any emergency.


UNICEF has pledged to protect children living in war-torn areas. Extensive efforts have been made by UNICEF to improve children’s access to education in areas of armed conflict.

In Afghanistan, for example, children have benefited from a Back-to-School campaign for several years. When UNICEF first began this program, sixty percent of Afghan schools were seriously or partially damaged. In the 2002 program, UNICEF allocated nearly US $50 million to repair school buildings, develop curriculums, provide school supplies, pay teachers’ salaries and help ensure that girls receive access to education. In part due to these efforts, more than three million children, or sixty percent of the child population, were able to return to school.

139. Id. The remaining goals include: distributing their resources equally among rural and urban areas; meeting returning costs, particularly teacher salaries; and connecting education and vocational training to skills that will lead to jobs.
140. Watchlist, supra note 9.
141. Id.
142. Id.
143. Id.
144. COIPURAM, supra note 48 at 2.
146. Campaign, supra note 67. As part of their efforts, UNICEF has worked with the Ministry of Education to donate school supplies.
147. Subki, supra note 13.
148. Id. In its largest-ever logistical effort, UNICEF delivered more than 7,000 tons of learning and teaching materials to virtually every school in the country, reaching 1.7 million children and 70,000 teachers.
IV. Discussion of provisions to be included in proposed Declaration on the Rights of Children to Education in Areas of Armed Conflict

It is readily apparent that external organizations have taken a leading role in supporting the enforcement of children's rights, especially in areas of armed conflict and with respect to education. However, the United Nations, as the leading international body, must increase its involvement in these matters and take steps to increase internal enforcement of such rights. Although the UN has adopted a number of treaties pertaining to children's rights, there is not a treaty or declaration intended to ensure protection of the education rights of children living in areas of armed conflict. Rather, the existing treaties relating to armed conflict focus primarily on protecting children from becoming directly or indirectly involved. Therefore, as part of the United Nations' efforts to enforce the right to education for children, a declaration should be adopted specifically pertaining to the unique problems surrounding enforcement of this right during the reconstruction of war-torn areas.

Although the background and analysis of this paper focus on the current situations in Iraq and Afghanistan, the overall effect of armed conflict is detrimental in other countries facing frequent turmoil as well. Therefore, the proposed declaration shall be applicable to the reconstruction of any state previously engaged in internal or international warfare. Such a declaration that will merely expound upon previously existing treaties and offer suggestions for how to achieve enforcement of the right to education is likely to gain support from the same states that have supported the CRC and the Geneva Conventions. With a strong backing from the Commission on the Rights of the Child and a large number of states, this declaration should serve as the basis of a treaty much like how the DRC greatly influenced the drafting of the CRC.

Following are several general conclusions regarding the conditions of the education systems in Iraq and Afghanistan and how they have been affected by armed conflict. The ideas accompanying these conclusions should be included in a declaration on both prioritizing and improving the enforcement of the educational rights of children in areas of armed conflict.

149. *Id.*

150. The suggestion that the United Nations support a new declaration for children in armed conflict is not meant to reduce the significance of prior agreements intended to eliminate the use of child soldiers. However, a more comprehensive treaty, focusing on the general social and cultural rights of children in areas of armed conflict is crucial to implementation of these rights.

151. See *Weissbrodt*, *supra* note 20, at 37-82.
1. It is imperative that children receive a continuous and thorough education. This is especially true in war-torn nations because the ability to successfully rebuild a country’s infrastructure depends upon the strength of future generations. Therefore, all safe and reasonable efforts must be made to allow the uninterrupted education of children, even during times of war. As turmoil ends, educating children must be a top priority, even during the transitional period when leaders are in the process of returning the system to its pre-war state.

2. The existence of a quality educational system is an integral foundation to building a new economy. War-ravaged countries are in desperate need of stability and strength in their infrastructure as the government attempts to rebuild the country from the ground up. Prior experience has proven that a thriving system of education is a central foundation to reconstruction efforts. Therefore, rebuilding a country’s system of education after a period of armed conflict must be of the highest priority for the state’s leaders.

3. Children need to understand the basis of conflict in their area so that they do not make uneducated decisions concerning their involvement in and reaction to such conflict. Children who grow up in areas dominated by armed conflict are especially vulnerable to accept views that may be skewed by the beliefs of wrongdoers. Therefore, a child’s basic education should be supplemented with lessons pertaining to the country’s history and objective information relevant to past or current conflict in their area. This education is necessary because the leaders in war-torn countries who initially rebuild a country’s infrastructure must be able to count on the children to carry out their goals long into the future. If children carry their misperceptions into adulthood, they may be reluctant to participate in the civil society, thereby reducing or eliminating the success of prior rehabilitation efforts.

4. Reconstruction in any country requires an immense amount of funding regardless of the source of conflict or its duration. For example, the Comprehensive Needs Assessment (CNA) reports that nearly US $1.25 billion will be needed to assist in the reconstruction of Afghanistan’s education system over the next decade. Much of this money must come from external donors because of the country’s

152. See ROGER, supra note 10.
153. See supra text accompanying note 1.
154. See, e.g., Child Soldiers, supra note 8; Seminar, supra note 8.
155. AFGHANISTAN SYSTEM, supra note 59.
ravaged economy.\textsuperscript{156} Due to the need for substantial funds during reconstruction, all states involved in armed conflict must take all efforts to solicit donations from human rights organizations and must use any funds designated to benefit education for that specific purpose. The leadership must ensure that all allocated funds are applied towards improving their educational institutions, including the provision of books and supplies for children and the payment of an adequate salary for teachers. Without funding for such supplies, it will be difficult to return quality to a ravaged education system.

5. Qualified teachers and administrators are the foundation of an effective educational system.\textsuperscript{157} Their role has even greater importance following armed conflict, when it is often necessary to work in less than ideal conditions and to develop new curriculums from scratch. Therefore, all efforts must be taken to ensure that school teachers receive adequate training to instruct children and that they earn a salary commensurate with their education and experience. Likewise, administrators must be fully versed in the aims of the country's education system and must have the appropriate resources available to promote these goals among their staff and students. Also, the administration should consider benefits such as discounted food or free medical services to public teachers in order to reduce the shortage of teachers.\textsuperscript{158} Each of these actions can help attract and retain qualified teachers and administrators, both of which are necessary to rebuilding a damaged education system.

6. In order to verify that the country's reconstruction efforts are succeeding, each state must have a system of evaluating its educational institutions. For example, states should conduct studies of the number of children enrolled in schools, the student/teacher ratio, the availability of books and supplies, and the illiteracy rate. Due to the huge investment of time and funding required to reconstruct an education system, it is important this evaluation takes place from the outset. The results can then be compared over time and areas of weakness can be identified and new solutions developed.

V. Conclusion

All children deserve a quality education regardless of the conditions existing in the country where they grow up. Education for children in areas of armed conflict is even more fundamental, as these children are at

\textsuperscript{156} Id.
\textsuperscript{158} Revival, supra note 85.
risk for developing inaccurate perceptions regarding war and/or becoming active participants. In addition to learning basic reading, writing and arithmetic skills, all children need special guidance as they develop their personality, morals, and beliefs. Although the existence of armed conflict creates a strain on a country’s entire infrastructure, a child’s right to education is not something that can be ignored during hard times.

The current situations in Iraq and Afghanistan expose the devastating effect that armed conflict can have on a country. A great percentage of children are not receiving an adequate education, teachers are only just beginning to receive a suitable salary, and most of the books and supplies are being donated by external organizations. In fact, as a result of the ravaged condition of Iraq and Afghanistan’s economies, a majority of the assistance for their reconstruction efforts comes from outside sources.

Although it is to the advantage of both Iraq and Afghanistan to receive widespread support in their reconstruction efforts, protections should be taken to maintain the education system even during armed conflict. All safe and reasonable efforts should be made to provide continuous schooling for children throughout their youth. This schooling should include basic skills in addition to objective lessons on the basis of conflict in their area. Additionally, states must ensure that teachers and administrators in their school system have adequate education and experience to instruct children. Each of these proactive actions to maintain continuous education will benefit children and facilitate the reconstruction process following armed conflict.

Moreover, once conflict ceases and reconstruction begins, restoring the education system must be a top priority. Because reconstruction efforts require a substantial amount of funding, states involved in armed conflict should solicit donations from human rights organizations. When funds are available, states should use every amount provided to support education for the maintenance of their institutions and to furnish students with supplies and books.

Finally, states should keep close records of their system of education. These records can be used to identify the strengths and weaknesses of the system and make plans for the future.

Each of these suggestions should be incorporated into a declaration on prioritizing and improving the enforcement of a child’s right to education following armed conflict. The short-term effect of this declaration will be to bring awareness to the United Nations, human rights organizations and the world’s leaders as to the significance of the problem and possible solutions. In the future, this declaration can be used as the foundation for a more comprehensive treaty that binds states
to enforce the general rights of children, including the right to education, in areas of armed conflict. Regardless of which states initially support this declaration, the mere fact that a document protecting a child's right to education at all times has been recorded will be a step in the right direction. A strong education system is a vital foundation to reconstruction, as today's children are tomorrow's leaders; therefore, it is imperative for the United Nations to recognize the education of children as a priority during the reconstruction of areas torn by armed conflict.