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Research Article

RETHINKING THE LEGAL PROTECTION OF SCHOOLS DURING ARMED CONFLICT: FUNCTIONAL DEPENDENCY AND ACCESS TO JUSTICE

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ABSTRACT

Background: *This article examines the international legal implications of destroying accessibility infrastructure in schools during armed conflict. International humanitarian law protects schools as civilian objects. International human rights law protects the individual rights affected by the consequences of armed conflict. The Convention on the Rights of Persons with Disabilities provides specific guarantees concerning accessibility, inclusive education, and the protection of persons with disabilities in situations of risk. These bodies of law have distinct scopes of application and duty-bearers. Their application to the same attack may nevertheless reveal a legal characterisation gap where the specific consequences of damage to accessibility infrastructure for students with disabilities remain unidentified. Elevators, ramps, accessible evacuation routes, and other accessibility features may determine students' ability to access education and evacuate safely.*

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Method: *This study employs doctrinal legal research based on the analysis of international humanitarian law, international human rights law, and international criminal law. It also applies the comparative legal method and systemic treaty interpretation. The analysis distinguishes the scope, obligations, and duty-bearers under the relevant bodies of international law. It then examines their relationship in cases involving damage to accessibility infrastructure. International treaties, international court jurisprudence, the practice of international human rights treaty bodies, and academic scholarship provide the legal basis for developing and assessing the proposed criterion.*

Results and Conclusions: *This study identifies a legal characterisation gap in assessing disability-specific consequences arising from damage to accessibility infrastructure during armed conflict. It develops functional dependency as an interpretative and analytical criterion. The criterion identifies the objective relationship between the exercise of a protected individual right and the continued functioning of a particular infrastructure element. Its application enables the identification of the specific consequences of infrastructure damage for persons who depend on its continued functioning. This assessment may inform the identification of victims, the evaluation of evidence, and the selection of appropriate remedies. The criterion also provides a basis for documenting functional harm and strengthening access to justice for students with disabilities affected by attacks on schools.*

1 INTRODUCTION

Protecting educational institutions remains one of the most pressing concerns of contemporary international law in situations of armed conflict. Although schools are recognised as civilian objects and the right to education is firmly established as a fundamental human right, armed conflicts continue to involve large-scale attacks on educational infrastructure. The consequences of such attacks extend far beyond property damage. They affect civilian safety, the effective enjoyment of the right to education, and the restoration of educational systems after hostilities cease. Two interrelated developments determine the relevance of this study.

The first is the unprecedented increase in attacks on educational institutions. According to international monitoring data, approximately 130 armed conflicts were taking place worldwide in 2024, during which nearly 6,000 attacks on schools, universities, students, and educational personnel were recorded. This represented an increase of 166 per cent compared with 2021.[1] The effects of armed conflict reached approximately 234 million

1 Farida Shaheed, *Right to Education in Armed Conflict: A Human Rights Imperative: Report of the Special Rapporteur on the right to education* (UN Doc A/80/479, 15 October 2025) para 6 <https://www.ohchr.org/en/documents/thematic-reports/a80479-right-education-armed-conflict-human-rights-imperative-report> accessed 27 July 2026.

school-age children, 35 million more than during the preceding three-year period.[2] More than 52 million children living in conflict-affected countries were out of school in 2024.[3] In 2025, the Secretary-General of the United Nations confirmed that this trend was continuing, reporting a further 44 per cent increase in attacks on educational institutions.[4] International monitoring mechanisms recorded at least 340 attacks on educational facilities in Ukraine during 2025 alone,[5] while the Independent International Commission of Inquiry on the Occupied Palestinian Territory documented the extensive destruction of the education system in the Gaza Strip.[6]

The second development concerns the evolution of the international legal framework governing the protection of education during armed conflict. This framework encompasses both international humanitarian law (hereafter, IHL) and international human rights law (hereafter, IHRL). These legal regimes address different aspects of the same situation. They also differ in their scope of application and duty-bearers. IHL regulates the conduct of hostilities and protects schools as civilian objects.[7] IHRL protects individual rights affected by armed conflict, including the right to education. Within this framework, the UN Convention on the Rights of Persons with Disabilities (hereinafter, CRPD) provides specific protection for persons with disabilities and establishes obligations concerning inclusive education, accessibility, and protection in situations of risk.[8] These obligations have particular significance for students with disabilities whose participation in education depends on an accessible educational environment.[9] Lifts, ramps, accessible evacuation routes, and other accessibility features may determine their ability to access education and evacuate safely. An attack on a school may therefore have two legally relevant dimensions. It may damage a civilian object protected under international humanitarian

2 ibid

3 ibid

4 'Attacks on Schools Surge by "Staggering" 44 per cent Over the Past Year' (*UN News*, 9 September 2025) <https://news.un.org/en/story/2025/09/1165810> accessed 27 July 2026.

5 'More than 340 Educational Facilities Damaged or Destroyed in Ukraine this Year: Press Release' (*UNICEF*, 26 November 2025) <https://www.unicef.org/press-releases/more-340-educational-facilities-damaged-or-destroyed-ukraine-year> accessed 27 July 2026.

6 UN Human Rights Council, *Legal Analysis of the Conduct of Israel in Gaza Pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide: Conference room paper of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel* (UN Doc A/HRC/60/CRP.3, 16 September 2025) paras 146, 161, 189 <https://digitallibrary.un.org/record/4089577> accessed 27 July 2026.

7 Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977) [1986] UNTS 1125/3, art 52 <https://treaties.un.org/pages/showdetails.aspx?objid=08000002800f3586> accessed 27 July 2026.

8 Convention on the Rights of Persons with Disabilities (adopted 13 December 2006) [2008] UNTS 2515/3 <https://treaties.un.org/pages/viewdetails.aspx?chapter=4&clang=_en&mtdsg_no=iv-15&src=treaty> accessed 27 July 2026.

9 UN Committee on the Rights of Persons with Disabilities, *Convention on the Rights of Persons with Disabilities: General Comment No 4 on the Right to Inclusive Education* (UN Doc CRPD/C/GC/4, 2 September 2016) para 10 <https://digitallibrary.un.org/record/1313836?v> accessed 27 July 2026.

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law. It may also affect the exercise of individual rights protected under international human rights law. The destruction of accessibility infrastructure makes the relationship between these two dimensions particularly significant.

The interaction between these legal regimes reveals a gap in legal characterisation. IHL protects schools as civilian objects, whereas IHRL protects the individual rights affected by the consequences of armed conflict. However, existing legal approaches do not clearly identify the specific harm that arises when damage to accessibility infrastructure prevents students with disabilities from accessing education or evacuating safely. A related difficulty lies in documentation and accountability. Data on attacks on education are rarely disaggregated by disability.[10] This limits the assessment of their specific consequences for persons with disabilities. Damage to elevators, ramps, lifting platforms, designated evacuation routes, and other accessibility features may therefore be recorded as part of the general damage to an educational institution. The resulting loss of access to education or safe evacuation may remain unidentified as a distinct form of harm.

This legal characterisation gap gives rise to the central research question addressed in this article: How can existing international law account for the specific consequences of the destruction of accessibility infrastructure for students with disabilities during armed conflict? Answering this question requires a criterion that can identify the relationship between damage to a particular element of infrastructure and its consequences for the exercise of protected rights, personal safety, and access to justice. This study aims to develop functional dependency as an interpretative and analytical criterion through a systemic interpretation of IHL, the CRPD, and international standards on access to justice. The criterion identifies the relationship between specific infrastructure elements and the exercise of protected rights by persons who depend on their continued functioning. It does not constitute an autonomous rule of existing international law. The article examines its relevance to the legal characterisation of the resulting harm and to access to justice. The study's originality lies in applying this criterion to infrastructure damage during armed conflict and linking the protection of the civilian object to the legal position of the individual rights-holder.

The article is divided into four sections. Section 2 sets out the research methodology. Section 3 examines the international legal foundations protecting an inclusive educational environment and the evolution of the right to inclusive education in the context of the interaction between IHL and IHRL. Section 4 develops the criterion of functional dependency and considers its relevance to the legal characterisation of damage to accessibility infrastructure, the protection of the rights of students with disabilities, and access to justice. The conclusion summarises the study's principal findings.

10 Global Coalition to Protect Education from Attack, *Enhancing Accountability for Attacks on Education: Guidance on Investigating and Prosecuting Education-Related Crimes* (GCPEA 2025) <https://protectingeducation.org/publication/enhancing-accountability-for-attacks-on-education/> accessed 27 July 2026.

2 METHODOLOGY

This study employs doctrinal legal research complemented by a comparative analysis of international case law and an examination of documented incidents. The analysis considers IHL, IHRL, international criminal law, and relevant soft law instruments separately, according to their respective scopes of application and duty-bearers. It then examines their relationship in cases involving damage to accessibility infrastructure in schools during armed conflicts. Treaty interpretation follows the rules of the Vienna Convention on the Law of Treaties. Particular attention is given to the principle of systemic integration under Article 31(3)(c). This analysis considers the relevant provisions of the CRPD alongside the rules of Additional Protocol I on the protection of civilian objects. Article 18 of the Fourth Geneva Convention is examined for the limited purpose of a functional comparison with civilian hospitals. Article 8 of the Rome Statute is considered in relation to individual criminal responsibility for attacks against buildings dedicated to education. This approach preserves the distinct scope and requirements of each body of international law.

The study also applies legal analogy. The comparison between schools and civilian hospitals is limited to the functional relationship between particular persons and infrastructure that is essential to their safety. It does not extend the special legal protection afforded to civilian hospitals under IHL to schools. The comparison provides an analytical basis for examining the legal significance of infrastructure on which particular persons objectively depend. On this basis, the study develops functional dependency as an interpretative and analytical criterion. The criterion derives from the relationship between existing international legal obligations and the practical conditions required to exercise protected rights. It is used to identify disability-specific consequences that may remain insufficiently recognised when an attack is assessed primarily through damage to the civilian object. The analysis then considers the implications of this characterisation for identifying victims, assessing evidence, and accessing an effective remedy.

3 INTERNATIONAL LEGAL FOUNDATIONS FOR THE PROTECTION OF THE INCLUSIVE EDUCATIONAL ENVIRONMENT AND CONCEPTUAL TRANSFORMATION OF SCHOOLS

International legal protection of education during armed conflict draws on rules from several branches of international law. International humanitarian law provides the primary legal framework for protecting schools during hostilities. Schools are generally protected as civilian objects under Article 52 of Additional Protocol I.[11] The relevant rules govern the conduct of parties to an armed conflict. The legal assessment under IHL therefore concerns the school's status and the rules governing attacks on civilian objects. Damage to particular

11 Protocol I (n 7) art 52.

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elements of school infrastructure may also have specific consequences for certain groups of students. This issue is particularly significant for students with disabilities.

International criminal law provides a separate basis for individual responsibility. Article 8(2)(b)(ix) of the Rome Statute criminalises the intentional directing of attacks against buildings dedicated to education when the relevant legal requirements are satisfied.[12] Legal scholarship has also questioned the adequacy of the existing protection of schools. Earlier proposals included stronger protection by analogy with hospitals and religious buildings.[13] This study examines the legal significance of particular elements of school infrastructure for persons who depend on their continued functioning.

IHRL approaches education from the perspective of individual rights. Article 26 of the Universal Declaration of Human Rights (1948) recognises the right to education for everyone.[14] The International Covenant on Economic, Social, and Cultural Rights (1966) subsequently established binding obligations for state parties in this field.[15] The normative content of the right to education is commonly explained through availability, accessibility, acceptability, and adaptability.[16] This framework is also reflected in the Committee on Economic, Social and Cultural Rights' interpretation of the right to education.[17] Accessibility is particularly relevant to this study. It concerns the practical conditions that enable students to access and use the educational environment. Accessibility is even more important in crisis settings. The International Network for Education in Emergencies Minimum Standards links the continuity of education with the safety of the educational environment and continued access to education during emergencies, including armed conflict.[18] Therefore, the exercise of the right to education also depends on practical conditions that enable students to access the educational environment.

12 Rome Statute of the International Criminal Court (adopted 17 July 1998) [2004] UNTS 2187/3, art 8(2)(b)(ix) <https://treaties.un.org/Pages/ShowMTDSGDetails.aspx?src=UNTSONLINE&tabid=2&mtdsg_no=XVIII-10&chapter=18&lang=en> accessed 27 July 2026.

13 Gregory Raymond Bart, 'The Ambiguous Protection of Schools Under the Law of War – Time for Parity with Hospitals and Religious Buildings' (2009) 40(2) Georgetown Journal of International Law 405.

14 Universal Declaration of Human Rights (UNGA Res 217 A(III), adopted 10 December 1948) art 26 <https://www.un.org/en/about-us/universal-declaration-of-human-rights> accessed 27 July 2026.

15 International Covenant on Economic, Social and Cultural Rights (UNGA Res 2200A (XXI), adopted 16 December 1966) [1983] UNTS 993/3, arts 13, 14 <https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&mtdsg_no=IV-3&src=TREATY&clang=_en> accessed 27 July 2026.

16 Katarina Tomasevski, *Manual on Rights Based Education: Global Human Rights Requirements Made Simple* (UNESCO Bangkok 2004) <https://unesdoc.unesco.org/ark:/48223/pf0000135168> accessed 27 July 2026.

17 UN Committee on Economic, Social and Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights: General Comment No 13: The Right to Education* (UN Doc E/C.12/1999/10, 8 December 1999) <https://digitallibrary.un.org/record/407275?v> accessed 27 July 2026.

18 Maya Khater, 'Refugee Children's Right to Education: Education of Syrian Refugee Children in Jordan – Reality and Prospects' (2023) 6(3) Access to Justice in Eastern Europe 108 <https://doi.org/10.33327/AJEE-18-6.3-a000302> accessed 27 July 2026.

General guarantees of the right to education did not eliminate the specific barriers faced by persons with disabilities. The CRPD gave these barriers more specific legal recognition. The development of Article 24 gave inclusive education a distinct place within the international legal protection of the right to education.[19] The precise content of this right remains the subject of legal debate. Recent scholarship emphasises the relevance of educational quality, individual educational needs, the best interests of the child, and the effective enjoyment of CRPD rights.[20] The legal character of an individual right is relevant to the relationship between the rights-holder and duty-bearer. The justiciability of the right to education allows an affected person to seek legal protection where the applicable right has been violated.[21] In the context of disability, the development of the right to education has placed corresponding obligations on States to address barriers that prevent persons with disabilities from participating in education.[22] Judicial practice illustrates the practical content of these obligations. In *Çam v Turkey*, the European Court of Human Rights found discrimination in the enjoyment of the right to education after a visually impaired applicant was refused admission without an adequate assessment of reasonable accommodation.[23] In *Enver Şahin v Turkey*, the court found a violation of Article 14 of the European Convention read in conjunction with Article 2 of Protocol No. 1. The case concerned effective access to university premises for a student with a mobility impairment.[24] In *G.L. v Italy,* the absence of necessary educational support resulted in a discriminatory restriction of a child's access to education.[25] These cases demonstrate the legal significance of the practical conditions required for persons with disabilities to exercise the right to education.

Accessibility forms one of these conditions. The Committee on the Rights of Persons with Disabilities interprets accessibility as an obligation that requires the identification and

19 Gauthier de Beco, Shivaun Quinlivan and Janet E Lord (eds), *The Right to Inclusive Education in International Human Rights Law* (CUP 2019) 7 <https://doi.org/10.1017/9781316392881> accessed 27 July 2026; Gauthier de Beco, 'The Right to "Inclusive" Education' (2022) 85(6) Modern Law Review 1329 <https://doi.org/10.1111/1468-2230.12742> accessed 27 July 2026.

20 Lucie Margot Ducarre, 'De-centring Inclusion: Discussing the Meaning and Place of Inclusive Education in International and European Law through the Case of Children with Autism' (2024) 42(4) Netherlands Quarterly of Human Rights 319 <https://doi.org/10.1177/09240519241284448> accessed 27 July 2026.

21 Nagarjun Kandukuru, 'Justiciability' (*Right to Education Initiative*, 2023) <https://www.right-to-education.org/issue-page/justiciability> accessed 27 July 2026.

22 Vernor Muñoz, *The Right to Education of Persons with Disabilities: Report of the Special Rapporteur on the Right to Education* (UN Doc A/HRC/4/29, 19 February 2007) <https://digitallibrary.un.org/record/595007> accessed 27 July 2026.

23 *Çam v Turkey* App no 51500/08 (ECtHR, 23 February 2016) <https://hudoc.echr.coe.int/eng?i=001-161149> accessed 27 July 2026.

24 *Enver Şahin v Turkey* App no 23065/12 (ECtHR, 30 January 2018) <https://hudoc.echr.coe.int/eng?i=001-180499> accessed 27 July 2026.

25 *GL v Italy* App no 59751/15 (ECtHR, 10 September 2020) paras 66–72 <https://hudoc.echr.coe.int/?i=001-204685> accessed 27 July 2026.

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removal of barriers in advance.[26] The development of international disability rights has also strengthened the legal significance of reasonable accommodation, accessibility, support measures, and accessible communication.[27] These requirements have direct implications for the design, adaptation, and use of educational infrastructure.

The CRPD establishes specific obligations for States Parties concerning persons with disabilities in situations of armed conflict. Article 11 requires States Parties to take necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including armed conflict. Article 24 sets out obligations on inclusive education. The Committee has further clarified the accessibility obligations arising under Article 9 of the Convention. These provisions provide the legal basis for considering accessibility, education, and the safety of persons with disabilities within the same human rights framework. Contemporary scholarship also recognises the relevance of this relationship during armed conflict. Armed conflict may create new environmental barriers and intensify existing ones. Damage to infrastructure may have particularly serious consequences for persons with disabilities who depend on its continued functioning for mobility and access to essential services.[28] The effects of an attack may therefore differ according to the relationship between the affected person and the damaged infrastructure.

The obligations arising under these bodies of international law retain their distinct legal character. Their scope of application and duty-bearers must therefore be identified separately. IHL governs the conduct of parties to an armed conflict. The treaty obligations examined under IHRL bind state parties to the relevant treaties. The ICESCR establishes obligations concerning the right to education. The CRPD establishes disability-specific obligations concerning accessibility, inclusive education, and protection in situations of risk. International criminal law addresses individual criminal responsibility where the elements of an international crime are established. The application of these rules depends on the applicable legal framework and the circumstances of the particular case. A single attack may nevertheless have legal consequences under more than one body of law. An attack on a school may be assessed under IHL rules protecting civilian objects. The same attack may affect the exercise of the right to education. It may also have specific consequences for persons with disabilities. These legal assessments address different

26 UN Committee on the Rights of Persons with Disabilities, *Convention on the Rights of Persons with Disabilities: General Comment No 2, Article 9: Accessibility* (UN Doc CRPD/C/GC/2, 22 May 2014) <https://digitallibrary.un.org/record/812025?v> accessed 27 July 2026.

27 Arlene S Kanter, *The Development of Disability Rights Under International Law: From Charity to Human Rights* (Routledge 2015) 9.

28 Gauthier de Beco, 'Taking Economic and Social Rights Earnestly: What Does International Human Rights Law Offer Persons with Disabilities in Situations of Armed Conflict?' (2023) 105(922) International Review of the Red Cross 306 <https://doi.org/10.1017/S1816383122000923> accessed 27 July 2026.

dimensions of the same factual event. The relationship between applicable rules may be considered through the principle of systemic integration. Article 31(3)(c) of the Vienna Convention on the Law of Treaties requires relevant rules of international law applicable between the parties to be taken into consideration in treaty interpretation.[29] This principle provides a basis for considering relevant human rights obligations when interpreting applicable international rules. It does not alter the legal status of a school under IHL. This relationship becomes particularly significant for accessibility infrastructure. Elevators, ramps, lifting platforms, accessible circulation routes, and evacuation routes may perform essential functions for persons with disabilities.[30] Damage to these elements may restrict access to education. It may also affect the possibility of safe evacuation. Their legal significance depends partly on the function they perform for the persons who rely on them. Contemporary armed conflicts demonstrate the practical importance of infrastructure for the continuity of education. Evidence from Ukraine documents the serious effects of attacks on schools and the educational opportunities available to children.[31] International investigative mechanisms have also documented circumstances in which violence during conflict and crisis affected civilians' safety and their ability to reach safety.[32] These examples illustrate the importance of examining the consequences of infrastructure damage for people who face disability-related barriers.

This issue is also important for assessing the consequences of military operations. The specific function of accessibility infrastructure may remain invisible when a school is assessed only through its general status as a civilian object. An elevator or evacuation platform may perform an ordinary transport function for many students. For a student with a mobility impairment, the same element may determine whether leaving a building is practically possible. Therefore, the function performed by the damaged infrastructure may be important when assessing the resulting harm. Soft law instruments supplement this legal framework. The Safe Schools Declaration promotes measures aimed at protecting education and ensuring its continuation during armed conflicts.[33] United Nations Security Council Resolution 2601 reinforces international commitments to protect education in

29 Vienna Convention on the Law of Treaties (adopted 23 May 1969) [1987] UNTS 1155/331, art 31(3)(c) <https://treaties.un.org/pages/showdetails.aspx?objid=080000028003902f> accessed 27 July 2026.

30 Eyal Weizman, *Forensic Architecture: Violence at the Threshold of Detectability* (Zone Books 2017) <https://doi.org/10.2307/j.ctv14gphth> accessed 27 July 2026.

31 'Ukraine: War's Toll on Schools, Children's Future' (*Human Rights Watch*, 9 November 2023) <https://www.hrw.org/news/2023/11/09/ukraine-wars-toll-schools-childrens-future> accessed 27 July 2026.

32 UN Human Rights Council, *Report of the Independent International Fact-Finding Mission on the Islamic Republic of Iran* (UN Doc A/HRC/61/60, 10 March 2026) <https://digitallibrary.un.org/record/4039538> accessed 27 July 2026.

33 Safe Schools Declaration (adopted 28 May 2015) <https://ssd.protectingeducation.org/> accessed 27 July 2026.

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armed conflicts.[34] These instruments also support the documentation of attacks and the restoration of education after such disruptions.

These forms of protection raise a further question concerning the legal significance of the relationship between damaged infrastructure and a person whose exercise of a protected right depends on its continued functioning. This question has direct implications for access to justice. Its legal assessment affects how courts identify individual harm. It also influences victim identification, the evidence required, and appropriate remedies. Section 4 develops functional dependency as a proposed interpretative and analytical criterion for identifying and assessing this relationship.

4 FUNCTIONAL DEPENDENCY: LEGAL CHARACTERISATION, PROTECTION OF RIGHTS, AND ACCESS TO JUSTICE

IHL is structured to protect persons and objects.

Its legal framework distinguishes between civilian objects, military objectives, and specially protected objects. The legal assessment of attacks against infrastructure is therefore determined by the rules applicable to the relevant object.[35] Schools generally receive protection as civilian objects. A separate legal dimension arises where damage to a particular element of school infrastructure also affects the exercise of individual rights protected under IHRL. The same factual event may therefore require distinct legal assessments under IHL and IHRL. The legal characterisation gap examined in this study concerns the relationship between these assessments where infrastructure damage has specific consequences for persons who depend on its continued functioning.

This legal characterisation gap provides the basis for the functional dependency criterion proposed in this study. The criterion is intended to identify situations in which damage to physical infrastructure has specific consequences for exercising an individual right. Functional dependency is understood as the objective relationship between the effective exercise of a specific individual right and the continued operation of a particular element of infrastructure, without which the exercise of that right becomes impossible or disproportionately impaired. Unlike social vulnerability or a person's medical condition, functional dependency does not describe the individual's characteristics. Rather, it identifies a legally significant relationship between a specific component of infrastructure and the rights-holder's practical ability to exercise a protected right.

34 UN Security Council Resolution 2601 (UN Doc S/RES/2601, adopted 29 October 2021) preamble, paras 3, 9 <https://docs.un.org/en/S/RES/2601(2021)> accessed 27 July 2026.

35 Protocol I (n 7) arts 48, 52.

The functional dependency criterion proposed in this study is not presented as an autonomous rule of international law. It derives its legal basis from existing rules of IHL and IHRL and is further supported by legal theory. These legal foundations perform different functions. IHL determines the protection afforded to schools and other civilian objects during armed conflict. IHRL identifies the individual rights affected by the consequences of infrastructure damage and the corresponding obligations of States. The general doctrine of individual rights provides an additional theoretical basis for explaining the relationship between protected rights and the conditions necessary for their effective exercise. Functional dependency brings these elements together to assess the legal significance of infrastructure damage for persons who depend on its continued functioning. The first normative foundation is found in international humanitarian law. Article 18 of the Fourth Geneva Convention grants specific protection to civilian hospitals.[36] This protection reflects the humanitarian function performed by civilian hospitals and the vital interests of persons receiving medical care. The continued functioning of such facilities may therefore directly affect the life and safety of persons who depend on the services provided there. This functional dimension is relevant to this study. It provides a point of comparison for examining whether destroying particular elements of infrastructure in an inclusive school may affect students who depend on those elements for their safety and the effective exercise of their rights.

The protection of civilian hospitals provides a relevant point of functional comparison, although the legal regimes applicable to hospitals and schools remain distinct. International humanitarian law affords civilian hospitals specific protection. Schools generally retain the protection afforded to civilian objects. The present study does not propose extending the legal status of medical facilities to educational institutions. The comparison concerns the relationship between protected persons and infrastructure whose continued operation is essential to their safety. In a hospital, disruption of essential infrastructure may affect care for persons who depend on it. A comparable relationship may arise in an inclusive school. For a student who uses a wheelchair, an elevator, evacuation lift, ramp, or accessible evacuation route may provide the only practicable means of reaching safety. The comparison serves an analytical purpose. It helps to identify situations in which damage to infrastructure produces consequences for particular persons that extend beyond material damage to the civilian object.

The second normative foundation of the proposed criterion is found in international human rights law. The CRPD is grounded in the social model of disability, according to which disability arises from the interaction between an individual's impairment and barriers created by the surrounding environment. Within this framework, accessibility is

36 Geneva Convention Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949) [1950] UNTS 75/287, art 18 <https://treaties.un.org/pages/showdetails.aspx?objid=0800000280158b1a> accessed 27 July 2026.

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not an autonomous benefit but a mandatory precondition for the effective enjoyment of other rights. Article 9 requires States to identify and remove barriers to accessibility; Article 24 links accessibility to the realisation of the right to education; and Article 13 requires States to ensure effective access to justice for persons with disabilities. The Convention thus proceeds from the premise that, without an accessible environment, these rights cannot be exercised effectively. This framework has significant legal consequences. Where infrastructure is an indispensable legal condition for exercising an individual right, its destruction affects more than the physical object itself. It also interferes with the effective exercise of the corresponding right. Accessibility infrastructure therefore acquires an independent legal significance not because of its material characteristics, but because it enables a particular rights-holder to exercise rights guaranteed under international law.

The third foundation of the proposed criterion lies in the general doctrine of individual rights. Contemporary legal theory understands an individual right as a legally protected entitlement whose effective exercise depends on the existence of conditions that make its practical realisation possible. This understanding is reflected in Martha Fineman's theory of vulnerability, which explains human dependence on social institutions as the basis of the State's positive obligations[37], and in the capabilities approach developed by Amartya Sen and Martha Nussbaum, according to which the formal recognition of a right does not, by itself, ensure its effective enjoyment.[38] This study extends these theoretical approaches by focusing on a more specific relationship. Rather than examining the dependence of rights on social institutions in general, it identifies the dependence of a particular individual right on the continued functioning of specific elements of physical infrastructure. The legal assessment therefore concerns not an individual's vulnerability as such, but the objective relationship between exercising a protected right and preserving the infrastructure that makes that exercise possible. Complementary normative and theoretical foundations therefore support the criterion of functional dependency. Each performs a distinct function in the proposed analysis. IHL determines the legal protection of civilian objects. IHRL provides the basis for assessing the consequences of infrastructure damage for individual rights. The criterion of functional dependency identifies the relationship between these two dimensions without altering the scope or legal requirements of either body of law.

In international humanitarian law, the protection of civilian objects has traditionally been understood in light of the humanitarian functions they perform. As Michael Schmitt observes, the special protection afforded to certain categories of civilian objects is

37 Martha Albertson Fineman, *The Autonomy Myth: A Theory of Dependency* (New Press 2004) <https://archive.org/details/autonomymyththeo0000fine> accessed 27 July 2026; Martha Albertson Fineman, 'The Vulnerable Subject and the Responsive State' (2010) 60(2) Emory Law Journal 251 <https://scholarlycommons.law.emory.edu/elj/vol60/iss2/1/> accessed 27 July 2026.

38 Amartya Sen, *Development as Freedom* (OUP 1999); Martha C Nussbaum, *Creating Capabilities: The Human Development Approach* (Harvard UP, Belknap Press 2011) <https://doi.org/10.2307/j.ctt2jbt31> accessed 27 July 2026.

determined less by their physical characteristics than by the vital interests of the civilian population that their continued functioning serves.[39] Marco Sassòli similarly argues that the primary purpose of IHL is to preserve the conditions necessary for civilian life, rather than merely safeguarding the physical integrity of civilian objects.[40] This understanding provides a basis for viewing infrastructure as an essential means through which internationally protected interests are realised. A comparable line of reasoning can be found in Martha Fineman's theory of vulnerability. Fineman argues that human dependence on social institutions is a universal condition rather than an exceptional circumstance and that this dependence gives rise to positive obligations on the part of the State to maintain the conditions necessary for the effective enjoyment of rights.[41] The present study develops this approach further by applying it to situations of armed conflict. Rather than focusing on dependence on social institutions in general, it examines the legal significance of dependence on specific elements of physical infrastructure whose continued functioning determines whether particular rights can be exercised in practice. The same underlying logic is reflected in Amartya Sen's capabilities approach. Sen emphasises that formal recognition of a right does not, in itself, guarantee the practical ability to exercise it. This insight is particularly significant in the context of international humanitarian law.[42] Following the destruction of accessibility infrastructure, a child with a disability may formally retain the right to education while being deprived, in practice, of any realistic opportunity to exercise it. The international legal assessment of such situations should therefore extend beyond the formal existence of the right itself and consider whether the conditions necessary for its effective enjoyment have been preserved.

The criterion of functional dependency brings these doctrinal approaches together within a single analytical framework. Under the proposed criterion, the continued functioning of a particular element of infrastructure becomes relevant to legal assessment where it constitutes a necessary condition for the exercise of an individual right by a specific group of persons. Its significance may be assessed by reference to the function it performs for the affected rights-holders. Legal protection extends beyond the civilian object as a material entity to encompass the function it performs in enabling the effective enjoyment of internationally protected rights. This constitutes the theoretical foundation of the proposed criterion of functional dependency. The legal characterisation of an attack's consequences determines which forms of harm receive legal recognition and which claims victims may

39 Michael N Schmitt, 'Military Necessity and Humanity in International Humanitarian Law: Preserving the Delicate Balance' (2010) 50(4) Virginia Journal of International Law 795 <https://ssrn.com/abstract=1600241> accessed 27 July 2026; Michael N Schmitt (ed), *The Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations* (2nd edn, CUP 2017) 503-7 <https://doi.org/10.1017/9781316822524> accessed 27 July 2026.

40 Marco Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare* (2nd edn, Edward Elgar 2019) 367-72.

41 Fineman (n 37).

42 Sen (n 38) 74-87.

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advance. An assessment focused on physical damage to the school may fail to identify the specific consequences experienced by students with disabilities. A school may remain operational for most students while becoming entirely inaccessible to those whose participation in education depended on elevators, ramps, lifting platforms, wayfinding systems, or specially designed evacuation routes. The absence of a legal framework capable of recognising this form of dependency creates an additional obstacle to access to justice. Judicial protection is available only in respect of harm that can be characterised as the violation of a legally protected right and substantiated by legally relevant evidence. Where the loss of accessibility is regarded merely as a secondary consequence of property damage, children with disabilities and their representatives face difficulties at the very outset of legal proceedings in defining the subject matter of their claim. Their exclusion from the educational environment consequently remains without independent legal recognition. The criterion of functional dependency provides a framework for identifying and assessing this distinct form of harm. Legal proceedings should therefore examine the function of the damaged infrastructure, the category of students who depended upon it to access education, the availability of equivalent alternatives, and the duration of the resulting restriction. Particular attention should also be given to the impact of the damage on evacuation safety, regular school attendance, and the child's ability to participate in mainstream education. Considered together, these factors make it possible to determine whether the attack impaired the practical exercise of the right concerned.

The proposed criterion has important implications for evidentiary assessments. Photographs of damaged buildings and estimates of repair costs provide only partial accounts of the consequences of an attack. Assessing functional harm requires additional forms of evidence, including accessibility plans, information on the educational needs of affected students, technical documentation relating to accessibility equipment, evidence regarding the accessibility of temporary educational facilities, and expert assessments. The testimony of the child and the child's legal representatives likewise assumes particular importance, as it enables the decision-maker to assess how the destruction of specific infrastructure affected both educational participation and personal safety of the child.

Article 2(3) of the International Covenant on Civil and Political Rights requires state parties to ensure an effective remedy for violations of the rights recognised in the Covenant.[43] An effective remedy presupposes access to a competent authority, a genuine examination of the claim on its merits, and the availability of an enforceable decision. In cases involving the destruction of educational infrastructure, Article 2(3) may become relevant if the consequences of an attack affect rights protected by the Covenant, including the right to life, equality before the law, freedom from discrimination, or other applicable guarantees. The scope of the remedy must correspond to the nature of the violation established during the proceedings.

43 International Covenant on Civil and Political Rights (adopted 16 December 1966) [1983] UNTS 999/171, art 2(3) <https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-4&chapter=4&clang=_en> accessed 27 July 2026.

The CRPD establishes a more specific procedural framework for accessing justice. Article 13 requires state parties to ensure effective access to justice for persons with disabilities on an equal basis with others, including by providing procedural and age-appropriate accommodations. This obligation applies to all legal proceedings. For children, accessible forms of communication, adapted interviewing procedures, the participation of legal representatives, the removal of architectural and informational barriers, and procedures that take account of the child's individual means of communication and participation are required. The Committee on the Rights of Persons with Disabilities has likewise emphasised that effective complaint mechanisms and appropriate remedies are indispensable components of the right to inclusive education.[44]

In situations of armed conflict, these obligations require a broader understanding of what constitutes an effective remedy. A judicial decision that merely establishes the fact of destruction or awards monetary compensation may leave the principal consequences of the violation unaddressed. A child's right to education cannot be regarded as effectively restored while the accessibility infrastructure remains unavailable or until an equivalent and safe educational alternative has been provided.

Therefore, the remedy should correspond to the function performed by the damaged infrastructure. Depending on the circumstances, appropriate measures may include the restoration of elevators or lifting equipment, the construction of accessible entrances, the re-establishment of safe evacuation routes, the provision of accessible transport, the temporary relocation of students to accessible educational facilities, or the organisation of education within another comparable inclusive school. Where reconstruction is likely to be prolonged, interim and precautionary measures become particularly important, as they prevent legal proceedings from coinciding with a prolonged period during which the child is effectively excluded from education.

Compensation remains an important component of legal protection, although its role depends on the circumstances of the individual case. Financial compensation may cover additional expenses incurred by the family, non-pecuniary harm, and costs arising from the loss of accessibility. However, compensation alone rarely restores a child's practical ability to attend school. An effective remedy requires a combination of individual reparation and measures that re-establish the practical conditions necessary for the effective enjoyment of the right to education.

The criterion of functional dependency also has implications for determining who should be recognised as a victim for procedural purposes. The owner of a damaged school building and a child who has lost access to education suffer fundamentally different forms of harm. The former sustains property damage, whereas the latter may be excluded from the

44 UN Committee on the Rights of Persons with Disabilities, *General Comment No 4* (n 9) paras 4, 30, 31, 63.

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educational environment, exposed to increased risks to personal safety, and experience broader social consequences arising from interruptions in education. Distinguishing between these forms of harm helps avoid the erroneous assumption that restoring the school's physical structure is sufficient to remedy the violation suffered by the child.

Institutional measures form an essential component of an effective remedy. The documentation of attacks should record damage to accessibility infrastructure, along with its specific consequences for students with disabilities. Investigative authorities and courts need appropriate methods to identify and assess functional harm. Reconstruction and recovery planning should involve organisations of persons with disabilities, parents, and specialists in inclusive education to ensure that accessibility considerations are adequately addressed. Such measures help prevent future violations and improve the effectiveness of subsequent legal and administrative responses. The Basic Principles and Guidelines on the Right to a Remedy and Reparation recognise a range of forms of reparation, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. In the context of inclusive schools, the choice of an appropriate remedy should be guided by the extent to which it restores the capacity of the educational environment to serve all students on an equal basis.

The functional dependency criterion connects the assessment of infrastructure damage with its procedural consequences. It provides a framework for identifying specific harm, determining the affected persons, defining relevant evidence, and assessing the appropriate content of effective remedies. From this perspective, access to justice includes the ability of the legal process to address the practical consequences of harm suffered by a child. An effective remedy should help restore the conditions necessary for education in a safe and accessible environment for all children.

5 CONCLUSION

This study demonstrates that the destruction of accessibility infrastructure in schools during armed conflict may engage distinct forms of protection under existing international law. IHL protects schools as civilian objects. IHRL protects the individual rights affected by the attack's consequences. The CRPD provides specific guarantees concerning persons with disabilities. These bodies of law retain distinct scopes of application and duty-bearers. A legal characterisation gap may nevertheless arise when damage to accessibility infrastructure prevents students with disabilities from exercising protected rights or evacuating safely. At the same time, these specific consequences remain unidentified within the legal assessment of the attack. To address this gap, this article develops the criterion of functional dependency. Under this approach, legal significance arises from the objective relationship between the continued functioning of a specific infrastructure element and the effective exercise of a particular individual right.

This criterion provides a basis for identifying the specific consequences of infrastructure damage for persons who depend on its continued functioning. Damage to accessibility infrastructure may therefore affect the effective exercise of protected rights, including the right to education and rights related to personal safety. Recognition of this specific harm also has consequences for subsequent access to justice.

The study's principal contribution is the development of a functional legal characterisation. This approach examines whether infrastructure damage has removed the conditions necessary to effectively exercise an individual's right. Functional dependency identifies the relationship between relevant legal dimensions while preserving the distinct scope and requirements of IHL and IHRL. It also provides a basis for examining the procedural consequences of the resulting harm for accessing effective remedies. This approach has practical implications for access to justice. Recognising functional harm influences victim identification, the evidentiary framework, and the selection of appropriate remedies for the victim. Effective judicial protection requires an assessment of the specific consequences experienced by the affected child. It also requires consideration of the conditions necessary to restore the practical exercise of the affected rights. In the context of inclusive schools, an appropriate remedy may therefore require the restoration or replacement of accessibility infrastructure. Equivalent accessible educational arrangements may also be necessary when immediate restoration is impossible.

The continuing development of international standards on inclusive education has increased the legal significance of accessibility infrastructure. Particular elements of the built environment may constitute indispensable conditions for the effective exercise of individual rights. Their destruction may therefore require separate consideration of the specific consequences for persons who depend on that infrastructure. This perspective supports a more complete legal assessment of attacks on civilian infrastructure. Such an assessment considers the protection of the civilian object and the consequences of infrastructure damage for the effective enjoyment of individual rights.

The proposed framework leaves the existing categories of protected objects under IHL unchanged. Functional dependency provides an interpretative and analytical criterion for assessing the relationship between accessibility infrastructure, individual rights, and access to an effective remedy. Its contribution lies in identifying disability-specific harm that may remain insufficiently recognised when the consequences of an attack are assessed primarily through damage to the civilian object.

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

ПЕРЕОСМИСЛЕННЯ ПРАВОВОГО ЗАХИСТУ ЗАКЛАДІВ ОСВІТИ ПІД ЧАС ЗБРОЙНОГО КОНФЛІКТУ: ФУНКЦІОНАЛЬНА ЗАЛЕЖНІСТЬ ТА ДОСТУП ДО ПРАВОСУДДЯ

Назим Сайранкизи

АНОТАЦІЯ

Передумови. *У статті досліджено міжнародно-правові наслідки знищення інфраструктури доступності в закладах освіти під час збройного конфлікту. Міжнародне гуманітарне право захищає заклади освіти як цивільні об'єкти. Міжнародне право прав людини захищає індивідуальні права, реалізація яких зазнає впливу внаслідок збройного конфлікту. Конвенція про права осіб з інвалідністю закріплює спеціальні гарантії щодо доступності, інклюзивної освіти та захисту осіб з інвалідністю в ситуаціях ризику. Зазначені правові режими мають різні сфери застосування та покладають відповідні обов'язки на різних суб'єктів. Водночас їхнє застосування до одного й того самого нападу може виявити прогалину в правовій кваліфікації, за якої наслідки пошкодження інфраструктури доступності для здобувачів освіти з інвалідністю залишаються невизначеними. Ліфти, пандуси,*

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доступні шляхи евакуації та інші елементи доступності можуть визначати здатність здобувачів освіти реалізовувати право на освіту та безпечно евакуюватися.

Методи. *Дослідження здійснено із застосуванням доктринального юридичного методу, що ґрунтується на аналізі норм міжнародного гуманітарного права, міжнародного права прав людини та міжнародного кримінального права. Також застосовано порівняльно-правовий метод і системне тлумачення міжнародних договорів. Під час аналізу розмежовано сфери застосування, характер зобов'язань і суб'єктів, на яких вони покладаються, у відповідних міжнародно-правових режимах, після чого досліджено співвідношення цих правових режимів у випадках пошкодження інфраструктури доступності. Правову основу для розроблення та оцінювання запропонованого критерію становлять міжнародні договори, практика міжнародних судів, практика договірних органів з прав людини та наукові праці.*

Результати та висновки. *У дослідженні виявлено прогалину в правовій кваліфікації наслідків пошкодження інфраструктури доступності для осіб з інвалідністю під час збройного конфлікту. Розроблено критерій функціональної залежності, який може застосовуватися як інтерпретаційний та аналітичний критерій. Цей критерій встановлює об'єктивний зв'язок між реалізацією захищеного індивідуального права та подальшим функціонуванням конкретного елемента інфраструктури. Застосування цього критерію дає змогу визначити конкретні наслідки пошкодження інфраструктури для осіб, реалізація захищених прав яких залежить від подальшого функціонування відповідного елемента. Такий підхід має практичне значення для встановлення кола постраждалих осіб, оцінки доказів та визначення належних засобів правового захисту. Крім того, запропонований критерій забезпечує підґрунтя для належного документування функціональної шкоди та посилення доступу до правосуддя для здобувачів освіти з інвалідністю, які постраждали внаслідок нападів на заклади освіти.*

Ключові слова: *право на освіту; доступність; особи з інвалідністю; функціональна залежність; міжнародне гуманітарне право; доступ до правосуддя.*