

The Legal Protection of Journalists and Media in Conflict Zones

A thesis submitted for the degree of Doctor of
Philosophy

By

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2017

To all the Journalists who have been killed in a war zone in order to seek the truth

ABSTRACT

This dissertation examines whether the international regime for the protection of journalists reporting from armed conflict zones is sufficient to protect journalists and the media operating in such places. This examination includes the current rules and principles of International Humanitarian Law, International Human Rights Law and the proposals provided by International, Regional and Non-Governmental Organisations. The second aim is to examine whether violence against journalists should be categorised as war crimes and/or crimes against humanity with automatic jurisdiction of the International Criminal Court (ICC) in cases where national courts are unable or unwilling to prosecute such offences. The final aim is to provide recommendations for enhancing the protection of journalists and media covering conflict zones.

The research findings show that the protection of journalists covering armed conflicts under International Law is absent. State motivation to initiate that is non-existent. Depending on general International Human Rights Law and general International Humanitarian Law to protect this profession which is at the forefront of the protection of democracy and the rule of law in Western democracies is no longer sustainable because it is inefficient.

States must make haste to establish treaty law for the protection of journalists and the media working in conflict zones. The UN General Assembly must instruct the UN International Law Commission under Article 13 (1) of the UN Charter to immediately commence studies on the international law for the protection of journalists and the

media operating in conflict zones. The conclusions of the International Law Commission Draft Articles on Protection of Journalists and the Media should then be adopted by the UN and lead to new State practice/ Convention on the protection of journalists and the media reporting from armed conflict zones.

ACKNOWLEDGMENTS

I owe a great debt of gratitude to my supervisor Professor Dr. Benedict Abrahamson Chigara for encouraging me to complete this work. This work would not have come to this level without his invaluable guidance, suggestions and critical comments. I would like to thank the staff of the libraries at Brunel and Qatar Universities for their assistance.

Many thanks to all those, who in one way or another contributed to the fruition of this work. Special thanks should go to my family in Qatar who have been supporting me to see this work come into existence.

DECLARATION

I hereby declare that the work in this thesis is my own work and all quotations have been distinguished by quotation marks. This work has not been submitted in substance for any other degree or award at this or any other university or place of learning, nor is being submitted concurrently in candidature for any degree or other award.

Khalifa Abdullatif M J Al-Moslamani

ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
ALCHR	Arab League Charter on Human Rights
CPJ	Committee of Protecting Journalists
ECHR	European Convention on Human Rights
HRQ	Human Rights Quarterly
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICE	Institutions of the Council of Europe
ICRC	International Committee of the Red Cross
ILC	International Law Commission
INSI	International News Safety Institute
IPDC	International Programme for the Development of Communication
IPI	International Press Institute
IRRC	International Review of the Red Cross
NGO	Non-Government Organisations
OAS	Organization of American States
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSCE	Organisation for Security and Cooperation in Europe

PEC	Press Emblem Campaign
MLC	Maritime Labour Convention
RS	Rome Statue of the International Criminal Court
RWB	Reporters Without Borders
SUNAP	Convention on the Safety of United Nations Associated Personnel
UDHR	Universal Declaration of Human Rights
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNSC	United Nations Security Council

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Introduction

1.1. Overview

The Committee to Protect Journalists reported in 2016¹ that 1211 journalists have been killed whilst reporting from conflict zones, since 1992. This highlights the increasing threat to life currently faced, without international legal protection, by journalists practicing their profession within conflict zones. Equally, various Regional and Non-Governmental Organisations² have highlighted the growing attacks against journalists, including being arrested, tortured and kidnapped. The United Nations Security Council Resolution 1738 (2006),³ states that parties to an armed conflict have the obligation to protect journalists within conflict zones by preventing any such violent attacks as well as ensuring retribution and to tackle the issue of impunity.

Journalism has become an increasingly dangerous profession due to the scale of attacks against journalists in States such as Libya, Iraq, Yemen and Syria. The increasing violence against journalists has thus become a global issue, with journalists being killed, kidnapped, tortured or assaulted almost daily in different parts of the world. This suggests also that the legal protection of journalists operating in conflict zones may be a critical issue.

¹ www.cpj.org

² See for example, The Press Emblem Campaign, "Draft for 'International Convention to Strengthen the Protection of Journalists in Zone of Armed Conflicts and Civil Unrest'" (2007) www.pressemblem.ch/index2.html

³ UNSC Resolution on Protection of Civilian in Armed Conflict, S/RES/ 1738/28/April/2006

When journalism is threatened, freedom of expression and freedom of the press are also threatened, as the fear of the power of words and images drastically limits journalists' freedom to report to the public about war. It seems entirely plausible that an attack on a journalist is not only an attack on the profession but also a direct attack on the freedom of expression and thus, an attack on democracy as a whole. Without accurate reporting of how democracies prosecute their wars in foreign lands, their citizens will not be able to hold them to account at the ballot box for how they treat citizens of other nations abroad – away from the glare of domestic media. The Director-General of the United Nations Education, Scientific and Cultural Organisation has opined that that “every aggression against a journalist is an attack on our most fundamental freedom. Press freedom and freedom of expression cannot be enjoyed without basic security.”⁴

It is therefore important to stress that attacks against journalists and media equipment in conflict zones violate International Humanitarian Law. Such law establishes a degree of protection for civilian individuals as well as objects so long as such individuals are not found to be contributing directly towards the military efforts in the confrontations.

International Humanitarian Law distinguishes between different statuses for journalists, namely, war correspondents, embedded journalists, independent journalists and more recently citizen journalists. International Humanitarian Law does not provide a clear definition of the term journalist. This lack of a definition on who

⁴ UNESCO, Press Freedom-Safety of Journalists and Impunity (2004), www.unesco.org

qualifies as a journalist under International Humanitarian Law results in an unclear and impaired distinction between journalists and general media-active civilians.

The increase in civilian journalists and multimedia active citizens makes it increasingly more difficult to establish who is a journalist and who is merely an active citizen.⁵ It is, however imperative, under International Humanitarian Law, to ascertain the reference of 'journalist' in order to further establish the particular status of an individual as well as the obligations States may have towards journalists that may be engaged in risky missions in conflict zones.

International awareness to the growing risks faced by journalists reporting from conflict zones and to the lack of specific protections under International Law has led to a variety of proposals for the protection of journalists and the media in conflict zones. The 1970s witnessed an increase for the first time, in international awareness in the need to protect journalists covering armed conflicts.⁶ This awareness did not result in the international codification of any hard or soft law on the protection of journalists covering armed conflicts. It left the profession of journalism exposed to the same risks described above, with the possibility that International Human Rights Law and the 1949 Geneva Convention⁷ might afford a measure of protection against the hazards they faced.

⁵ Griet Verschlingel, "Towards a Better Protection for Journalists in Armed Conflicts", *Jura Falconno*, Volume 45 (3), 2008-2009, pp. 435-456.

⁶ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

⁷ Geneva Convention (1V) relative to the Protection of Civilian Persons in Time of War 12 August 1949

Article 79 of the Protocol Additional I,⁸ states emphatically, that journalists as well as media personnel reporting from armed conflict zones must be regarded as civilians. It is arguably the strongest provision in the code which obliges States to ensure protection of journalists. It is important to note that the term 'journalist' is used here to represent all media personnel including those involved in the assembly, processing and broadcasting of information including photographers and cameramen, as well as support staff such as interpreters and drivers.

However, Article 79 of Additional Protocol I which still exists as the main source of International Humanitarian Law for the protection of journalists operating in conflict zones by considering them as civilians appears ill-suited to offer journalists the level of protection required by their profession today. The range of protection afforded to a journalist depends on his/her legal classification and on the nature of the conflict - whether it is classified as international or non-international armed conflict. However, doubt has been cast upon the potential of Article 79 as a rule and its potential to offer protection to the journalist professionals impugned as unsustainable and difficult to defend particularly as the majority of conflicts occurring in the world today are civil conflicts rather than international armed conflicts.

If International Humanitarian Law is inadequate for the task of protecting journalists covering armed conflicts, could general rules of the International Human Rights Law

⁸ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

suffice. Journalists could claim such rights as the right to freedom of opinion, expression and thoughts; and freedom from violence. State authorities have the obligation to guarantee the protection of journalists from actions that would restrict their rights and freedom. The obligation for States to protect journalists in times of violence and intimidation is very much imperative, particularly in States such as Iraq, Syria, Yemen and Libya where there is an increase in the number of violence and threats against journalists, including violation of their right to security and to life. Nonetheless, Human Rights rules are also insufficient to protect journalists as Human Rights obligations are intended for normal peace time and can be derogated from in times of conflict.⁹

The protection of journalists operating from conflict zones has also been addressed by various bodies, including the United Nations, Regional Organisations and Non-Governmental Agencies.¹⁰ They all appear to have individual standards on the protection of journalists operating in conflict zones. Nonetheless, they are united in their affirmation of the validity of both the International Humanitarian Law and International Human Rights Law applicable to the protection of journalists. They have also given recognition to the significance of the addition of both political and legal regulation of the protection of journalists in order to counter the increasing task of protecting journalists reporting from conflict zones.¹¹ The problem with political protection is that it does not refer to sanctions of the law. Secondly, it cannot be

⁹ *Infra*, ch,3

¹⁰ *Infra*, ch,4

¹¹ Kayt Davies and Emily Crawford, "Legal Avenues for Ending Impunity for the Death of Journalists in Conflict Zones: Current and Proposed International Agreements" (2013) 7 *International Journal of Communications* 2157 – 2177; Joanne M Lisosky and J Henrichsen, "Don't Shoot the Messenger: Prospects for protecting journalists in conflict situations" (2009) 2 *Media, War and Conflict* 129 – 148

invoked by the affected journalist directly except through a willing interested entity such as a State or political organization.

They have also proposed plans for the protection of journalists and to finally end the problem of impunity. Numerous propositions have been adopted with the impression that journalists themselves are credible and thus, require both protection and safety that is distinct from that granted to civilians. They insist that States are obligated under International Humanitarian Law, to abstain from unlawfully arresting, ill-treating and killing their own citizens.¹²

Both the safety of journalists operating from conflict zones and the effort to end impunity for those suspected of criminal conduct against journalists operating in conflict zones is vital for ensuring the widest possible enjoyment of the right to freedom of expression under Article 19 of the Universal Declaration of Human Rights (1948). Therefore, with regards to the safety of journalists, the United Nations Security Council Resolution 1738 (2006) stated clearly, in paragraph 7,¹³ that States have a responsibility “to comply with the relevant obligations under international law to end impunity and to prosecute those responsible for serious violations of international humanitarian law”

¹² See for example, United Nations Security Council Resolution on Protection of Civilian in Armed Conflict, S/RES/ 1738/28/April/2006; United Nations Security Council on Protection of Civilians on Armed Conflict S/RES/2222/27 May/2015; Human Rights Council Resolution on the Safety of Journalists, A/HRC/RE/22/9 October.2012; Human Rights Council Resolution on the safety of journalists, A/HRC/L.7/19 September/ 2014

¹³ UNSC Resolution on Protection of Civilian in Armed Conflict, S/RES/ 1738/28/April/2006

In the first instance, it is submitted that the protection of journalists and the media is the responsibility of every State. Government authorities are responsible for protecting and assisting their citizens and everyone on their territory or within their jurisdiction. National authorities must investigate crimes against journalists allegedly committed by their nationals or armed forces, or on their territory, and must prosecute those responsible.

However, it is questionable whether violence against journalists can be categorised as a war crime and a crime against humanity. It has been opined that crimes such as murder, torture, imprisonment, disappearances, etc., do indeed amount to war crimes and crimes against humanity.¹⁴

And where States are either unable or unwilling to prosecute crimes against journalists committed in their jurisdictions, referral to the International Criminal Court should be ensured. While obstacles are manifold that hinder the exercise of ICC jurisdiction over crimes against journalists, one of which is the institution of immunities attached to public officials who are often the main perpetrators of such crimes; consideration should be given to ease these obstacles in order to enhance international legal protection for journalists covering armed conflicts.

¹⁴ See e.g. Geoffrey Robertson QC, *Crimes Against Humanity: The Struggle for Global Justice* (2nd ed. 2002)

Recently, it has been suggested that crimes against journalists should be characterised as universal jurisdiction offences.¹⁵

1.2. Research Aim

The aim of this research is to closely examine and evaluate both the rules and principles regulating the protection of journalists as well as media personnel operating in armed conflict zones with the hope of bringing forward a proposal to improve the existing law.

The study will examine how the law relating to the protection of journalists and the media reporting from conflict zones has been developed. Another important factor of this study is to critically evaluate both the international and national rules and principles relating to the protection of journalists and the media personnel reporting from conflict zones. Discussion and analysis of the rules and practices on the protection of journalists and the media within conflict zones will also be made in this study.

The other purpose of this research is to examine the adequacy of current law on the protection of journalists operating in armed conflict zones as well as the jurisdictional basis over crimes committed against journalists in armed conflicts. The study intends

¹⁵Beth Van Schaack, "Mapping War Crimes in Syria", *International Law Study*, Vol 92, 2016, p.286

to test the hypothesis that the existing international law does not provide enough protection to journalists and the media in armed conflicts. Finally, the study intends to provide valid and perceptive recommendations and suggestions for the law relating to protecting journalists and the media reporting from armed conflicts zones.

1.3. Importance of the Study

The profession of journalism can be a very dangerous practice due to the exposure to the physical dangers of war. Journalists have been the victims of direct hostilities. For example, in 2016, 47 journalists as well as media personnel alone were killed reporting armed conflicts across many regions of the world.¹⁶

The United Nations Security Council Resolution 1738 (2006)¹⁷ was motivated by the growing violence against journalists from military personnel, to denounce such violence as a threat to both international security and peace. Therefore, this study is important in that it recognises and seeks to address significant problems relating to the law on the protection of journalists and the media personnel working in armed conflict zones. Comparison and analysis will also be made between the various legal systems in order to determine the main issues as well as flaws in the international regime for the protection of journalists and the media in armed conflict zones. Further, the study is also important to lawyers in Qatar as it is recognised that this is the first study in this discipline. In order to afford the best possible protection to journalists reporting from conflict zones, it is therefore imperative to analyse both the

¹⁶ www.cpj.org

¹⁷ UNSC Resolution on Protection of Civilian in Armed Conflict, S/RES/ 1738/28/April/2006

international and national approaches to jurisdiction conflict and identify the basis upon which a court can have jurisdiction over crimes committed against journalists reporting from conflict zones.

1.4. Research Questions

This study will aim to attempt to find solutions to the most essential questions which relate to the protection of journalists and the media professionals working in areas of international and internal armed conflict.

1- What is States' practice on the protection of journalists seeking to report to tax payers at home on how democratic governments are waging wars abroad and even within their own borders when civil strife occurs?

2- Are the existing international rules sufficient to protect journalists and the media covering armed conflicts?

3-Should violence against journalists be categorised as war crimes and crimes against humanity and referral to the International Criminal Court is required?

The inspiration for the above research questions came from several factors. Firstly, the total absence of an International Labour Organisation (ILO) or a United Nations treaty protecting journalists covering armed conflicts. Yet, without them, democratic accountability of States to their citizens on how they are conducting themselves becomes illusory.

Secondly, the need to hold governments accountable for human suffering and for their possible human rights abuses and violation of the laws of armed conflict when they are prosecuting armed hostilities both at home and abroad was a great factor in my determination of research topic.

Thirdly, it is States that make international laws according to Article 38(1) (b) of the Statute of the International Court of Justice. Yet, the same States fear the journalistic lens more than any weapon of war. Therefore, their motivation to protect journalists is questionable. Finally, the questions above were also inspired from the fact that there is an urge to assure international treaties which in turn are alike to the developing ILO resolutions, on protecting seafarers.

1.5. Research Methodology

The main theme of this thesis is to establish, evaluate and justify the law relating to the protection of journalists reporting from armed conflict zones and how this law has materialized and progressed over the years. In order to assess this, the primary method taken in this thesis is therefore that of a doctrinal method. Duncan and Hutchinson described the doctrinal method as one that analyses the conception of the law with the aim to both assess and justify the establishment of the laws.¹⁸

With regards to the law of protection of journalists reporting from armed conflict zones, the doctrinal method thus requires reviewing the application of soft law instruments, Treaties, Statutes, case law and legal and academic reviews. This can be achieved using findings of both historical and analytical doctrinal legal research.

A thorough review of sources on the topic was achieved in order to capture, understand and assess the published research relating to the protection of journalists and the media in conflict zones. The research is based on analysing the provisions of the Geneva Conventions, the rules of the soft law instruments and legal documents as well as existing literature relating to the protection of journalists in armed conflicts. The research is also based on case law to assess judicial reasoning relating to crimes committed against journalists reporting from conflict zones.

This method allows the researcher to critically examine the significances and consequences of these rules and as well as the values which underpin them.¹⁸ This broad literature review helps the reader to understand the fundamental principles and laws relating to the protection of journalists. Furthermore, it exposes both the weaknesses and strengths of the law on the protection of journalists reporting from armed conflict zones.

¹⁸ Terry Hutchinson and Nigel Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research' (2012) 17:1 Deakin LR 83, 84.

Examination of the provisions of the Geneva Conventions, existing literature, the rules of the soft law instruments and legal documents is required in order to answer the fundamental research questions. However, it is essential to examine both the wording and legislative history of such provisions. The term Historical Legal Research explains how previous circumstances resulted in the creation of the current law and its application.¹⁹ This however, requires a systematic analysis of the statutory provision by means of doctrinal research as well as appropriate legal concepts with the view to analysing the stability between both the language of law and its application.

Researching the Geneva Conventions and other instruments of the soft law is very accessible, where almost all of the provisions are available online at the ICRC website.²⁰ The information is then collected from a variety of sources including textbooks, legal journals, conference papers, documents, legislative history and professional publications. A valuable source of clarifying indefinite provisions in the Geneva Conventions is the ICRC, a group of legal scholars that address controversial unresolved issues relating to the Geneva Conventions and publish reasoned opinions on the subject matter.

Through examination of the history of the provisions of the Geneva Convention and other soft law instruments, this thesis can therefore identify the various debates that took place amongst delegates when they were drafted. However, this is not adequate to identify the general principles that underpin these legal rules. Therefore,

¹⁹ Duncan and T. Hutchinson, p.86

²⁰ <https://www.icrc.org/en>

it is essential to study and review existing interpretations on the Geneva Conventions and other soft law instruments which may offer understanding on the meanings and possible underlying principles of these legal rules.

The bases of examining the current literature on the subject of the protection of journalists under the Geneva Conventions and other soft law instruments is to recognise both the similarities and dissimilarities that may exist within the thesis and the findings of other scholars. Moreover, it provides a wider understanding of the relevant issues. This particular method helps to elucidate the meanings of vague words and phrases as well as categorise the various issues within clearly defined limitations. This thesis will be able to extract the relevant information and then employ it to the protection of journalists with the aim of clarifying their meanings.

Many advantages exist from using the doctrinal approach to analyse this subject area. The doctrinal methodology is able to cover any form of legal analysis, including the history of law, what the law was previously, what the law is now and whether there are any such suggestions as to how the law might be developing or evolving. Therefore, it can be said that a doctrinal approach can afford both endurance and consistency on the evolving or developing of the subject matter.²¹

²¹ D. Feenan, 'Exploring the Socio of Socio-Legal Studies' in D. Feenan, *The Palgrave McMillan Exploring the Socio of Socio-Legal Studies* (Palgrave McMillan, 2013), 6-10.

However, it must be stated that the doctrinal approach has been subject to some criticism. It has been described as being too formalistic in its approach.²² This legal formalism however, can at times, lead to overgeneralising the legal doctrine and often does not afford enough of a basis on which to support the thesis and the questions it seeks to answer. However, the doctrinal method supports most legal research, and is able to establish what the law is, predominantly in areas where the law is indeterminate or where it is still evolving.

It must also be mentioned that the internet is a rich source of information and therefore, will be crucial for this research. I am a judge of the Supreme Court of Qatar for which I practice law throughout. I rely on textual analysis to test the application of doctrines including: requirements of the rule of law; transparency, proportionality, equity and fairness.

By using library based research to correlate case law, legal provisions, NGO reports and legal journals, it aims to fill the breaks within the existing literature and together form the most important evidence for providing a clear framework for the future of the law of protection of journalists reporting from armed conflict zones.

²² Michael Salter and Julie Mason, *Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research* (Pearson 2007) 31.

1.7. Research Structure

This Study is divided into five chapters.

Chapter One: The Legal Status of Journalists and Media in Armed Conflict

The aim of this chapter is to examine how the law relating to the legal status of journalists and the media has evolved under current international law. International Humanitarian Law distinguishes between different statuses for journalists. Therefore, it is important to define the term journalist in order to determine the particular applicable status and the obligations of States towards journalists reporting from conflict zones.

Chapter one also analyses the meaning of 'media object' and thus focuses also on how media equipment and facilities are given protection within conflicts. Civilian and military objects are differentiated under International Humanitarian Law. Thus lawfully, only military objects can be targeted. Civilian objects have the added advantage of benefiting from the presumption that they are used for civilian use. Moreover, the rule that the legal protection of journalists is dependent on the armed conflict being either a non-international or national conflict will be examined as well as the challenges posed by modern warfare tactics to the protection of journalists seeking to report the prosecution of armed conflict.

Chapter Two: Protection of Journalists and Media under International Humanitarian Law

This chapter examines and analyses the challenges relating to the protection of journalists and the media facilities in conflict zones. It focuses particularly on what protections if any, International Humanitarian Law affords to protection of journalists and the media reporting from armed conflict zones. Are current existing rules of protection sufficient and are they adequately respected and implemented?

This chapter analyses the different protections afforded to journalists according to the legal status they hold in armed conflict zones. It further emphasises on the protection granted to media facilities during conflict as well as the conditions where the media could be a legitimate target.

Chapter Three: Protection of Journalists under International Human Rights Law

This chapter examines how, under International Human Rights Law, the protection given to journalists within conflict zones is assured. Journalists' protection is extended to freedom of expression, opinion and thoughts. It discusses the legal standards relating to the protection of journalists under Human Rights instruments. It examines how journalist's human rights can be protected in conflict zones including the rights to, life, expression, freedom, security and liberty, which in essence all have a direct purpose to the practice of journalists as well as their safety.

The responsibilities of State authorities in relation to assuring protection of journalists from actions that would ultimately suppress their rights and freedoms, is also examined within this chapter. The obligation of States to abide by the above is imperative during the current times where war-torn countries such as Iraq, Syria and Yemen have seen an increase in the number of violent attacks against journalists.

Chapter Four: Other Avenues for the Protection of Journalists reporting Armed Conflict

Within this chapter, discussion of the legal principles in relation to the protection of journalists found under United Nations Resolutions will be covered. Efforts to support the protection of journalists by Regional Governmental Organisations and NGOs are also analysed. It shows that not only is there a soft law method to the protection of journalists in conflict areas, which is very weak, but also that States themselves must work harder to protect journalists working in combative situations.

This chapter also examines how the United Nations, Regional Governmental Organisations and Non-Governmental Agencies seek to apply legal and political measures in order to respond to the challenge of protecting journalists working in conflict situations.

Chapter Five: Jurisdiction over Crimes Committed against Journalists in Conflict Zones

Chapter five examines and investigates the emergent character of violence that is committed against journalists reporting from conflict zones. The main factor discussed within this chapter is whether or not the crimes that are targeted against journalists in conflict zones are fit to be categorised as war crimes or as crimes against humanity. This chapter also examines some national and international approaches towards jurisdiction for crimes against journalists covering armed conflict.

Conclusion

The conclusion proposes and justifies a way forward that State practice may take in order to ensure the protection of journalists covering armed conflicts.

Chapter One

The Legal Status of Journalists and the Media in Armed Conflict

Introduction

Under the principles of International Humanitarian Law, the status of a person determines the standard of treatment and protection to which they are entitled. It is therefore logical to consider initially how the legal status of a journalist working in a conflict area is classified under the law before examining the treatment and protection entitled to them from such classification.

Media facilities and equipment receive some protection during conflicts. International Humanitarian Law distinguishes between military and civilian objects.¹ Hence, belligerents may only target military objects and nothing else. Objects that are generally civilian in nature benefit from a presumption of civilian use. The legal protection afforded to journalists depends on whether the armed conflict is classified as international or non-international conflict.² This odd rule is no longer desirable and difficult to justify because most conflicts are now non-international rather than international.³

¹ Article 48 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

² Article 79 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

³ Listing at least 28 current and ongoing conflicts across the world, see also Global Conflict Tracker website at: <https://www.cfr.org/global/global-conflict-tracker/p32137#!/> last visited 16 June 2017

Freedom of the press is essential for ensuring democratic governance. Journalists have the right to seek and publish their reports during both peace and armed conflict times. Thus, the power of the media reporting in wartime should not be curtailed if democratic governments are to be held accountable by their citizens at the ballot box for how they treat citizens of other States abroad during times of armed conflict. The aim of this chapter is to analyse how the law relating to the legal status of journalists and the media has evolved in international law, and whether it is still fit for purpose. It evaluates both Customary International Law (CIL) and treaty origins of the relevant law.

This chapter is divided into Five Parts. Part one deals with the legal definition of the term 'Journalist'. Part two discusses the legal status of journalists in armed conflict. Part three deals with the definition of 'media object'. Part four examines the nature of contemporary armed conflict and freedom of the press in wartimes. Part Five examines The Concept of International Humanitarian Law and International Human Rights Law and the Relationships between the Two Laws. A brief conclusion is provided at the end of this chapter

Part One

The Legal Definition of 'Journalist'

1.1. Introduction

It is well established under International Humanitarian Law that all parties involved in conflict must at all times, distinguish between civilians and combatants.⁴ Civilians are persons who are not members of the armed force and who are protected against attack unless they directly take part in hostilities.⁵ Journalists and other media personnel are not accorded combatant status. Instead, they are treated as ordinary civilians and are thus protected under The 1907⁶ Hague and 1949 Geneva Convention.⁷

International Humanitarian Law distinguishes between different statuses for journalists, namely, war correspondents, embedded journalists, independent

⁴ See Articles 13, 48, 51 (2) and 52 (2) of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977; See also, ICRC, Customary IHL Database (2015) Rule 1 <https://www.icrc.org/customary-ihl/eng/docs/home> acceded on 11 April 2015; Rogers A, "Law of the Battlefield" Manchester (University Press, 1996)7; Michael Meyer "Armed Conflict and New Law", Aspects of the 1977 Geneva Protocols and the 1981 Weapons Convention (Chameleon Press Ltd 1989) p.107.

⁵ See, Jean-Marie Henckaents and Louie Dowald-Beck: Customary International Humanitarian Law (Vol1, Cambridge University Press 2010) p.115. See also, LTC Richard P. DiMeglio, and ET AL: Law of Armed Conflict Desk book" International and Operational Law Department the Judge advocate General's Legal Centre and School (U.S. army, Virginia 2012) p.38; Gary D. Solis: "The Law of Armed Conflict: International Humanitarian Law in War" (Cambridge University Press 2010) p. 232

⁶ (Hague) Convention (IV) Respecting the Laws and Customs of War on Land, Oct. 18, 1907, 36 Stat. 2277, T.S. 539, 1 Bevans 631, 205 Consol. T.S. 277, 3 Martens Nouveau Recueil (ser. 3) 461, *entered into force and for the United States* Jan. 26, 1910 [hereinafter Hague IV].

⁷ IV (Civilians): 75 U.N.T.S. 267. See Article 13 of the Hague Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. 29 July 1899; Article 13 of the Hague Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land.18 October 1907; Article 4 (4) of the Geneva Convention (III) relative to the Treatment of Prisoners of War 12 August 1949; Article 79 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

journalists and more recently citizen journalists.⁸ Therefore, it is important to define the term 'journalist' under International Humanitarian Law in order to determine the particular applicable status appertaining at any one time and the obligations of States towards journalists engaged in dangerous missions in conflict zones.

1.1.1. The term 'Journalist' Prior to 1977

International Humanitarian Law on the treatment and protection of prisoners of war refers to 'newspaper correspondents and reporters.' Under the 1989 Hague Convention⁹ and the 1949 Geneva Convention,¹⁰ 'newspaper correspondents and reporters' are to be given military authorisation to work as journalists and are to be treated as prisoners of war if captured by the other side.¹¹ Thus, journalists are

⁸ Compare Article 13 of the Hague Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land.18 October 1907 with Article 4 (4) of the Geneva Convention (1V) relative to the Protection of Civilian Persons in Time of War 12 August 1949 and Article 79 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

⁹ **1989** Convention, 2173 **UNTS** 222. Article 13 of the Hague Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land 29 July 1899 and Article 13 of the Hague Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land.18 October 1907 provided that "Individuals who follow an army without directly belonging to it, such as newspaper correspondents and reporters, sutlers, contractors, who fall into the enemy's hands, and whom the latter think fit to detain, have a right to be treated as prisoners of war, provided they can produce a certificate from the military authorities of the army they were accompanying."

¹⁰ Article 4 A (4) of the Geneva Convention (III) relative to the Treatment of Prisoners of War 12 August 1949 provided that" Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorisation from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model." For more details See, Kirby and Jackson, "International Humanitarian Law and the Protection of Media Personal", [1986] UNSW Law Journal, Vol 9,p. 44

¹¹ It is interesting to mention here that special protection was also made to protect newspaper reports that were captured during the American Civil War. Article 50 of the 1863 Lieber Code, provided that " editors, or reports of journals.....if captured, may be made prisoners of war, and detained as such"

characterised as civilians who follow the armed forces without belonging to them and, if captured, they are to be treated as prisoners of war.¹²

The treatment of journalists under The 1989 Hague Convention and 1949 Geneva Convention as prisoners of war if captured reflects the era of conventional international warfare. It presumes governmental control over their journalists. This would not be acceptable in modern times since governmental control over press has been diminished and journalists now have the state of autonomy where they work independently from their home governments.

1.1.2. The term 'Journalist' after 1977

The lack of definition of who is a journalist under the international law of armed conflict has spawned unclear and impaired distinctions between journalists and other media-active civilians.¹³ Thus, the increase in civilian journalists and multimedia active citizens makes it progressively more difficult to determine who is a journalist and who is merely an active citizen. Moreover, the increase in attacks on journalists in the 1960s raised concerns regarding the protection of journalists in armed conflicts. This led to the introduction of the Additional Protocols I¹⁴ and II¹⁵ to the 1949 Geneva Conventions.¹⁶

¹² See, Amit. Mukherjee, "Protection of Journalists Under International Humanitarian Law [1995] 17 Communication and the law, p.30

¹³See, Mag. Hilde Farthofer, "Journalists in armed conflicts-Protection measures in International Humanitarian Law" Paper presented at SGIR 7th Pan-European International Relations Conference, Stockholm, 9-11 September [2010] p.7

¹⁴ Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, deals only with international conflicts

Article 79 of the Additional Protocol I¹⁷ used the term 'journalist' but the term itself was left undefined.¹⁸ It is said that the ordinary meaning of the word must be applied to cover a much wider circle of people working for the press and other media.¹⁹ Nonetheless, it has also been argued that the definition contained in Draft Article 2 (a) of the International Convention for the Protection of Journalists Engaged in Dangerous Missions in Areas of Armed Conflict,²⁰ could serve as a guide for the interpretation of Article 79.

According to the definition in Draft Article 2 (a) of the International Convention for the Protection of Journalists Engaged in Dangerous Missions in Areas of Armed Conflict, "The term 'journalist' shall mean any correspondent, reporter, photographer, and their technical film, radio and television assistants who are ordinarily engaged in any of these activities as their principal occupation." It also covers civilian members of military news agencies,²¹ but does not include any uniformed members assigned to Armed Forces Radio and Television Service.²²

¹⁵ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977 deals only with non-international conflicts

¹⁶ In 1977 two treaties were drafted to supplement the Geneva Convention (1V) relative to the Protection of Civilian Persons in Time of War 12 August 1949: Additional Protocols I and II. The two Protocols were inspired by the International Committee of the Red Cross's belief that the 1949 Geneva Conventions and the Hague Regulations insufficiently covered certain areas of warfare in the conflicts following World War II, mainly protection of civilians. See, LTC Richard P. DiMeglio, and ET AL, p.21

¹⁷ Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

¹⁸ As Article 4A (4) of the Geneva Convention (III) relative to the Treatment of Prisoners of War 12 August 1949 does not define the term "war correspondents"

¹⁹ See, Griet. Verschlingel, p. 446

²⁰ See, Document of the United Nations A/10147 of 1 August 1975, Annex 1.p.921

²¹ Article 79 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 indirectly includes all civilians "accompanying the force" as defined in Article 4(A) (4) of the Geneva Convention (III) relative to the Treatment of Prisoners of War 12 August 1949. Furthermore, Article 50 (1) of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of

1.1.3. Clear definition is needed

It is quite clear that neither Article 79 nor Draft Article 2 (a) provides a clear definition of 'journalist'. This ambiguity threatens clarity about whom the privileges of protection should be extended. A new and clear definition of 'journalist' should cover all the different categories of those that practice journalism. Such a definition would remove the current distinction between war correspondents and other types of journalists. It is therefore important to investigate and try to consider a close definition of the term 'journalist'.

A working paper drafted by the United Nations Educational Scientific Council Organisation (UNESCO) proposed that the term journalist should include: "Any person, irrespective of nationality, who is regularly and professionally engaged as an editor, reporter, photographer, cameraman or technician of the press, radio, television or filmed news services in seeking, receiving, or imparting information,

Victims of International Armed Conflicts (Protocol I), 8 June 1977 which defines civilians (also referred to in Article 79), includes persons defined in Article 4(A) (4) of Geneva Convention III relative to the Treatment of Prisoners of War. Geneva, 12 August 1949.as well

²² See, Dieter Fleck: The Handbook of International Humanitarian Law, (1005) 515. Article 79 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 which protects journalists by categorising them as civilians was subject to criticisms. Thus, The Press Emblem Campaign creates a special category of journalist and defines the term of journalists in paragraph 25. It is interesting to note here that although the PEC maintained that the current protection for journalist under Article 79 of the Geneva Conventions is insufficient, the PEC differentiates between the role of the journalist and the civilian in times of conflict. 'They [journalists] have to take risks to report a situation by going to dangerous places on behalf of people's right to information, The PEC reports that it is this mission of information that justifies journalists being afforded special protection. But to achieve this distinction as a journalist under any newly proposed strategy, a specific definition will most likely need to be established to designate who is and who is not a journalist. See, Draft 'International Convention to strengthen the protection of Journalists in Zone of Armed Conflicts and Civil (2007)

including opinions, ideas and comments for daily or periodic publications, press agencies, radio or television broadcasting services or filmed news services.”²³

It is argued here that this definition is too narrow in as much as it requires or insists upon an element of professional occupation.²⁴ On the other hand, the UNESCO definition appears to be sufficiently broad because of its inclusion of all media workers and supporting staff. The underlying idea for this broad approach is that journalists can, by reporting in armed conflicts, prevent more harm befalling the public by bringing to the attention of both the local and international citizenry the consequences and reality of conflicts.²⁵

In a recent study, Peters and Tandoc (2001) defined the term ‘journalist’ as “someone employed to regularly engage in gathering, processing, and disseminating (activities) news and information (output) to serve public interest (social role).”²⁶ This attractive and persuasive definition requires three conditions to be met in order to qualify someone is a journalist. Firstly, the person’s primary source of livelihood must come from journalistic activities. Secondly, the person’s role should be to serve public welfare by producing news and information. The definition captures not just

²³ See, Document under heading “Protection of Journalists”, New Communication, Order Series No.4 UNESCO, Paris,1980 <http://www.unesco.org/new/en/communication-and-information/freedom-of-expression/safety-of-journalists/>>accessed 26 March 2015

²⁴ See, Hans Thoolen, p.6

²⁵ See, Griet. Verschingel, p. 446

²⁶ See, Jonathan Peters & Edson C. Tandoc, Jr. “People who aren't really reporters at all, who have no professional qualifications”: defining a journalist and deciding who may claim the privileges N.Y.U. Journal of Legislation & Public Policy Quorum.[2001]61. According to Merriam-Webster Dictionary, a “journalist” is a person who practices journalism. “Journalism” is: (a) the collection and editing of news for presentation through the media; (b) the public press; (c) an academic study concerned with the collection and editing of news or the management of a news medium; (d) writing designed for publication in a newspaper or magazine; (e) writing characterized by a direct presentation of facts or description of events without an attempt at interpretation; (f) writing designed to appeal to current popular taste or public interest.

journalistic activities (e.g. processing in the form of analysis or judgment) but also the ethical principles (e.g. honesty and fairness) that govern those activities. Finally, the person must engage in the gathering, processing, and disseminating of news and information on a regular basis.

Still, it is argued here that this definition is too narrow because it excludes other types of journalists such as 'Citizen Journalists' that are adversely affected when they seek to report armed conflicts. As long as the types of journalists are unpaid and often untrained reporters,²⁷ they would not benefit from Peters and Tandoc's proposition. The reality though is that with new forms of electronic media making mass communication available to non-professionals, the term 'journalist' should be extended to include citizen journalists as well as professional journalists.²⁸

To this extent, the 2010 Annual Report of the Special Rapporteur on the Right to Freedom of Expression defined journalists as "individuals that are dedicated to investigating, analysing and disseminating information, in a regular and specialised manner, through any type of written media, broadcast media, (television or radio) or

²⁷ It is interesting to note that Citizen Journalists were explicitly excluded by PEC when it defined the term journalist as encompassing "all civilians who work as reporters, correspondents, photographers, cameramen, graphic artists, and their assistants in the fields of the print media, radio, film, television and the electronic media (Internet), who carry out their activities on a regular basis, full time or part time, whatever their nationality, gender and religion." See, Draft Proposal for an International Convention to Strengthen the Protection of Journalists in Armed Conflicts and other situations including Civil Unrest and Targeted Killings. PEC, 2007, preamble, para 25, Retrieved from <http://www.presseblem.ch/4983.html>>accessed 2 June 2014

²⁸ Recommendation 4 of 3 May 1996 of the Committee of Ministers of the Council of Europe used the term journalist to cover "all representatives of the media, namely all those engaged in the collection, processing and dissemination of news and information including cameramen and photographers, as well as support staff such as drivers and interpreters".

electronic media. With the advent of new forms of communication, journalism has extended into new areas, including citizen journalism.”²⁹

On 26 November 2013, the United Nations General Assembly adopted the first Resolution on ‘Safety of Journalists and the Issue of Impunity.’³⁰ The text acknowledges that journalism has evolved and includes various forms, including “media institutions, private individuals and a range of organizations that seek, receive and impart information and ideas of all kinds, online as well as off-line, in the exercise of freedom of opinion and expression, in accordance with article 19 of the International Covenant on Civil and Political Rights, thus contributing to shape public debate.”³¹

Thus, it would be unhelpful to restrictively interpret the term ‘journalist’ because of the possibilities of a wide range of persons to effectively promote and achieve journalistic functions. The emphasis should fall on the behaviours and practices which bring individuals into the sphere of performing journalistic activities. However, it has been suggested that any new definition of journalist should have two elements.³² First, it should be made clear that any individual pursuing normal journalistic functions in an armed conflict zone is not directly participating in

²⁹ See, the Annual Report of the Special Rapporteur on the Right to Freedom of Expression 11 August 2010, A/65/284

³⁰ UN General Assembly Resolution on the Safety of Journalists and the issue of impunity, RES/68/163/ 21 Fabray 2014

³¹ Ibid; see also, Human Rights Committee 2011 General Comment No. 34 on Article 19, paragraph 44 defines journalism as “a function shared by a wide range of actors, including professional full time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere.”

³² Griet. Verschingel, p. 444

hostilities. Secondly, it should recognize and seek to include all types of journalistic activity.³³

Therefore, if the second element was adopted it would remove the distinction between independent journalists and war correspondents. It would also remove the uncertainty over the legal status of journalists under the law of armed conflict. It should be emphasized here that whatever definition is used to describe a journalist who is carrying out a task in a conflict zone, the journalist should follow the code of conduct and the rights and duties applied in zones of armed conflict. Journalists who are reporting from conflict zones should also be registered and their names should be passed through the international press media to the countries involved in conflict. This would add extra safety and protection to journalists against cases such as the threat of harassment and attack.

Part Two

The Legal Status of Journalists in Armed Conflict

1.2.1. Introduction

The law of armed conflict distinguishes between different categories of occupational journalism, namely, war correspondents, embedded journalists, independent

³³ See, Elizabeth Levin, "as a protected category: a new status for the media in international humanitarian Journalists law" [2013] UCLA Journal of International Law & Foreign Affairs, Vol.17,p.12

journalists, and more recently citizen journalists.³⁴ While war correspondents should be treated as prisoners of war if captured,³⁵ the other types of journalists are considered as civilians.³⁶ This section examines the development of the conception of the legal status of journalists under the international law of armed conflict.

1.2.2. War Correspondents

Under International Humanitarian Law, War Correspondents are representatives of the media, who accompany the armed forces without being actually members of the armed forces.³⁷ They are given civilian status, but with a special entitlement to prisoner of war status upon capture by a belligerent force.³⁸

War Correspondents travel with combatants, dresses as civilians, and do not directly engage in hostilities. However, because government accreditation allows them to

³⁴ Professor Dinstein proposes another category of journalists, which he refers to as those journalists who are members of the armed forces and cover the war for military news organs. However, such journalists are simply considered to be members of the armed forces, in contrast to independent or accredited journalists, and hence fall under the category of combatants. Yoram Dinstein: *The Conduct of Hostilities under the Law of International Armed Conflict* (Cambridge University Press 2004) 72

³⁵ See, Article 13 of the Hague Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. 29 July 1899 and Article 4 (A) of the Geneva Convention (III) relative to the Treatment of Prisoners of War 12 August 1949

³⁶ See, Article 79 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

³⁷ See, Griet Verschingel, p. 444; See also Balguy-Gallois, p.3; Isable Dusterhoft, p.8; Major Douglas W. Moore, "Twenty-First Century Embedded Journalists: Lawful Targets?" July [2009] the Army Lawyer DA PAM 27-50-434. pp.1-33

³⁸ Article 50 (1) of the Protocol Additional I to the 1949 Geneva Conventions of 12 August 1949, Relating to the Protection of Victims of International Armed Conflict, 8 June 1977; See LTC Richard P. DiMeglio, and others, p.92; See also Peter Rowe, "Prisoners of War in the Gulf Area: The Gulf War 1990-1991 in International and English Law", (Sweet& Maxwell 1993) p.193.

travel with armed forces, they may be, by virtue of their location, more exposed to collateral injury.³⁹

They must carry a government issued card identifying themselves as war correspondents and are therefore holders of this status. Article 13 of the 1899 Hague Convention (II) with Respect to the Laws and Customs of War on Land, states that “Individuals who follow an army without directly belonging to it, such as newspaper correspondents and reporters” are entitled in case of capture to prisoner-of-war treatment on one condition that they are in possession of “a certificate from the military authorities of the army which they were accompanying”.⁴⁰

In the same line of treatment, Article 4 (a) of the Geneva Convention (III) relative to the Treatment of Prisoners of War (12th August 1949) accords captured War Correspondents the status of prisoners of war. It provides that “prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy...(4) Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, War Correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed

³⁹ The accreditation of war correspondents through the armed forces is distinct from any accreditation that may come from the news agency that employs them. Turner and Norton, P.14. See, also Pilloud ET AL., P. 918

⁴⁰ This solution was retained in Article 81 by the 1929 Geneva Convention Relative to The Treatment of Prisoners of War, Article 13 of the Hague Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land.18 October 1907, Article 27 Oxford Manuel and Article 50 of Liber Code, See, Allan Rosas: The Legal Status of Prisoners of War: A study in International Humanitarian Law Applicable in Armed Conflicts (Helsinki 1976) p.302

forces, provided that they have received authorisation from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model".⁴¹

It is clear from the above provisions that the main principle regarding the treatment of war correspondents as prisoners of war is that they must have received authorisation from the armed forces which they accompany. Although Article 4 of the 1949 Geneva Convention⁴² states that War Correspondents should be given an identity card by the armed forces they accompany, it is argued that the possession of such a card is not a core condition of the right to be treated as a prisoner of war. Rather it is evidence that the person has received the required authorisation.⁴³

It has been lucidly stated that the War Correspondent card plays a similar role to that of a soldier's uniform. "It creates a presumption that if there is any doubt about the status of a person who demands prisoner of war status, that person remains under the protection of the 1949 Convention pending the decision of a competent tribunal, according to the procedure laid down in Article 5 (2) of the Third Convention".⁴⁴

⁴¹ Article 4(A) of the Geneva Convention (III) relative to the Treatment of Prisoners of War. Geneva 12 August 1949; See, Griet Verschingel, p. 444.

⁴² Geneva Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949.

⁴³ See, Saul, p. 103; Griet Verschingel, p. 444; Allan Rosas, p. 303

⁴⁴K Dörmann (2007) Journalist and News Media Personnel in Armed Conflicts: Protection Measures in International Humanitarian Law International Review of the Red Cross 2007; See also Gasser, p. 5. Article 5 Geneva Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949 stated that "The present Convention shall apply to the persons referred to in Article 4 from the time they fall into the power of the enemy and until their final release and repatriation. Should any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, belong to any of the categories enumerated in Article 4 , such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal."

Although the classification of war correspondents as prisoners of war under the 1949 Geneva Convention⁴⁵ is a secure measure in that such status carries with it various protections in detention, such status keeps War Correspondents in captivity, sometimes up to the end of the conflict..⁴⁶ It is worth noting here that the treatment of captured War Correspondents as prisoners of war does not imply that they are combatants under International Humanitarian Law. Such persons accompanying armed forces remain civilians, but are accorded prisoners of war status in recognition of their close association with the armed forces to which they are attached.⁴⁷ It follows from this rule that the international laws on prisoners of war should also apply to War Correspondents if they are taken captive while practising their profession.⁴⁸

One of the fundamental requirements of the 1949 Geneva Convention⁴⁹ is the prohibition against torturing prisoners. A prisoner can only be required to give his or her name, date of birth, rank, and service number. Thus, journalists are legally entitled to greater autonomy than most other civilian non-combatants.

Journalists can be detained only for "imperative reasons of security" and even then, are entitled to be held with the same legal protections as a prisoner of war, including

⁴⁵ Geneva Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949.

⁴⁶ See, Ben Saul, p.103; Peter Rowe, p.193

⁴⁷ Historically, as during the two World Wars, such proximity was also signified in practice by journalists frequently wearing the military uniform of the armed forces they accompanied, notwithstanding the obvious risk of being confused for a soldier by the army. See Saul, p.103

⁴⁸ Article 13 of the Geneva Convention (III) relative to the Treatment of Prisoners of War 12 August 1949. See Farthofer, 'Journalists in armed conflicts-Protection measures in the International Humanitarian Law' Paper presented at the SGIR 7th Pan-European International Relation Conference, Stockholm, 9-11 September [2010] p.3

⁴⁹ Geneva Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949.

the right not to respond to interrogation.⁵⁰ Furthermore, persons holding prisoner of war status must, in all circumstances be treated with respect.⁵¹

Additional Protocol II⁵² underlines similar protections for persons detained during non-international armed conflicts.⁵³ They must be treated humanely at all times and are entitled to respect, for their honour, convictions and religious practices.⁵⁴ In the same line of protection accorded to prisoners of war, the Rome Statute states clearly that prisoners of war are persons who are protected against inhumane treatment, execution without preceding trial, torture and so on, just like civilians.⁵⁵

1.2.3. Independent journalists

It is well established that journalists who are not authorised or accredited by a military unit receive no special recognition under International Humanitarian Law. Instead they are covered by the 1949 Geneva Convention⁵⁶ which deals with the protection of civilians in times of war. Thus, journalists who work independently in

⁵⁰ Articles 14 and 17 of the Geneva Convention (III) relative to the Treatment of Prisoners of War 12 August 1949; Article 45 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 applicable to international armed conflicts, grants the protection of 'prisoner of war' status to persons taking part in hostilities who fall into the power of an adverse party.

⁵¹ Article 17 of the Geneva Convention (III) relative to the Treatment of Prisoners of War 12 August 1949

⁵² Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977

⁵³ See, Fleck: The Law of Non-international Armed Conflicts The Handbook of International Humanitarian Law, (2nd Edition 2008) Margin No.1215

⁵⁴ Article 4 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977

⁵⁵ Article 8 (2) (a) Rome Statute of the International Criminal Court 1998

⁵⁶ Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War 12 August 1949

conflict areas are deemed to be civilians. As civilians, it is illegal to target or attack them provided they take no active part in hostilities.

Article 79 of the Additional Protocol 1 re-affirmed this legal status for independent journalists when it provided that “1. Journalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians within the meaning of Article 50, paragraph 1. 2.⁵⁷ They shall be protected as such under the Conventions and this Protocol, provided that they take no action adversely affecting their status as civilians, and without prejudice to the right of war correspondents accredited to the armed forces to the status provided for in Article 4 (a) (4) of the Third Convention. 3. They may obtain an identity card similar to the model in Annex II of this Protocol. This card, which shall be issued by the government of the state of which the journalist is a national or in whose territory he resides or in which the news medium employing him is located, shall attest to his status as a journalist.”⁵⁸

⁵⁷ Article 50 Geneva Convention (1V) relative to the Protection of Civilian Persons in Time of War 12 August 1949 provides that “ A civilian is any person who does not belong to one of the categories of persons referred to in Article 4 A (1), (2), (3) and (6) of the Third Convention and in Article 43 of this Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian. 2. The civilian population comprises all persons who are civilians. 3. The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.”

⁵⁸ Saul argued (p.106) While Article 79 Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 provides that journalists shall be ‘considered’ as civilians, the provision is understood as declaring the pre-existing law that such journalists are civilians according to Art 50(1) of Protocol I. The provision of Article 79 creates no new status for journalists, but explicitly confirms that they are civilians; codifies the customary rule that they are immune from attack so long as they do not participate in hostilities; and does not prejudice the entitlement of authorised war correspondents to POW status. Article 79 was adopted without reservation, and no subsequent reservations have been made to the Article; Article 79 has been affirmed as customary international law, with observance of the principle in numerous State military manuals, as well as in State practice – including by States not party to Protocol I. See, Jean- Marie Henckaerts and Louise Doswald-Beck (eds) *International Committee of the Red Cross: Customary International Humanitarian Law*, Volume I: Rules, Volume 2: Practice (two parts) (Cambridge University Press, Cambridge, 2005) p.115; See also, the ICRC website on customary international law, including updated State practice on Article 79, at http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule34. 64

Independent journalists are undertaking professional activities in areas affected by hostilities, but who are not accompanying the armed forces form a distinct category.⁵⁹ This category of journalist will not be treated as a prisoner of war upon capture by an armed force. Instead, they will be considered as civilians with all the protection and immunity conferred by International Humanitarian Law on civilians within the meaning of Article 50.⁶⁰

Thus, journalists are protected against the effects of hostilities⁶¹ and against arbitrary conduct by a party to the conflict when they are captured or arrested.⁶² Thus, the difference between journalists protected by article 79 of the Additional Protocol I and war correspondents protected by Article 4 (a) (4) of the 1949 Geneva Convention⁶³ is that the latter, when captured, are to be treated as prisoners of war, while the former are to be treated as civilians.⁶⁴ Therefore, International Humanitarian Law applies different rules towards journalists working in conflict zones. It is believed that such a law is odd and as such we shall discuss this point in more details in chapter two.

In order to consider such journalists as civilians and then benefit from the international law protection, they must not actively engage in combat or work

⁵⁹ See, Gasser, p.6

⁶⁰ Robin Geiss, "How Does International Humanitarian Law Protect Journalists in Armed-Conflict Situations"? Int'l Comm. Red Cross [2010] p.7; Rogers A, p.8.

⁶¹ See for example, Articles 48,51,57 and 83(3) Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War 12 August 1949

⁶² See, Balguy-Gallois, p.4, Gary D. Solis, p.237

⁶³ Geneva Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949.

⁶⁴ See, Amit, p.35, Griet Verschingel, p.442. Under Article 79 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 journalists received additional protection. This so-called additional protection is based on the fact that journalists normally undergo more danger than what other citizens undergo of danger.

together with the enemy, for instance by arming themselves.⁶⁵ However, as with other civilians, journalists lose their special protection if they take direct part in hostilities, but only for as long as they take a direct part. Participation does not include activities such as interviewing, taking pictures, video, or audio recordings, or any other usual journalistic tasks even the dissemination of propaganda by a journalist does not amount to direct participation.⁶⁶

As stipulated in Article 79 of the Additional Protocol I, the journalist, while exercising his professional mission, can be identified by an identity card. It is clear that the purpose of the identity card is to prove that the person in the armed conflict is a journalist. Article 79 does not, however, create a right to be issued an identity card, but leaves it to the discretion of the issuing authority, according to their own national rules or practices.⁶⁷ The identity card must be issued by the government of the State of which the journalist is a national or by the government of the State where the

⁶⁵ Reporters Without Borders points out to journalist's actions which conduct can lead to a loss of the status as civilians according to International Humanitarian Law. For more advice regarding the actions of journalists in armed conflict, see Reporter without Borders, Handbook for Journalists, Chapter 9, and Principle 8. See also, Clarke, Glynn and Rogers, "Combatant and Prisoners of war Status: Aspects of the 1977 Geneva Protocols and the 1981 Weapons Convention " (Chameleon Press Ltd, 1989) 118

⁶⁶ See, Sandoz, Y, Swinarski, C, and Zimmerman, B. (Eds.): (Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949 (Switzerland: ICRC. 1987). The International Criminal Tribunal for the former Yugoslavia noted this in its final report on the NATO bombing, stating that whether the media constitutes a legitimate target group is a debatable issue. If the media is used to incite crimes, as in Rwanda, then it is a legitimate target. If it is merely disseminating propaganda to generate support for the war effort, it is not a legitimate target. (ICTY, 2000, para. 47)

⁶⁷ See, ICRC Commentary to Art 79, para 3274. The list of issuing authorities is exhaustive and so, for instance, no supranational organisation (such as professional media organisations or unions) may issue cards (ICRC Commentary to Art 79, para 3275). There is, of course, a danger that national authorities will refuse to issue identity cards in order to improperly restrict media coverage. See Saul, p.107

journalist works. Article 50 (1) requires that “in case of doubt whether a person is a civilian, that person shall be considered to be a civilian.”⁶⁸

It is interesting to note here that the protection granted to journalists under Article 79 of the Additional Protocol I is not linked to the domicile or to the nationality of the person concerned. It should follow from this rule that any journalist who is a domicile in or a national of a State involved in the conflict or a domicile in or a national of a neutral State, is generally protected by international law.⁶⁹

1.2.4. Embedded Journalists

The method of embedding journalists in the military units is one of the US government’s strategies to control information. This strategy was used mainly during the 1991 Gulf war, where journalists had been grouped and headed by the military, Media coverage was censored and no access was given to the actual fighting.⁷⁰

This kind of journalism has drawn more attention in recent years mainly during the 2003 Iraq war. It is reported that there were about 700 embedded journalists with the American and British military units during the war in Iraq.⁷¹

⁶⁸ Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

⁶⁹ See, Amit, p.30.

⁷⁰ The embedding strategy has generated a great deal of criticism, especially among journalists themselves. It can be demonstrated, however, that the critical stance depends either on actual involvement in the hostilities or on the degree of support for the US forces in the Gulf war. See, Christiane Eilders, “Media under fire: Fact and fiction in conditions of war” *International Review of the Red Cross*, Vol 87 Number 860 December [2005].P.643

⁷¹ For more details see, Major Douglas W. Moore, pp.1-33. It has been said that several key factors encouraged the US military to take this approach: (1) the demand for more access to combat coverage, (2) the impracticability of large-scale censorship due to technology considerations, (3) a

Those journalists are inserted into military units and consent to a number of ground rules obliging them to remain with the unit to which they are attached and which ensures their protection.⁷² They travel with the troops and report from the battlefield. They are usually required to sign a 'Hold Harmless/Release from Liability Statement' by the military with which they are embedded.⁷³ The embedded journalists can only base their reports on information available in the unit they are embedded with.⁷⁴

The work of embedded journalists has been widely acknowledged by the media perspective as not ideal.⁷⁵ Nick Pollard, the former head of Sky News wrote: "Television coverage of the Iraq war generated intense debate within the industry and the wider world. In particular the use of embedded reporters accompanying troops raised the question of whether they could ever be really impartial while relying on the military for safety, transport, food and shelter. Critics also questioned the

better understanding by DOD of how media coverage supported its own military objectives, and (4) public expectations. Of these factors, DOD's use of the media to support operational objectives was fundamental to changing the war correspondent's role on the battlefield. The formal system of embedding ended shortly after President George W. Bush declared an end to major combat operations in Iraq on 1 May 2003. During the six week period of major combat operations, 400 journalists embedded with the U.S. Army, eighteen with the U.S. Air Force, 150 with the U.S. Marines, and 141 with the U.S. Navy. Nearly 100 of the war correspondents were foreign reporters including a few al-Jazeera reporters (although they were attached to rear units that never left Kuwait). The British embedded 128 journalists. Following 1 May 2003, many embedded reporters left their units to return to traditional reporting techniques such as unilateral reporting.

⁷² See Balguy-Gallois, p.5

⁷³ The Ground Rules Agreement established by the Coalition Force Land Component Command for the media; See also, Balguy-Gallois, p.4

⁷⁴ See K. Tuosto, "The Grunt Truth of Embedded Journalism: The New Media/Military Relationship" *Stanford Journal for International Relations*, [2008] p.22

⁷⁵ On the other hand, the work of embedded journalists is widely recognized as one of the most successful ventures between the military and the media in history. This success was attributable to the military's willingness to integrate the embedded concept from the highest strategic level to the lowest unit on the ground. See, Christopher Paul and James j. Kim, "reporters on the battlefield: the embedded press system in historical context" [2004]. pp 52,53;

value of such reporting when correspondents and camera crews were not free to roam beyond the immediate vicinity of the unit they were stationed with.”⁷⁶

Embedded journalists are often, but not always, War Correspondents because the status of war correspondents is dependent upon accreditation from the government. Many embedded journalists qualify for this status when they receive the authorisation to embed.⁷⁷

The legal status of embedded journalists is not clear. It has been said⁷⁸ that such journalists are not protected by International Humanitarian Law because they cannot be considered as war correspondents, nor can they be considered as journalists in the sense of Article 79.⁷⁹ On the other hand, it is suggested that such journalists should be equated with war correspondents within the meaning of Article 4 (a) (4) of the 1949 Geneva Convention⁸⁰ in order to benefit from prisoner of war status.⁸¹

The media guideline of the British Ministry of Defence has adopted this view and granted embedded journalists prisoner of war status if they are captured.⁸² On the

⁷⁶ See, Pollard, Non-stop deadlines: 24-hour news. In J. Owen and H. Purdey (Eds.), *International News Reporting: Frontlines and Deadlines*. London, UK: Wiley Blackwell [1999] pp.122, 123. It is interesting to note here that in response to The Department of Defense’s media policy for combat operations, Iran has declared that the Coalition’s use of embedded journalists violates Article 79, Protocol I to the Geneva Conventions. Consequently, Iran warns that it has the right to lawfully target embedded journalists as they are not being used in their professional capacity, but instead as an extension of military operations. For more details, see Major Douglas W. Moore, p.2

⁷⁷ See, Douglas W. Moore, p.5

⁷⁸ See, Griet Verschingel, p. 445

⁷⁹ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

⁸⁰ Geneva Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949

⁸¹ See, Saul, p.108

⁸² See, Balguy-Gallois, p.3; Jean-François Bureau (Director of Information and Communication, Ministry of Defence spokesperson), “Embedded: war reporting”, in Jean-Marie Charon and Arnaud

other hand, the French military authorities suggested that embedded journalists are only entitled to civilian status as provided in Article 79.⁸³

It is quite clear that such conflicting views regarding embedded journalists is odd,⁸⁴ and this point must be clarified, especially since the prisoner of war status granted to war correspondents has practical consequences, mainly in term of interrogation⁸⁵ and confiscation of personal belongings.⁸⁶ On the other hand, it has been argued that classifying embedded journalists as independent journalists is incorrect under international law because such journalists are authorised to accompany armed forces and they should be treated as war correspondents.⁸⁷

However, because of the restrictions placed on such journalists by the armed forces, there is a real concern about their journalistic independence. Such journalists should follow the military rules when they practice their profession,⁸⁸ therefore their work will be monitored carefully by the armed authorities. Thus, under the general guide, the release of information will be controlled because it might be of benefit to an enemy.⁸⁹

Mercier (eds), Weapons of Mass Communication. War reporting from Iraq: 1991-2003, The CNRS Communication Series, Paris, [2004].p.15

⁸³ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

⁸⁴ See, Balguy-Gallois, p.5

⁸⁵ Article 17 of the Geneva Convention (III) relative to the Treatment of Prisoners of War 12 August 1949

⁸⁶ Article 18 of the Geneva Convention (III) relative to the Treatment of Prisoners of War 12 August 1949

⁸⁷ See, Saul, p.108

⁸⁸ See, Farthofer, p. 4

⁸⁹ Ministry of Defence, Greenbook P.10. In this regard, some militaries have adopted their own protocols governing relations between the military and journalists during armed conflict. The revised British Ministry of Defence (MOD) 'Green Book' (MOD 2006) is regarded as international best practice and was welcomed by the International News Safety Institute (2006b) after consultations between the MOD and media organisations. The Green Book recognises the right of independent journalists to freely move and report in conflict areas, and the British military's commitment not to deliberately target journalists. It also addresses a range of other media matters in detail. Including provisions concerning

1.2.5. Citizen journalists

Citizen journalists are unpaid and often untrained reporters who disseminate and analyse news on blogs, wikis and share websites using the latest technology tools and worldwide distribution via the internet to find new and different news stories.⁹⁰

Referring to these people as 'citizen journalists', has been criticised on the ground that they have not been oriented toward the standards and practices of professional journalism and also on the fact that their reports might be subjective and inaccurate.⁹¹ However, the role of citizen journalists has been widely recognised in recent years. CPJ Executive Director Joel Simon stated that "This is another tragic reminder of the role that citizen journalists have played covering the conflict in Syria, including the documentation of horrific violence perpetrated against civilians."⁹²

However, despite the increasing number of citizen journalists reporting from conflict zones, international law of armed conflict gives no protection to these citizen journalists reporting in such conflicts. Thus, under the current law those journalists have no special status and should benefit from general rules of protection.

safety, security, media accreditation, war correspondents, embedded assignments, media briefings, pooling, restrictions on reporting for security or other reasons, control of the release of information, embargoes, casualty reporting, reporting on prisoners of war, interviews of air crew, military assistance with the travel and support of journalists, and procedures for facilitating these working arrangements between the media and the military. The International News Safety Institute (2007c, 11) has urged all military forces to adopt similar protocols.

⁹⁰ See, Mona Elbahtiy and Sarah Elliott, "Safety of Journalists Research Pack" Center of Governance and Human Rights, University of Cambridge [2012] 57

⁹¹ See, Griet Verschingel, p.445 said that the distinction between the two (Professional Journalist and Citizen journalist) is however needed because then the professional journalist can get some privileges-for example the professional journalist can keep his sources secret or in an armed conflict, the professional journalist can get an identity card-, whereas the citizen journalist not.

⁹² See, Committee to Protect Journalists at www.cpj.org>accessed 1 August 2014

It is thought that international law of human rights should apply to protect this type of journalists on the ground that they are civilians as long as they are not making an effective contribution to military action.⁹³

Part Three

The Definition of Media object

1.3.1. Introduction

It is well established under the law of war that media facilities and equipment receive some protection during conflict.⁹⁴ International Humanitarian Law distinguishes between military and civilian objects.⁹⁵ Under International Humanitarian Law, only

⁹³ See, Pollard, "Non-stop deadlines: 24-hour news". In J. Owen and H. Purdey (Eds.), *International news reporting: Frontlines and deadlines*, London, UK: Wiley Blackwell. 2006) p.109

⁹⁴ The prohibition of attacks on civilian objects was firmly established in International Humanitarian Law in the beginning of the century and reaffirmed in the 1977 Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 and in the Rome Statute of the International Criminal Court. Article 25 of 1907 Convention respecting the Laws and Customs of War on Land and its annex: Regulations concerning, the Laws and Customs of War on Land. The Hague, 18 October 1907 provided that "The attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited." Article 27 provided that "In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes. It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand." Article 8 (2) of the Rome Statute of the International Criminal Court provided that "For the purpose of this Statute, 'war crimes' means: (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention: (i) Wilful killing; (ii) Torture or inhuman treatment, including biological experiments; (iii) Wilfully causing great suffering, or serious injury to body or health; (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power; (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial; (vii) Unlawful deportation or transfer or unlawful confinement; (viii) Taking of hostages."

⁹⁵ See, LTC Richard P. DiMeglio, and others, p.135; Rogers A, p.9

military objects may be legitimately targeted.⁹⁶ Objects that are generally civilian in nature benefit from a presumption of civilian use.

However, once an object is used for hostile purposes, it loses its civilian status for the duration of the conflict, regardless of any prior civilian use.⁹⁷ This section examines the legal definition of the media object and in what circumstances the media can be targeted.

1.3.2. The General Rule

Article 48 of the Additional Protocol I states clearly that “In order to ensure respect for and protection of the civilian population and civilian objects, the parties to the conflict shall, at all times, distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.”⁹⁸

It is worth noting that Article 48 only prohibits direct attacks against civilian objects and does not deal with the question of incidental damage resulting from attacks directed against military objectives.⁹⁹ However, one can argue that an attack which

⁹⁶ See, Saul, p.109; LTC Richard P. DiMeglio, and ET AL, p.137

⁹⁷ United Nations Security Council Resolution on Protection of Civilian in Armed Conflict, S/RES/1738/28/April/2006

⁹⁸ Articles 48 and 52 (2) Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977; See, ICRC, Customary IHL Database (2015) Rule 7, <https://www.icrc.org/customary-ihl/eng/docs/home> acceded on 11 April 2015

⁹⁹ See, Rogers, p.10

affects civilian objects is not unlawful as long as it is directed against a military objective and the incidental damage to civilian objects is not excessive.

1.3.3. Definition of Civil Object

Article 52 (1) of the Additional Protocol I states that “Civilian objects are all objects which are not military objectives as defined in paragraph 2.”¹⁰⁰ It follows from this rule that media facilities, such as television and radio broadcasting facilities or transmitters, are presumed to be civilian objects and, as such, are not legitimate targets as long as the media facilities do not make an effective contribution to military action.¹⁰¹ The direct attack against a civilian object is a war crime. Article 85 (5) of the Additional Protocol I provides that “Without prejudice to the application of the Conventions and of this Protocol, grave breaches of these instruments shall be regarded as war crimes.”¹⁰²

Curiously, International Humanitarian Law adopted a strategy of defining civilian objects not by what they are, but by distinguishing them from listed military

¹⁰⁰ Article 52 (1) Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977; See, Gallois, p. 7

¹⁰¹ See, Griet Verschingel, p. 445. Reporters Without Borders, Crisis in Iraq 3193003, Declaration on the Safety of Journalists and Media Personnel in Situations Involving Armed Conflicts” 2003 URL: www.rsf.org/rubrique.php3?id-rubrique=236s. The declaration stressed that media equipment should be treated as civilian object in wartime and should not be attracted

¹⁰² Article 85 (5) of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I) 8 June 1977; See Gallois, p7. Also according to Article 8 (2) (b) (ii) of the Rome Statue of the International Criminal Court 1998 the direct attack against a civilian object is a war crime. See also United Nations Security Council Resolution on Protection of Civilian in Armed Conflict, S/RES/ 1738/28/April/2006. It is pointed out once more that the facilities and equipment of the media are civilian objects and therefore may not be directly attacked or become victims of reprisals. This applies to both international and internal conflicts.

objects.¹⁰³ This strategy was confirmed by the International Criminal Tribunal for Yugoslavia (ICTY) in the *Blaskic* case where the Tribunal defined a civilian object as “any property that could not be legitimately considered a military objective.”¹⁰⁴

It has been argued that although the method of defining things by the negative is odd, it has at least, the advantage of avoiding overlap and being inclusive.¹⁰⁵ Thus, under this definition, any use of the media that does not amount to incitement to war crimes would make that object a civilian object. Media equipment and facilities that are not used for military purposes and that do not meet the conditions set out in Article 52 (2) of Additional Protocol I fall into the category of civilian objects, which shall not be the object of attack or reprisals according to Article 52 (1) of Additional Protocol I.¹⁰⁶

Article 52 (3) of Additional Protocol I states that “In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used.” Accordingly, media equipment and facilities should benefit from a presumption of civilian use in case of doubt, even if they are situated in conflict zones.¹⁰⁷ Moreover, media equipment and

¹⁰³ See Saul, p.112

¹⁰⁴ ICTY, the Prosecutor v. Tihomir Blaskic (IT-95-14), Judgment of 3 March 2000. Para.180

¹⁰⁵ See, Saul, p.112

¹⁰⁶ See, Balguy-Gallois, p.7

¹⁰⁷ See Balguy-Gallois, p.7; Griet Verschingel, p. 443

facilities should also benefit from the measures of precaution set down in Article 57 of Additional Protocol I which is to protect civilian populations and civilian objects.¹⁰⁸

However, once an object is used for hostile purposes, it loses its civilian status for the duration of the conflict, regardless of any prior civilian use. In line with this rule, the ICTY Committee justified the attack by NATO on Radio Televisija Srbije (RTS). In this case, NATO planes deliberately bombed the headquarters and studios of Serbian State radio-television in the heart of Belgrade in 1999. At least 16 civilians died and another 16 were wounded.

The ICTY Committee recommended that the Office of the Prosecutor open no investigation into the RTS bombing on the ground that RTS installations had indeed been used as radio transmitters and relays for the armed and special police forces of

¹⁰⁸ Article 57 Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 stated that “1. In the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects. 2. With respect to attacks, the following precautions shall be taken: (a) those who plan or decide upon an attack shall: (i) do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection but are military objectives within the meaning of paragraph 2 of Article 52 and that it is not prohibited by the provisions of this Protocol to attack them; (ii) take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects; (iii) refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated; (b) an attack shall be cancelled or suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated; (c) effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit. 3. When a choice is possible between several military objectives for obtaining a similar military advantage, the objective to be selected shall be that the attack on which may be expected to cause the least danger to civilian lives and to civilian objects. 4. In the conduct of military operations at sea or in the air, each Party to the conflict shall, in conformity with its rights and duties under the rules of international law applicable in armed conflict, take all reasonable precautions to avoid losses of civilian lives and damage to civilian objects. 5. No provision of this Article may be construed as authorizing any attacks against the civilian population, civilians or civilian objects.”

the Federal Republic of Yugoslavia prior to that attack. The ICTY Committee of review was justified in concluding that they thus constituted legitimate military targets for NATO.¹⁰⁹

1.3.4. Can the media be military objectives?

Article 52 (2) of the Additional Protocol I provides that “attacks shall be limited strictly to military objectives. As far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage.”¹¹⁰

Thus, according to this provision, for media equipment and facilities such as radio and television to be lawful targets, they must be military objectives. Article 52 (2) of Additional Protocol I requires that two conditions must be met in order to consider the object as a military object. The first condition is that the object must, by its nature, location, purpose or uses, make an effective contribution to military action.¹¹¹ The second condition is that the destruction of the object offers a definite military advantage. Hence, the second condition clearly implies that it is unlawful to destroy any objects that serve no military purpose whatsoever.

¹⁰⁹ See, ICTY, Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia, 8 June 2000, paras. 55, 75 and 76, at: <http://www.un.org/icty/pressreal/nato061300.htm>. See also, for example, Reporters Without Borders, Serbia Broadcasting: Chronicle of Martyrdom Foretold, Report, November 2000, P.28).

¹¹⁰ Article 52 (2) of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977; See Gallois, p. 9. See also Daoud Kuttub, “The media and Iraq: a blood bath for and gross dehumanization of Iraqis” [2007] International Review of the Red Cross, Volume 89 Number 868 December, pp.879-891

¹¹¹ See, Saul, p.112

Moreover, attacks that offer only indeterminate or possible advantages are also unlawful.¹¹² Accordingly, the military commanders must decide at the time of the attack on the media for example, radio or television stations that the destruction on those facilities offers a definite military advantage. The final report by ICTY Prosecutor noted that the military advantage anticipated must be “substantial and relatively close rather than hardly perceptible and likely to appear only in the long term.”¹¹³

1.3.5. Dual Use of Media

When media equipment and facilities have dual use, i.e. civilian and military, their attack would be lawful providing that the conditions in Article 52 (2) of the Additional Protocol I, as well as the requirements of proportionality and advance warning have been met.¹¹⁴ Thus, during NATO’s air campaign in Yugoslavia, the Military Commanders justified the bombing of RTS on the grounds that the facilities were being used for two purposes, not only were they being employed for civilian

¹¹² See, Balguy-Gallois, p.9. See also W. Hays Parks, “Air war and the law of war”, [1990] Air Force Law Review, Vol 32, No,1.pp141-145

¹¹³ See, final Report to the ICTY Prosecutor 2000 at Para76. For those reasons it was argued that there is doubt about whether it was lawful for American forces to bomb Al-Jazeera television facilities in Kabul and Baghdad in military engagements in Afghanistan in 2001 and Iraq in 2003; or for Israel to bomb Palestinian broadcasting facilities in Gaza and Ramallah in 2002, or Lebanese media in Beirut in 2006. See Saul, p.113

¹¹⁴ Art. 57 (2) (2) of the 1977 Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977; See, Balguy-Gallois, p.11. Saul, p.113

purposes, but they were part of the C3 network (the Serbian army Command, Control and Communications network).¹¹⁵

The Military Commanders also justified the attack by stating that adequate warning had been given and the 10 to 17 civilian casualties caused were not excessive in relation to the military advantage gained by disrupting part of the command and control centre.¹¹⁶ In its final report, the ICTY Committee of review considered that if the RTS facilities had been indeed used for armed forces transmitter purposes, they constituted a military objective.¹¹⁷ Thus, media facilities may potentially be targeted but this requires a careful balancing of military advantage gained versus collateral damage caused.¹¹⁸

¹¹⁵ The relevant statements by NATO representatives are reported in: ICTY, Final Report NATO Bombing, paras. 72, 73 and 75; Kosovo/Operation Allied Force After-Action Report, US Department of Defense, report submitted to Congress on 31 January 2000, p. 83, available at <http://www.defenselink.mil/pubs/kaar02072000.pdf> accessed 23 August 2014; NATO/Federal Republic of Yugoslavia. "Collateral Damage" or Unlawful Killings? Violations of the Laws of War by NATO during Operation Allied Force, Amnesty International, London, June 2000, p. 39, available at: http://www.amnesty.org/ailib/intcam/kosovo/docs/nato_all.pdf.

¹¹⁶ See, final Report to the ICTY Prosecutor 2000 at Paras 77-78, In March 2003, US forces attacked Iraq's main television station in Baghdad, in which nine journalists have been killed according to the CPJ investigation, The CPJ states that "while there is no evidence to conclude that the US military has deliberately targeted the press in Iraq, the record does show that US forces do not take adequate precautions to ensure that journalists can work safely. And when journalists are killed, the US military is often unwilling to launch an adequate investigation or take steps to mitigate risk. Official investigations have been conducted in only three cases in which journalists were killed by US forces. See, CPJ, Report of 2005, available at www.cpj.org/news/2005/Qatar23may05na_report.html accessed 27 September 2014).

¹¹⁷ ICTY, Final Report NATO Bombing, paras 55, 75 and 76. Another example is that on 27 March 2003, the Information Ministry in Baghdad was bombed twice by the Coalition forces, even though it was known to house international media offices as well. On 8 April 2003, after an American tank shelled the Hotel Palestine, the gathering spot for the foreign press in Baghdad, a spokesman for the US Defense Department postulated that the hotel had been a military objective for the 48 hours that it had been a meeting place for Iraqi officials. See Reporters Without Borders, Two Murders and a Lie, inquiry by Jean-Paul Mari, January 2004, p. 14, at <http://www.rsf.org> accessed 22 August 2014.

¹¹⁸ See, LTC Richard P. DiMeglio, and others, p. 138

1.3.6. Media and Propaganda

The ICTY stated that the media are not legitimate targets, merely because they engage in propaganda, even if such activities support the war efforts.¹¹⁹ However, it is well established that the media becomes a legitimate military target if it incites others to commit war crimes, crimes against humanity or genocide.¹²⁰

The ICTY stated clearly that, “whether the media constitutes a legitimate target group is a debatable issue. If the media is used to incite crimes, as in Rwanda, then would be a legitimate target. If it is merely disseminating propaganda to generate support for the war effort, it would not be a legitimate target.”¹²¹ Such acts are prohibited by Article 4 of the United Nations Security Council Resolution 1738.¹²² Nonetheless, such crimes can also be punished as war crimes or crimes against humanity.¹²³

¹¹⁹ ICTY, Final Report NATO Bombing, paras 47,55,74,76

¹²⁰ This was illustrated by cases at the International Criminal Tribunal for Rwanda, where such acts are punishable under international criminal law. An example of this hate propaganda is Radio des Mille Collines in Rwanda. The Hutu president called up on this Radio-Station to commit genocide and sexual violence against the Tutsis. This act is prohibited by (art. 4 of the United Nations Security Council Resolution 1738, 2006, <http://www.un.org/News/Press/docs/2006/sc8929.doc.htm>), but these crimes can also be punished as war crimes or crimes against humanity. For more details see Odora, pp.307-324. See also Rome Statute of the International Criminal Court 1998 (UNGA A/CONF 183/9, 2187 UNTS 90, art 25(3) (e) (RS). The ICTR has, however, not clearly established to what extent such media can become legitimate targets. See the cases concerning the media’s responsibility in relation to public incitement: ICTR Prosecutor v Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze ICTR-99-52-T (3 December 2003); ICTR Prosecutor v Georges Ruggiu ICTR-97-32-I (1 June 2000); See also Gasser, p.382

¹²¹ ICTY, Final Report NATO Bombing, Para 47

¹²² United Nations Security Council Resolution on Protection of Civilian in Armed Conflict, S/RES/1738/28/April/2006

¹²³ Articles 6 and 8 of the Rome Statute of the International Criminal Court 1998

Part Four

Special Circumstances of Journalists in Armed Conflicts

1.4.1. Introduction

International Humanitarian Law applies various rules depending on whether an armed conflict is of an international or internal nature.¹²⁴ The legal protections afforded to journalists in international armed conflicts are more expansive and stronger than those for non-international armed conflicts.¹²⁵

The increasing number of casualties resulting from a variety of non-international conflicts shows that great effort is required to improve and develop a new approach to determine the legal status of journalists. To understand the regulation of the protection of journalists in conflict zones, and in order to apply a single law of protection to all journalists who work in conflict zones, it is necessary to study the types of conflicts recognised under International Humanitarian Law. The second point to be discussed in this section is the freedom of speech and the power of the media in wartime.

¹²⁴See, Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, Volume I. Rules, (Cambridge University Press, 2005) 115-118.

¹²⁵ See, Bartels, R. "Timelines, borderline and conflicts: the historical evolution of legal divide between international and non-international armed conflicts." [2009] International Review of the Red Cross, 91 (873), pp.35-67; Byron, C. "Armed conflicts: International or non-international?" [2001] Journal of conflict and Security Law 6(1),pp.63-90

1.4.2. The Nature of Contemporary Armed conflict

1.4.2.1. Definition of Armed Conflict

International Humanitarian Law does not define the term armed conflict. However, it differentiates between two forms of armed hostilities, specifically between (declared) “war” and (other) “armed conflicts”.¹²⁶ In *Prosecutor v. Dusko Tadic*, the International Criminal Tribunal for the former Yugoslavia offered a definition of ‘armed conflict’. The Tribunal held that there is an armed conflict “whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organised armed groups or between such groups within a State.”¹²⁷ According to this definition, International Humanitarian Law recognises two types of armed conflict, namely, international armed conflicts and non-international armed conflicts.¹²⁸

¹²⁶ See, Josef Mrázek, “Armed Conflicts and the use of force law armed conflicts and the use of force”. [2010] 1 CYIL p.91; See also Griet Verschingel, p. 437

¹²⁷ *Prosecutor v. Dusko Tadic*, Decision of the Defense Motion on Interlocutory Appeal on Jurisdiction, Appeals Chamber, 2 October 1995, Paragraph 70, <http://www.un.org/icty/tadic/appeal/decision-e/51002.htm>>accessed 16 August 2014

¹²⁸ It is interesting to note here that in the past many attempts were made to unify the body of International Humanitarian Law, but unfortunately these attempts failed, thus in 1948 the International Committee of the Red Cross presented a report recommending that the Geneva Conventions apply the full extent of international humanitarian law “in all cases of armed conflict which are not of an international character, especially cases of civil war, colonial conflicts, or wars of religion, which may occur in the territory of one or more of the High Contracting Parties”. See, Pictet (ed.), *Commentaries on the Geneva Conventions of 12 August 1949*, Vol. III: Geneva Convention relative to the Treatment of Prisoners of War, ICRC, Geneva, 1960, p. 31. In 1971, it submitted a draft to a Conference of Government Experts recommending a further proposition that was intended to make the whole body of International Humanitarian Law applicable to a civil war if foreign troops intervened. The ICRC put forward a more subtle proposal along the same lines the following year the proposal sought to apply the full body of International Humanitarian Law to internal conflicts when third States intervened in support of both sides. See, International Committee of the Red Cross, *Report on the Work of the Conference of Government Experts*, Geneva, 1971, Para. 284. 7. In 1978 the Norwegian delegation of experts to the same Conference proposed that the two categories of armed conflict be dropped in favour of a single law for all kinds of armed conflict, again without success. See, *Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts*, Official Records, Summary Record, Vol. 5

1.4.2.1.1. International Armed Conflicts

In his Commentary on the 1949 Geneva Convention Pictet writes that: "... any difference arising between two States and leading to the intervention of armed forces is an armed conflict within the meaning of Article 2 of the 1949 Geneva Convention, even if one of the parties denies the existence of a state of war. It makes no difference how long the conflict lasts or how much slaughter takes place."¹²⁹

Recently, the ICRC stated that: "... international armed conflict exists whenever there is resort to armed force between two or more States. The armed confrontation must reach a minimum level of intensity and the parties to the conflict must show a minimum of organisation."¹³⁰ In other words an international armed conflict encompasses any use of force or arms between two or more States, irrespective of the intensity of the armed conflict.¹³¹

It should be noted that Article 1 (4) of Additional Protocol I which supplements the Common Article 2 of the 1949 Geneva Conventions, extended the concept of

¹²⁹ See, J. Pictet, Commentary on the Geneva Convention for Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, [1952] ICRC, Geneva. P. 34. In 1985, the Institute of International Law defined armed conflict: "Armed conflict means a state of war or a conflict which involves armed operations which by their nature or extent are likely to affect the operations of treaties between States parties to the armed conflict and third States, regardless of formal declaration of war or other declaration by any or all of the parties to the armed conflict."¹²⁹ International Law Commission Report on the work of its fifty-ninth session (2007), GAOR Sixty-second Sess. Supp. No. 10 (A/62/10), par. 284-288, quoted in Report of the Seventy-Third Conference, ILA, Rio de Janeiro, 2008, p. 835.

¹³⁰ Gasser, "How is the Term "Armed Conflict" Defined in International Humanitarian Law? Opinion Paper, March 2008

¹³¹ See, Josef Mrázek, p.91

international armed conflict to “armed conflicts in which people are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.”¹³²

1.4.2.1.2. Non-international Armed Conflicts

Non-international armed conflicts are armed confrontations that take place within the territory of a State between the governments and armed insurgent groups.¹³³ These types of armed conflicts are legally regulated by Common Article 3 of the 1949 Geneva Conventions.¹³⁴ Each party to the conflict is bound to apply, as minimum certain provisions in armed conflicts in which a non-governmental armed group (or groups) are involved.¹³⁵

¹³² Article 1 (4) of the Protocols Additional to the Geneva Conventions of 12 August 1949, ICRC Geneva 1977, P. 4.

¹³³ See, Gasser, “How is the Term “Armed Conflict” Defined in International Humanitarian Law?” ICRC Opinion paper, March 2008, P. 5. See also LTC Richard P. DiMeglio, and ET AL, p. 24

¹³⁴ For more details see, Lindsay Moir, “The Law of Internal Armed Conflicts”, (Cambridge University Press, 2002) 23, Judith Gardam, “Non-Combatant Immunity as a Norm of International Humanitarian Law”, (Martins Nijhoff Publishers, London 1993)167.

¹³⁵ Article 3 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977 provided that “In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed ‘ hors de combat ’ by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;(b) taking of hostages;(c) outrages upon personal dignity, in particular humiliating and degrading treatment;(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.(2)

However, Additional Protocol II develops and supplements Common Article 3 of the 1949 Geneva Conventions so that it applies to all armed conflicts which are not covered by Article 1 of Additional Protocol I.¹³⁶ Although Article I¹³⁷ of the Additional Protocol II is much more detailed than Common Article 3, it is still not applicable to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.”¹³⁸ Unfortunately, this situation was affirmed by the International Criminal Tribunal for the former Yugoslavia when it adopted a more inclusive approach in defying the term ‘armed conflict’.¹³⁹

The wounded and sick shall be collected and cared for. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict. The Parties to the conflict should further endeavor to bring into force, by means of special agreements, all or part of the other provisions of the present Convention. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.”

¹³⁶This article provides that”1 The High Contracting Parties undertake to respect and to ensure respect for this Protocol in all circumstances.2 In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.3This Protocol, which supplements the Geneva Conventions of 12 August 1949 for the protection of war victims, shall apply in the situations referred to in Article 2 common to those Conventions.4 The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.”

¹³⁷ This Article provides that “This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of application, shall apply to all armed conflicts which are not covered by Article 1of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.2 This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.”

¹³⁸ Article 1 (2) of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977 Josef Mrázek, p. 94. LTC Richard P. DiMeglio, and ETAL, p. 226.

¹³⁹ See, Lindsay Moir, p .43

Thus, International Humanitarian Law still applies different rules to international and internal armed conflicts.¹⁴⁰ The legal status of journalists in non-international armed conflicts is not regulated in either Common Article 3 of the 1949 Geneva Conventions or Additional Protocol II. Therefore, the legal status of those journalists falls into the category of civilians and are afforded the same protection as mere civilians.

Such distinction appears arbitrary, undesirable, and difficult to justify. It frustrates the humanitarian purpose of the law of war in most of the instances in which war now occurs.¹⁴¹ What is desirable is a single body of International Humanitarian Law which applies to all conflicts whether they are international or internal and journalists work in conflict zones should be offered the same law of protection, irrespective of the nature of conflict.

1.4.3.1. Freedom of the Press and Armed Conflict

Freedom of opinion is considered an essential element for every democratic society and is of fundamental importance to the safeguarding of human dignity. Article 19 of the United Nations Universal Declaration of Human Rights (1948)¹⁴² states clearly that “everyone has the right to freedom of opinion and expression; this right includes

¹⁴⁰ See, Josef Mrázek, p.95

¹⁴¹ See, James g. Stewart, "Towards a single definition of armed conflict in international humanitarian law: A critique of internationalized armed conflict" [2003] IRRC June Vol. 85 No 850.p.313

¹⁴² <http://www.un.org/en/documents/udhr/> accessed 26 March 2015

freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”¹⁴³

It is generally accepted that comprehensive, correct information as well as independent and neutral media coverage are the preconditions for journalism.¹⁴⁴ The job of journalists is to seek out and publish or broadcast objective facts. In wartime, the role of the media is to enable the public to evaluate the war and its justification. The power of media reports in times of armed conflict was recognised by the International Criminal Tribunal for the Former Yugoslavia. The Tribunal stated that: “Journalists reporting on conflict areas play a vital role in bringing to the attention of the international community the horrors and realities of the conflict.”¹⁴⁵

¹⁴³ It is interesting to note here that freedom of expression is embodied also in many international treaties such as Article 19 of the International Covenant on Civil and Political Rights. It states that "1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law or are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (order public), or of public health or morals." See also, Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed on 4 November 1950, "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity of public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority or impartiality of the judiciary."

¹⁴⁴ See, Dan Saxon, p .414

¹⁴⁵ Prosecutor v Radoslav Brdjanin and Momir Talic, Decision on Motion to Set Aside Confidential Subpoena to Give Evidence, 7 June 2002. Case No, IT-99-36, Para 25. See also, The 1978 UNESCO Declaration Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racism, apartheid and incitement to war states that: “The strengthening of peace and international understanding, the promotion of human rights and the countering of racism, apartheid and incitement to war demand a free flow and a wider and better balanced dissemination of information. To this end, the mass media have a leading contribution to make. This contribution will be

Thus, a strong public interest exists in protecting the scope of freedom of expression and the right to impart and receive information, in particular during an armed conflict where serious violations of human rights are often committed.¹⁴⁶ However, the freedom of press is always at risk during times of armed conflict. Hence it is expected that the press will be the voice of the government at war.¹⁴⁷ Governments often impose significant press and speech restrictions, which impair the free flow of information to and from the war areas.

To this extent the former head of ICRC wrote that: “too many armed conflicts are nowadays forgotten by the general public and consequently by international community, in far too many cases the correspondents of radio and particularly television are barred from reporting objectively and comprehensively on certain conflict-stricken parts of the world. The fate of thousands and even millions of human being, theatrically protected by the Geneva Convention, is thus abandoned to the arbitrary decision of the belligerents, who can act with full impunity, unobserved by embarrassing witnesses.”¹⁴⁸

Thus, during the 1991 Iraq, any journalist chosen to join the military during Operation Desert Shield was provided with ‘Ground Rules.’¹⁴⁹ These rules regulated what

the more effective to the extent that the information reflects the different aspects of the subject dealt with.”

¹⁴⁶ See, Dan Saxon, p.414, Lichtenberg, “Foundation and Limits of Freedom of the Press”, [1987] 16 Philosophy and Public Affairs 329

¹⁴⁷ See, Cooke “Reporting the War: Freedom of Press, from the American Revolution to the War on Terrorism” [2007] Palgrave Macmillan, New York, 1.

¹⁴⁸ See, Alain Modoux, “International Humanitarian Law and the Journalist’ Mission” extract from the international Review of the Red Cross-January-February 1983.21.

¹⁴⁹ According to the Ground Rules the following information should not be reported because its publication or broadcast could jeopardize operations and endanger lives: (1) For U.S. or coalition

information was permissible for a journalist to report and what information was prohibited from release. Moreover, a number of ground rules dictated the level of involvement of journalists with military troops and the equipment journalist were allowed to use in the field during certain types of operations.

In non-democratic countries, press freedom is often abandoned and journalists usually encounter many more difficulties in seeking information about the war. Thus, in Syria, the government fully controlled the domestic media outlets after the uprising in 2011. The government is reported to have harassed, detained, and mistreated a number of journalists who reported on the anti-government protest.¹⁵⁰ The most recent example of imposing restrictions on press freedom is the arrest of Al Jazeera

units, specific numerical information on troop strength, aircraft, weapons systems, or-hand equipment. Or supplies (e.g., artillery, tanks, radars, missiles, trucks, water), including amounts of ammunition or fuel moved by or on hand in support and combat units. Unit size may be described in general terms such as "company-size," "Multi Battalion," "Multidivisional", "Naval task force and Carrier Battle group. Number or amount of equipment and supplies may be described in general terms such as "large; "small," or "many." (2) Any information that reveals details of future plans, operations, or strikes, including postponed or cancelled operations. (3) Information, photography, and imagery that would reveal the specific location of military forces or show the level of security at military installations or encampments. Locations may be described as follows: all Navy embark stories can identify the ship upon which embarked as a dateline and will state that the report is coming from the "Persian Gulf," "Red Sea," or "North Arabian Sea." Stories written in Saudi Arabia may be datelined "Eastern Saudi Arabia," "Near the Kuwaiti border," etc. For specific countries outside Saudi Arabia, stories will state that the report is coming from the Persian Gulf region unless that country has acknowledged its participation. (4) Rules of engagement details. (5) Information on intelligence collection activities, including targets, methods, and results. (6) During an operation, specific information on friendly force troop movements, tactical deployments, and dispositions that would jeopardize operational security or lives. This would include unit designations, names of operations, and size of friendly forces involved, until released by CENTCOM. (7) Identification of mission aircraft points of origin, other than as land- or carrier-based. (8) Information on the effectiveness or ineffectiveness of enemy camouflage, cover, deception, targeting, direct and indirect fire, intelligence collection, or security measures. (9) Specific identifying information on missing or downed aircraft or ships while search and rescue operations are planned or underway. (10) Special operations forces' methods, unique equipment or tactics. (11) Specific operating methods and tactics, (e.g., air angles of attack or speeds, or naval tactics and evasive maneuvers). General terms such as "low" or "fast" may be used. (12) Information on operational or support vulnerabilities that could be used against U.S. forces, such as details of major battle damage or major personnel losses of specific U.S. or coalition units, until that information no longer provides tactical advantage to the enemy and is, therefore, released by CENTCOM. Damage and casualties may be described as "light," "Moderate" or "heavy"

¹⁵⁰ Human Rights Council, 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic', United Nations Document A/HRC/S-17/2/Add.1, 23 November 2011, paras 88 and 104. See Dan Saxon, p.419

TV journalists in Egypt. The arrests have sparked an international outcry from media organisations as well as a statement from the UN High Commissioner for Human Rights, which expressed concern over what it called “the systematic targeting of Al Jazeera staff and the wider situation facing journalists and other media workers in Egypt.”¹⁵¹

Part Five

5.1. The Concept of International Humanitarian Law and International Human Rights Law and the Relationships between the Two Laws

5.1.1. International Humanitarian Law

International Humanitarian Law, also known as the law of war or the law of armed conflict, is a series of international rules which was established by a treaty or custom in order to control the conduct of parties that are engaged in armed conflict. For humanitarian reasons, the law itself aims to restrain the effects of armed conflict. It affords protection to those who are not or who are no longer partaking in hostilities and restricts the means and methods of warfare.¹⁵²

¹⁵¹ On 23 June, Egypt jailed Al Jazeera English staff Mohamed Fahmy, Peter Greste and Baher Mohamed for simply doing their job as journalists. Mohamed Fahmy and Peter Greste were dealt seven years in prison for ‘broadcasting false news’ and apparently promoting the banned Muslim Brotherhood group. Baher Mohamed faces ten years behind bars; his sentence is longer as he has an additional charge of possessing a bullet casing, which he says he picked up as a souvenir. All three were arrested on 29 December. Security forces filmed the arrest of Mohamed Fahmy and Peter Greste at the Marriot Hotel in Cairo. The video was later screened on Egyptian television, apparently in an attempt to smear the men. www.amnesty.org.uk/free-journalis>accessed September 2014.

¹⁵² Marco Sassoli and Antoine A. Bouvier, “How Does Law Protect in War,” International Committee of the Red Cross, Geneva 2006, p. 81; Antoine A. Bouvier and Harvey J. Langholtz, “International Humanitarian law and the law of armed Conflict” 2th edition Peace Operations Training Institute 2012, p. 7

International Humanitarian Law is part of Public International Law, which is the body of rules governing relations between States.¹⁵³ International Humanitarian Law or (*jus in bello*) must be distinguished from other parts of Public International Law i.e. (Jus ad bellum), that refers to the circumstances under which States may resort to war or to the use of armed force in general.¹⁵⁴

The 1949 Geneva Conventions,¹⁵⁵ which form the fundamental treaties of International Humanitarian Law, is used as a main source. The 1949 Geneva Conventions have been augmented by the 1977 Additional Protocols I and II which relate to the protection of victims of both international and non-international armed conflict respectively¹⁵⁶ and by the 2005 Additional Protocol III relating to an additional distinctive emblem (the red crystal).¹⁵⁷

Other parts of the International Humanitarian Law is also founded in treaties such as the 1899 and 1907 Hague Conventions,¹⁵⁸ the 2006 International Convention for the

¹⁵³ Marco Sassoli and Antoine A. Bouvier, p. 90

¹⁵⁴ Greenwood Christopher, "The Relationship between Jus ad Bellum and Jus in Bello", in Review of International Studies, Vol. 9, 1983, pp. 221-234; Antoine A. Bouvier and Harvey J. Langholtz, , p. 22; Marco Sassoli and Antoine A. Bouvier, , p. 102

¹⁵⁵ Geneva Convention for the Amelioration of the Conditions of the Wounded and Sick in Armed Forces in the Field (Geneva Convention I) 1949; Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Geneva Convention II) 1949; Geneva Convention relative to the Treatment of Prisoners of War (Geneva Convention III) 1949; Geneva Convention relative to the Protection of Civilian Persons in Time of War (Geneva Convention IV) 1949

¹⁵⁶ Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977

¹⁵⁷ Antoine A. Bouvier and Harvey J. Langholtz, p. 11; Marco Sassoli and Antoine A. Bouvier, p. 131

¹⁵⁸ Hague Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. 29 July 1899; Hague Convention (IV) Respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. 18 October 1907

Protection of All Persons from Enforced Disappearance¹⁵⁹ and the 1998 Rome Statute of the International Criminal Court (ICC).¹⁶⁰ Such treaties are now believed to mirror usual International Humanitarian Law and are, accordingly, binding on all States and all parties to a conflict.¹⁶¹

In all such circumstances States must be able to respect and ensure respect for International Humanitarian Law.¹⁶² States must also implement legislation and regulations which are aimed at safeguarding full agreement with International Humanitarian Law. They must pass laws which punish the most serious violations of the 1949 Geneva Conventions and their Additional Protocols I and II. States must also implement laws protecting the Red Cross, Red Crescent, Red crystal and other symbols. States should also use other means to implement International Humanitarian Law in developing educational programmes for the armed forces and the general public.¹⁶³

¹⁵⁹ International Convention for Protecting of All Persons from Enforced Disappearance adopted on 20 December 2006 by the UN General Assembly and entered into force on 23 December 2010

¹⁶⁰ See also, the 1925 Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols of 1954 and 1999, the 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, the 1976 Convention on the Prohibition of Military or any Other Hostile Use of Environmental Modification Techniques, the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons and its five Protocols of 1980 (I, II and III), 1995 (IV), and 2003 (V), the 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction.

¹⁶¹ Antoine A. Bouvier and Harvey J. Langholtz, p.14

¹⁶² Article 1 common to the four 1949 Geneva Conventions

¹⁶³ United Nations Security Council Resolution on protection of Civilian in armed conflict S/RES1265/17/September/1999; United Nations Security Council Resolution on Children and Armed Conflict, S/RES/1261/30 August 1999; United Nations Security Council Resolution on Protection of Civilian in Armed Conflict, S/RES/ 1738/28/April/2006; United Nations Security Council Resolution on Protection of Civilian in Armed Conflict, S/RES/ 1674/28/April/2006; United Nations Security Council Resolution on Protection of Civilian in Armed Conflict S/RES1894/12/November/2009; United Nations Security Council Resolution on Syria S/RES/2042/14 April/2012

The ICC is authorised to prosecute the most serious crimes of international concern, including war crimes¹⁶⁴ and crimes against humanity, in terms of suppression of International Humanitarian Law violations.¹⁶⁵ By virtue of the principle of complementarity its jurisdiction is intended to come into play only when a State is genuinely unable or unwilling to prosecute alleged war criminals over which it has jurisdiction.¹⁶⁶ In addition to the ICC, the UN Security Council fashioned several *ad hoc* international tribunals for the prosecution of war criminals in the former Yugoslavia and Rwanda setting up the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993 and the International Criminal Tribunal for Rwanda (ICTR) in 1994. The purposes of the tribunals were to try persons who have gravely breached the 1949 Geneva Conventions including genocide and crimes against humanity.

5.1.2. International Human Rights Law

International Human Rights Law is part of Public International Law, which was established by treaty or custom, on the grounds whereby individuals and groups can anticipate and/or claim certain behaviour or benefits from governments. Human rights are essential rights which belong to every individual as a result of being human. Many other non-treaty based standards and guidelines also belong to the body of International Human Rights standards.¹⁶⁷

¹⁶⁴ Article 8 of the Rome Statute

¹⁶⁵ *Ibid*, Art 7

¹⁶⁶ *Ibid*, Art 5

¹⁶⁷ Andrew T. Guzman and Timothy L. Meyer, "International Soft Law" 2 J. Legal Analysis 171 (2010), pp.171-225

The principal sources of treaty based principles of International Human Rights Law are the International Covenant on Civil and Political Rights (1966), the Universal Declaration of Human Rights (1948), the European Convention on Human Rights (1953), Arab League Charter on Human Rights (2008), American Convention on Human Rights (1969) and African Charter on Human and peoples' Rights (1986).¹⁶⁸

5.1.3. The Relationship between International Humanitarian Law and International Human Rights Law

The two laws were separately created and thus have different ranges of application. Moreover, they are enclosed in different treaties, and are subject to different compliance methods.¹⁶⁹ International Humanitarian Law “evolved as a result of humanity’s concern for the victims of war, whereas human rights law evolved as a result of humanity’s concern for the victims of a new kind of internal war.”¹⁷⁰

Whether international or non-international, it is argued that International Humanitarian Law is only applicable in times of armed conflict. Whereas

¹⁶⁸ See, Other international human rights laws such as, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 entry into force 26 June 1987, The International Convention for Protecting of All Persons from Enforced Disappearance adopted on 20 December 2006 by the UN General Assembly and entered into force on 23 December 2010.

¹⁶⁹ Andrew T. Guzman and Timothy L. Meyer, p. 177

¹⁷⁰ Roberta Arnold and Noëlle Quéniwet, “International Humanitarian Law and Human Rights Law, Towards a New Merger in International Law”, Library of Congress Cataloging-in-Publication Data, (2008), P.130

International Human Rights Law applies during both peacetime and armed conflict, however many of its provisions can be diminished from during an armed conflict.¹⁷¹

As proclaimed in its Charter, the United Nations bodies decided to eliminate all discussion of the International Humanitarian Law from their work, because they believed that by considering that branch of law they might undermine the force of *jus contra bellum*, and would disturb confidence in the capability of the world body to maintain peace.¹⁷² Further to this there was a certain contrast between the ICRC and the United Nations, which was due partly to the latter's elimination of the International Humanitarian Law from its discussions. A more thoughtful reason was the ICRC's determination to preserve its independence, a determination which was braced by the political nature of the United Nations.¹⁷³

Human rights were seen as being within the influence of the United Nations and its bodies which were specifically set up to encourage and develop those rights, were thus distanced from the concerns of the ICRC, which continued to work only in the area of the International Humanitarian Law.¹⁷⁴

¹⁷¹ Antoine A. Bouvier and Harvey J. Langholtz, p.16

¹⁷² Schindler, "The International Committee of the Red Cross and human rights", *IRRC*, No. 208, January-February 1979, p. 3

¹⁷³ ¹⁷³ Andrew T. Guzman and Timothy L. Meyer, p.181

¹⁷⁴ Roberta Arnold and Noëlle Quéniévet, 245

Contrastingly, many believe that there is a close relationship between the two laws.¹⁷⁵ The two laws aim to protect the lives, health and dignity of individuals, although from a different perspective. While International Humanitarian Law regulates and directly appeals to the physical protection of people, International Human Rights Law regulates and appeals to the social security of individuals.¹⁷⁶ The right to freedom of expression, the right to life,¹⁷⁷ liberty and security of an individual,¹⁷⁸ are found to have direct purpose to individuals in war zones.¹⁷⁹

International Humanitarian Law and International Human Rights Law are mutually understanding of journalists' protections, as stated by Fleck (2008).¹⁸⁰ Moreover, because the two laws function contemporaneously during conflict, they play significant roles in the protection of individuals. Thus, during armed conflict, International Human Rights Law applies as the *lex generalis* while international humanitarian law applies as the *lex specialis*. For example, with regards to the right to life, the result of the collaboration between the two branches of law is that, in armed conflict, the main question of whether a killing is regarded as "arbitrary" or unlawful is in most instances determined by International Humanitarian Law.¹⁸¹ The

¹⁷⁵ Robert Kolb, "The relationship between international humanitarian law and human rights law: A brief history of the 1948 Universal Declaration of Human Rights and the 1949 Geneva Conventions," *International Review of the Red Cross*, No. 324, 1998, pp.12-28

¹⁷⁶ See also Alain. Modoux, "the Protection of Journalists" *International Review of the Red Cross*, September-October, 1985, p. 20

¹⁷⁷ See, Article 3 UDHR; Article 6 ICCPR; Article 4 of the African Charter on Human and Peoples' Rights, Article 4 of the American Convention on Human Rights, Article 5 of the Arab Charter on Human Rights, Article 2 ECHR

¹⁷⁸ See, Article 3 UDHR; Article 10 ICCPR; Article 6 of the African Charter on Human and Peoples' Rights; Article 4 of the American Convention on Human Rights; Article 5 of the Arab Charter on Human Rights; Article 5 ECHR

¹⁷⁹ See, Amit Mukherjee, "Protection of Journalists under International Humanitarian Law" *Communication and the law*, Volume 17, 1995, p.29

¹⁸⁰ See, Fleck Dieter, *The Law of Non-International Armed Conflicts-The Handbook of International Humanitarian Law* (2nd - ed London 2008)

¹⁸¹ See, Christof Heyns and Sharath Srinivasan, "Protecting the Right to life of journalists: the need for higher level of engagement", *Human Rights Quarterly*, Volume 35, Number 2, [2013] pp. 304-332

International Court of Justice observed in its Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons (1996) that both laws play an important role and thus should be applied to protect individuals against threats and attacks in conflict zones.¹⁸²

International Humanitarian Law connects all parties towards an armed conflict whereas International Human Rights Law contains rules which bind governments in their associations with individuals. International Humanitarian Law enforces responsibilities on individuals and also provides that persons may be held individually criminally responsible for "grave breaches" of the 1949 Geneva Conventions and its Additional Protocol I and II, as well as for other violations of the laws and customs of war (war crimes).¹⁸³ International Humanitarian Law develops universal jurisdiction over those individuals who are suspected of having committed all such violations.¹⁸⁴

Under International Human Rights Law treaties, individuals do not have specific duties, however, International Human Rights Law also affords for individual criminal responsibility for violations that may constitute international crimes, such as genocide, crimes against humanity and torture. Moreover, such crimes are also subjected to universal jurisdiction. The ad hoc International Criminal Tribunals for the

¹⁸² See, International Court of Justice, [Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion] 8 July 1996, ICJ Reports 1996 at para 25; See also, Human Rights Committee, General Comment No 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 29 March 2004, CCPR/C/21/Rev.1/Add.13 at para 11.

¹⁸³ Article 85 of Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

¹⁸⁴ Article 146 of the Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 12 August 1949

former Yugoslavia and Rwanda, as well as the International Criminal Court, possess jurisdiction over violations of both International Humanitarian Law and International Human Rights Law.¹⁸⁵

While the instruments of International Humanitarian Law or *jus in bello* which control the behaviour of armed conflicts are primarily based on the treaties or custom rules, it should be stressed that this thesis will only examine the provisions of the Hague and the 1949 Geneva Conventions. It should also be stressed that, with regards to International Human Rights Law, only the provisions of some treaties based instruments will be used in this thesis such as, International Human Rights Law, the International Covenant on Civil and Political Rights (1966), the Universal Declaration of Human Rights (1948), the European Convention on Human Rights (1953), Arab League Charter on Human Rights (2008), American Convention on Human Rights (1969) and African Charter on Human and peoples' Rights (1986).

1.5. Conclusion

It appears that journalists are classified as civilians and therefore, entitled to protection under International Humanitarian Law. However, if a journalist is officially accredited and embedded within an armed force, such a journalist is considered as a prisoner of war if captured. The present law is difficult to justify.

¹⁸⁵ Article 8 of the Rome Statute

To remove the uncertainty over the legal status of journalists in armed conflicts, a clear definition to the term 'journalist' is required. Such a new definition should stress on the behaviours and practices of performing journalistic activities rather than on an inclusive list of media workers. The new definition should also include all the different types of journalist activities. The merits of such a definition would remove the current distinction between war correspondents and other types of journalists. Consequently, it would remove the uncertainty over the legal status of journalists in the law of armed conflict.

Currently, most journalists working in conflict zones are independent journalists who represent or work for non-governmental agencies. Equally, journalists themselves prefer to work independently due to the importance of independence in their profession and performance of freedom of press. Accordingly, the distinction between different types of journalists on the basis of proximity to the conflict is outdated. The distinction between war correspondents and other civilian journalists under article 79 of Additional Protocol I is odd and results in better protections for war correspondents than other types of journalists. This discriminatory function in the law is difficult to justify for persons undertaking similar work and facing similar risks.

Media equipment and facilities are presumed to be civilian objects and are not legitimate targets as long as the media facilities do not make an effective contribution to military action. Any direct attack against the media is a war crime. For media equipment and facilities to be lawful targets, they must serve as a military objective. Supplying propaganda does not convert broadcasters into military objective targets.

The law of armed conflict still applies different rules towards international and internal armed conflicts. This odd rule leads to uncertainty in the legal status of journalists in non-international armed conflicts. It is clear that such a distinction is arbitrary, undesirable and difficult to justify. It frustrates the humanitarian purpose of the law of war in most of the instances in which war now occurs. There should be a single body of International Humanitarian Law which applies to all conflicts regardless of whether they are international or internal and journalists working in conflict zones should be offered the same law of protection, irrespective of the nature of the conflict.

Finally, the job of journalists is to seek out and publish or broadcast objective facts. In wartime, the role of the media is to enable the public to evaluate the war and its justification. Accordingly, the power of the media should not be restricted and the interests of the public to learn and discover how their governments treat citizens of other nations in their conduct or warfare abroad should prevail.

Chapter Two

Protection of Journalists and Media under International Humanitarian Law

2. Introduction

International law requires each country to take responsibility to ensure international peace and security by protecting the human rights of people on their territories. Failure may result in collective consequential action to ensure protection of individuals' human rights.¹ The United Nations has labelled the increasing attacks on journalists covering armed conflict zones as threats to peace and security.²

While International Humanitarian Law offers some protections for journalists and media,³ it nevertheless requires specific provisions for the criminalization of any attacks on journalists working in armed conflict zones in order to ensure enhanced protection.⁴

¹ See, United Nations Document, 5 August 2005 A/59/HLPM/CRP www.un.org/ga/59/hlpm-accedded on 22 February 2015. Revised Draft Outcome Document of the High-level Plenary Meeting of the General Assembly of September 2005 submitted by the President of the General Assembly. Paragraph 113 stated "Recognizing the need for universal adherence to and implementation of the rule of law at both the national and international levels, "We Reaffirm our commitment to the purposes and principles of the Charter and international law and to an international order based on the rule of law, which is essential for peaceful coexistence and cooperation among States."

² See for example, United Nations Security Council Resolution on Protection of Civilian in Armed Conflict, S/RES/ 1738/28/April/2006; United Nations Security Council on Protection of Civilians on Armed Conflict S/RES/2222/27 May/2015; See also, The 2010 UNESCO Decision on the Safety of Journalists and the Danger of Impunity and 2012 UN Human rights Council Resolution on the safety of journalists <http://www2.ohchr.org/english/bodies/hrc.comments.htm>>accessed 26 august 2015

³ The protection of journalists was recognised by various international humanitarian instruments. See for example, Conference of Press Experts, League of Nations Doc. A.34 1927 GQ8 (1927), <http://www.worldcat.org/title/conference-of-press-experts-geneva-august-1927-final-report/oclc/65764903?page=citation>accedded on 11 March 2015

⁴ See, Isabel Dusterhoft, p.6

This chapter examines and analyses the challenges relating to the protection of journalists and the media in conflict zones. It focuses particularly on the opportunities to develop International Humanitarian Law further forward so that it can provide enhanced protection to journalists and the media. It can also be argued that the risks associated with journalist work could be significantly reduced if there was greater respect towards existing laws and if they were more actively enforced.⁵

This chapter is divided into two parts. Part one analyses the International Humanitarian Law rules on the protection of journalists in armed conflicts and the different protections afforded to journalists according to the legal status they may hold. Part two focuses on the protection of the media facilities in armed conflicts and the circumstances in which the media can be lawful targets. A brief conclusion is provided at the end of this chapter.

Part One

Protection of Journalists under International Humanitarian Law

Introduction

International Humanitarian Law was established fundamentally to regulate the treatment of individuals in times of armed conflict. Its main objective is the protection of human dignity and to confine the suffering associated with war and to reassure the

⁵ See, Knut Dormann, "International Humanitarian Law and the Protection of Media Professional Working in Armed Conflicts" [2007] p.7
<https://www.icrc.org/eng/resources/documents/article/other/media-protection-article-.htm>-Acceded on 10 November 2014

respect of those apprehended as prisoners of war.⁶ Additionally, the law was also established to deal with those who have fallen into enemy hands in armed conflicts zones and who are not or no longer directly taking part in hostilities.⁷ In such cases, International Humanitarian Law makes it clear that such people must be protected, respected and treated humanely.⁸

Moreover, International Humanitarian Law makes clear the distinction between civilians and combatants.⁹ This distinction is significant when analysing the protection of journalists in conflict zones. However, International Humanitarian Law makes no reference to journalistic freedoms, including the freedom of speech.¹⁰ Notwithstanding the right of sovereign States to determine who may enter or leave their ports, International Humanitarian Law makes no mention of the privileges of journalists which should include considerations to enter conflict zones. Although, International Humanitarian Law recognizes the need to protect journalists and other

⁶ See, Geneva Convention (III) relative to the Treatment of Prisoners of War 12 August 1949 and Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War 12 August 1949.

⁷ Ibid

⁸ See, Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 and Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol II), 8 June 1977.

⁹ Articles 48, 51(2) and 52 (2) of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Article 13 (2) of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol II), 8 June 1977, See, Jean-Marie Henckaerts and Louise Doswald-Beck, "Customary International Humanitarian Law", ICRC, Cambridge University Press, Geneva and Cambridge, (2005), p. 3; Michael N. Schmitt, "The Interpretive Guidance on the Notion of Direct Participation in Hostilities: A Critical Analysis" Harvard National Security Journal. Vol 1 [2010], p.12, See also, ICRC, Customary IHL Database (2015) <https://www.icrc.org/customary-ihl/eng/docs/home> accessed on 11 April 2015, rule 1.

¹⁰ See, Yves Sandoza *et al*, "Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949" (ICRC 1987) para 3246, http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCQQFjAA&url=http%3A%2F%2Fwww.loc.gov%2Frr%2Ffrd%2FMilitary_Law%2Fpdf%2FCommentary_GC_Protocols.pdf&ei=3sSBVZiGA8XjU9PpgoAC&usq=AFQjCNHq-ryJmM1Rv4bNdvbl_IWLJDD-dg&sig2=Xvx4FPQ4EcTCWJE0__ybsg accessed on 15 April 2015

members of the media when they enter armed conflict zones,¹¹ it does not however extend to the legality of journalistic activities within conflict zones.¹²

2.1. Different Protection

The scope of the legal protection of journalists is dependent, firstly, on the classification of the legal status of a journalist under International Humanitarian Law¹³ and secondly, on the type of conflict, whether it is classified as international or non-international conflict.¹⁴ Therefore, it is necessary to discuss separately the protection of journalists in conflict zones according to the nature of conflicts and the legal status they hold.

2.1.1. Protection of Journalists as Prisoners of War in International Armed Conflict

Under International Humanitarian Law, journalists that are taken captive while practising their profession in areas of conflict should be treated as prisoners of war and should be protected as such.¹⁵ The legal status of captured journalists is

¹¹ See, Amit Mukherjee p.29

¹² Article 79 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

¹³ Supra chapter One p.?

¹⁴ Supra chapter One p.?

¹⁵ Article 4 (4) of the Geneva Convention (III) relative to the Treatment of Prisoners of War 12 August 1949; See, Farthofer, p.3. Yves Sandoza *et al*, paras 3247-3248. Fleck. Dieter, "The Handbook of International Humanitarian Law in Armed Conflicts", Oxford University Press (2003) p.95

classified as a “War Correspondent”.¹⁶ War Correspondents are journalists who accompany armed forces without being actually a member of the armed forces.¹⁷

War Correspondents are given civilian status,¹⁸ but with a special entitlement to prisoners of war status when captured by other forces.¹⁹ This right is extended to all journalists until they lose that status and are then regarded by their captors as either combatants or unlawful combatants.²⁰ War Correspondents lose their civilians status if they directly participate in hostilities.²¹

It is important to note that, War Correspondents who have been captured in conflict zones can only be assured protection if they can present proper identification.²² Even if this condition is relaxed slightly under the Geneva Convention (III), it is however, a requirement for War Correspondents to seek permission from the armed forces in

¹⁶ Supra chapter One p?

¹⁷ See, Griet Verschingel, p. 444. See also, Balguy-Gallois p.3. Isable Dusterhoft. p.8. Major Douglas W. Moore, p.27, Sejal Parmar, “Assistant Towards an Effective Framework of Protection for the work of Journalists and an end to Impunity” Seminar and Inter-regional Dialogue on the Protection of Journalists European Court of Human Rights, Strasbourg (PRESS ROOM) Monday 3 November [2014] p. 12 <http://www.inter-justice.org/acceeded> on 18 April 2015

¹⁸ See, Article 50 (1) of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 which stated that “ A civilian is any person who does not belong to one of the categories of persons referred to in Article 4 A (1) (2) (3) and (6) of the Third Convention and in Article 43 of this Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian” For more details see, LTC Richard P. DiMeglio, and others, p.92; Peter Rowe, p.193.

¹⁹ See Article 4 A (4) of the Geneva Convention (III) relative to the Treatment of Prisoners of War 12 August 1949. War correspondents may be subject to either domestic law or prisoner of war protections dependent upon the capturing party’s interpretation of the laws of war. According to Article 45 of Protocol I persons captured are presumed to have prisoner of war protections unless otherwise proven by a competent tribunal. See, Jean-marie Henckaerts & Louise Doswald-beck p.115. Saul, p.102

²⁰ For more details about the term “unlawful combatant”, see Knut. Dörmann, “The legal situation of unlawful/unprivileged combatants” RICR Mars IRRC March Vol. 85 No 849[2003] p. 72

²¹ Article 51 (3) of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. See also, Article 51(2) of the Additional Protocol I. See, Duffy, p.317, Saul, p.110, Nils Melzer, p. 1039

²² See, Article 4 of the Hague Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land.18 October 1907.

order to obtain protection.²³ This requirement is based on the principle under International Humanitarian Law that journalists do not have any right to enter a conflict zone without the permission and consent of the concerned authorities.²⁴

Issuing proper identification to War Correspondents means that they receive better protection than say journalists embedded within military forces. Under this regime, war correspondents should not be treated as members of the military armed forces and should not be seen as legitimate military targets²⁵ and must be considered by belligerents when calculating necessity and proportionality.²⁶

Embedded journalists are a distinct type of War Correspondent.²⁷ Such a journalist is inserted into the military unit and must agree to a number of ground rules which oblige them to remain with the unit in order to ensure their protection. Embedded journalists travel with the armed forces and report from within the battlefield.²⁸

Embedded journalists can only base their reports on information available in the unit they are embedded in.²⁹ Because embedded journalists also carry the status of accredited journalists that accompany the armed forces, they are also considered to

²³ Article 4(4) of the Geneva Convention (III) relative to the Treatment of Prisoners of War 12 August 1949; See, Lisoky & Henrichsen p.133

²⁴ Saul, p.102

²⁵ As with all civilians, independent journalists need no identifying marks to establish their status. Thus, though the language of Article 79 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 allows journalists to carry an identity card, this card is not necessary to be given civilian status. A card-carrying journalist detained by a non-party to the Protocol Additional I is entitled to the same treatment they would be given by a state party as they are considered a civilian. See, Isable Dusterhoft. p.7; Balguy-Gallois, p.12

²⁶ See, Shannon Bosch, "Journalist: Shielded from the Dangers of War in Pursuit of truth?" 34 S.Afr.Y.B.Int'l. L [2009] 70

²⁷ See, Isable Dusterhoft. p.8

²⁸ See, Balguy-Gallois, p.5

²⁹ See, K. Tuosto, "The Grunt Truth of Embedded Journalism: The New Media/Military Relationship" Stanford Journal for International Relations, [2008] p. 22

be war correspondents for purposes of International Humanitarian protection.³⁰ Since they tend to be equated with War Correspondents they are entitled to the status and treatment of a prisoner of war in case of capture.

It should be noted that not all captured War Correspondents in an international armed conflict are entitled to prisoner of war (POW) status. In order to qualify for the status of POW, War Correspondents ought to belong to one of the groups described in Article 4 of the Geneva Convention (III). Article 4 of the Geneva Convention (III) relative to the Treatment of Prisoners of War 12 August 1949 provides that:

Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.

Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State, who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are.

The provisions of Part II are, however, wider in application, as defined in Article 13. Persons protected under the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, or under the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949, or under the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949, shall not be considered as protected.”

War Correspondents as prisoners of war are the responsibility of the capturing party from the moment of capture. They should enjoy the protection afforded to them under International Humanitarian Law from the moment of capture.³¹ Furthermore,

³⁰ See, Douglas W. Moore, p.14

³¹ Article 12 of the Geneva Convention (III) relative to the Treatment of Prisoners of War 12 August 1949 stated that “Prisoners of war are in the hands of the enemy Power, but not of the individuals or military units who have captured them. Irrespective of the individual responsibilities that may exist, the Detaining Power is responsible for the treatment given them.” For more details see, ^{Hilaire McCoubrey} “International Humanitarian Law-The Regulation of Armed Conflicts” Dartmouth Publishing Company Limited (1990) p. 89

under the Geneva Convention (III), War Correspondents are not given protection against the physical dangers that are associated with war.³² The protection afforded under Geneva Convention (III) to War Correspondents applies only to the period of detention. However, since War Correspondents are entitled to civilian status they therefore qualify for protection against the physical dangers of war under the 1977 Additional Protocol I.³³

The basic standard of treatment for War Correspondents as prisoners of war is set out in Article 13 of Geneva Convention (III).³⁴ This standard underlies all aspects of their detention/captivity and extends even to instances where disciplinary action may be taken for infraction of rules. They are entitled to humane treatment at all times³⁵ and in particular they may not be tortured, unlawfully killed³⁶ or endangered, physically mutilated or subjected to medical or scientific experiments of any kind, or

³² The Prisoner of war protections afforded war correspondents under Geneva Convention (III) relative to the Treatment of Prisoners of War 12 August 1949 are not affected by the 1977 Additional Protocol I. Article 79 of Additional Protocol I acts as a cross-reference to the other articles which deal with civilian protections in general. See, Claude Pilloud et al, "Commentary of the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949", (ICRC 1987) pp. 922–23

³³ Article 79 of Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

³⁴ Article 13 states that "Prisoners of war must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited, and will be regarded as a serious breach of the present Convention. In particular, no prisoner of war may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoner concerned and carried out in his interest. Likewise, prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity. Measures of reprisal against prisoners of war are prohibited."

³⁵ See, Richard Miller, "The Law of War" Lexington Books, London (1975) p. 35

³⁶ Article 13 of the Geneva Convention (III) relative to the Treatment of Prisoners of War 12 August 1949; See, LTC Richard P. DiMeglio, JA "Law of Armed Conflict Deskbook, International and Operational Law Department", the Judge Advocate General's Legal Center and School, U.S. Army (2012) P.71, Amit Mukherjee p.30

to any acts of violence or intimidation.³⁷ In all circumstances, they are entitled to respect as a human being and for their honour.³⁸

War Correspondents as POWs are prohibited from supplying information to the capturing party. They are forbidden to do so under their own national laws and professional rules of engagement and may not be coerced into doing so.³⁹ However, they are only required to give their names and date of birth.

The special protection given to POWs upon capture is the most essential aspect of the War Correspondent status.⁴⁰ Under this protection, War Correspondents, unlike other categories of journalists, may be detained only for “imperative reasons of security” and even then, they are entitled to enjoy the same legal protections as POWs, including the right not to respond to interrogation.⁴¹

³⁷ Article 14 of the Geneva Convention (III) relative to the Treatment of Prisoners of War 12 August 1949, See, *Hilaire McCoubrey*, p. 89

³⁸ Articles 12-16 of the Geneva Convention (III) relative to the Treatment of Prisoners of War 12 August 1949; Article 13 of the Geneva Convention (III) relative to the Treatment of Prisoners of War 12 August 1949 does not per se prohibit photographing prisoners of war. The prohibition extends to photographs that degrade or humiliate prisoners of war. With respect to prisoners of war there is some value added in disseminating photographs since it gives family members assurance that their loved one is alive. However, strict guidelines required. This is in stark contrast to Iraq's practice of parading prisoners of war before the news media. For more details see, LTC Richard P. DiMeglio, JA. 79

³⁹ Article 17 of the Geneva Convention (III) relative to the Treatment of Prisoners of War 12 August 1949, See, Green. C "The Contemporary Law of Armed Conflict" Manchester University Press, 2nd, (2000) p.200; *Hilaire McCoubrey*, p.90

⁴⁰ Article 15 of the Geneva Convention (III) relative to the Treatment of Prisoners of War 12 August 1949

⁴¹ Articles 14 and 17 of the Geneva Convention (III) relative to the Treatment of Prisoners of War 12 August 1949; Article 45 of Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 applicable to international armed conflicts, and grants the protection of prisoner of war status to persons taking part in hostilities who fall into the power of an adverse party.

However, if captured War Correspondents should be treated as POWs⁴² and may only be transferred by the detaining power to a power that is also a party to the Geneva Conventions and only after the detaining power has satisfied itself of the willingness and ability of such transferee power to apply the Geneva Conventions.⁴³

Captured War Correspondents must be given efficient health care⁴⁴ and in the case of a serious health problem, they may be entitled to either repatriation or transfer to a neutral State.⁴⁵ They are entitled to sufficient food, clothing, and medical attention. They must also be given the opportunity to practice any religious duties, including attending services of their faith.⁴⁶

Captured War Correspondents are entitled to regular visitation from a central POW information agency and relief society, such as the International Committee of the Red Cross.⁴⁷ Moreover, if it is alleged that War Correspondents have violated any law(s) of war, they are entitled to a proper trial.⁴⁸

⁴² Article 17 of the Geneva Convention (III) relative to the Treatment of Prisoners of War 12 August 1949. See, Green, p.201

⁴³ Articles 46-48 of the Geneva Convention (III) relative to the Treatment of Prisoners of War 12 August 1949

⁴⁴ Ibid, Article 13

⁴⁵ Ibid, Article 110

⁴⁶ Ibid, Articles 34-38

⁴⁷ Ibid, Articles 122-125

⁴⁸ Ibid, Article 82; see, Green p. 201

2.1.2. Protection of Journalists as Prisoners of War in Non-International armed Conflict

Under International Humanitarian Law, War Correspondents reporting international armed conflict are given the status of POW and should be protected as such. However, journalists reporting from a non-international armed conflict are not entitled to the POW status under Geneva Convention (III).⁴⁹ Additional Protocol II, which deals with non-international armed conflicts, provides protections to journalists detained during non-international armed conflicts.⁵⁰ These protections are similar to those enjoyed by journalists covering international conflicts.

Additional Protocol II provides that, at all times, the journalist shall be treated humanely and shall be entitled to respect for their honour, religious practices and convictions.⁵¹ The Rome Statute states clearly that POWs are protected against inhumane treatment, execution without preceding trial, torture and so on, just like civilians.⁵²

2.1.3. Evaluation of Geneva Convention Rules

It is therefore quite clear that the Geneva Convention (III) on the protection of journalists has noticeable weaknesses. Firstly, the Convention limits its scope of

⁴⁹ See, Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol II), 8 June 1977

⁵⁰ See, Fleck, "The Law of Non-international Armed Conflicts" *The Handbook of International Humanitarian Law*, 2nd Edition, Margin (2008)1215

⁵¹ Article 4 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977

⁵² Article 8 (2) (a)

application to international armed conflicts only.⁵³ Secondly, protection of journalists under the Geneva Convention (III) applies only after they have been captured. Thirdly, the Convention only covers such journalists as having received authorisation from the competent authorities. Fourthly, other forms of journalists including independent journalists appear to be completely unprotected.

Finally, giving the status of POW to war correspondents is an odd rule as it effectively stops arrested war correspondents from reporting and practicing their profession. Moreover, this rule appears contrary to Article 79 of Additional Protocol 1 which requires independent journalists to be released immediately after circumstances justifying the arrest or detention have ceased to exist.⁵⁴ Contrastingly, War Correspondents can be detained until the cessation of active hostilities.⁵⁵

2.1.2-Protection of Journalists as Civilians in International Armed Conflict

Journalists who report from conflict zones without authorisation or accreditation by a military unit receive no special recognition under Geneva Convention (III).⁵⁶ However, they are covered under Geneva Convention (1V).⁵⁷ The Convention provides civilian status to journalists working independently in conflict zones,

⁵³ The exception to rule was in Common Article 3 which applies minimum standard of humane treatment to non-international armed conflicts occurring in the territory of a party to the convention. See, Kirby and Jackson, p. 6

⁵⁴ Article 79 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

⁵⁵ Article 118 Geneva Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949 which stated that "Prisoners of war shall be released and repatriated without delay after the cessation of active hostilities."

⁵⁶ See, Geneva Convention (III) relative to the Treatment of Prisoners of War 12 August 1949

⁵⁷ See, Geneva Convention (1V) relative to the Protection of Civilian Persons in Time of War 12 August 1949

including citizen journalists.⁵⁸ Because they are regarded as civilians, it is illegal for belligerents to target them as long as they do not actively take part in the hostilities.⁵⁹

International Humanitarian Law maintains that a distinction must be made between civilians and combatants.⁶⁰ Therefore, the civilian population must be respected and protected during armed conflicts, and for this purpose all belligerents to the conflict shall at all times not direct their operations against civilians.⁶¹

⁵⁸ Article 50 (1) Additional Protocol I stated that civilians as “any person who does not belong to one of the categories of persons referred to in Article 4 A (1), (2), (3) and (6) of the Third Convention and in Article 43 of this Protocol. Thus, Additional Protocol I does not expressly define civilian, however, civilians are defined negatively all persons who are neither members of the armed forces of a party to the conflict nor participants in a *levée en masse* are civilians and, therefore, entitled to protection against direct attack unless and for such time as they take a direct part in hostilities. See, Nils Melzer, “Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law”, Vol. 90, No. 872 (ICRC 2009) p.997. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian”. Article 4 (A) (4) of the Geneva Convention (1V) relative to the Protection of Civilian Persons in Time of War 12 August 1949 specifically encompasses journalists as those civilian persons who accompany the armed forces without being members thereof. Article 50 (2) of Additional Protocol I speaks to the breadth of this civilian status by stating that “the civilian population comprises all persons who are civilians.” See, Katy Davies and Emily Crawford “Ending Impunity for the Death of Journalists” International Journal of Communication 7 [2013] 2161. Saul p. 104. Douglas W. Moore, p.14. Jean-Marie Henckaerts and Louise Doswald-Beck, p. 19

⁵⁹ Articles 51 (2) and 79 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I) 8 June 1977. See, Yves Sandoza *et al*, para 3270. According to Article 49 of Additional Protocol I attacks means acts of violence against the adversary whether in offence or in defence.

⁶⁰ Article 48 of the Additional Protocol I to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. For more details See, Rogers. A, “Law of the Battlefield”, Manchester University Press, (1996) p. 7, Michael Meyer “Armed Conflict and New Law”: Aspects of the 1977 Geneva Protocols and the 1981 Weapons Convention, (Chameleon Press Ltd 1989) p.107. Judith Gail Gardam, “Combatant Immunity as a Norm of International Humanitarian Law”, Malhus Nijoff Publishers (1993) p.112, Yves Sandoza *et al*, para 1863

⁶¹ Articles 48, 51(2) and 52 (2) of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Article 13 (2) of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. See, Jean-Marie Henckaerts and Louise Doswald-Beck, p. 3, Michael N. Schmitt, “The Interpretive Guidance on the Notion of Direct Participation in Hostilities: A Critical Analysis” Harvard National Security Journal. Vol 1 [2010], p.12, ICRC Customary IHL Database (2015) <https://www.icrc.org/customary-ihl/eng/docs/home> accessed on 11 April 2015, rule 1. See also, Knut Dörmann, “The legal situation of unlawful/unprivileged combatants” RICR Mars IRRC March Vol. 85 No 849[2003] p. 72

Article 79 of Additional Protocol I undoubtedly insists that journalists who report from conflict zones shall be treated as civilians.⁶² Accordingly, “Journalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians ... provided that they take no action adversely affecting their status as civilians.”⁶³ In the words of Article 50 (I) of the Additional Protocol I, the legal status ascribed to such journalists is that of civilians⁶⁴ and they shall remain civilians upon entering areas of armed conflict on a professional task, even while accompanying armed forces or, if they take advantage of their logistical support.⁶⁵ Accordingly, all International Humanitarian Law applicable to civilians also applies to journalists.⁶⁶

In order to be recognised as civilians, Article 79 of Additional Protocol I requires that journalists must be engaged in ‘dangerous professional missions in areas of armed

⁶² Article 79 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. See, ICRC, Customary IHL Database (2015) <https://www.icrc.org/customary-ihl/eng/docs/home> accessed on 11 April 2015, rule 34

⁶³ Article 79 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. It is interesting to note here that the fact that the provision of Article 79 stated that journalists are “considered as civilians,” and not that they “are civilians,” is of little significance. Because journalists are treated like civilians, they do not lose this status by their mere presence in an area of armed conflict while on a professional mission. This status even extends under circumstances where journalists take advantage of military logistical support. Regardless of whether journalists are non-accredited by the military or are “accompanying the armed force” as accredited war correspondents, they maintain their civilian status. In dealing with this language issue, the Diplomatic Conference recognised that the language of Article 79(1) could be misconstrued as creating a separate status for journalists not “as civilians” but one “considered as civilians.” (Referencing the Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law (CDDH) applicable in Armed Conflicts, Geneva, 1974–1977) However, due to a compromise from all parties to the Working Group who drafted the provision, the CDDH did not wish to reopen the matter on such a finely balanced text. Nevertheless, the “considered as civilians” language is universally treated “merely declaratory” and does not create a separate quasi-civilian status for journalists. See, Douglas W. Moore, p.15

⁶⁴ Article 50 of the Additional Protocol I to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. The language of Article 79 (2) “and without prejudice to the right of war correspondents accredited to the armed forces to the status provided for Article 4(A) (4) of the Geneva Convention (III)” suggests that journalists who are not accompanying military forces receive civilian protection, while those who accompany military force retain prisoner of war status. The interplay between Article 4(A) (4) and Article 79 (2) makes it clear that war correspondents will receive more protection than independent journalists.

⁶⁵ See, Knut Dormann, p.2 Sejal Parmar, p.11

⁶⁶ See, Keith D. Suter, p. 77

conflict.’ The term ‘dangerous’ refers to an area affected by hostilities and that which is dangerous by its very nature.⁶⁷ The term ‘professional missions’ refers to all activities which normally form part of the journalists profession, for example, taking notes, conducting interviews, taking photographs, videoing and recording sound etc. and forwarding them to the newspaper or agency. It should be noted that the professional activities of journalists may be subject to court of national law or of the military authorities themselves to control, in order to ensure that they comply with the rules they have laid down.⁶⁸

Additional Protocol I (1977) established a general rule requiring that: “... civilians shall enjoy general protection against dangers arising from military operations.”⁶⁹ If this rule is applied to journalists, it essentially means that, journalists may not be subjects or objects of attack.⁷⁰ Therefore, while journalists must not be targeted specifically during a military objective, they must also not be subjected to indiscriminate attacks when there is no military objective.⁷¹

Article 51 (4) of Additional Protocol I defines ‘Indiscriminate attacks’ as:

⁶⁷ See, Yves Sandoza *et al*, *para 3266*

⁶⁸ The embedded journalists can only base their reports on information available in the unit they are embedded with. For more details see K. Tuosto, “The Grunt Truth of Embedded Journalism: The New Media/Military Relationship” *Stanford Journal for International Relations*, [2008] p.22. See also, Christiana Eilders, “Media under fire: Fact and fiction in conditions of war” *International Review of the Red Cross*, Volume 87 Number 860 December [2005] p.66

⁶⁹ Article 51 (1) Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977,

⁷⁰ The same principle was also found in the 1868 Declaration of St Petersburg when Article 35 (1) provided that “In any armed conflict, the right of the parties to the conflict to choose methods or means of warfare is not unlimited.”

⁷¹ Article 52 (2) Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

(a) those which are not directed at a specific military objective; (b) those which employ a method or means of combat which cannot be directed at a specific military objective; or (c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.⁷²

The prohibition against attacks that are directed against civilians and thus against journalists can also be found in the Rome Statute establishing the International Criminal Court. It criminalizes the intentional directing of “attacks against the civilian population as such or against individual civilians not taking direct part in hostilities” as a war crime in international armed conflicts.⁷³ Therefore, attacks on journalists, whether on the ground, sea or air, appear to be strictly prohibited, under both International Humanitarian Law⁷⁴ and International Criminal Law.

On the other hand, a journalist who is captured by the other party continues to be subject to the protection of the law applicable to civilians as such. Thus, journalists who benefit from the protections of national legislation can only be imprisoned when sufficient charges have been found against them. However, if the charges found against the journalist are deemed to be insufficient, the journalist must be released.⁷⁵

⁷² The 25th International Conference of the Red Cross in 1986 deplored “the indiscriminate attacks inflicted on civilian populations ... in violation of the laws and customs of war.” <https://www.icrc.org/en/resource-centre>. ICRC, Customary IHL Database (2015) <https://www.icrc.org/customary-ihl/eng/docs/home> accessed on 11 April 2015, rule 11

⁷³ Article 8(2) (b) (I) of the Rome Statute; ICRC, Customary International Humanitarian Law Database (2015) <https://www.icrc.org/customary-ihl/eng/docs/home> accessed on 11 April 2015, rule 1

⁷⁴ Articles 49 (3) , 51 and 57 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977; See, H. Duffy, “The War on Terror and the Framework of International Law”, Cambridge, Cambridge University Press(2007)230

⁷⁵ See, Yves Sandoza *et al*, paras 3266-3267; Gasser, p.3

Thus, it is very clear that, journalists present in situations of armed conflict, are protected under International Humanitarian Law, as long as they do not take part in any hostilities.⁷⁶ From this rule, it follows that journalists have the right to report to the public through the media, as long as they practice their profession and they do not err from their professional role.

Treatment of captured journalists depends primarily on the location of their capture and also on their nationality. Journalists will be subject to their national laws as well as International Human Rights Law if they are arrested by the authority of their own State. However, journalists that are captured in their State by the enemy must remain in custody in their own State and not be transferred to the territory of the occupying power.⁷⁷

Journalists may be arrested and detained in the ordinary application of, and liability under, domestic criminal law. National law may, for instance, validly prohibit or criminalise mere participation in hostilities although civilians that take part in hostilities may be liable for the war crime of perfidy.⁷⁸

On the other hand, journalists who are captured on the territory of the enemy may be liable to prosecution if they have committed a crime, or interned if deemed necessary

⁷⁶ Article 79 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

⁷⁷ Article 76 of the Geneva Convention (1V) relative to the Protection of Civilian Persons in Time of War 12 August 1949; See, Amit Mukherjee p.37

⁷⁸ Article 37 (1) (c) of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

for the security of the detaining power.⁷⁹ If not, they must be released.⁸⁰ Journalists that are nationals of a neutral State that has normal diplomatic relations with the State that has captured them are not protected by the Geneva Convention.⁸¹ They may be detained only if there are sufficient charges against them. If not, they must be released.⁸²

Thus, journalists arrested by the authorities of another party to the conflict enjoy the protection afforded by the fundamental guarantees in Article 75 of Additional Protocol 1. This Article establishes the minimum guarantees of humane and non-discriminatory treatment of all persons in the power of a party to the conflict. Protection of journalists under this Article includes the prohibition of threats to life, health or physical and /or mental wellbeing, outrage upon personal dignity, collective punishment, threats and fair and humane detention and trial.⁸³

Moreover, journalists must at all times be treated humanely and without any discrimination towards their race, religion, gender etc.⁸⁴

In all circumstances, journalists bearing a civilian status are entitled to full respect for their person, honor, religious convictions and practices, manners and customs.⁸⁵

⁷⁹ Articles 37 and 42 of the Geneva Convention (1V) relative to the Protection of Civilian Persons in Time of War 12 August 1949

⁸⁰ Ibid, Articles 79

⁸¹ Ibid, Articles 4

⁸² See, Detter, *The Law of war*, Ashgate Publishing Limited, 3th-ed (2013) p. 34

⁸³ Article 75 (2) (a) (ii) of the of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

⁸⁴ See, Hilaire McCoubrey, p.116

Journalists must not be used as either hostages or human shields, nor must they be the object of reprisal.⁸⁶ The torture of persons under protection is prohibited.⁸⁷

Journalists must be granted every opportunity to communicate with the protecting party to the conflict including the International Association for Journalists, the International Federation of Journalists, the International Committee of the Red Cross, and the National Red Cross or similar society of the country where they are, as well as any other organisations that are able to help them. The holding authority must provide all necessary facilities to enable this and permit visits by representatives of these organisations.⁸⁸

Journalists shall not be transferred to a country that is not a member to the Geneva Conventions.⁸⁹ Those journalists cannot be compelled to serve in the armed forces of the occupying power. They are entitled to sufficient food, clothing, and medical attention.⁹⁰ In cases of detention, there are specific guarantees as well as a fair

⁸⁵ See, Fleck, p. 211

⁸⁶ Article 57(7) of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I) 8 June 1977; See, OJ. Umozurike, "Protection of the Victims of Armed Conflicts" International Dimension of Humanitarian Law, UNESCO, Paris (1988) p. 190; Richard Miller, p.81; Green, p.234

⁸⁷ Article 27 of the Geneva Convention (III) relative to the Treatment of Prisoners of War 12 August 1949, Article 32 of the Geneva Convention (1V) relative to the Protection of Civilian Persons in Time of War 12 August 1949, as well as by Article 3 Common to the Conventions, According to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, United Nation 1984 torture means "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

⁸⁸ Articles 27 of the Geneva Convention (1V) relative to the Protection of Civilian Persons in Time of War 12 August 1949; Green, p. 235

⁸⁹ Articles 45 of the Geneva Convention (1V) relative to the Protection of Civilian Persons in Time of War 12 August 1949

⁹⁰ See, OJ. Umozurike, p. 192

criminal trial before an impartial and regularly constituted court respecting the generally recognised principles of regular judicial procedure.⁹¹ Journalists who are arrested, detained or interned in relation to the conflict remain protected until they are released, even after the end of the conflict.⁹²

Journalists detained as a spy or saboteur or those definitely suspected of activity hostile to the security of the occupying power, shall forfeit rights of communication under the convention if 'absolute military security' so requires. Such journalists shall nevertheless be treated with humanity, and in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the Geneva Convention. They shall also be granted the full rights and privileges of a protected person under the Geneva Convention at the earliest date consistent with the security of the State or Occupying Power, as the case may be.⁹³

With respect to journalists under the Geneva Convention, it is prohibited to take hostages, inflict degrading or humiliating treatment and also, to pass sentence without a proper judgement of a duly constituted court. The detaining power may institute a penal inquiry against detained journalists 'for imperative reasons of security.'⁹⁴ If the charges against journalists are not serious enough to sentence them, journalists must be released.

⁹¹ Article 75 (3) (4) and (7) of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

⁹² Ibid, Article 75 (6)

⁹³ Article 5 of the Geneva Convention (1V) relative to the Protection of Civilian Persons in Time of War 12 August 1949

⁹⁴ Articles 76 and 78 of the Geneva Convention (1V) relative to the Protection of Civilian Persons in Time of War 12 August 1949

According to Article 75 (2) (c) the capture of journalists as hostages is also prohibited.⁹⁵ The term hostages in Article 75 should be interpreted in the same way as in Article 34 of Geneva Convention (1V), which prohibits the taking of hostages.⁹⁶ However, this only concerns those hostages that have been taken by an authority and not by individuals and whom are detained for the purpose of obtaining certain advantages. This therefore means that hostages are those who find themselves either willingly or unwillingly, in the power of the enemy.

The parties involved in the conflict may take certain measures such as control and security of protected journalists as may be necessary as a result of the war.⁹⁷ For instance, journalists must register with the police and report to them regularly. Much tougher measures include; prohibiting any change with regards to place of residence without permission, prohibiting access to certain areas, restricting movement, or even assigned residence and internment.⁹⁸

Therefore, the parties involved in war may induce certain security provisions that are laid down in the Geneva Convention (1V) in order to restrict journalists' access to certain areas of territory or sources of information, or to prevent journalists from

⁹⁵ Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

⁹⁶ Article 3 Common to the Geneva Convention (1V) relative to the Protection of Civilian Persons in Time of War 12 August 1949; See, Yves Sandoza *et al.* para 3053

⁹⁷ Article 27 of the Geneva Convention (1V) relative to the Protection of Civilian Persons in Time of War 12 August 1949

⁹⁸ Article 64 of the Geneva Convention (1V) relative to the Protection of Civilian Persons in Time of War 12 August 1949 stated that "The Occupying Power may, however, subject the population of the Occupied Territory to provisions which are essential to enable the Occupying Power to fulfil its obligations under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them."

being able to publish or broadcast resources which may be considered prejudicial to the security of the occupying power.

Such measures are likely to be lawful if they are justified objectively and are proportionate to the security threat that is faced and there is crossover here with the jurisprudence on permissible limitations on freedom of expression and movement, and privacy, under International Human Rights Law. However, unnecessary restrictions on either the media or on journalists are unlikely to be justified as lawful and thus this may impermissibly interfere in the principal rights which might include expression.⁹⁹

2.1.3.1. Protection of Journalists as Civilians in Non-International Armed Conflict

While International Humanitarian Law offers some protections for journalists reporting from international armed conflicts, the increasing complexity of armed conflicts in the millennia also means that in the majority of cases, journalists find themselves reporting on non-international conflicts or conflicts that unfortunately do not meet the threshold of armed conflict under international law.¹⁰⁰

⁹⁹ See, Saul, p.116

¹⁰⁰ See, Isabel Dusterhoft, p.12

As previously discussed in chapter one, International Humanitarian Law still applies different rules to international and non-international armed conflicts.¹⁰¹ This odd rule means that the protections of journalists in international armed conflict differ from those available to them in non-international armed conflicts.¹⁰² Consequently, the protections of journalists in international armed conflicts are therefore more developed than the provisions which regulate the protections of journalists in non-international armed conflicts.¹⁰³ The legal status of journalists in non-international armed conflicts is not regulated in either Common Article 3¹⁰⁴ or Additional Protocol II.¹⁰⁵ There is no international legal status of POWs for non-international armed conflicts and no provisions are made for War Correspondents nor for independent journalists.¹⁰⁶

Thus, journalists' immunity is not expressly recognized in Additional Protocol II. This may result in indiscriminate attacks against journalists from parties to the armed conflict. However, it is argued that the principle of journalists' immunity can be implied from Article 13 (1) of the Additional Protocol II which states that: "The civilian population and individual civilians shall enjoy general protection against the danger arising from military operations."¹⁰⁷ The legal status of journalists in non-international

¹⁰¹ See, Josef Mrázek, p.95

¹⁰² Infra?

¹⁰³ See, Isabel Dusterhoft, p.14

¹⁰⁴ Common Article 3 of the 1949 Geneva Convention (III) relative to the Treatment of Prisoners of War 12 August 1949

¹⁰⁵ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977

¹⁰⁶ See, Saul, p.119

¹⁰⁷ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977. See, Kalshoven, "Reaffirmation and Development of International Humanitarian law Applicable in Armed Conflicts: The Diplomatic Conference, Geneva 1974-1977, Part 1 Combatant and Civilians" (1977) 8 Neth. YB. Int. L pp.118-119

armed conflicts falls into the category of civilians and should be afforded the same protection for civilians in non-international conflicts.¹⁰⁸

This idea is justifiable from the provisions of Common Article 3 (2) which states that: “The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.”¹⁰⁹ The application of the previous provisions shall not affect the legal status of the parties to the conflict. Thus, it is open to the parties to exercise discretion to apply the remainder of the provisions of Geneva Convention to non-international armed conflicts, including the provisions on the protection of civilians which may benefit journalists.¹¹⁰

Therefore, journalists reporting from non-international armed conflicts are protected as civilians. However, they are not afforded special protection as a direct consequence of practicing their profession. Hence Common Article 3 grants certain basic rights to persons that may not have taken an active part in hostilities. The provision of Common Article 3 applies to each party to the conflict in its relations with personnel of the other party. Therefore, Common Article 3 binds all parties to non-international conflicts including insurgents as well as lawful government.¹¹¹

¹⁰⁸ See, Saul p. 119. Civilians in non-international armed conflict are defined as “ all persons who are not members of State armed forces or organized armed groups of a party to the conflict are civilians and, therefore, entitled to protection against direct attack unless and for such time as they take a direct part in hostilities.” See, Nils Melzer, p. 1009

¹⁰⁹Common Article 3 of the Geneva Convention (1V) relative to the Protection of Civilian Persons in Time of War 12 August 1949

¹¹⁰ See, Saul, p. 119

¹¹¹ See, Richard Miller “The Law of War” Lexington Books, London (1975) p.35

The provisions of Common Article 3 provide some basic fundamental protections afforded to civilians in non-international armed conflicts.¹¹² However, Additional Protocol II of the 1977 Geneva Convention develops and supplements the Common Article 3 of the 1949 Geneva Convention which is to be applied to all armed conflicts not covered by Article 1; that is, non-international conflicts.

Article 13 of Additional Protocol II sets out a number of rules on the protection of civilians, including that:

1. The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances.
2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.

¹¹² See, Henckaerts J.M and Doswald-Beck, p.115. Common Article 3 of the 1949 Geneva Convention (III) relative to the Treatment of Prisoners of War 12 August 1949 states that "In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed ' hors de combat ' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;(b) taking of hostages;(c) outrages upon personal dignity, in particular humiliating and degrading treatment;(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.(2) The wounded and sick shall be collected and cared for. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict. The Parties to the conflict should further endeavor to bring into force, by means of special agreements, all or part of the other provisions of the present Convention. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict."

3. Civilians shall enjoy the protection afforded by this Part, unless and for such time as they take a direct part in hostilities.¹¹³

Thus, journalists reporting from non-international armed conflicts are treated like any other civilian in the jurisdiction of conflict. Therefore, they are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction.¹¹⁴ Acts against journalists shall remain prohibited at any time and in any place whatsoever, such as violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture or any form of corporal punishment.¹¹⁵

Curiously, Article 13 of the Additional Protocol II does not contain any specific limitations on the means and methods of combat observed in Article 51 of Additional Protocol I. Accordingly, Article 13 contains no prohibition against indiscriminate attacks or requirements of proportionality; nor prohibitions on the civilian population being used as a shield against military operations; nor are there any prohibitions against reprisals.¹¹⁶

¹¹³ See, Jean-Marie Henckaerts and Louise Doswald-Beck, P.5. ICRC, Customary IHL Database (2015) <https://www.icrc.org/customary-ihl/eng/docs/home> accessed on 11 April 2015, rule 1

¹¹⁴ See, Hilaire McCoubrey, p.117; Judith Gail Gardam, p.127; Green, P. 325; O J. Umozurike, p. 196

¹¹⁵ Article 4 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977

¹¹⁶ See, Judith Gail Gardam, p.128

According to Article 5 of Additional Protocol II, journalists are to be afforded protections with regards to practicing their religion and they are allowed to send and receive letters and cards and have the benefit of medical examinations.¹¹⁷ Furthermore, all journalists who have been wounded either because they took part in the conflict or not, should be fully respected and protected¹¹⁸ and their weakness should not be used as an advantage to mistreat or harm them in any way.¹¹⁹

Since non-international armed conflicts are so often based on ideological differences and hatred for the way of life of the opposing party, it is therefore likely that objects which reflect the beliefs and history of the opponents will be subjected to attacks. Recent conflicts such as in Iraq, Yemen and Syria show that journalists were attacked solely on religious and political grounds. Furthermore, journalists reporting from such hostile areas are often faced with high levels of threats from militia groups in order to force them to report on their stories and views about the conflict. Equally, the authorities in such conflict areas provide weak legal protections to journalists, probably to intimidate them and to force them not to cover provocative topics. Unfortunately, the weakness of the political systems and the lack of local legislative provisions for the protection of journalists in these jurisdictions resulted in more violence against journalists. Militia groups do not fear being held to account.

¹¹⁷ Article 5 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977

¹¹⁸ Ibid, Article 7

¹¹⁹ See, Green p. 327

It has been reported that the local government in Iraq detained many journalists based on the allegations that they had contact with insurgent forces.¹²⁰ Some of the journalists were held for months or years without ever being charged with a crime. On the other hand, the militia groups have killed and beheaded several journalists suspected of having relationships with the opposing party. According to CPJ more than 121 journalists were killed in Iraq since 2003 either by military forces or by militia groups.¹²¹ Therefore, it could be argued that in such areas of conflict, it is deemed more necessary to develop and implement effective rules based on the legal protection of journalists than is the case in international armed conflicts where ideologies and emotions are not primarily important and where there is normally no presence of militia groups.

2.1.3.2. The Concept of Direct Participation in Armed Conflicts

The basic rule underlying International Humanitarian Law is that combatants are the only legitimate military targets in hostile situations. Civilians must never be targeted, however, they also lack the privilege of participating in hostilities and therefore are not entitled to the status of POW if captured.¹²² However, in some situations of hostilities, it is often unclear whether an individual is a combatant or a civilian.

¹²⁰ Ibid.

¹²¹ See also: <https://www.cpj.org/> accessed on 29 April 2015

¹²² Article 79 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 and Article 13 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977

In such cases, International Humanitarian Law uses the concept of 'direct participation' to determine their status, providing civilians protection unless they take a direct part in hostilities. This principle has significant consequences for journalists reporting from conflict zones. If journalists want to enjoy the protection given to them when reporting in conflict zones they must not take direct part in hostilities.

International Humanitarian Law does not define what is meant by 'direct participation in hostilities', nor has a clear interpretation of the concept emerged from State practice or international jurisprudence. The significance of understanding this terminology has increased dramatically in parallel with the increasing professional role of journalists during both international and non-international armed conflicts.

However, according to the Vienna Convention on the Law of Treaties (1969)¹²³ - (VCLT), the notion of 'direct participation' in hostilities must therefore be interpreted in good faith in accordance with the ordinary meaning to be given to its constituent terms in their context and in light of the object and purpose of International Humanitarian Law.¹²⁴

Article 79 (2) of Additional Protocol I states that: "They [journalists] shall be protected as such under the Conventions and this Protocol, provided that they take no action

¹²³ 1155 U.N.T.S. 331, 8 **I.L.M.** 679

¹²⁴ Article 31 (1) of the Vienna Convention on the law of Treaties (with annex), Concluded at Vienna on 23 May 1969

adversely affecting their status as civilians.”¹²⁵ In line with this Article the same principle also applies to journalists in non-international conflicts.¹²⁶ Article 51 (3) also confirms this principle stating that “Civilians shall enjoy the protection afforded by this Section, unless and for such time as they take a direct part in hostilities.”¹²⁷

Thus, the general rule is that journalists who engage in dangerous professional missions are entitled to protection against direct attack unless and for such time as they directly participate in hostilities.¹²⁸ The duration of their direct participation in hostilities including their activities and location may expose them to an increased risk of incidental injury and death.

Hence, journalists may be directly attacked as if they were combatants.¹²⁹ It should be noted that independent journalists involved in hostilities will not be entitled to the privilege and immunities of combatants, including prisoners of war.¹³⁰ Such journalists will be legitimate military objects for the duration of their participation in hostilities.¹³¹

¹²⁵ Article 79 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. See also Article 51(2) of the Protocol Additional I.

¹²⁶ Article 13 (3) of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977

¹²⁷ Article 51 (3) of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 see also Article 51(2) of the Protocol. See, Judith Gail Gardam, p. 118

¹²⁸ See, Duffy, p.317; Saul, p.110; Nils Melzer, p. 1039

¹²⁹ See, Yves Sandoza *et al*, para 3270

¹³⁰ Article 79 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 and Article 13 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977

¹³¹ See, Saul, p. 110

It is argued, however, that journalists reporting from conflict zones may become legitimate targets, for example, if they are too close to a military unit or if they are attached to a military unit and if they wear clothing which closely resembles the military uniform being used.¹³² Also, if war correspondents were to wear a military uniform on the battlefield or if they were to rely upon using military transportation,¹³³ they would therefore incur the same risks due to the fact that an enemy combatant cannot be asked to spare an individual's life whom he/she cannot identify as a journalist.¹³⁴ Moreover, this view is based on the fact that in such situations it is difficult to distinguish civilians from military members.¹³⁵

It is however difficult to accept such a view on the grounds that nowadays, with the advancement of technology, it is easy in some situations to distinguish between civilians from military combatants. Moreover, such a view is inconsistent with the law of armed conflict which stresses that parties to the conflict must take all necessary precautions to distinguish between civilians and combatants and between civilian objects and military objects. In addition, prior to attacks, the armed forces are obligated to give advance warning to journalists, according to Additional Protocol I (1977).¹³⁶

¹³² See, Yves Sandoza *et al*, para 3271. Amit Mukherjee p.36 argued that "the mere presence of journalists in a combat zone will not induce the warring parties to make the environment safe for a civilian so that journalists can do their job. Nor does article 79 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 requires this of the parties to the conflict."

¹³³ Article 48 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 does not prohibit those civilians who accompany the military in the field from wearing uniforms. Similarly, the provision of Article 48 does not prohibit civilians who accompany the armed forces from being transported by military tactical vehicle/aircraft during times of combat. See, Pilloud *et al*, p. 922

¹³⁴ See, Yves Sandoza *et al*, para 3270

¹³⁵ See, Detter, "The Law of war", Cambridge, Cambridge University Press (2000) p. 316

¹³⁶ See, Article 57 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

It is understood that the aim of this warning is to give journalists the chance to seek refuge from the effects of a planned attack and to give military authorities the opportunity to evacuate them.¹³⁷ Moreover, the Geneva Conventions impose the requirement principle of ‘proportionality’ on the armed forces when planning military attacks. Hence, there must be a weighing between the expected civil losses and the actual military advantage.¹³⁸ However, journalists reporting within a conflict zone and are also members of the armed force may be subjected to targeting by the opposing party as in the case with members of the armed forces in general.¹³⁹

In these circumstances, the customary law of distinction would not be applicable where there is no evidence to indicate that civilians may be a target.¹⁴⁰ However, where the presence of a civilian is observed, the legitimacy of a military attack is guided by the customary law principle of proportionality.¹⁴¹

Furthermore, military forces should comply with the ordinary precautionary rules in planning any attack. They should do “everything feasible to verify that the objectives

¹³⁷ See, Peter Rowe, “The Air Campaign: Have the Provisions of Protocol I Withstood the Test?” *International Review of the Red Cross* (2000) p.7

¹³⁸ Article 51 (4) of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

¹³⁹ See, Yves Sandoza *et al*, paras 3270

¹⁴⁰ Article 48 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

¹⁴¹ Article 51 (5) (b) of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 states that “an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.”

to be attacked are neither civilians nor civilian objects and are not subject to special protection but are military objectives".¹⁴²

Such risks were intensified principally because War Correspondents as well as combat photographers wore an army label during world war. It therefore makes it more difficult for the enemy to distinguish civilians from combatants. Since the First Gulf War in 1990, the contemporary practice of embedding journalists within military units also carries huge risk for journalists, although in these circumstances journalists are responsible for putting themselves in danger. It should be noted that this should not excuse the armed forces from their duties to avoid directly targeting journalists.¹⁴³

In some areas of conflict such as in Iraq and Syria some journalists hired private security contractors to guarantee their safety. Saul noted that "this practice may blur the boundary between combatants and civilians in practice, particularly when guards are not conversant with humanitarian law or are too ready to use force in response to threats, or where they are mistaken for combatants by enemy forces, thereby heightening the risk of incidental media casualties."¹⁴⁴

¹⁴² Article 57 (2) (a) of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977; See, Fleck, p. 171

¹⁴³ Article 51(5) (b) of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

¹⁴⁴ See, Saul, pp. 109-110

If journalists that have only civilian status protection are found to have participated directly in hostilities, they can be treated as 'unlawful combatants' and thus lose any of the civilian protections previously ascribed to them, although they do not lose the status of journalist itself.¹⁴⁵ In such a scenario, they could be treated as criminals and tried under domestic law of the adverse party for their actions.¹⁴⁶ It can be argued whether or not War Correspondents should lose their status of prisoner of war if they participate in direct hostilities. However, the consequence of this scenario would be severe for any civilian who takes a direct part in hostilities because they become legitimate military targets.

The conception of hostilities is ultimately linked to situations of international and non-international armed conflict. Therefore, the notion of direct participation in hostile situations does not refer to conduct that does not occur in outside situations of armed conflict, for example, internal disturbances and tensions such as riots, sporadic and isolated acts of violence and other such acts that are of a similar nature because such situations do not embody an armed conflict.¹⁴⁷

As previously mentioned, International Humanitarian Law does not establish a clear definition of what would constitute an action that may be interpreted as adverse or characterized as taking direct participation in hostile situations.¹⁴⁸ However, it is

¹⁴⁵ See, Pilloud *et al.*, at 922

¹⁴⁶ *Ibid.*, 619

¹⁴⁷ See, Article 1 (2) Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977. Moreover, even during armed conflict, not all conduct constitutes part of the hostilities. Armed conflict can arise without any occurrence of hostilities, namely through a declaration of war or the occupation of territory without armed resistance. See Article 2 of Geneva Convention (1V) relative to the Protection of Civilian Persons in Time of War 12 August 1949.

¹⁴⁸ See, Saul, p. 110

suggested that the term 'direct participation' should be interpreted to include "acts of war which by their nature or purpose are likely to cause actual harm to the personnel and equipment of the enemy armed forces."¹⁴⁹

Moreover, the concept of direct participation in hostile situations should refer specifically to hostile acts which are carried out by individuals as part of the conduct of hostilities between parties to an armed conflict. It must be interpreted synonymously in situations of international and non-international armed conflict.¹⁵⁰

In order for an individual to be classed as participating in hostilities, the act upon which the individual carries out must be likely to adversely affect military operation, military capacity of a party to an armed conflict, or otherwise, to induce injury, destruction or death on persons or objects protected against direct attacks.

Perhaps, there must be a direct link between the act and the harm that is likely to result from the act or from a military operation were the act plays an integral part. Finally, the act must also be designed specifically to cause direct harm in support of a part to the armed conflict as well as to the detriment of the opposing party to the armed conflict.¹⁵¹ Therefore, it can be noted that the term 'direct' in Article 51 (3) of

¹⁴⁹ See, Yves Sandoz *et al.*, para 619

¹⁵⁰ See, Nils Melzer, p.1015; Michael N. Schmitt, p.25

¹⁵¹ See, Nils Melzer, p.49. According to Article 43 (2) of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, only combatants "have the right to participate directly in hostilities" under the laws of war. Combatants are distinguished from civilians and are largely viewed as individuals who "(1) are under the command of a person responsible for his subordinates and subject to an internal disciplinary system; (2) have fixed and distinctive emblem recognizable at a distance; (3) carry arms openly; and (4) conduct operations in accordance with the laws and customs of war."

Additional Protocol I and Article 13 (3) of Additional Protocol II requires there to be close link between that of the journalist's conduct and the effect the conduct has on hostilities.¹⁵² Consequently, journalists who decide to take part in the hostilities associated with armed conflicts become a legitimate target for the opposing party, though only as they take part in hostilities. If a journalist is either captured or arrested, he/she must therefore be given a prisoner of war status and he/she must also be treated humanely pending determination of his/her status by an adequate tribunal.¹⁵³

However, only once the journalist ceases their participation in hostilities, they then regain their right to protection and they may no longer become a target. However, there is nothing to prevent the local authorities capturing journalists or arresting journalists at a later stage on the ground of punitive security measures.¹⁵⁴ In addition, since journalists are not members of the armed forces, they may charge him with perfidy.¹⁵⁵

It should be noted that direct participation in hostilities by journalists has to be judged on a case by case basis. Combatants in action in the field must be able to make an honest decision as to whether or not a particular civilian is either subject to a deliberate attack based on the individual's behavior, location as well as other information that is available at the current time.¹⁵⁶

Geneva Convention (III) relative to the Treatment of Prisoners of War 12 August 1949 Article. 4(A)(2) and Article 43(1), 44 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June

¹⁵² See, Balguy-Gallois, p. 6; Michael N. Schmitt, p.25

¹⁵³ Article 45 (1) of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, See, Yves Sandoz *et al.* para 1944

¹⁵⁴ Article 45 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

¹⁵⁵ Ibid, Article 37 (1) (c)

¹⁵⁶ See, Jean-Marie Henckaerts and Louise Doswald-Beck p.24

The types of activities that fall outside the professional role of a journalist and that which would constitute a direct participation in hostilities are not very clearly addressed in Article 79 of the Additional Protocol 1. However, the normal activities of a journalist including, taking photographs, conducting interviews, recording videos and audio are covered through immunity against any direct attack and does not constitute a direct participation.¹⁵⁷

Reporters Without Borders have listed specific acts that could lead them to lose the status of civilian. “Journalists on dangerous assignments are considered civilians under Article 79 of Additional Protocol I of the Geneva Conventions, provided they do not do anything or behave in any way that might compromise this status, such as directly helping a war, bearing arms or spying. Any deliberate attack on a journalist that causes death or serious physical injury is a major breach of this Protocol and deemed a war crime.”¹⁵⁸

Furthermore, if journalists were to take direct action against the enemy and caused injury they would lose their protection and could therefore be lawfully targeted. Thus, journalists who use their radio transmitters in order to send military messages or to gather information of military value would therefore constitute as having a direct

¹⁵⁷See, Knut Dormaan, p.22; Douglas W.Moore, p.3; Balguy-Gallois, p. 6; Gasser, p. 371. It is interesting to note that it is against customary international law to target the civilian population merely because they are generally participating in the war effort since this is required during war to various degrees. Such activities might include: employment in munitions factories, participation in rationing efforts, expressions of support for enemy government and provision of purely administrative and logistical support to forces not deployed in combat. See, 57th Graduate Course Deskbook, int'l & operational Law, (2008) Vol. II, at C-8, C-9

¹⁵⁸Reporters Without Borders, Handbook for Journalists, Chapter 9 Principle 8
http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CCcQFjAB&url=http%3A%2F%2Fwww.rsf.org%2FIMG%2Fpdf%2Fguide_gb.pdf&ei=LokhVZLdFdjsaK2ngZAM&usg=AFQjCNEw0DB8AGpiJuz_ywLFBt1_FhzMCQ&sig2=LdDj0UotR2Jc4Xlqi4LGZg-accessed 5 April 2015

participation. Further to this the publishing of hate propaganda directed against the opposing party to the conflict may also constitute as direct participation¹⁵⁹ as they are not protecting themselves against deliberate attacks.

The Israeli Supreme Court has interpreted the term 'direct participation' beyond merely committing the physical act of attack. It concluded that conduct amounting to transporting combatants or weapons, servicing weapons and volunteering as human shields can amount to direct participation.¹⁶⁰

In some situations, a journalist may be regarded as an incidental casualty from a lawful attack on military infrastructure even if they are not taking any direct part in hostilities. Military forces may possibly mistake a camera lens as a weapon from a distance and therefore may conclude that such a journalist is participating in hostilities. Therefore it can be said that the immunity given to civilians in such circumstances is not absolute, and nothing in humanitarian law confers greater immunity to journalists than other civilians.¹⁶¹ However, it can be questioned how armed forces are able to distinguish between that of a journalist solely performing their professional duty and that of one engaging in hostile acts.

It appears that a clear principle is required to distinguish between the normal professional activity of a journalist and those activities of which may constitute direct

¹⁵⁹ In the Prosecutor v. Nahimana (2003), the International Criminal Tribunal For Rwanda declared that hate propaganda broadcast or published in the written media in support of one party to the conflict may be qualified as acts of violence and thus active participation in the conflict. For more details see, Alex Obote Odora, "Criminal Responsibility of Journalists under International Criminal Law: The ICTR Experience" *Nordic Journal of International Law* 73: (2004) 307–323

¹⁶⁰ The Public Committee Against Torture in Israel v Government of Israel (Targeted Killings), HCJ 769/02 (11 December 2005) paras 35-37.

¹⁶¹ See, Saul, p. 111

participation in hostilities¹⁶² However, in reality this would be impossible to determine without having a sufficient degree of reliability of whether or not some acts constitute as direct participation in hostilities.

It is thought that speculating whether or not a journalist is taking direct participation could inevitably result in a fallacious or whimsical attack against a journalist, therefore undermining their protection which is at the heart of International Humanitarian Law. Consequently, in accordance with the object and purpose of International Humanitarian Law the concept of direct participation in hostilities must be interpreted as restricted to specific hostile acts. It can also be argued that whether or not carrying a defensive weapon constitutes direct participation in hostilities is moot. However, International Humanitarian Law does not contain any explicit provisions on whether or not carrying a defensive weapon is allowed. The British Ministry of Defence Green Book, for example, states that War Correspondents are not permitted to carry arms.¹⁶³ Gasser writes that carrying a defensive weapon for protection cannot be considered a hostile act.¹⁶⁴

However, the question is whether or not a journalist is entitled to use force as self-defence when under attack from those participating in the conflict. It must be noted that self-defence is not a legal defence available for persons engaging in mutual

¹⁶² See, Isabel Dusterhoft, p.14

¹⁶³ United Kingdom Ministry of Defence, The Green Book: MOD Working Arrangements with the Media 7 paragraph 31

¹⁶⁴ See, Gasser p.377

combat. It appears that, a journalist deciding to take direct participation in hostilities could not claim self-defence.¹⁶⁵

It must be noted that if a journalist was attacked during their professional duties they would have the right to use self-defense in accordance with the self-defense principal i.e. if the force used by the journalist was proportionate and necessary to protect them. International Humanitarian Law does not criminalise civilians' participation in hostilities as such and thus, the issue of self-defence mostly falls within the scope of national law.¹⁶⁶

Part Two

Protection of Media equipment under International Humanitarian Law

As stated in chapter one, all parties involved in international and non-international conflict, must at all-times distinguish between civilian objects and military objects.¹⁶⁷

All civilian objects must be respected and protected in armed conflict. Thus, the

¹⁶⁵ See, Saul, p.112

¹⁶⁶ Ibid, p.112

¹⁶⁷ Articles 48 and 52 (2) of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 and Article 52 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of non-International Armed Conflicts (Protocol II), 8 June 1977; ICRC, Customary IHL Database (2015) <https://www.icrc.org/customary-ihl/eng/docs/home> accessed on 11 April 2015, rule 7. In its advisory opinion, the International Criminal Court stated that the principle of distinction was one of the "cardinal principles" of international humanitarian law and one of the "intransgressible principles of international customary law". ICJ, *Nuclear Weapons case*, Advisory Opinion <http://www.icj-cij.org/docket/index.php?sum=498&code=unan&p1=3&p2=4&case=95&k=e1&p3=5>

general principle of this basic rule is that attacks must not be targeted against civilian objects.¹⁶⁸

Civilian objects are all objects that are not military objects. Military facilities are objects which by “their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.”¹⁶⁹

In relation to non-international armed conflicts, Additional Protocol II does not contain this rule as such even though it has been argued that it does so by inference within the prohibition against making the civilian population the subject of the attack contained in Article 13 (2) of Additional Protocol II.¹⁷⁰

Thus, applying this general rule of distinguishing between civilian objects and military objects, in order for the media to be targeted and attacked lawfully, it must make an

¹⁶⁸ See, Yves Sandoza *et al*, para1863, Jean-Marie Henckaerts and Louise Doswald-Beck, p.25, Edward Kwakwa, p.141. The Plan of Action for the years 2000–2003, adopted by the 27th International Conference of the Red Cross and Red Crescent in 1999, requires that all parties to an armed conflict respect the total ban on directing attacks against the civilian population as such or against civilians not taking a direct part in hostilities or against civilian objects. See, the 27th International Conference of the Red Cross and Red Crescent, Plan of Action for the years 2000-2003 <https://www.icrc.org/eng/resources/documents/misc/57jq8k.htm> accessed on 10 April 2015

¹⁶⁹ Article 52 (2) of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, See, Yves Sandoza *et al*, para1874, Fleck, p. 155, See also, ICRC, Customary IHL Database (2015) <https://www.icrc.org/customary-ihl/eng/docs/home> accessed on 11 April 2015, rule 7, See also, Hilaire McCoubrey, pp. 118,119

¹⁷⁰ See, Jean-Marie Henckaerts and Louise Doswald-Beck, p.39; ICRC, Customary IHL Database (2015) <https://www.icrc.org/customary-ihl/eng/docs/home> accessed on 11 April 2015, rule 7, See, Noam Zamir “Distinction Matters: Rethinking the Protection of Civilian Objects in Non-International Armed Conflicts”. *Israel Law Review*, 48 [2015] p 118

effective contribution to military action either by its nature, for example, if the media was used to directly support the armed forces, or by its location, for example, the media was used as a military site that must be seized, or because its purpose, for example, the media was used to accommodate troops or as headquarters for staff, in such examples the media may become military objectives.

In case of any doubt of whether or not an object which is normally dedicated to civilian use is being used to make effective military contribution, the 1979 Additional Protocol I requires that the parties to the armed conflict must presume the object is a civilian.¹⁷¹ Such presumption would likely apply to media premises and installation, such as newsrooms, studios and transmitters.¹⁷² This strategy was confirmed by the International Criminal Tribunal for Yugoslavia in the *Blaskic* case where the Tribunal noted that the media as such is not a traditional target category.¹⁷³

Clearly in case of any doubt, a careful assessment must be made under the conditions and restraints governing a particular situation as to whether or not there are sufficient indications to warrant an attack. It cannot automatically be assumed whether or not an object which appears suspicious can be subject to a lawful attack. This presumption is therefore consistent with the requirements needed to take all feasible precautions during attack, particularly the obligation to ascertain whether or

¹⁷¹ Article 52 (3) of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

¹⁷² See, Saul, p. 112, Griet Verschlingel p. 443

¹⁷³ See, final Report to the ICTY Prosecutor 2000 at Para 55

not an object about to be attacked is indeed military infrastructure which is liable to attack and not civilian infrastructure.¹⁷⁴

It is also the case that in certain situations there is no clear-cut possibility in determining the nature of an object, but there are also borderline cases where the responsible authorities could hesitate. In such situations, the principal aim of the International Humanitarian Law should be borne in mind, i.e., the protection of the civilian object.

Thus, since media facilities come under civilian infrastructure, the authorities should always presume such nature unless they have strong and sufficient evidence to suggest otherwise.¹⁷⁵ However, it is a fundamental rule of the International Humanitarian Law that, where there is an option of military objectives to obtain a similar military advantage, the objectives selected must cause minimal danger to civilians.¹⁷⁶

It should be noted that, International Humanitarian Law makes it absolutely clear that the immunity given to civilian infrastructure is not absolute and protection ceases if such infrastructure is used for hostile purposes. Furthermore, media facilities which hold military personnel, supplies, equipment, or if they are making, in any way whatsoever, an effective contribution towards military action that is incompatible with their status are therefore regarded as legitimate targets.

¹⁷⁴ ICRC, Customary IHL Database (2015) <https://www.icrc.org/customary-ihl/eng/docs/home> accessed on 11 April 2015, rule 10

¹⁷⁵ See, Yves Sandoza *et al*, para 2035

¹⁷⁶ Article 57 (3) the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. See, Saul p. 114

The International Criminal Tribunal for Yugoslavia (ICTY) in the *Blaskic* case concluded that the Radio Televisija Srbije constituted a legitimate military target for NATO forces. The ICTY justified its decision based on the fact that the RTS installations were being used as relays and radio transmitters for the armed forces and the special police forces of the Federal Republic of Yugoslavia.¹⁷⁷

In 2003 US forces attacked Iraq's main television station in Baghdad, where tragically nine journalists were killed. The US forces justified this attack as lawful saying that the TV station was being used for military purposes and also used to transmit propaganda.¹⁷⁸ Such attacks are lawful if they satisfy the conditions found under¹⁷⁹ Article 52 of the Additional Protocol I and the requirements of proportionality and advance warning are present during the time of the attack.¹⁸⁰

However, the Committee to Protect Journalists (CPJ) launched an investigation in 2003. The CPJ stated that: "while there is no evidence to conclude that the US military has deliberately targeted the press in Iraq, the record does show that US forces do not take adequate precautions to ensure that journalists can work safely.

¹⁷⁷ Final Report to the ICTY Prosecutor 2000, paras 55,75 and 76

¹⁷⁸ For more details see, Daoud Kuttub "The Media and Iraq: a blood bath for and gross dehumanization of Iraqis" International Review of the Red Cross, VOL. No. 868 December 2008

¹⁷⁹ See, Jean-Marie Henckaerts and Louise Doswald-Beck, p. 115

¹⁸⁰ Article 57 (3) the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

And when journalists are killed, the US military is often unwilling to launch an adequate investigation or take steps to mitigate risk.”¹⁸¹

It also observed that attacks on media infrastructure that undermine civilian morale is incompatible with the principles of International Humanitarian Law. The ICTY in the *Blaskic* case confirmed this view, stating that: “While stopping such propaganda may serve to demoralize the Yugoslav population and undermine the government’s political support, it is unlikely that either of these purposes would offer the ‘concrete and direct’ military advantage necessary to make them a legitimate military objective.”¹⁸²

The International Criminal Tribunal for Yugoslavia also observed that media infrastructure could not be considered a legitimate target solely because it engaged in the dissemination of propaganda, even though this may support the war efforts.¹⁸³

The Tribunal made it clear that in any attack the “military advantage anticipated must rather be ‘substantial and relatively close rather than hardly perceptible and likely to appear only in the long term.’”¹⁸⁴

It should also be pointed out that not all forms of propaganda are lawful. Although propaganda which instigates people to commit crimes against humanity or such acts

¹⁸¹ CPJ, Report of 2005, available at www.cpj.org/news/2005/Qatar23may05na_report.html accessed 6 April 2015. On 8 April 2003, after an American tank shelled the Hotel Palestine, the gathering spot for the foreign press in Baghdad, a spokesman for the US Defense Department postulated that the hotel had been a military objective for the 48 hours that it had been a meeting place for Iraqi officials

¹⁸² Final Report to the ICTY Prosecutor 2000, para 76

¹⁸³ Ibid, paras 47,55,74,76

¹⁸⁴ Ibid, para 76

of genocide or violence is prohibited, and therefore the media can be seen as a legitimate target if they were found to be spreading such messages.¹⁸⁵ It is yet to be established to what extent the media, in such situations, can become lawful targets. It should be noted that media facilities can become lawful targets, if the conditions found in Article 52 (2) of Additional Protocol I and the requirements of proportionality and as well as advance warning are present during the time of the attack.¹⁸⁶ The principle of proportionality can be found in Articles 51 (5) (b)¹⁸⁷ and 57 (2) (a) (iii)¹⁸⁸ of Additional Protocol I. It represents an attempt to minimize the “collateral damage” caused by military operations.¹⁸⁹

There must also be a reasonable balance between that of the effect of a legitimate target and thus its destruction and the undesirable collateral effects. Caution must also be taken in that the attack must not be excessive relative to the military advantage anticipated.

¹⁸⁵ See, Balguy-Gallois, p.12

¹⁸⁶ Art. 57 (2) (c) of the 1977 Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977; See, Balguy-Gallois, p.11; Saul, p.113

¹⁸⁷ Article 51 (5) (b) states that “the following types of attacks are to be considered as indiscriminate: (b) an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.”

¹⁸⁸ Article 57 (2) states “With respect to attacks, the following precautions shall be taken:(a) those who plan or decide upon an attack shall:(iii) refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.”

¹⁸⁹ Numerous States have expressed the view that military commanders and others responsible for planning, deciding upon or executing attacks necessarily have to reach decisions on the basis of their assessment of the information from all sources which is available to them at the relevant time. At the same time, many military manuals stress that the commander must obtain the best possible intelligence, including information on concentrations of civilian persons, important civilian objects, specifically protected objects, the natural environment and the civilian environment of military objectives, See, ICRC, Customary IHL Database (2015) <https://www.icrc.org/customary-ihl/eng/docs/home> acceded on 11 April 2015, rule 15

Military commanders must also assess carefully the attack in terms of the cost in civilian losses as well as military advantage.¹⁹⁰ However, it must be noted that if an attack exceeds what was anticipated from the purpose of the attack, then such an attack would probably be contrary to the principle of proportionality.¹⁹¹ Furthermore, the damages inflicted upon civilian infrastructures must be weighed against the “direct military advantage anticipated.” The term “military advantage anticipated” refers wholly to the advantage of the attack anticipated and not of specific or isolated components of it. Both the total military advantage and proportionality must be measured in relation to each attack.

This approach was adopted by the International Criminal Tribunal for Yugoslavia in its review of NATO’s air campaign in Yugoslavia. The tribunal concluded that the collateral damages, although high, were not disproportionate.¹⁹²

As mentioned previously, for an attack to be considered lawful, the parties involved in the war should give an effective and advanced warning before any such attack takes place.¹⁹³ It is also curious to note that according to Article 26 of the 1907 Hague Convention the officer in command of an attacking force must “before

¹⁹⁰ See, Yves Sandoza et al, para 2028

¹⁹¹ The attacker responsibility will come under Article 85 (3) (b) and (c) of Protocol I and Article 8 (2) (b) (IV) of the Rome Statute. Admittedly, though, by combining the Protocol I requirement that the attack cause excessive losses (Art. 85 (3)) and that the perpetrator knew it would do so (Art. 85 (3) (b) and (c)), the scope of war crimes for violation of the principle of proportionality is considerably reduced. For more details See, Balgu- Gallois, p.13

¹⁹² Final Report to the ICTY Prosecutor 2000, paras 77, The Rome Statute confirms this widely accepted interpretation when it refers to the “concrete and direct overall military advantage anticipated” (Art. 8 (2) (b) (iv)).

¹⁹³ Article 57 (2) (c) of the 1977 Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977; See, ICRC, Customary IHL Database (2015) <https://www.icrc.org/customary-ihl/eng/docs/home>, rule 20

commencing a bombardment, except in cases of assault, do all in his power to warn the authorities.”¹⁹⁴

However, “Protection may cease only after due warning has been given, naming, in all appropriate cases, a reasonable time limit, and after such warning has remained unheeded.”¹⁹⁵ The advance warning should be given unless circumstances do not permit. The word ‘circumstances’ can be referred to such circumstances which relate to the success of the military operation as well as the security of the combatants.¹⁹⁶

The advance warning must be given prior to an attack, in order to allow the enemy to remove the equipment that is to be targeted. It should also be noted that the warning does not have to be directed towards the authorities concerned, as dropping leaflets from the air to the population, loudspeaker announcements, radio messages, asking civilians to stay at home or stay away from certain military objects is also deemed to be effective.¹⁹⁷

¹⁹⁴ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907

¹⁹⁵ Article 19 of the Geneva Convention (1V) relative to the Protection of Civilian Persons in Time of War 12 August 1949, see also Articles 31 (1) and 65 (1) of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

¹⁹⁶ Article 57(2) (c) of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Under the terms of paragraph 2 (c) of Article 57, the rule of warning does not apply when the attack does not affect the civilian population, either because there are no civilians near the military objective (there is no requirement to warn combatants) or because the means of combat used ensure that civilians will be spared

¹⁹⁷ See, Yves Sandoza *et al* para, 225, Balgu- Gallois, p.16

On March 2003 the US forces had attacked a Palestine hotel in Baghdad in which two journalists were killed and a further three wounded.¹⁹⁸ An investigation carried out by the US military failed to answer one vital question: why did US commanders, who knew that the hotel was filled with journalists, not pass this information to the troops who attacked the hotel?

The CPJ investigated this incident in 2003, based on interviews with reporters present at the scene at the time of the attack, including two embedded journalists who had monitored the military radio traffic prior the attack as well as after. The CPJ, came to the conclusion that the attack on the hotel where journalists were present, while not deliberate, was avoidable. Furthermore, the CPJ had learned that Pentagon officials, as well as commanders on the ground in Baghdad, had prior knowledge that the Palestine Hotel was full of international journalists and were intent on not hitting it.¹⁹⁹

As mentioned above, attacks targeted towards media infrastructure are lawful, providing that the condition found in Article 52 (2) of Additional Protocol I, as well as the requirements of proportionality and advance warning have been met.²⁰⁰ However, if such requirements are not present during the time of attacks on media facilities then the following question can be asked; would such attacks constitute war

¹⁹⁸ See, Joel Champagne and Rhonda Roumani, "Permission to fire", Committee to Protect Journalists, <https://cpj.org/reports/2003/05/palestine-hotel.php>-accessed on 7 April 2015

¹⁹⁹ See, Joel Champagne and Rhonda Roumani, "Permission to fire", Committee to Protect Journalists, <https://cpj.org/reports/2003/05/palestine-hotel.php>-accessed on 7 April 2015

²⁰⁰ Art. 57 (2) (c) of the 1977 Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977; See, Balguy-Gallois, p.11; Saul, p.113

crimes? Although Article 85 of Additional Protocol I states that attacks against civilian populations are considered a war crime, there is no similar provision given to civilian infrastructure in general. However, it has been agreed upon that attacks against civilian infrastructures that are given special protection such as media facilities would constitute a war crime.²⁰¹

Finally, loss of protection of media as objects must be read together with the basic rule that only military objectives may be attacked.²⁰² It follows that if a civilian object is being used in a way that it effectively loses all its civilian characteristics and therefore qualifies as being a military object, it is liable to an attack.²⁰³

We have previously seen that not all civilian infrastructures are under protection in non-international armed conflicts and therefore media facilities may well be easily targeted. However this view should be eliminated based on the fact that the view nowadays is that the law of protection of all civilian infrastructures is now part of the

²⁰¹ See, Balguy-Gallois, p.7. The Statute of the International Criminal Court does not explicitly define attacks on civilian objects as a war crime in non-international armed conflicts. It does, however, define the destruction of the property of an adversary as a war crime unless such destruction be “imperatively demanded by the necessities of the conflict ICC.” Statute, Article 8(2) (e) (xii) Therefore, an attack against a civilian object constitutes a war crime under the Statute inasmuch as such an attack is not imperatively demanded by the necessities of the conflict. See, ICRC, Customary IHL Database (2015) <https://www.icrc.org/customary-ihl/eng/docs/home> acceded on 11 April 2015, rule 7

²⁰² Article 52 (2) of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, See, Yves Sandoza *et al*, para1874, See also, ICRC, Customary IHL Database (2015) <https://www.icrc.org/customary-ihl/eng/docs/home> acceded on 11 April 2015, rule 7

²⁰³ This reasoning can also be found in the Statute of the International Criminal Court, which makes it a war crime to intentionally direct attacks against civilian objects, provided they “are not military objectives.” Article 8(2)(b)(ii); see also Article 8(2)(b)(ix) and (e)(iv) (concerning attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected) and Article 8(2)(b)(v) (concerning attacks against towns, villages, dwellings or buildings which are undefended).

customary law.²⁰⁴ This rule provides positivity on the grounds; firstly, as it grants protection to all civilian infrastructures in non-international armed conflicts which narrow down the highly criticized gap of the protection those civilians in international armed conflicts enjoy under the International Humanitarian Law. Secondly, it is necessary to provide protection to civilian infrastructures in non-international armed conflicts, in order to fully complete the protection that civilians currently enjoy in non-international armed conflicts.²⁰⁵

Conclusion

Two factors are used to determine the level of protection given to journalists during an armed conflict. Firstly, whether the conflict is either international or non-international and, secondly, whether the journalist is under the accompaniment of the military forces. With regards to the first factor, the provisions which regulate the protection of a journalist in international armed conflicts are far more developed than those of the provisions which regulate the protection of journalists in non-international armed conflicts. With regards to the second factor, Article 79(2) of Additional Protocol I distinguishes between the protections afforded to independent journalists and those considered as war correspondents.

²⁰⁴ See, Noam Zamir, p.131

²⁰⁵ Article 13 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

International Humanitarian Law provides protection to all categories of journalists whom carry out their professional duties during armed conflicts. However, the current law does not create a special status for journalists. Depending on which Convention they come under, journalists are either classified as civilians or prisoners of war. Due to the fact that prisoners of war are also regarded as civilians, one can therefore say that all categories of journalists are considered civilians under International Humanitarian Law and are thus protected according to such status.

Even though the majority of States have ratified the 1949 Geneva Conventions and its Additional Protocols I and II, recognising that journalists should be respected, protected and treated as civilians, this fact is contradicted by a dramatic increase in the number of journalists ending up as victims of war while conducting their professional duties. It appears therefore that while the current rules of International Humanitarian Law provide realistic basis for protection of journalists covering armed conflict, more still needs to be done to develop a law that offers better protection for this profession.²⁰⁶ Gasser writes that under the current law, journalists are protected against the effects of hostilities as well as against arbitrary conduct such as killings or torture on the part of combatants if they are captured or arrested.²⁰⁷

²⁰⁶ Grriet Verschlingel, p.456 suggested that "it does not seem necessary to give journalists more protection than the civilian status. There are several reasons for this. First, a creation of specific status of journalist could lead to legal vagueness.....Secondly; it was not clearly during this research if it is legally possible that better protection could be given to journalists. According to the author, the protection of civilians is broadly and a deviant of this civilian protection specified for journalists, can only be a copy of the existing regulation." See also, Isabel. Dusterhot , p.16

²⁰⁷ Gasser, p.388, the author also noted that "there is hardly any room for strengthening the protection through new law and that the question remains whether those rules are in fact respected".

However, it is still the case that there has been a significant increase in the number of attacks against journalists for several reasons. Lack of respect for International Humanitarian Law and skepticism over the implementation of this law is one. Perhaps military commanders' poor understanding of this law and how it applies to them may be an issue. If so this points to training matters at national level. Consequently, the majority of affected journalists rely upon their lawyers and editorial boards for protection.

The CPJ has noted that: “the most serious deficiency is presently the lack of vigorous implementation of existing rules and the systematic investigation,²⁰⁸ prosecution and sanction of violations, rather than the lack of rules.”²⁰⁹ Therefore, it can be argued that there is a general lack of awareness regarding the protection of journalists and more importantly, misunderstandings about the exact role journalists play in society.²¹⁰

²⁰⁸ According to a CPJ report <https://www.cpj.org/> accessed on 5 April 2015 more than 94% of the attacks on journalists are not investigated at all.

²⁰⁹ See, Isabel. Dusterhot p.4; Knut Dormann, p.17 suggested that to improve the protection of journalists in armed conflicts a better implementation of the existing rules is required. The author wrote “the grounds for basic legal protection exist. As so often with rules of IHL, they are not sufficiently respected in practice. It should therefore be the foremost objective to work for improved compliance with these rules. This requires proper training and instructions for those who have to implement them, i.e. members of armed and security forces and of other armed groups. It also requires that those who violate the rules be held to account and, if found guilty of crimes, be sanctioned. Everyone is accountable to the provisions of international humanitarian law and all States have an obligation to ensure that these laws are known, respected and enforced.” Compare with Keith D. Suter, p. 78, who wrote that “journalists have little special legal protection under international humanitarian law But more work needs to be done on educating everyone on international humanitarian law so that journalists—like all civilians—will get more protection. Additionally, governments should do more to show their concern over the fate of their citizens who are journalists, while media organisations should also work on ensuring that their journalists understand the nature of modern warfare”.

²¹⁰ See, Isabel. Dusterhot p.16; Joanne M. Lisosky and Jennifer Henrichsen, p.102

Furthermore, belligerent parties must do everything they can to create a safety area, where journalists can work independently and freely.²¹¹ The nature of modern warfare has changed the role of journalists dramatically in conflict zones. Moreover, the nature of war nowadays is totally different than what it was in the last century when the rules of protection of journalists were introduced.

Technological advances provide immense opportunities for belligerents to distinguish between combatants and civilians and therefore the risks facing journalists in conflict zones. Parties to conflicts should always presume media equipment and facilities are civilian objects and accordingly, they are not legitimate targets unless they make an effective contribution to the military effort. In such cases the parties to the conflict should seek a strong evidence that the media is used as a military object. Even if the media becomes a legitimate target, the parties should consider the conditions in Article 52 (2) of Additional Protocol I and the requirements of proportionality and advance warning are presented at the time of attack. Otherwise any direct attack against the media is a war crime.

²¹¹ See, Griet Vershingel, p.455

Chapter Three

3. Protection of Journalists under International Human Rights Law

3.1. Introduction

Chapter two examined the rules of International Humanitarian Law applicable to the protection of journalists in conflict zones. However, the protection of journalists in conflict zones is also guaranteed under International Human Rights Law.¹ This is in contrast to International Humanitarian Law, where journalists' rights are extended to freedom of expression, opinion and thoughts.²

While International Humanitarian Law regulates and directly appeals to the physical protection of journalists, International Human Rights Law regulates and appeals to the social security of individuals. But to what extent it might also benefit journalists operating in conflict zones is moot.³ The right to freedom of expression, the right to life,⁴ liberty and security of person,⁵ appear to have direct application to the work of

¹ See, Yves Sandoza *et al*, Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949 (ICRC 1987) para 3246

² See, Article 19 of the Universal Declaration of Human Rights (UDHR); Article 19 the International Convent on Civil and Political Rights (ICCPR); Article 9 of the African Charter on Human and Peoples' Rights (ACHPR); Article 4 of the American Convention on Human Rights (ACHR); Article 44 of the Arab Charter on Human Rights (ACHR); Article 10 of the European Convention on Human Rights (ECHR)

³ See also Alain. Modoux, "the Protection of Journalists" International Review of the Red Cross, September-October, 1985, p. 20

⁴ See, Article 3 UDHR; Article 6 ICCPR; Article 4 of the African Charter on Human and Peoples' Rights, Article 4 of the American Convention on Human Rights, Article 5 of the Arab Charter on Human Rights, Article 2 ECHR

⁵ See, Article 3 UDHR; Article 10 ICCPR; Article 6 of the African Charter on Human and Peoples' Rights; Article 4 of the American Convention on Human Rights; Article 5 of the Arab Charter on Human Rights; Article 5 ECHR

journalists and their safety.⁶ Therefore, there is a sense in which International Human Rights Law might assist with the physical protection, and also the professional rights of journalists operating in conflict zones.⁷

Fleck writes that International Humanitarian Law and International Human Rights Law are mutually supportive of journalists' protections.⁸ Moreover, because the two laws operate contemporaneously during conflict, they play important roles in the protection of journalists.⁹ The International Court of Justice observed in its Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons (1996) that both laws play an important role and thus should be applied to protect journalists against threats and attacks in conflict zones.¹⁰

The United Nations Security Council Resolution 1738 (2006) exhorts parties to armed conflict to protect journalists in conflict zones.¹¹ The Resolution reminded all

⁶ See Amit Mukherjee p.29

⁷ See, Stuart Casey-Maslen, "The War Report", Oxford Press (2013) p.366

⁸ See, Fleck p.71; Stuart Casey-Maslen,p.366

⁹ During armed conflict, international human rights law applies as the *lex generalis* while international humanitarian law applies as the *lex specialis*. For instance, with respect to the right to life, the result of this interaction between the two branches of law is that, in armed conflict, the main question of whether a killing is considered "arbitrary" or unlawful is in most cases determined by international humanitarian law. See, Christof Heyns and Sharath Srinivasan, "Protecting the Right to life of journalists: the need for higher level of engagement", Human Rights Quarterly, Volume 35, Number 2, [2013] pp. 304-332

¹⁰ See, International Court of Justice, [Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion] 8 July 1996, ICJ Reports 1996 at para 25; See also, Human Rights Committee, General Comment No 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 29 March 2004, CCPR/C/21/Rev.1/Add.13 at para 11.

¹¹ United Nations Security Council Resolution on Protection of Civilian in Armed Conflict, S/RES/1738/28/April/2006; United Nations Security Council on Protection of Civilians on Armed Conflict S/RES/2222/27 May/2015; See also, UN Human Rights Council Resolution 12/16, 2012 (the Right to Freedom of Opinion and Expression) <http://www.freemedia.at/newssview/article/un-human-rights-council-passes-resolution-in-favor-of-journalist-safety.html>>accessed 26 March 2015; The Medellin Declaration by UNESCO in 2007 <http://www.unesco.org/new/en/unesco/events/prizes-and-celebrations/celebrations/international-days/world-press-freedom-day/previous-celebrations/worldpressfreedomday2009000/medellin-declaration/>>26 august 2015; The 2010 UNESCO Decision on the Safety of Journalists and the Danger of Impunity and 2012 UN Human

parties to armed conflicts of their obligations to protect journalists, to prevent acts of violence and retribution, to fight impunity and to protect media equipment and installations.¹²

International Human Rights Law has a number of provisions that could be invoked to establish effective protection of journalists operating in conflict zones. They include the right to exercise their freedom of expression as well as the guarantee to freedom from threats of violence and arbitrary arrest. State authorities are obliged to ensure the protection of journalists from any acts that would limit these freedoms. But there is the challenge of derogability from most guaranteed human rights during times of emergencies except only from a few core non-derogable rights.

Under Article 4 of the International Covenant on Civil and Political Rights (1966)¹³ the following rights are non-derogable even in times of war and emergency:

Article 6:

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

Rights Council Resolution on the safety of journalists
<http://www2.ohchr.org/english/bodies/hrc.comments.htm>>accessed 26 august 2015,

¹²United Nations Security Council Resolution on Protection of Civilian in Armed Conflict, S/RES/1738/28/April/2006; Paragraphs 7 and 8

¹³ 999 UNTS 171 and 1057 UNTS 407 / [1980] ATS 23 / 6 ILM 368 (1967).

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8:

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.

Article 11:

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 15:

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.
2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16:

Everyone shall have the right to recognition everywhere as a person before the law.

Article 18:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

This list weakens generalisations about International Human Rights' potential to ensure safety of journalists operating in armed conflict zones. In warring countries such as Syria, Iraq and Afghanistan, threats and violence towards journalists are

increasing and journalists remain unprotected from violations of the right to life,¹⁴ the right to liberty and security of a person.¹⁵

This chapter is divided into two parts. Part one discusses the human rights standards that may assist in the protection of journalists covering armed conflict. Part two evaluates the scope of any such potential protection. A brief conclusion is provided at the end of this chapter.

Part One

3.1.1 Legal Human Rights Standards Relating to the Protection of Journalists

There is no international treaty dedicated to the protection of journalists covering armed conflict or civil unrest. This is in contrast to International Humanitarian Law where Geneva Conventions¹⁶ regulate the protection of journalists. There is an orchestra of interested international bodies on the subject of protections for journalists covering armed conflict. They tend to regard the right to life as a requirement of Customary International Law (CIL) that is habitually recited in national, regional and international human rights instruments.¹⁷ The right to life is

¹⁴ See, Article 3 UDHR; Article 6 ICCPR; Article 4 of the African Charter on Human and Peoples' Rights; Article 4 of the American Convention on Human Rights; Article 5 of the Arab Charter on Human Rights; Article 2 (2) ECHR

¹⁵ See, Article 3 (9) UDHR; Article 9 ICCPR; Article 6 of the African Charter on Human and Peoples' Rights; Article 7 of the American Convention on Human Rights; Article 14 of the Arab Charter on Human Rights; Article 5 ECHR

¹⁶ Geneva Convention (1V) relative to the Protection of Civilian Persons in Time of War 12 August 1949; Geneva Convention (III) relative to the Treatment of Prisoners of War 12 August 1949; Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977; **See Chapter Two**

¹⁷ See, Article 3 UDHR; Article 6 ICCPR; Article 4 of the African Charter on Human and Peoples' Rights; Article 4 of the American Convention on Human Rights; Article 5 of the Arab Charter on Human Rights; Article 2 ECHR

widely recognised as the supreme right that could not be derogated from even in times of war.¹⁸

The underlying principle of human rights is their universality. They apply regardless of religion, race or gender. Everyone is entitled to the protection of life and of freedom from abuse. Treaty Law and the Customary International Law have established that threats and violations against journalists desecrate a wide range of human rights norms. Violations against journalists, including breaches of the right to life, security, liberty and cruel or inhumane and degrading treatment have serious consequences with regards to their right to freedom of expression.¹⁹ Therefore, it can be said, that the right of journalists to practice their profession under safe conditions is circumscribed under the guarantee to freedom of expression and freedom of the press.

The main international human right instruments that journalists covering conflict zones could plead to for protection include the International Covenant on Civil and Political Rights (1966), the Universal Declaration of Human Rights (1948), the European Convention on Human Rights (1953), Arab League Charter on Human Rights (2008), American Convention on Human Rights (1969) and African Charter on Human and peoples' Rights (1986). Other international human rights laws are

¹⁸ See, General Comment No. 6, *The Right to Life*, U.N. Human Rights Committee, 16th Sess., U.N. Doc. HRI/GEN/1/Rev.1, at 6 (1982); *Herrera Rubio v. Colombia*, Human Rights Committee Communication No. 161/1983, *adopted* 2 Nov. 1987, U.N. Human Rights Committee, at 190, U.N. Doc. A/43/40 (1988)

¹⁹ See, Tarlach McGonagle "How to address current threats to journalism? The role of the council of Europe in protecting journalists and other media actors" Council of Europe 2013, p.4

also important depending on how the safety of journalists is undermined or breached.²⁰

3.1.1.1 The Universal Declaration of Human Rights (1948)-(UDHR)

The UDHR was the first international agreement that sought to promote the view that all human beings have fundamental rights and freedoms. Although, at the time of their inauguration the norms contained in the Universal Declaration were non-binding, they are now however, binding *qua* Customary International Law (CIL).²¹

The right to freedom of opinion and expression derives from Article 19 of the UDHR. This Article guarantees the freedom of opinion and expression, including the right to “seek, receive and impart information and ideas through any media and regardless of any frontiers.”²²

The UDHR also guarantees the right to life, liberty and security of person,²³ the right not to be subjected to torture or to cruelty, inhumane²⁴ or degrading treatment or punishment or arbitrary arrest.²⁵

²⁰ See, for example the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 entry into force 26 June 1987, The International Convention for Protecting of All Persons from Enforced Disappearance adopted on 20 December 2006 by the UN General Assembly and entered into force on 23 December 2010.

²¹ See, Carmen Draghici and Lorna Wooda, “Intuitive on impunity and the rule of law research, legal instruments study, published by CLJJ. City University London and CFOM University of Sheffield 2011,p. 15

²² Article 19 UDHR states that “everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

²³ Article 3 UDHR states that “everyone has the right to life, liberty and security of person.”

²⁴ Article 5 UDHR states that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

²⁵ Article 9 UDHR states that “no one shall be subjected to arbitrary arrest, detention or exile.”

It is well established, that the right to freedom of expression is intended to maximise individual self-actualisation. Furthermore, freedom of expression is widely perceived as the foundation stone for every free and democratic society.²⁶ In *Handyside v UK*,²⁷ the European Court of Human Rights stated that: "... freedom of expression constitutes one of the essential foundations of such as society, one of the basic conditions for its progress and for the development of every man."²⁸

3.1.1.2 The International Covenant on Civil and Political Rights (1966)-(ICCPR)

States' compliance with their obligations under the ICCPR he is monitored by the United Nations Human Rights Committee (HRC) – a treaty body that evaluates regular reports of Member States parties on their progress towards greater protection of covered rights. Where States have ratified the Optional Protocol, recognizing the jurisdiction of the HRC to receive individual complaints, persons whose rights have been violated may upon satisfying required conditions submit petitions against the violating State to the HRC for its determination.

²⁶ See, Human Rights Committee, General Comment No 34 on Article 19 on freedom of opinion and expression, CCPR/C/GC/34, 11 September 2011, para. 33

²⁷ Application No 5493/72, Judgment 7 December 1976

²⁸ Ibid at para 49. 125. See also, the decisions of the European Court of Human Rights in *Jersild v Denmark*, Application No 15890/8, Judgment of 23 September 1994, para 31; *Observer and Guardian v the United Kingdom*, Application No 13585/88, Judgment of 26 November 1991, para 59; *The Sunday Times v the United Kingdom (no 2)*, Application No 13166/87, Judgment of 26 November 1991, at para 50. 130

Most notably, Article 19 confirms the right to freedom of expression.²⁹ The ICCPR also guarantees the right to life,³⁰ prohibition of ill-treatment,³¹ the right to liberty and security of the person.³²

It has been opined,³³ that press freedom has a direct connection with the independent practice of journalism. Perhaps Article 19 of the ICCPR should be interpreted to include also journalists' right to convey information to the public, and journalists' freedom of movement within conflict zones. Moreover, if Article 19 is read in conjunction with Article 20, which prohibits propaganda for war, then journalists' objective reporting becomes counter to State propaganda.³⁴ Additionally, the extent of protection that Article 19 guarantees should be interpreted to cover all

²⁹ Article 19 ICCPR states that "1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (order public), or of public health or morals."

³⁰ Article 6 (1) ICCPR states that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

³¹ Article 9 (1) ICCPR states that "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

³² Article 10 (1) states that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." See also United Nation against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment (1984 in force since 1987) and International Convention for the Protection of all Persons from Enforced Disappearance (2006 in force since 2010) which could also be relied upon in the case of ill-treatment of journalist covering conflict zones. For more details see, Carmen Draghici and Lorna Wooda, p. 16

³³ Monroe Price and Peter Krug, "The Enabling Environment For Free and Independent Media" in Mark Harvey, Ed., Media Matters: Perspectives on Advancing Governance & Development from the Global Forum for Media Development Beijing, Inter news Europe, (2007), pp. 94-101.

³⁴ Article 20 ICCPR states that "1. Any propaganda for war shall be prohibited by law. 2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law"

aspects and means of expression and communication³⁵ as well as restrictions on freedom of expression in line with 19 (3).

3.1.1.3 European Convention on Human Rights (1953) (ECHR)

The European Convention on Human Rights (ECHR) can be described as creating an empowering environment for the freedom of expression as documented by journalists and other media actors.³⁶ The Convention also provides safety measures, enabling journalists to work freely in conflict zones. The Convention guarantees the right to life,³⁷ the guarantee of freedom from torture,³⁸ the right to liberty,³⁹ the right to freedom of expression⁴⁰ and the right to a remedy.⁴¹

The guarantee to freedom of expression in Article 10 comprises three distinct elements, namely, the freedom to hold opinions and to receive and impart

³⁵ See, Human Rights Committee, General Comment No 34 on Article 19 on freedom of opinion and expression, CCPR/C/GC/34, 11 September 2011, para 12,15,43-45

³⁶ See, Monroe Price and Peter Krug, p.96

³⁷ Article 2 ECHR states that “Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.”

³⁸ Article 3 ECHR states that “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

³⁹ Article 5 (1) ECHR states that “Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law.”

⁴⁰ Article 10 ECHR states that “1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

⁴¹ Article 13 ECHR states that “Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

information and ideas. Under this provision, freedom of expression may, legitimately, be limited, only if the limitations are advocated by law and are necessary in a democratic society.⁴²

3.1.1.4 Arab League Charter on Human Rights (2008)

The Arab League Charter on Human Rights⁴³ entered into force on 15 March 2015. Described as a landmark instrument, it resulted from over forty-five years of effort to draft a human rights treaty for the Arab world. This Charter is considered to be a significant step in the promotion and recognition of human rights in the Arab world.⁴⁴ It offers a level of human rights protection similar to that of the UDHR and other regional instruments.⁴⁵

The Arab League Charter on Human Rights recognises the right to life and prohibits all forms of arbitrary deprivation of life,⁴⁶ and prohibits acts of torture.⁴⁷ The Arab

⁴² Tarlach McGonagle, p.17

⁴³ UNHRC, <http://www.refworld.org/cgi-bin/tehis/vtx/rwmain?docid=3ae6b38540>

⁴⁴ For more details see, Mervat Rishmawi "The Arab Charter on Human Rights and the League of Arab States: An update" 10 Human Rights Review Oxford University Press 2010,196-178

⁴⁵ Efforts have also been ongoing since 2013 to establish a Human Rights Court for Arab League member states. The proposed Arab Court of Human Rights would be based in Bahrain, and would operate within the framework of the Arab **Charter for Human Rights**. Its mandate would include the adjudication of cases involving torture, discrimination, and other violations. A statute for the Court's establishment has been drafted, and awaits ratification by at least seven states members before it can proceed

⁴⁶ Article 8 states that "Every person has the right to liberty and security of person. No one shall be subjected to arrest or detention or stopped without legal basis and must be brought before the judiciary without delay."

⁴⁷ Article 13 states that "The State parties shall protect every person in their territory from physical or psychological torture, or from cruel, inhuman, degrading treatment. [The State parties] shall take effective measures to prevent such acts; performing or participating in them shall be considered a crime punished by law."

League Charter further goes on to guarantee the right to liberty, the right to security of the person⁴⁸ as well as the right to freedom of expression.⁴⁹

3.1.1.5 American Convention on Human Rights (1969)

The American Convention on Human Rights⁵⁰ is an international agreement that operates within the framework of the Organisation of American States. The Convention sets out measures to protect human rights in the region as well as providing international monitoring and implementation of human rights. It is a reflection of the effort covered by its drafters in order to provide a minimum standard of civility amongst the American countries in their treatment of individuals.

The American Convention on Human Rights guarantees the right to life,⁵¹ human treatment,⁵² the right to liberty⁵³ and the right to freedom of thought and expression.⁵⁴

⁴⁸ Article 5 states that “Everyone has the right to life, liberty, and security of person; these rights are protected by law”

⁴⁹ Article 26 states that “The freedom of thought, conscience and opinion is guaranteed to everyone”

⁵⁰ Organization of American States, http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm

⁵¹ Article 4 (1) states that “Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.”

⁵² Article 5 (1) states that “No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.”

⁵³ Article 7 (1) states that “Every person has the right to personal liberty and security.”

⁵⁴ Article 13 states that “1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice. 2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: (a) Respect for the rights or reputations of others; or (b) The protection of national security, public order, or public health or morals. 3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government

3.1.1.6 African Charter on Human and Peoples' Rights (1986)

Implemented by the African Union, the African Charter on Human Peoples' Rights⁵⁵ guarantees human rights protection on the African continent. The African Union adopted the Charter on 7th June 1981 and it entered into force on 21st October 1986. The African Charter on Human and Peoples' Rights protects both civil and political rights as well as economic, social and cultural rights. It recognises the right to life,⁵⁶ the right to liberty;⁵⁷ the right to freedom of expression.⁵⁸It prohibits all forms of torture.⁵⁹

It can be clearly stated from the above discussion, that human rights instruments provide no set rules which aim to protect journalists working in conflict zones. All the corresponding human rights treaties recognise the need to impose a broad range of positive duties on the State authorities to protect individuals on their territories,

or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions. 4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence. 5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law."

⁵⁵ African Commission on Human and Peoples' Rights, <http://www.achpr.org/instruments/achpr/>

⁵⁶ Article 4 states that "Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right"

⁵⁷ Article 6 states that "Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained."

⁵⁸ Article 9 states that "1. Every individual shall have the right to receive information. 2. Every individual shall have the right to express and disseminate his opinions within the law."

⁵⁹ Article 5 states that "Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."

including journalists from harm.⁶⁰ However, protection of journalists from these regional instruments is either piece-meal or half hearted.

These international human rights instruments recognise both the freedom of expression and the right to convey information to the public, particularly during an armed conflict.⁶¹ Moreover, international human rights instruments protect the dignity of human beings and forbid all forms of abuse and degrading treatment of all individuals.⁶²

Part Two

3.1.2 The Scope of Protection of Journalists under International Human Rights Law

Cases of attacks and threats on journalists operating in conflict zones invoke the jurisdiction of numerous international and regional human rights instruments. While the right to freedom of expression, the right to life and the prohibition against torture, ill-treatment and abduction have been the key issues in the leading judgments and other authoritative sources on threats to journalists, other human rights may also be implicated.⁶³

⁶⁰ See, Carmen Draghici and Lorna Wooda, p. 15

⁶¹ Article 19 UDHR; Article 19 (2) ICCPR; Article 4 of the African Charter on Human and Peoples' Rights, Article 4 of the American Convention on Human Rights, Article 5 of the Arab Charter on Human Rights, Article 10 ECHR
Article 10(1) ECHR

⁶² Article 5 UDHR; Articles 7 and 10 ICCPR; Article 11 of the African Charter on Human and Peoples' Rights; Article 4 of the American Convention on Human Rights; Article 41 of the Arab Charter on Human Rights; Article 3 ECHR

⁶³ For more details see, Philip Leach, "The principles which can be drawn from the case-law of the European Court of Human Rights relating to the protection and safety of journalists and journalism"

Human rights instruments also protect other relevant rights of journalists in dangerous situations, including the right to a fair hearing in civil and criminal proceedings⁶⁴ and freedom from arbitrary or unlawful interference with privacy, family, home or correspondence, or unlawful attacks on honour and reputation.⁶⁵ This section analyses the main forms of violation of journalists' human rights. It also analyses the duty of States to protect journalists under human rights instruments.

A- The Right to Freedom of Expression

The importance of freedom of expression for the media and for the full development of the person has been highlighted in numerous human rights instruments.⁶⁶ It is important to note that journalists play an important role in enhancing democratic societies. In particular their role in covering armed conflict zones contributes immensely to holding democracies to account for how they prosecute or facilitate wars that affect citizens of other nations. In this sense, any attack or forms of violence against journalists reporting from armed conflict zones constitutes an attack

Council for Europe Belgrade 7-8 November 2013; Sejal Parmar, Towards an effective framework of protection for the work of journalists and an end to impunity, Seminar and Inter-regional Dialogue on the protection of journalists European Court of Human Rights, Strasbourg (PRESS ROOM) The Protection and Safety of Journalists: A Review of International and Regional Human Rights Law, Monday 3 November 2014, Council of Europe, p.8

⁶⁴ Article 14 ICCPR

⁶⁵ Article 17 ICCPR

⁶⁶ See, Human Rights Committee, General Comment No 34 on Article 19 on freedom of opinion and expression, CCPR/C/GC/34, 11 September 2011, para 2.

on the foundations of democratic accountability, the human rights project and ultimately of society as a whole.⁶⁷

In *Ivcher Bronstein v. Peru*, the Inter-American Court stated that: “journalists who work in the media should enjoy the necessary protection and independence to exercise their functions to the fullest, because it is they who keep society informed, an indispensable requirement to enable society to enjoy full freedom and for public discourse to become stronger.”⁶⁸

The Inter-American Court repeated the same protectionist principle in *Vélez Restrepo and Family v. Colombia*.⁶⁹ The Court stated that: “... journalism can only be exercised freely when those who carry out this work are not victims of threats or of physical, mental or moral attacks or other acts of harassment.”⁷⁰ Without uninhibited journalism, good government is threatened as people’s choices would lack the full disclosure necessary to fully hold public authorities accountable. Furthermore, it goes against the spirit of a free society, where, ultimately, independent media are established.⁷¹

⁶⁷ See, Sejal Parmar, p.19

⁶⁸ Judgment of 6 February 2001 Series C No. 74, para 150, See also Herrera, Ulloa v. Costa Rica, Judgment of 2 July 2004 Series C No. 107, para 119

⁶⁹ Vélez Restrepo and Family v Colombia, Report No 136/10 Case 12.658, 23 October 2010

⁷⁰ Ibid, para 209

⁷¹ See, Human Rights Committee, General Comment No 34 on Article 19 on freedom of opinion and expression, CCPR/C/GC/34, 11 September 2011, para 2.

Although human rights instruments allow State authorities to derogate from certain measures during times of conflict/emergency,⁷² such discretion should not extend to limitation of freedom for journalists operating in a conflict zone. Any limitations must be within the law, and in specific circumstances, such as, protection of national security.⁷³ Therefore, before any such limitation on freedom of expression can be done, courts must take into account all circumstances prior to deciding whether or not to restrict freedom of expression.

Arguably, Article 19(3) of the ICCPR should never be summoned to justify the suppression of democracy, nor should it be used to justify an attack on an individual because of their exercise of freedom of expression or opinion.⁷⁴ Furthermore, Courts have generally stated that any action by public bodies which has an actual effect on an individual's freedom of expression will constitute a limitation or restriction of that individual's freedom.⁷⁵

However, it must be noted that derogation from human rights norms can be made, only if the limitation on the right in question is reasonable.⁷⁶ Human rights instruments consider the following to be viable grounds for curtailing the freedom of

⁷² See, Article 19 of the ICCPR

⁷³ Article 20 of the ICCPR contains a specific prohibition on two types of expressions. First, it proscribes war propaganda, and second, it proscribes the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. See, Sejal Parmar, p.9

⁷⁴ See, Human Rights Committee, General Comment No 34 on Article 19 on freedom of opinion and expression, CCPR/C/GC/34, 11 September para. 23

⁷⁵ *Özgür Gündem v. Turkey*, No. 23144/93, para 43, ECHR 2000-III

⁷⁶ Article 19 (3) of the ICCPR; Article 10 (2) of the ECHR

expression: propaganda for war, support of racial, national or religious hatred, which leads to a rise in the level of discrimination and, incitement, violence, or hostility.⁷⁷

The European Court of Human Rights (ECHR) has developed a standard test in order to determine whether or not freedom of expression has been breached.⁷⁸ In *Handyside v. the United Kingdom*,⁷⁹ the court decided that any such restriction on an individual's freedom of expression must be made by law. Further to this, such a restriction must pursue a legitimate aim⁸⁰ and finally the restriction must be necessary in a democratic society and be proportionate to the legitimate aim(s) being pursued.⁸¹

It is also suggested that: "...any legislation restricting the right to freedom of expression must be applied by a body which is independent of any political, commercial, or other unwarranted influences in a manner that is neither arbitrary nor discriminatory, and with adequate safeguards against abuse, including the possibility of challenge and remedy against its abusive application."⁸²

⁷⁷ See, Elizabeth Levin, p.5

⁷⁸ Article 10 (1) ECHR, See, Philip Leach, p.5

⁷⁹ 7 December 1976, para 47-50, Series A No. 24

⁸⁰ Article 10 (2) ECHR

⁸¹ See, *Handyside v. the United Kingdom*, 7 December 1976, para 47-50, Series A no. 24. See. Talach McGonagle, p.17

⁸² See, The Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Human Rights Council Twentieth session 2012. The Special Rapporteur reiterates that "any restriction to the right to freedom of expression must satisfy the three-part test stipulated in article 19, paragraph 3, of the Covenant: (i) the restriction imposed must be provided by law, which is clear and accessible to everyone; (ii) it must be proven as necessary and legitimate to protect the rights or reputation of others; national security or public order, public health or morals; and (iii) it must be proven as the least restrictive and proportionate means to achieve the purported aim.

Freedom of expression ultimately gives journalists the guarantee that they have the right to receive, seek and expose information. Thus, it can be said that, the obligation to respect a journalists' professional, could not ultimately, on the State.⁸³ The human rights guarantee to freedom of expression ensures that. Furthermore, State authorities have a positive obligation to carry out prompt, independent and effective investigations into alleged violations of freedom of expression for journalists.⁸⁴ States' positive obligations therefore include both preventative and investigative dimensions.⁸⁵

In addition to the above, States must also give journalists assurance that they have both effective and accessible remedies to justify those rights. Article 2 (3) ICCPR states that: "Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the

⁸³ Article 2 (1) of the International Covenant on Civil and Political Rights states that "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." See, Annual report of the United Nations High Commissioner for Human Rights, The safety of journalists, Human Rights Council, Twenty-fourth Session July 2013

⁸⁴ Article 2 (2) ICCPR states that "Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant."

⁸⁵ For more details see, D.J. Harris, M. O'Boyle, E.P. Bates and C.M. Buckley, Harris, O'Boyle and Warbrick: Law of the European Convention on Human Rights (Second edition) Oxford, Oxford University Press, (2009), p. 107.

legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.”⁸⁶

It is important to note that, if such violations on journalists succeed, the media cannot be free and consequently, information cannot be diverse and democracy cannot function. Thus, the above gives reason to why governments should always be proactive about ensuring the safety and protection of journalists, especially those covering armed conflicts. State authorities must however forcefully demonstrate that they are prepared to protect freedom of the media, not just in words, but through solid actions. Accordingly, affirmative State measures are needed to promote the safety of journalists and to tackle the main causes of violence against the conduct of their vocation.

The HRC in its General Comment No.34 on freedom of opinion and expression stressed that positive actions by State are required to enhance the safety of journalists. “States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression.Journalists are frequently subjected to such threats, intimidation and attacks because of their activities. So too are persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports, including judges and lawyers. All such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims, or,

⁸⁶ Article 13 ECHR states that, “Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.” See also Tarlach McGonagle, p.6. Philip Leach, p.12

in the case of killings, their representatives, be in receipt of appropriate forms of redress.”⁸⁷

B- The Right to Life

The right to life is the most fundamental of all human rights that are protected by human rights instruments.⁸⁸ It imposes a strong obligation on the States such that they can protect a person’s life, as well as to refrain from taking life and, to carry out investigation on acts which are found to breach the right to life. The right to life is non-derogable and cannot be suspended, even in a time of public emergency threatening the life of the nation.⁸⁹

Journalists are entitled to protection from arbitrary deprivation of life under human rights instruments.⁹⁰ The deliberate targeting of journalists by the State authorities or by armed groups can constitute violation of the right to life if the use of such force was arbitrary.⁹¹ In *Stewart v. UK*,⁹² the ECtHR decided that the most fundamental of human rights is the right to life. The Court also stated that any use of force against journalists must be proportionate and must be planned to minimise the loss of life.⁹³

⁸⁷ Human Rights Committee, General Comment No 34 on Article 19 on freedom of opinion and expression, CCPR/C/GC/34, 11 September 2011, para 23

⁸⁸ See, Article 3 UDHR; Article 6 ICCPR; Article 4 of the African Charter on Human and Peoples’ Rights, Article 4 of the American Convention on Human Rights, Article 5 of the Arab Charter on Human Rights, Article 2 (2) ECHR

⁸⁹ Article 4(2) ICCPR

⁹⁰ Ibid

⁹¹ See, Stuart Casey-Maslen, p.367

⁹² *Stewart v. UK*, No 10044/82 39 DR 162, ECHR (1984)

⁹³ See, *Özgür Gündem v. Turkey*, No. 23144/93, para 43, ECHR 2000-III

The HRC has emphasised that the protection from arbitrary deprivation of life is of permanent importance.⁹⁴

Under International Human Rights Laws, State authorities must not purposely interfere with the journalist's right to life.⁹⁵ In *Özgür Gündem v. Turkey*,⁹⁶ ECTHR decided that the "State has failed to take adequate protective and investigative measures to protect *Özgür Gündem's* exercise of its freedom of expression and that it has imposed measures on the newspaper, through the search and arrest operation of 10 December 1993 and through numerous prosecutions and convictions in respect of issues of the newspaper, which were disproportionate and unjustified in the pursuit of any legitimate aim. As a result of these cumulative factors, the newspaper ceased publication. There has accordingly been a breach of Article 10 of the Convention."

Further to this, State authorities also have a number of positive obligations to provide effective measures to the lives of journalists against attacks perpetrated by third parties,⁹⁷ as well as carrying out efficient investigations into any circumstances surrounding the death of journalists.⁹⁸

⁹⁴ See, Human Rights Committee General Comment No. 6 (1982) para. 3

⁹⁵ See, *Özgür Gündem v. Turkey*, No. 23144/93, para 43, ECHR 2000-III

⁹⁶ No. 23144/93, para 71, ECHR 2000-III

⁹⁷ See, *Dink v. Turkey*, Nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, 14 September 2010

⁹⁸ See, *Kilic v. Turkey*, 2000; see also *Carmen Draghici and Lorna Wooda*, p.18

The HRC requires States to adopt positive methods for the protection individuals' right to life.⁹⁹ States parties should also take specific and effective measures to prevent the disappearance of individuals, and to “establish effective facilities and procedures to investigate thoroughly cases of missing persons in circumstances which may involve a violation of the right to life.”¹⁰⁰

The ECHR affirmed in *Özgür Gündem v. Turkey*, that effective measures are required by States to protect journalists.¹⁰¹ In this case, the European Court held that “the key importance of freedom of expression as one of the preconditions for a functioning democracy. Genuine, effective exercise of this freedom does not depend merely on the State's duty not to interfere, but may require positive measures of protection, even in the sphere of relations between individuals.”¹⁰²

The Council of Europe's Committee of Ministers further highlighted that “Member States should instruct their military and police forces to give necessary and reasonable protection and assistance to journalists when they so request, and treat them as civilians.”¹⁰³ In *Isayor et. Al. v. Russia*, the ECHR held that the importance of

⁹⁹ Human Rights Committee, General Comment No 34 on Article 19 on freedom of opinion and expression, CCPR/C/GC/34, 11 September 2011, para 5

¹⁰⁰ General Comment No 34 on Article 6 on freedom of opinion and expression, CCPR/C/GC/34, 11 September 2011; See, Saul, p. 128

¹⁰¹ *Özgür Gündem v. Turkey*, No. 23144/93, para 43, ECHR 2000-III; In *Dink v. Turkey* Nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, 14 September 2010, the Court held that States are required to produce a positive environment for participation in public debate for everyone and to enable the expression of ideas and opinions without fear. This confirms that States have an obligation to produce an enabling environment for freedom of expression.

¹⁰² *Özgür Gündem v. Turkey*, No. 23144/93, para 43, ECHR 2000-III

¹⁰³ Council of Europe Committee of Ministers, Recommendation No R (96)4 on the Protection of Journalists in Situations of Conflict and Tension, of 3 May 1996; Principle 8

having planned military operations in war zones and to exercise their care for the lives of the civilian population.

The Inter-American Commission on Human Rights states that in order to protect the life of an individual, this must involve implementation of effective measures against the actions of private parties, the use of lethal force by the State's security forces within internationally recognised boundaries, and the investigation and punishment of violations of the right.¹⁰⁴ Therefore, States are found to breach their conventional obligations only if they are found to have failed to conduct a successful investigation into unlawful killing, or, to try and thus punish those individuals responsible.¹⁰⁵

C-Kidnapping

It has become increasingly difficult for journalists to carry out their work in conflict zones due to the increasing types of threats they face. A major risk factor for journalists working in a conflict zone is abduction. This is predominantly carried out by those in armed groups or criminal organisations in order to gain political goals or for ransom. Many journalists are either abducted due to their mere presence or due to the content of their work.¹⁰⁶

¹⁰⁴ See, Inter-American Commission on Human Rights, Report on citizen security and human rights 2009 <http://www.cidh.org>. accessed on 24 October 2015

¹⁰⁵ See, Velásquez Rodríguez Case, Judgment of July 21, 1989, Inter-Am. Ct. H.R. (Ser. C) No. 7 (1989). Hugo Bustios Saavedra v. Peru, Caso 10.548, Informe N° 38/97, Inter-Am. C.H.R., Ivcher Bronstein Case, Judgment of February 6, 2001, Inter-Am Ct. H.R. (Ser. C) No. 74 (2001).

¹⁰⁶ See, Report of the independent international commission of inquiry on the Syrian Arab Republic, Human Rights Council, Twenty-fourth session, HRC 24-46, 2013 Para, 63

In recent years there have been numerous attempts to intimidate journalists around the world. Islamic State militants in Iraq and Syria have kidnapped journalists on several occasions. While held hostage, journalists may endure different types of torture, and/or sexual assault.¹⁰⁷

In 2014, the Islamic State militants released a video purportedly beheading American journalist Steven Sotloff. Mr. Sotloff was the second American journalist to be killed by an Islamic State militant. His death came just two weeks after American journalist James Foley was executed under similar circumstances. The Islamic State militants claimed that the murders were in retaliation for the American airstrikes in Iraq.¹⁰⁸ The Islamic State militants also released a video in 2015 that shows the beheading of Japanese journalist Kenji Goto. The video was released less than a week after the apparent beheading of another Japanese man, Haruna Yukawa. An Islamic State militant claimed this time that the murder was for failure of the Japanese government to respond to their ransom.¹⁰⁹

Two Iraqi journalists have also been killed by Islamic State militants. Mohanad al-Akidi, was shot dead at the Ghazlani base and Raad Mohamed al-Azzawi, was beheaded in the city of Samarra.¹¹⁰ This time, however, Islamic State militants

¹⁰⁷ See, Lauren Wolfe, "CPJ Special Report: The silencing crime: sexual violence and journalists" <http://cpj.org/reports/2011/06/silencing-crime-sexual-violence-journalists.php>. accessed on 1 November 2015

¹⁰⁸ <http://www.dailymail.co.uk/news/article-2740998/ISIS-release-video-showing-beheading-American-journalist-Steven-Sotloff.html>. See also <https://cpj.org/killed/mideast/syria/>

¹⁰⁹ <http://www.bbc.co.uk/news/world-middle-east-31075769>

¹¹⁰ <http://www.bbc.co.uk/news/world-middle-east-29613783>. See also <https://cpj.org/killed/mideast/iraq/>

claimed that the reason for these murders was based on political grounds since they worked for the Iraqi government and published untrue stories about the fighting in northern Iraq.

As stated earlier, there is no specific international law or treaty that deals specifically with violations against journalists operating in conflict zones. It is said that according to human rights instruments, the authorities are responsible for the safety of any journalists working in their territory, and armed groups also must respect the status of journalists as non-combatants. But there is little within international human rights instruments that make an attack on journalists a crime punishable in an international legal setting. As a result, parties to an armed conflict are not deterred from kidnapping journalists and preventing them publishing information on war.

The Human Rights Council highlighted this situation in Syria when reported that: “Hostage-taking and kidnapping have risen sharply. Armed men, motivated by financial gain or to exchange prisoners held by opposing forces, abduct and hold individuals under threat of death.”¹¹¹

D-The prohibition of torture, Inhumane and other degrading treatment

Journalists are also protected under the prohibition against torture and against arbitrary, indiscriminate arrest and detention. According to the UN Convention

¹¹¹ See, Report of the independent international commission of inquiry on the Syrian Arab Republic, Human Rights Council, Twenty-fourth session, HRC 24-46, 2013 Para, 63

against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) and the International Convention for the Protection of all Persons from Enforced Disappearance (2006), State authorities are obliged to prevent indiscriminate killings of journalists.¹¹² The use of torture and inhumane or degrading treatment or punishment against journalists may violate these human rights instruments. Both the international and national human rights laws prohibit torture and inhumane or degrading treatment or punishment.¹¹³

The above principle is said to be breached when the ill-treatment of the individual has reached a “minimum level of severity”, depending on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects. In some cases, the sex, age and state of health of the victim is critical to the determination of when the prohibited breaches start.¹¹⁴ In *Tekin v Turkey* the ECHR held that the prohibition on inhumane and degrading treatment was breached. When the journalist was held blind-folded in a cold, dark cell and forcibly wounded and bruised.¹¹⁵

The threat of arrest is a very common problem faced by journalists reporting on activities of the opposition or criticising the government. Journalists facing criminal charges frequently experience considerable difficulty in continuing their daily work.

¹¹²Human Rights Committee, General Comment No 34 on Article 19 on freedom of opinion and expression, CCPR/C/GC/34, 11 September 2011, para 44

¹¹³ Article 5 UDHR; Article 7 ICCPR; Article 4 of the African Charter on Human and Peoples' Rights, Article of the American Convention on Human Rights, Article 5 of the Arab Charter on Human Rights, Article 3 ECHR

¹¹⁴ See ECHR decisions in *Najafli v Azerbaijan*, No. 2594/07, 2.10.12, para. 35. *Rizvanov v Azerbaijan*, No. 31805/06, 17.4.12, paras. 44-48

¹¹⁵ *Tekin v Turkey*, Application No 22496/93, Judgment of 9 June 1998 at paras 49 - 54.

In 2014, five journalists working for Aljazeera TV were arrested by the Egyptian State authorities, based on the grounds that they were supporting opposition agenda.¹¹⁶ Cases have been reported of journalists declared missing after criticising officials or reporting on activities which are at odds with the authorities. In the last year for instance, several journalists in Iraq and Syria were arrested and have not been heard from.¹¹⁷ Detentions without charge and disappearances have been highlighted as the most serious risks facing journalists in such areas.

State authorities must take all necessary measures in order to prevent and investigate ill-treatment.¹¹⁸ Thus, in many cases the ECHR held that Article 3 of the ECHR had been breached. In *Najafli v Azerbaijan*, the Court found the journalist was beaten by the State Authorities during the dispersal of a political demonstration, which he attended in order to report on the use of force was held to be “unnecessary, excessive and unacceptable.”¹¹⁹

Further, the ECHR stated that “The Court has repeatedly stressed that an investigation must be independent and impartial, both in law and in practice. The Court noted that the Sabail District Prosecutor’s Office, which was formally an independent investigating authority and which conducted the investigation in the present case, had requested the Sabail District Police Department to carry out an inquiry with the aim of identifying those who had allegedly ill-treated the applicant. As

¹¹⁶ www.amnesty.org.uk/free-journalis>accessed March 2016.

¹¹⁷ See, Committee to Protect Journalists, <https://www.cpj.org/Acceded> on 19 February 2016

¹¹⁸ See Article 3 ECHR

¹¹⁹ *Najafli v Azerbaijan*, No. 2594/07, 2.10.12, para 52; See also, *Tekin v Turkey*, No. 52/1997/836/1042, 9.6.98

such, the investigating authority delegated a major and essential part of the investigation – identification of the perpetrators of the alleged ill-treatment – to the same authority whose agents had allegedly committed the offence. In this respect, the Court finds it of no real significance that, while the alleged perpetrators were officers of the Riot Police Regiment of the Baku Police Department, it was another police department which was requested to carry out the investigation. What is important is that the investigation of alleged misconduct potentially engaging the responsibility of a public authority and its officers was carried out by those agents' colleagues, employed by the same public authority. In the Court's view, in such circumstances an investigation by the police force of an allegation of misconduct by its own officers could not be independent in the present case”

Human rights instruments require that investigations of serious allegations of ill-treatment must be done in a diligent and effective manner.¹²⁰ The authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions.¹²¹

The State Obligations

The duty to protect journalists stems from States' positive obligations under International Human Rights Law in relation to the right to life, freedom of expression, the prohibition of torture and ill-treatment. Under this obligation, States are required to protect journalists and other media professionals from threats, especially if they

¹²⁰ See, e.g., *Mehmet Eren v Turkey*, No. 32347/02, 14.10.08, paras. 49-56.

¹²¹ See, *Rizvanov v Azerbaijan*, No. 31805/06, 17.4.12, para. 56; *Najafli v Azerbaijan*, No. 2594/07, 2.10.12, para. 47.

have been identified as facing a particular risk of attack.¹²² Moreover, States also have a responsibility to ensure that their national legal systems do not permit impunity in cases where such violations take place. States are also responsible for ensuring that legal measures, such as anti-terrorism or national security laws, are not used to limit freedom of expression by leading to the arrest and detention, or to fear of arrest and detention, among journalists.

The ECHR in *Özgür Gündem v. Turkey*¹²³ laid down the positive duty upon the State to protect freedom of expression in a case involving the murders of a number of journalists. The Court went on to state that, if State Authorities are aware of intimidation committed against journalists or other media organisations, they may have an obligation to take protective procedures and to carry out an effective and efficient investigation into such allegations. Moreover, States have negative obligations to refrain from killing, ill treatment, unlawful arrest and other interferences which are likely to threaten the safety of journalists.¹²⁴

The HRC requires “All allegations of attacks or other forms of intimidation or harassment of journalists, human rights defenders and others should be vigorously investigated, the perpetrators prosecuted, and the victims, or, in the case of killing, their representatives, be in receipt of appropriate forms of redress.”¹²⁵ The HRC

¹²² See, Human Rights Committee, General Comment no 31 on The Nature of the General Legal Obligation Imposed on States Parties to the Covenant under Article 2, 29 March 2004, CCPR/C/21/Rev.1/Add.13. See also, Thomas Hammarberg, “Protection of Journalists from Violence”, Commissioner for Human Rights, Strasbourg 4 October 2001, p.4

¹²³ Application No (23144/93 Judgment of 16 March 2000)

¹²⁴ *Dink v. Turkey*, Nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, 14 September 2010

¹²⁵ See also, *Grioua v Algria* 2007, *Bashasha et al. v. Libya* 2010, *EL Abani v. Libya* 2010

appears to be aware of journalists' role in promoting human rights protections. In *Afuson Njaru v. Cameroon*, the Committee found that the State had violated Article 9 of the ICCPR (right to security of the person) by failing to take measures against attacks on journalists.¹²⁶

State authorities must be able to avoid both the unlawful and intentional taking of life as well as ensure appropriate measures for the safety of the lives of journalists within its jurisdiction. This, however, requires an obligation upon the State to ensure the right to life by regulating criminal-law provisions to deter the attacker and which, must be fully backed up by law-enforcement system for the suppression, prevention and punishment of any such breaches of provisions.¹²⁷

In *Osman v UK*, the ECHR decided that the authorities, according to Article 2 of the ECHR, are under the obligation to take appropriate steps to safeguard the lives of those within its jurisdiction by providing an appropriate framework for criminal justice, including legal provisions and "law enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions."¹²⁸

¹²⁶ Human Rights Committee, 89th Sess., 6.3 U.N. Doc. CCPR/C/89/D/1353/2005 (2007).

¹²⁷ See the European Court of Human Rights decision on *Osman v UK*, Application No 23452/94, Judgment of 28 October 1998 (Grand Chamber) at para 115 and on *McCann and others v UK*, Application No 18984/91, Judgment of 27 September 1995 (Grand Chamber) at para 161. See, Philip Leach, p.10; Sejal Parmar, p.22

¹²⁸ European Court of Human Rights, *Osman v UK*, Application No 23452/94, Judgment of 28 October 1998 (Grand Chamber) at para 115. See also, European Court of Human Rights decision in, *McCann and others v UK*, Application No 18984/91, Judgment of 27 September 1995 (Grand Chamber) at para 161

The United Nations HRC in its General Comment No. 34 on Article 19, ICCPR states clearly that the authorities in States should put in place effective measures against attacks on journalists who exercise their rights to freedom of expression. Importantly, provisions of the law must be able to firmly control and limit all circumstances in which an individual life may be deprived by the State authorities. States parties should also take specific and effective measures to prevent the disappearance of individuals, and to establish effective facilities and procedures to investigate thoroughly cases of missing and disappeared persons in circumstances which may involve a violation of the right to life.¹²⁹

Therefore, if the authorities were found to have known of the existence or a real and immediate threat of a journalist life within a conflict zone, and that they failed to give them the obligatory protection, then, it can be said, the authorities desecrated the freedom of expression if journalists had been attacked.¹³⁰

When assessing whether or not the State had any knowledge of risk to life, the Court may take into account the degree to which the bodies, i.e. prosecutors, had known about the vulnerable position journalists were in.¹³¹ The Court may also take account of the States' knowledge of the possibility that a risk to life arose from the activities of persons acting with the knowledge or acquiescence of elements in the

¹²⁹ See, General Comment No. 6, *The Right to Life*, U.N. Human Rights Committee, 16th Sess., U.N. Doc.HRI/GEN/1/Rev.1, at 6 (1982)

¹³⁰ Inter-American Commission on Human Rights, Report No 38/97, Case 10.548, Hugo Bustios Saavedra v Perú, 16 October 1997, para 61. Dink v. Turkey, Nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, 14 September 2010

¹³¹ See, *Gongadze v Ukraine*, No. 34056/02, 8.11.05, para. 168. 43

security forces.¹³² In *Gongadze v. Ukraine*, the European Court decided that for “a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party, and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk”¹³³

In *Kilic v. Turkey*, the ECHR evidently found that the Turkish authorities were conscious of the risk journalists faced, and, additionally, that they “were aware, or ought to have been aware, of the possibility that this risk derived from the activities of persons or groups acting with the knowledge or acquiescence of elements in the security forces.”¹³⁴

The Court further acknowledged that the Turkish authorities had unsuccessfully taken any necessary measures to prevent any real or immediate threat to life of *Kemal Kilic*. The Turkish State was found to have violated Article 2 of the ECHR.¹³⁵ In *Dink v. Turkey*, the Court also came to the same conclusion; that the State had failed to prevent the murder of the journalists, thus violating Article 2 of the ECHR.¹³⁶

¹³² See, *Kılıç v Turkey*, No. 22492/93, 28.3.00, para. 68.

¹³³ *Gongadze v Ukraine*, No. 34056/02, 8 November 2011, para 25

¹³⁴ ECHR, *Kılıç v Turkey*, Application No 22492/93, Judgment of 28 March 2000

¹³⁵ *Ibid*, paras 63-77

¹³⁶ *Dink v. Turkey*, Nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, 14 September 2010. See also, Inter-American Court on Human Rights decisions on, “*Pueblo Bello Massacre*” *v Colombia*, Judgment of 31 January 2006, Series C No 140, para 124, and on *Vélez Restrepo and Family v Colombia*, Report No 136/10 Case 12.658, 23 October 2010.

In *Hugo Bustíos Saavedra v. Perú*, The Inter-American Commission on Human Rights held that the attacks on journalists covering conflict zones violated the freedom of expression granted by the international human rights instruments. In this case the Inter-American Commission on Human Rights found that the Peruvian State authorities had knowledge of the fact that the journalists were in a conflict zone and had failed to provide them with the obligatory protection required by international human rights law “in order for them to have the ability to carry out their function of seeking, covering, and disseminating information on occurrences in the area.”¹³⁷

The Inter-American Commission highlighted that “making the work of the press possible in periods of armed conflict, even with irregular armed combatants, requires the greatest protection. It is journalists who are risking their lives to bring the public an independent and professional view of what is really happening in areas of conflict.”¹³⁸

The Inter-American Court of Human Rights indicated that “the State must continue to adopt the appropriate and necessary measures to safeguard and protect the life, personal integrity, and freedom of expression of the beneficiaries of these provisional

¹³⁷ Inter-American Commission on Human Rights, Report No 38/97, Case 10.548, *Hugo Bustíos Saavedra v Perú*, 16 October 1997, paras 76 – 77. See also the Inter American Court decision in the *Vélez Restrepo and Family v Colombia*. In this case the Court ordered the State to provide a wide range of reparations to the victim and his family, including ongoing protection, the payment of medical costs, an effective investigation into events, damages, and training for the armed forces on the right to freedom of thought and expression and the role of journalists and social commentators. Inter-American Court of Human Rights, *Vélez Restrepo and Family v Colombia*, judgement of 3 September 2012.

¹³⁸ Inter-American Commission on Human Rights, Report No 38/97, Case 10.548, *Hugo Bustíos Saavedra v Perú*, 16 October 1997, para 73.

measures, especially when they carry out journalistic activities outside the stations.”¹³⁹

It is therefore evident that in spite of the absence of dedicated treaty on protection of journalists operating in conflict zones, international human rights provisions can be applied to achieve some protection. International Human rights Law requires that State authorities grant journalists with the highest possible protection in order for them to carry out their vocation which presupposes enjoyment of right of freedom of expression in such a way that fulfils society’s right to be adequately informed.¹⁴⁰

The obligation of States to take necessary measures seeks to prevent and eradicate crimes against journalists. It is also aimed to prevent any such threats to the freedom of expression such as the legal restrictions on freedom of expression including restrict legislation and, moreover, the limited application of legislation. Human rights instruments have also put pressure on States in order to make assurance that journalists have both effective and accessible measures in all cases of violence.¹⁴¹

¹³⁹ Inter-American Court of Human Rights *Provisional Measures, Matter of "Globovisión" Television Station regarding Venezuela*, Order of the Inter-American Court of Human Rights, 21 November 2007, 11.

¹⁴⁰ *Dink v. Turkey*, Application Nos. 2668/07, 6102/08, 30079/08, 7072/09, 7124/09, judgment of 14 September 2010, paragraph 137. *Gongadze v. Ukraine*, no. 34056/02, § 164, ECHR 2005-XI.

¹⁴¹ Article 8 of the Universal Declaration of Human Rights, Article 2 (3) of the International Covenant on Civil and Political Rights, Article 13 of the European Convention on Human Rights, Article 5 of Arab Charter on Human Rights

In *Velez Restrepo and Family v. Colombia*,¹⁴² the Inter-American Court ordered the State to provide a wide range of compensation to both the victim and his family, including the payment of medical treatment.

Security Council Resolution 1738 urges any party involved in conflict to obey completely with their international obligation on the protection of journalists in armed conflict.¹⁴³ It also advocates that all parties do their best to prevent violation of international law.¹⁴⁴ Moreover, State authorities are also permitted to cast legislations and act on the necessary steps to ensure the effective protection to journalists.¹⁴⁵ The UN Plan of Action also urges States “to take prompt action in response to attacks by establishing emergency mechanisms, which different stakeholders can adopt.”¹⁴⁶

State authorities may be held responsible for breaching of human rights if they are found to have failed to provide the necessary measures to protect journalists.¹⁴⁷ The Organisation for Security and Cooperation in Europe (OSCE) Parliamentary Assembly requires contributing states to investigate fully, the criminal activities against journalists and to fully prosecute those found to be responsible for such

¹⁴² *Velez Restrepo and Family v. Colombia*, no.71 2012

¹⁴³ UN Security Council Resolution 1738 (2006), 23 December 2006, S/RES/1738 (2006); See also, UN Human rights Council Resolution 12/16 (the Right to Freedom of Opinion and Expression) <http://www.freemedia.at/newssview/article/un-human-rights-council-passes-resolution-in-favor-of-journalist-safety.html>>accessed 26 March 2015

¹⁴⁴ UN Security Council Resolution 1738 (2006), 23 December 2006, S/RES/1738 (2006) paras 1 and 5

¹⁴⁵ Sejal Parmar, p.21

¹⁴⁶ UNESCO, International Programme for the Development of Communication (IPDC), UN Plan of Action on the Issue of the Safety of Journalists and the Issue of Impunity, April 2012, CI-12/CONF.202/6. p. 58

¹⁴⁷ Sejal Parmar, p.21

criminal activities.¹⁴⁸ The OSCE summit 2010 in Astana reaffirmed that “the commitment undertaken in the field of human dimension are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the state concerned.”¹⁴⁹

As mentioned earlier in this chapter, both the States of Iraq and Syria represent the most volatile countries in the world for journalists to practice their profession in. Journalists are prone to both verbal and physical assault when exercising their profession. They were killed, ill-treated, arrested, threatened with death, intimidated or kidnapped. This violence against journalists demonstrates the State’ failed duty to protect journalists.

Threats and violence committed against journalists in conflict zones such as Iraq and Syria are ultimately the product of a series of complex causes. In general, in some cases this type of violence continues to be exercised by State actors. In the past few years, there has evidently been a rise in the number and size of armed militia groups in action. This currently represents a major threat to both the life and integrity of journalists and which also presents a host of challenges when it comes to the protection of journalists and other media workers.

¹⁴⁸ See, Resolution on Strengthening OSCE Engagement on Freedom of Opinion and Expression, adopted by OSCE Parliamentary Assembly in Vilnius in July 2009, <http://www.oscepa.org/news-a-media/press-releases/2009/158-osce-parliamentary-assembly-adopts-vilnius-declaration>

¹⁴⁹ http://www.osce.org/event/summit_2010. The Budapest Summit of the Conference on Security and Cooperation in 1994, condemned “all attacks on and harassment of journalists”, and committed them to “endeavour to hold those directly responsible for such attacks and harassment accountable.” See: <http://www.osce.org/fom/31232>, p. 21. See also Thomas Hammarberg, p.10

Following criticisms by the international human rights organisations to both the government in Iraq and Syria for failing to provide safety to journalists, both governments took several steps towards protecting journalists in the last few years. In Iraq the “Journalists Protecting Law” was adopted by Iraqi Parliament on August 2011.¹⁵⁰ Ultimately, the goal of this was to confirm the principles of human rights contained in the Iraqi Constitution such as the right to life,¹⁵¹ freedom of expression and freedom of opinion¹⁵² and to provide protections for journalists working in Iraq.

Although international human rights law guarantees freedom of opinion and freedom of expression, the new Iraq law may rigorously and indiscriminately restrict the rights to freedom of expression and freedom of opinion guaranteed by the Iraqi Constitution.

Moreover, the law fails to offer any meaningful protection to journalists and enforces limitations on who can be defined as practicing journalism and how one can practice and access information. The new Iraqi law came under review by The Committee to Protect Journalists which concluded that the law falls short of the international standards of freedom of expression and thus such law should indefinitely be abolished.¹⁵³ The Committee to Protect Journalists also highlighted that the existing Iraq Penal Code, which allows journalists to be held captive for up to seven years if

¹⁵⁰ Journalists Protecting Law, No 21, 2011

¹⁵¹ Article 36 of The 2007 Iraqi Constitution states that “Every individual has the right to enjoy life, security and liberty, Deprivation or restriction of these rights is prohibited except in accordance with the law and based on a decision issued by a competent judicial authority.”

¹⁵² Article 36 of The 2007 Iraqi Constitution states that “The state guarantees in a way that does not violate public order and morality: A. Freedom of expression, through all means. B. Freedom of press, printing, advertisement, media and publication”

¹⁵³ <https://cpj.org/2012/01/iraqs-journalist-protection-law-doesnt-protect-the.php>

they were found to be guilty of insulting and criticizing the government, is incompatible with human rights principles.¹⁵⁴

Article 43 of the Syrian Constitution guarantees both the freedom of speech and freedom of expression.¹⁵⁵ Moreover, Article 3 of the Media Law of 2011 confirms that the law maintains freedom of expression guaranteed in the Syrian constitution and in the Universal Declaration of Human Rights. Article 4 highlights the importance of how the media must respect this freedom of expression by applying it with both responsibility and awareness. The Media Law of 2011 also bans the arrest, questioning, or searching of journalists and allowed right to access information about public affairs.

However, in practice the right to freedom of speech and freedom of expression are severely restricted.¹⁵⁶ The 2001 Press Law allows the Syrian State to take full control over all media prints and also prohibits any reporting on topics which are considered either delicate by the government, such as issues of national security or unity. The Ministry of Information must approve all foreign publications.¹⁵⁷ The Ministry also has the authority to place bans on publications if they are found to challenge national sovereignty and security or offend public morality.¹⁵⁸ In 2012, many arrests were

¹⁵⁴ Article 77 of Iraqi Penal Code No 21 1969

¹⁵⁵ Article 43 of the Constitution states that “state shall guarantee freedom of the press, printing and publishing, the media and its independence in accordance with the law” Article 42 of the Constitution states that 1. Freedom of belief shall be protected in accordance with the law; 2. Every citizen shall have the right to freely and openly express his views whether in writing or orally or by all other means of expression”

¹⁵⁶ See, Dan Saxon, “Covering Syria: Legal and Ethical Obligations of Journalists” *Cambridge Journal of International and Comparative Law* (2)3: 411–430 (2013)

¹⁵⁷ See, Articles 9 and 10 of The 2001 Press Law

¹⁵⁸ <https://freedomhouse.org/report/freedom-press/2013/syria>

made by the government on reporters under this indistinct charge of threatening national security

Unfortunately, threats and violations on journalists in both Iraq and Syria are often met with inadequate efforts by the authorities to bring the attackers to justice. Due to the unwillingness of the State to bring attackers to justice or even to open a case to investigate, armed groups were therefore encouraged to commit heinous crimes against journalists.

In order to prevent violence against journalists, State authorities should take serious measures to provide journalists with the maximum protection. Furthermore, States should employ series of measures to guarantee the safety of journalists, including; implementing its obligations to the International Human Rights Law, ensure safety training courses are provided for journalists, assigning enhanced training and resources for law enforcement officials including prosecutors and the judiciary, and finally, to adopt the legislation of the right to information and to reform the criminal defamation laws. The Governments should also make clear that diverse views and opinions, including criticism of authorities, can be expressed peacefully by journalists.

The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression highlighted his concern with regards to both journalists and activists who have been the targets of violence in Iraq and Syria. He summoned

upon the governments to desire reform over repression, to incorporate diverging views, to listen to the citizens and finally, to build a strong and stable society based on the accord of the governed, and whose right to freedom of expression must be sustained.¹⁵⁹

Conclusion

Overall, it can be said that the extent of protection of journalists, under international human rights instruments is patchy and its enforcement not universally consistent. Although, State authorities are ultimately obliged to respect journalist's right to life and to abstain from interference and have a duty to investigate and punish those individuals who are found to have committed violent crimes against journalists, to ensure universally consistent practice in the protection of journalists covering armed conflict. International Law needs to develop a journalist focused Convention on the protection of journalists covering armed conflicts. Such a Convention should also have a treaty monitoring body that has jurisdiction to receive individual complaints from aggrieved journalists.

According to a CPJ report, more than 94% of the attacks on journalists are not investigated at all.¹⁶⁰ Lack of investigation is a particular problem where journalists suffer attacks in conflict zones. In cases of lower-profile armed conflict, attacks on journalists are often carried out by armed groups which make it difficult for the State

¹⁵⁹ <http://www.ohchr.org/EN/HRBodies/SP/Pages/Pressreleases2011.aspx>

¹⁶⁰ See, CPJ's 2011 Impunity Index [<http://www.cpj.org/reports/2011/06/2011-impunity-index-gettingaway-murder.php>]. accessed 1 November 2015

to protect journalists or to carry out investigation without first ending the whole armed group, and ending the armed conflict.

Impunity is a major cause of the consistently high number of journalists killed every year. In many cases there is a lack of political will to prosecute the criminals or there is political protection of them. The Arab Charter on Human Rights guarantees the right to life and freedom of expression, but unfortunately the Courts in most Arab countries have not yet been asked to use the Charter to protect journalists.

Governments must understand why journalists need special attention. Violence against journalists is a crime against fundamental democratic values. Therefore governments need to commit themselves to treating such violence as crimes aimed at undermining public order and democratic governance. Therefore, changes to national laws are needed to ensure the violence against journalists is crimes. Authorities in States must treat these crimes with the full political, administrative and technical resources available to them so as to make sure the criminals and those behind them do not escape justice. The existing human rights instruments provide the required normative protection of journalists, the main challenge lies in its full implementation and application of international norms in national law and practices.

In spite of the absence of a dedicated international treaty on the protection of journalists operating in conflict zones, international human rights standards imply a duty upon all States to ensure journalists' safety. There is a clear link between democratic governance and the vocation of journalism. Without accurate, up-to-date information the public cannot hold public authorities to account for their actions. The

human rights guarantees to freedom of opinion and expression allow journalism to search, test and report information that helps the public hold their governments accountable.

Therefore, international human rights law have responsibility to protect journalists' activities and human rights provisions and where possible interpret broadly to continue to offer protection to journalists operating in conflict zones. That omission until now by States to introduce an international human rights treaty focused solely on the protection of journalists operating in armed conflict zones in spite of the increasing evidence of harm to befalling journalists working in areas of armed conflict, is an indictment on the commitment of the United Nations to the idea of democratic governance and the rule of law which depends on availability of current, up-to-date information for the public to use to search information decisions.

Chapter Four

Other Avenues for the Protection of Journalists reporting Armed Conflict

4. Introduction

Chapters two and three examined respectively the rules of International Humanitarian Law and International Human Rights Law applicable to the protection of journalists operating in conflict zones. The protection of journalists in conflict zones has also been addressed by various bodies, including the United Nations, Regional Organisations and Non-Governmental organizations. Each body has its own standards and guarantees as well as its own enforcement mechanisms to protect journalists operating in conflict zones.

The United Nations, Regional Organisations and Non-Governmental organizations have affirmed the applicability of both International Humanitarian Law and International Human Rights Law to journalists covering armed conflicts;¹ they have

¹See, T Siatitsa and M Titberidze, 'Human Rights in Armed Conflict from the Perspective of the Contemporary State Practice in the United Nations: Factual Answers to Certain Hypothetical Challenges', Rule of Law in Armed Conflicts Project, Geneva Academy of International Humanitarian Law and Human Rights, 1-37, <<http://www.geneva-academy.ch/RULAC/pdf/HRL.ia-AC.pdf>, accessed 24 March 26.

also recognised the importance of having an added legal and political measure for the protection of journalists reporting from armed conflict zones.²

They have proposed several strategies for the protection of journalists and also to end the issue of impunity victimization of journalists reporting from armed conflict zones. A large number of the proposals are based on the idea that journalists are credible, and require safety and protection that is separate from that given to civilians. They insist that States are obligated under International Humanitarian Law, to abstain from unlawfully arresting, ill-treating and killing of their own citizens.³

However, Tanner writes that these proposals are not obligatory and therefore do not appropriately address the obscurities within the International Humanitarian Law when applied independently.⁴ The proposals also appear to be disintegrated to the extent of leaving the challenges unscathed. Many previous endeavours to enhance the protection of journalists reporting on armed conflict have failed partly because States preferred to link journalists' rights to their responsibilities, in a way that unsatisfactorily adjusted the profession of journalism and greatly limited freedom of expression.⁵

² The International Committee of the Red Cross (ICRC) believes that journalists are well protected by Geneva Conventions and its Protocol I and II of 1979. ICRC sees the problem is in the enforcement of the Convention rather than the current rules of protections. See, Report Without Borders, "Roundup of the Abuses against Journalists, 2014." <https://en.rsf.org/files/bilan-2014>.

³ Geneva Convention (1V) Relative to the Protection of Civilian Persons in Time of War 12 August 1949 and its Protocol I and II of 1979; Hague Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. 29 July 1899.

⁴ See, C Tanner, "Protecting Journalists in Foreign War Zones" 2015, p.36, epubs.utah.edu/index.php/HJP/article/view/1371/1041; Saul, p.29

⁵ Saul, p.30

This chapter is in four parts. Part one discusses the legal status of soft law instruments. Part two discusses United Nations Resolutions that seek to enhance the protection of journalists reporting from armed conflict zones. Part three analyses attempts by Non-Governmental Organisations to enhance the protection of journalists covering armed conflicts. Part four examines Regional Organisations' own attempts to enhance the protection of journalists operating in armed conflict situations. The chapter shows that this soft law approach to the protection of journalists working in areas of armed conflict is extremely feeble. States themselves need to do more to protect journalists working in combative situations.

Part one

4.1. The Legal Status of Soft Law Instruments

A number of instruments, including the United Nations, Non-Governmental Agencies and Regional Organisations have addressed the issues of protection of journalists reporting from conflict zones. Such organisations have provided acknowledgment towards the supplementation of legal and political rule of the protection of journalists so as to counteract the growing duty of affording protection to journalists reporting from conflict zones. Such organisations have also given proposals so as to put an end to impunity. As these instruments refer to soft law, it is thus necessary to examine the scope of soft law as well as what the legal status is for the instruments in affording protection to journalists reporting from conflict zones.

Laws which do not fully lack legal importance or that are not firmly compulsory are termed soft law. Ultimately soft law comprises of standards, codes of conduct, policy statements which in essence establishes standards of conduct, within the framework of international law.⁶

With regards to the evolution of international law and of international relations, soft law instruments have provided a significant and increasing position. The foundation to treaty negotiations, in practice, is often from non-binding standards. This can also fuel State practice which can lead to the introduction of Customary International Law.⁷ Furthermore, soft law instruments are valuable when it comes to dealing with fresh matters of standards which necessitates rule-making with regards to non-State players. Non-State players are those who are not associated to a treaty or who have no contribution towards the establishment of Customary International Law.⁸

It should also be noted that soft law provides endless variability. Many of the work of international organisations provide a majority of non-bound standards. Although in most cases, it does not have the authority to implement binding actions. The Security Council, under Article 25, is one of the few international bodies that can confer the power to bind states and demand compliance with the measures it adopts.⁸

⁶ Shelton, D (ed.) (2000), *Commitment and Compliance: The Role of Non-Binding Norms in the International Legal System* (Oxford: Oxford University Press), p.15

⁷ Shelton, D p.12

⁸ Andrew T. Guzman and Timothy L. Meyer, p.188

Under the UN Charter, The General Assembly is given complete power to pledge revisions, deliberate issues, and provide references.⁹ Therefore, the General Assembly resolutions, as a soft law instrument, continue as a recommendation.¹⁰ However, the United Nations General Assembly Resolution has enforced added responsibility on the international community, including every Member State of the United Nations, so as to help individual States construct the power to protect their civilian populations from genocide, war crimes, ethnic cleansing, and crimes against humanity as well as to aid those States that are under pressure before a conflict breaks out.¹¹

A further example of soft law instruments is the Governmental and NGOs organisations including the ICRC.¹² In essence, the ICRC provides a mixed nature. This means that it is able to merge elements of non-governmental and of governmental organizations, therefore making its legal personality *sui generis* with respect to international relations. Due to the decree conversed upon it; States therefore consider the ICRC as an intergovernmental organisation instead of a private organisation.

Under the Geneva Conventions, the ICRC is assigned with an international mandate. This includes Additional Protocols I and II and the Statutes of the International Red Cross and Red Crescent Movement, which confers to it an international legal

⁹ Article 13 of the UN Charter

¹⁰ Dinah L. Shelton, *Soft Law handbook of International LAW* (Routledge Press, 2008)

¹¹ Paragraph 189 of the United Nations General Assembly Document A/60/L.I, September 15th, 2005.

¹² Anton Camen, "The Role of the ICRC in Armed Conflicts and other Situations of Violence, Introduction to International Humanitarian Law", *IHL moot in asia-pacific region*, p. 14

personality. It ultimately makes sure that protection is given to the victims of conflict as well as encouraging States to adopt their responsibilities of International Humanitarian Law. Resourcefulness of the ICRC permits it to propose its services or to commence any act which it believes is essential to safeguard the accurate use of International Humanitarian Law.¹³

There are a number of legal bases that comes with the freedom and honour of the ICRC. A number of national and international tribunals have reigned on the ICRC's judicial protection and testimonial freedoms. The ICRC was differentiated from NGOs by The International Criminal Tribunal for the former Yugoslavia (ICTY). It alludes to its international legal decree and position, including its right to decline to testify.¹⁴ The position of the International Criminal Court with respect to its regulations of evidence and procedure replicates that of the position of the more than one hundred States that enlisted the document, whereby the ICRC relishes its testimonial protection and freedom. The UN General Assembly has granted the ICRC with the role of observer status and as such has the same status given to other international and intergovernmental organisations. Moreover, the ICRC has been granted observer status at the UN General Assembly and enjoys similar status with other international, intergovernmental organisations.¹⁵

¹³ Anton Camen, p. 17

¹⁴ Final Report to the ICTY Prosecutor 2000, para 33

¹⁵ Els Debuf, "Tools to do the job: The ICRC's legal status, privileges and immunities" *International Review of the Red Cross* (2016), 319–344.

Part Two

4.2 Protection of Journalists under the United Nations

The United Nations has implemented a number of resolutions with the aim of enhancing the legal framework and enforcement methods intended to protect journalists and to fight impunity against offences committed against journalists.

4.2.1. Security Council Resolutions

Chapter VII of the UN Charter (1945)¹⁶ authorised the UN Security Council to take all measures necessary to ensure international peace and security.¹⁷ This includes ensuring the needs of those who are susceptible and defenceless to abuse, including refugees, women, children, journalists, and those who have been ousted outside their borders.¹⁸

¹⁶ (entered into force Oct. 24, 1945), 1 U.N.T.S. xvi.

¹⁷ Under Article 39 of the UN Charter the primary responsibility of the Security Council is to maintain international peace and security and underlining the importance of taking measures aimed at conflict prevention and resolutions. This Article states that “The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.” <http://www.un.org/en/sections/un-charter/chapter-vii/index.html>

¹⁸ See for example, United Nations Security Council Resolution on Children and Armed Conflict, S/RES/1261/30 August 1999; United Nations Security Council Resolution on Women and Peace and Security, S/RES/1324/31 October 2000

In order to address the issue regarding journalist's safety during conflict zones, the Security Council has passed two different types of resolutions. The first focuses on general resolutions on the protection of civilians in conflict zones. The second focuses on resolutions which directly address the issue of journalists' safety whilst operating in armed conflict zones.

4.2.1.1. Security Council Resolutions on the Protection of Civilians in Armed Conflict zones.

The UN Security Council has adopted several resolutions to address the issue of the protection of civilians in conflict zones. Resolutions 1265 (1999),¹⁹ 1674 (2006)²⁰ and 1894 (2009)²¹ acknowledged the Geneva Conventions²² principles on the prohibition against deliberately targeting civilian populations in conflict zones.²³

The Security Council expressed deep concern at the erosion of International Humanitarian Law and Human Rights Law and Refugee Law during armed conflicts and in particular, the increase in deliberate acts of violence against all those

¹⁹ United Nations Security Council Resolutions on Protection of Civilian in Armed Conflict S/RES1265/17/September/1999

²⁰ United Nations Security Council Resolutions on Protection of Civilian in Armed Conflict S/RES/28/April/2006

²¹ United Nations Security Council Resolutions on Protection of Civilian in Armed Conflict S/RES1894/12/November/2009

²² Geneva Convention (1V) Relative to the Protection of Civilian Persons in Time of War 12 August 1949 and its Protocol I and II of 1979

²³ United Nations Security Council Resolution S/RES/1265/17/September/1999, para 5

protected under such law. It observed that that the denial of safe and unimpeded access to people in need was unconscionable.²⁴

Further, the Security Council stressed the obligation incumbent upon States to end impunity and to prosecute those responsible for genocide, crimes against humanity and serious violations of International Humanitarian Law.²⁵ The Security Council insisted that: “All parties concerned comply strictly with the obligations applicable to them under international law, in particular those contained in The Hague Conventions of 1899 and 1907 and in the Geneva Conventions of 1949 and their Additional Protocols of 1977, as well as with the decisions of the Security Council.”²⁶

With respect to the protection of civilians during armed conflict, the UN Security Council confirmed the appropriate establishment of the 2005 World Summit Outcome Document.²⁷ This included paragraphs 138²⁸ and 139²⁹ which concentrate

²⁴ Ibid, para 3

²⁵ Ibid, para 6

²⁶ United Nations Security Council Resolution S/RES/1265/17/September/1999, para 7; United Nations Security Council Resolution S/RES/11/November/2009, para 6. For discussion on the possible protection of journalists under these instrument see also Chapters 2 and 3.

²⁷ World Summit Outcome Document, General-Assembly, United Nations/RES/60/1/24 October/2005

²⁸ Paragraph 138 states “Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.”

²⁹ Paragraph 139 states “The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to

on States' responsibility to protect populations on their territories from war crimes, crimes against humanity, genocide and ethnic cleansing.

This category of resolutions is aimed only towards the protection of civilian populations during armed conflict. It does not target the problem of journalist's safety when operating in conflict zones. However, these resolutions are valid for journalists as civilians working in armed conflict zones and thus it enhances their protection. This is supported by the fact that Article 79 of Additional Protocol 1 confirms that journalists practicing their work in armed conflict zones are considered as civilians.³⁰ It states that: "Journalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians ... provided that they take no action adversely affecting their status as civilians."³¹

Additionally, Article 50 (1) of Additional Protocol I confirms the legal status of journalists as civilians. Therefore, journalists have the legal status of civilians and they retain this status when entering theatres of armed conflict in pursuit of their vocation. They are also classed as civilians when they are in the company of armed forces involved in armed conflict or if they were to take benefit of logistical support.³²

commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out."

³⁰ Article 79 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977; See, ICRC, Customary IHL Database (2015) Rule 34, <https://www.icrc.org/customary-ihl/eng/docs/home> acceded on 11 March 2016

³¹ See Chapters One and Two

³² See also United Nations Security Council Resolution on Protection of Civilian in Armed Conflict, S/RES/ 1738/28/April/2006; See, Knut Dormann, p.2; Sejal Parmar, p.11

Therefore, it must be noted that, all International Humanitarian Law that refers to civilians applies also to journalists, including embedded journalists.³³

4.2.1.2. Security Council Resolutions on the Protection of Journalists in Armed Conflict zones.

The significant rise of deliberate violence towards journalists in violation of International Humanitarian Law appears to have jolted the UN Security Council into passing new resolutions that specifically refer to journalists operating in conflict zones.

Resolution 1738 (2006) was the first resolution adopted by the UN Security Council with regard to journalists' safety whilst practicing in conflict zones.³⁴ The principal aspect of this resolution was the reiteration of past resolutions, including Resolutions 1265 (1999), 1296 (2006) and 1674 (2009) as well as Geneva Conventions, which talked about the protection of civilians.³⁵

³³ See, D Keith; Suter, p. 77

³⁴ United Nations Security Council Resolution on Protection of Civilian in Armed Conflict, S/RES/1738/28/April/2006; in response to this resolution, the British Military updated its "Green Book" to take account of journalists' safety in conflict zones. http://www.mod.uk/NR/rdonlyres/BAFF11F2-EF45-4A99-B8BAA1BDA6AFE8A4/0/green_book_v7_011010.pdf

³⁵ Articles 47, 48, 127, and 144 of Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 12 August 1949 and Article 83 of Protocol Additional to the Geneva Conventions and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) 1977.

The Security Council stated clearly that journalists, media professionals and associated personnel engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians and shall be respected and protected as such, provided that they take no action adversely affecting their status as civilians. This is without prejudice to the right of war correspondents accredited to the armed forces to the status of prisoners of war provided for in Article 4.A.4 of the Third Geneva Convention.³⁶

Further to this, the Security Council demanded that: “All parties to an armed conflict comply fully with the obligations applicable to them under international law relating to the protection of civilians in armed conflict, including journalists, media professionals and associated personnel.”³⁷ It reiterated its demand that all States should end impunity as well by prosecuting anyone found responsible for violating international humanitarian law.³⁸ For the first time the Security Council expressed its willingness to authorise UN peacekeeping missions against media broadcasts that incite genocide, crimes against humanity, and serious violations of international humanitarian law.³⁹

Security Council Resolution 1738 (2006) establishes customary international humanitarian law. It restates current law and confirms custom and State practice by re-formulating and defining its scope.⁴⁰ However, the concern with this resolution is

³⁶ Ibid, para 2, See Chapter One

³⁷ Ibid, para 5

³⁸ Ibid, para 6

³⁹ Ibid, para 7, *Infra*, p. 17

⁴⁰ See, Saul, p.31; Courtney Tanner p. 36

that it only focused on journalists practicing in conflict zones. It failed to include any rules relating to the protection and safety of journalists whilst practicing during ceasefires, civil emergencies and other disturbances as well as domestic hostilities. The Security Council itself conceded its solution was restricted in a way that demands further investigations into the problem. Reporters Without Borders recommended that a number of independent experts should be established to observe State compliance with UN resolution 1738.⁴¹

UN Security Resolution 1738 (2006) also fell short in that it failed to show how demands enhanced protection of journalists operating in unstructured warfare. Thus, the issue of the safety of journalists had to be addressed further by the UN Security Council in its Resolution 2222 (2015).⁴² This resolution extended the protection of journalists, in that it included all journalists practicing their profession both inside and outside conflict zones.

Furthermore, Resolution 2222 (2015) recognised finally, the fact that journalists as well as media workers and associated personnel can certainly play a significant part

⁴¹ Reporters Without Borders-September, Safety of Journalists Recommendations 2014 https://www.google.co.uk/?gfe_rd=cr&ei=k2F_VOWjAcnn7AbJqoDACQ&gws_rd=ssl#q=the+safety+of+journalists+and+the+issue+of+impunity. Infra p.28

⁴²United Nations Security Council on Protection of Civilians on Armed Conflict S/RES/2222/27 May/2015; See also UN Security Council on Protection of Civilians on Armed Conflict, S/RES/1296/19 April/2000; In 2013 the Security Council held an open debate on the protection of journalists where the speakers almost unanimously stressed the need for protection. The open debate saw the participation of nearly 50 Member States, and was the first time that journalists were invited to address the Council. Deputy Secretary-General Jan Eliasson said that the Security Council could also play “an important role by reacting to and standing up against suppression of media freedom wherever and whenever it occurs. When journalists are killed, information about threats to international peace and security is often buried” He added that “journalists also are at grave risk in many non-conflict situations around the world”. See, S/PV. 7003 17/June /2013 http://www.unesco.org/new/en/communication-and-information/resources/news-and-in-focus-articles/allnews/news/un_security_council_debates_on_safety_of_journalists/#.VtIOAbkrHIU acceded on 27 February 2016

in protecting civilian lives by preventing the escalation of conflict in that their reports can act as an early warning mechanism with regards to both recognising and reporting any potential circumstances that could result in war crimes, genocide, ethnic cleansing or crimes against humanity.

The Council “urged the immediate and unconditional release of journalists, media professionals and associated personnel who might have been kidnapped or taken as hostages, in situations of armed conflict”.⁴³ It imposed on all parties involved in situations of armed conflict to “respect the professional independence and rights of journalists, media professionals and associated personnel as civilians.”⁴⁴

Legal Status of UN Security Council Resolutions

Security Council Resolutions relating to the safety and protection of journalists do not carry any form of execution mechanism. In large part, the resolutions merely reiterate previously established ‘concerns’ about the safety and protection of journalists. Thus, they do not introduce any extra radical or salient protections. However, the resolutions are said to be inventive to the extent that they emphasise that any kind of targeting of civilians that is deliberate in nature may constitute a threat to international peace and security that required a UN Security Council

⁴³ Ibid para 9
⁴⁴ Ibid, para 8

response.⁴⁵ They are also significant in that they urge all parties to a conflict to respect the professional independence and rights of journalists and media personnel⁴⁶ and urge States to become parties to Protocols I and II of Geneva Conventions of 1949.⁴⁷ But realistically, journalists could not look to any of these resolutions and hope for protection particularly away from home as they do not impose any meaningful way or legally binding belligerents.

4.2.2. UN General Assembly

The UN General Assembly has approved a number of resolutions on the protection of journalists practising their profession in armed conflict zones. Resolution 2673 (1970), establishes a mechanism for the protection of journalists practicing their profession in armed conflict zones. It stresses the importance of developing further international humanitarian conventions or, if possible, to have other suitable legal means for the protection of journalists operating in conflict zones.⁴⁸

⁴⁵United Nations Security Council Resolution on Protection of Civilian in Armed Conflict, S/RES/1738/28/April/2006, para, 9

⁴⁶ Ibid, para, 8

⁴⁷ Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 12 August 1949; See, Saul, p.30

⁴⁸ United Nations General Assembly Resolution on Protection of Journalists Engaged in Dangerous Missions in Areas of Armed Conflicts, 2673 (XXV) 9 December 1970. See also UN General Assembly Resolution on Protection of Journalists Engaged in Dangerous Missions in Areas of Armed Conflicts 2854 (XXVI) 20 December 1971; UN General Assembly Resolution on Respect for Human Rights in Armed Conflicts 3499 (XXX) 15 December 1975

Another resolution, approved in 2014 by the UN General Assembly⁴⁹ gave recognition to the practice of journalism as a profession characterised by a higher risk of violence, harassment and threats. Furthermore, the resolution raised concerns with the risk to the protection and safety of journalists that is presented by criminals and by terrorist groups. It condemned “unequivocally all attacks and violence against journalists and media workers, such as torture, extrajudicial killings, enforced disappearances and arbitrary detention, as well as intimidation and harassment in both conflict and non-conflict situations.”⁵⁰

The General Assembly appealed to Member States “to do their utmost to prevent violence against journalists and media workers, to ensure accountability through the conduct of impartial, speedy and effective investigations into all alleged violence against journalists and media workers falling within their jurisdiction and to bring the perpetrators of such crimes to justice and ensure that victims have access to appropriate remedies.”⁵¹ Furthermore, it requested that: “States promote a safe and enabling environment for journalists to perform their work independently and without undue interference.”⁵²

⁴⁹ United Nations General Assembly Resolution on the Safety of Journalists and the Issue of Impunity, RES/68/163/ 21 February 2014

⁵⁰ Ibid para 2; See also, UN General Assembly Resolution on Situation of Human Rights in Afghanistan RES/51/108/ 4 March 1996, para 9 “strongly urges all parties to the conflict to take all necessary measures to ensure the safety of all personnel of humanitarian organizations and representatives of the media in Afghanistan.”

⁵¹ Ibid para 5; See also, UN General Assembly Resolution on the Situation of Human Rights in Kosovo RES/53/ 181/ 1998. The resolution called upon the authorities of the Federal Republic of Yugoslavia (Serbia and Montenegro), as well as armed Albania group, to refrain from any harassment and intimidation of journalists.

⁵² United Nations General Assembly Resolution on the Safety of Journalists and the Issue of Impunity, A/RES/68/163/ 21 February 2014, para 6

In order to achieve this goal, the General Assembly requested that States involved in armed conflict must take certain measures within their means in relation to the safety and protection of journalists as a direct consequence of both their International Human Rights Law, and International Humanitarian Law obligations. These include, increasing the perception amongst military personnel and judiciary officers, as well as increasing perception amongst society and journalists of the need to observe the rights of journalists covering armed conflicts.⁵³ States must also observe and report any violence directed towards journalists. They must take every opportunity to publicly condemn such attacks and commit the necessary means for the investigation and prosecution of any such violent attacks on journalists.

In a significant move by the UN General Assembly, November 2nd became known as the 'International Day to End Impunity for Crimes against Journalists.' This date was specifically chosen in order to remember both Ghislaine Dupont and Cloude Verlon, two French journalists who were assassinated in Mali on this day in 2013.⁵⁴ This is a deliberate and strong signal by the UN General Assembly that violence against journalists cannot continue.

4.2.3. The Secretary-General

Resolution 1738 (2006) of the UN Security Council mandated the UN Secretary-General to produce a report based on the safety and protection of civilians present in conflict zones, and to present this report on a yearly basis to the General

⁵³ Ibid para 6

⁵⁴ Ibid para 7

Assembly.⁵⁵ The Secretary-General submitted his first report on 28 October 2007.⁵⁶ In the report, the Secretary-General raised specific concerns regarding the protection of journalists operating in conflict zones. Further, he raised concern on the rise of the number of journalists killed or wounded whilst practicing their profession in conflict zones and instructed that all parties participating in armed conflict must take all necessary precautions to avoid attacks on journalists.

The Secretary-General⁵⁷ observed that in the majority of cases, journalists were the group that was disproportionately numbered among victims in armed conflicts. This was probably because parties wanted to hide from objective reporting of their violent activities, in order to avoid the consequences of their crimes against the civilian populations.⁵⁸

He further recommended that the UN Security Council “make provision for the regular integration in mission mandates of media monitoring mechanisms that would

⁵⁵ United Nations Security Council Resolution on Protection of Civilian in Armed Conflict, S/RES/1738/28/April/2006; See also, United Nations Security Council Resolution on Syria S/RES/2042/14 April/2012. In this resolution the Security Council condemned the widespread violations of human rights by the Syrian authorities, as well as any human rights abuses by armed groups, recalling that those responsible shall be held accountable, and expressing its profound regret at the death of many thousands of people in Syria. See also, United Nation Security Council Resolution on Somalia, S/RES/ 2093/ 6 March/ 2013; United Nations Security Council Resolution on Afghanistan, S/RES/2096/ 19 March/ 2013

⁵⁶ Report of the Secretary-General on the Protection of Civilians in Armed Conflict, S/643/28 October 2007

⁵⁷ Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict, S/331/ 30 March/2001

⁵⁸ Ibid, para 6. In his Report on Protection of Civilians in Syria, the Secretary-General highlighted the danger for journalists operating in Syria reminding the authorities in Syria of their obligations to prevent attacks against journalists and to prosecute those responsible for such attacks. See, Report of the Secretary-General on the Protection of Civilians in Armed Conflicts, S/376/22 May/2012, para14-15; The Secretary-General also welcomed the initiatives being pursued in Human Rights Council by the Government of Austria and some human rights special producers mandate holders to ensure better protection of journalists operating in conflict zones, Report of the Secretary-General on the Protection of Civilians in Armed Conflicts, S/579/17 May/2010

ensure the effective monitoring, reporting and documenting of the incidence and origins of “hate media”. Such mechanisms would involve relevant information stakeholders from within the United Nations and other relevant international organizations, expert non-governmental organizations, and representatives of independent local media.”⁵⁹

In response to the rise in the number of attacks against journalists since the adoption of UN Security Council 1738 (2006) the Secretary General addressed the UN Security Council in 2012⁶⁰ where he vehemently registered his frustration with the lack of meaningful progress on the question of the safety and protection of journalists even after the Security Council had made several pronouncements on it, and passed several resolutions on it too. He condemned the increasing failure of parties participating in armed conflict to adhere to their responsibilities as expressed under international humanitarian law to not only show respect but to also show its willingness to protect civilians.⁶¹

The Secretary-General suggested that a more practical and pre-emptive approach was required to enhance the protection of journalists covering armed conflicts, and that the Security Council should take the lead on that.⁶² He recommended that the Security Council should find any way of motivating as well as helping States involved

⁵⁹ Ibid, para 8

⁶⁰ Report of the Secretary-General on the Protection of Civilians in Armed Conflicts, S/376/22 May/2012

⁶¹ Ibid, para 4

⁶² Ibid, para 81

in armed conflict to make sure that any violations of human rights law as well as International Humanitarian Law are prosecuted at national level.

Following this recommendation, the UN Security Council adopted in 2015⁶³ another resolution on the protection of journalists. As discussed above, the resolution failed to hold parties to a conflict accountable for any violation of International Humanitarian Law.

4.2.4. Human Rights Council

The Human Rights Council has addressed the issue of safety and protection of journalists within the context of the right to freedom of expression and the right to freedom of opinion.⁶⁴ The Human Rights Council has criticised the escalation in violent attacks against journalists and conveyed its concerns for the need to ensure journalists' safety. In 2012 the Human Rights Council invited States to make sure that they advocate both a safe and facilitating environment in which journalists can practice their profession independently and without unnecessary interference.⁶⁵

⁶³ United Nations Security Council on Protection of Civilians on Armed Conflict S/RES/2222/27 May/2015;

⁶⁴ Human Rights Council Resolution, Mandate of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, A/HRC/7/36/ 8 March/ 2008; See also, Human Rights Council Resolution on Promotion and Protection of Human Rights in the Context of Peaceful Protest, A/HRC/19/35/23/March/2012

⁶⁵ Ibid, para 9

Further to this, the Council advised “States to put in place voluntary protection programmes for journalists, based on local needs and challenges, including protection measures that take into account the individual circumstances of the persons at risk, as well as, where applicable, the good practices in different countries.”

In 2014 the Human Rights Council adopted a new resolution⁶⁶ on the safety and protection of journalists. The resolution stresses the importance of the need to thoroughly investigate and prosecute the many cases on journalists murdered while reporting from armed conflict zones. It imposes States to design and apply the necessary tools for ending impunity for violent attacks on journalists covering armed conflict.

The Resolution also recommends the creation of special national investigative units or independent commissions as well as a specialised prosecutor for crimes against journalists covering armed conflicts. It also encouraged States to offer training to prosecutors and the judiciary regarding the safety of journalists. Moreover, it advised States to establish an early warning and rapid response mechanism to give journalists, when threatened, immediate access to the authorities and protective measures.⁶⁷

⁶⁶ Human Rights Council Resolution on the Safety of Journalists, A/HRC/L.7/19 September/ 2014

⁶⁷ Ibid, para 5

The safety of journalists has also been addressed by International Commissions of Inquiry mandated by the Human Rights Council and supported by The Office of the United Nations High Commissioner for Human Rights (OHCHR).

The OHCHR, in essence is the main UN body that is assigned to oversee implementation of the International Bill of Rights.

In its enquiry on the human rights condition in Libya,⁶⁸ the OHCHR stated that journalists who were practicing their profession were also a target of kidnapping and arbitrary arrests. Due to increasing international pressure, many journalists have therefore been released but many journalists have disappeared.⁶⁹

4.2.1.5. The United Nations Educational, Scientific and Cultural Organisation (UNESCO)

UNESCO carries the biggest responsibility with regard to sustaining and encouraging the safety and protection of journalists.⁷⁰ It has taken numerous actions

⁶⁸The International Commission of Inquiry on the Situation of Human Rights in Syria highlighted in its report the targeting of journalists as well as incidents of journalists being arbitrary detained, held hostage and killed in the context of the continuing hostilities, in violation of both parties' obligations under international humanitarian law, See, Report of the independent International Commission of Inquiry on the Syrian Arab Republic, A/HRC/22/59/5 February 2013, paras 46-54

⁶⁹ See Report of the Independent International Commission of Inquiry on the Libyan Arab Jamahiriya, A/HRC/17/44/1 June 2012, para 171

⁷⁰ Article 1 of the UNESCO Constitution states that "The purpose of the Organization is to contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and

in stimulating the safety and protection of journalists practicing their profession in conflict zones as well combating impunity, as part of its obligation and mandate to defend both the freedom of the press and the freedom of expression.⁷¹

A resolution on the disapproval of violence against journalists was finally approved by UNESCO in 1997.⁷² The resolution declared that it would be a crime against society if journalists were the victims of violent attacks. It also encouraged State authorities to take the appropriate measures for ensuring investigation and criminalization of attacks against journalists covering armed conflicts. Furthermore, it encourages States to develop a particular group of crimes against the freedom of expression and freedom of press in order to protect journalists covering armed conflict from attack. Furthermore, it also encouraged States to ensure that their Statutes of limitations of time do not operate for crimes relating to the freedom of expression and access to information and ultimately to impeding justice.⁷³

Member States, in 2015, were encouraged again by UNESCO to promote journalists, producers of social media and media worker's safety. In order to achieve this, UNESCO encouraged the Member States to take advantage of the

fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations."

⁷¹ See, Saul, p.34; Horsley, p.31; Sejal Parmar, p.38; Christof Heyns and Sharath Srinivasan, p. 319; Mona Elbahtimy & Sarah Elliott, pp. 15-16

⁷² UNESCO Resolution 29 on Condemnation of Violence Against Journalists, Paris November/1997, www.unesco.org/new/fileadmin/.../FIELD/.../ipdc_resolution_29.pdf

⁷³ Ibid, para 1

opportunities, practices and knowledge which is available through the ‘United Nations Plan of Action on the Safety of journalists’ and the problem of impunity.⁷⁴

A number of declarations have been issued by UNSECO regarding impunity and the issue of journalist’s safety. They include the Belgrade Declaration on ‘Media in Conflict Areas and in Countries in Transition’, established in 2004 and the Medellin Declaration on ‘Securing the safety of journalists and combating impunity’, established in 2007. UNESCOs’ aim in establishing such declarations was to discover ways and methods for providing and enhancing support for the media operating in conflict zones and thus, to be able to design a suitable framework of action in order to achieve that.

Furthermore, the Belgrade Declaration sought to create a much more focused strategy than that of the existing humanitarian assistance plan in order to provide a much more sustainable and continuing media assistance framework founded on freedom of expression and progress of civil society. It emphasizes putting an end to the practice of impunity for attacks on journalists⁷⁵

It is interesting to note that UNESCO Resolutions and Declarations are recommendatory and have no power to bind Member States, although they signify

⁷⁴UNESCO 196th Executive Board Decision on Safety of Journalists and the Issue of Impunity 196/EX/31/20 April 2015, para16

⁷⁵ The Belgrade Declaration on Media in Conflict Areas and In Countries in Transition (2004), para 3

international concern for attacks on journalists and make useful recommendations for enhancing protections through the development of suitable national laws.⁷⁶

4.2.1.6. Safety of Journalists as Part of the Mandate of Peacekeeping Missions

Through its Security Council proceedings, the UN has the responsibility and obligation to ensure international peace and security.⁷⁷ Without journalistic and media reporting threats to the international peace and security can fester and deteriorate until security or peace is completely lost in affected territories. That is why to discharge its peace and security mandate, the UN Security Council requires unfettered journalistic work to occur throughout the world at all times. The Security Council and the Journalist Community are this way permanently and irrevocably interdependent.

In UN Resolution 1738 (2006), the Security Council announced that it would approve UN peacekeepers in order to respond to the media newscast that had instigated crimes against humanity, genocide as well as the violation of International Humanitarian Law.⁷⁸ Furthermore, Resolution 1738 (2006) emphasised that all parties participating in conflict are responsible and obliged to recognise the

⁷⁶ See, Saul, p. 34

⁷⁷ Article 39 of the UN Charter

⁷⁸ United Nations Security Council Resolution on Protection of Civilian in Armed Conflict, S/RES/1738/28/April/2006.para,4

professional rights and freedom of journalists, media workers as well as civilians and associated employees.⁷⁹

As emphasised in Resolution 1738 (2006),⁸⁰ the Secretary-General reminded the UNESCO of the importance for parties to the conflict to try and prevent any attacks on journalists and to prosecute anyone found to be responsible for any such attacks. The UN Secretary-Generals reporting of peacekeeping missions and his specific reporting on the protection and safety of journalists gives him the ability to observe as well as to report any violent attacks on journalists and above all, recommend methods for their protection which can inform the mandated peace operation.

4.2.1.7. Convention on the Safety of United Nations Associated Personnel (1994)

The 1994 Convention on the Safety of United Nations Associated Personnel⁸¹ states that any violent attack against members of the UN or associated personnel, including

⁷⁹ Ibid, para 2

⁸⁰ United Nations Security Council Resolution on Protection of Civilian in Armed Conflict, S/RES/1738/28/April/2006

⁸¹ Convention on the Safety of United Nations Associated Personnel (1994), Office of Legal Affairs Codification Division, www.un.org/law/cod/safety.htm. See, United Nations Security Council Resolution on Protection of United Nations Personnel, Associated Personnel and Humanitarian Personnel in Conflict Zones A/RES/58/122/1502/12/February/ 2003. In paragraph 4 of this resolution the Security Council “calls upon all other parties involved in armed conflicts, in compliance with international humanitarian law, in particular their obligations under the 1949 Geneva Conventions and the obligations applicable to them under the Additional Protocols thereto, to ensure the safety and protection of humanitarian personnel and United Nations and its associated personnel, to refrain from abducting or detaining them in violation of their immunity under relevant conventions referred to in the present resolution and applicable international humanitarian law, and speedily to release, without harm, any abductees or detainee.”

their premises and equipment, is strictly prohibited.⁸² Furthermore, it requires that there be an obligation to liberate captured⁸³ or detained personnel. It provides instructions for where disability is an issue,⁸⁴ death, injury or illness during UN operations. More importantly the Convention encourages States to exercise their jurisdiction over any crimes committed against UN personnel.⁸⁵

However, the Convention only has a limited purpose for journalists, as it only concerns those journalists who are sanctioned by the UN. Journalists, who work independently, under Article 1, are not included under this definition. Article 1 covers only those journalists that are associated with the UN or with UN special agencies, or those associated personnel who are consigned with a government, non-government, inter-governmental agencies.⁸⁶

It can be argued whether or not embedded journalists who are involved in a UN operation are safeguarded under this Convention. However, if the 1994 UN Personnel Convention was to be modified in order to protect journalists, then the existing UN workers that enjoy the freedom and protection would be at risk of being weakened.

⁸² Article 7

⁸³ Article 8

⁸⁴ Article 20

⁸⁵ Article 10

⁸⁶ Article 1 provides that "for the purposes of this Convention: (a) "United Nations personnel" means: (i) Persons engaged or deployed by the Secretary-General of the United Nations as members of the military, police or civilian components of a United Nations operation; (ii) Other officials and experts on mission of the United Nations or its specialized agencies or the International Atomic Energy Agency who are present in an official capacity in the area where a United Nations operation is being conducted;(b) "Associated personnel" means: (i) Persons assigned by a Government or an intergovernmental organization with the agreement of the competent organ of the United Nations; (ii) Persons engaged by the Secretary-General of the United Nations or by a specialized agency or by the International Atomic Energy Agency."

Furthermore, under general aspects of international law, journalists aren't entitled to the same legal protections as UN personnel. If journalists became thoroughly attached to UN operations, this would probably endanger them and therefore could threaten their apparent reporting impartiality, neutrality and independence.⁸⁷

4.2.8. Possible Protection of Journalists under the International Criminal Court (ICC)

The creation of the ICC⁸⁸ raised many hopes including that journalists practicing their profession in conflict zones would be protected. In particular it was hoped that governments that fail to prosecute those involved in serious crimes against journalists would by such failure trigger the complementary jurisdiction of the ICC.

The ICC requirement to protect civilians from Article 5 imposes an obligation on States parties to protect journalists as well.⁸⁹ This position appears to have been reaffirmed by the ICC in *Bosnia and Herzegovina vs. Serbia and Montenegro*,⁹⁰ where the Court expressed its opinion relating to the application of the 'Convention on the Prevention and Punishment of the Crime of Genocide in 1948'.⁹¹

⁸⁷ See, Saul, p. 32

⁸⁸ https://www.icc-cpi.int/en_menus/icc/Pages/default.aspx

⁸⁹ Theodor Meron, "The Geneva Conventions as Customary Law", *The American Journal of International Law*, Vol. 81, No. 2. (Apr., 1987), pp. 348-370.

⁹⁰ February 26/ 2007 www.icj-cij.org/docket/files/91/13685.pdf

⁹¹ Adopted by Resolution 260 (III) A of the United Nations General Assembly on 9 December 1948

Regardless of the fact that the Court was not able to find sufficient evidence to find Serbia guilty of genocide or directly responsible, the Court decided that the Srebrenica massacres of July 1995 constituted genocide. Furthermore, the Court also concluded that Serbia had indeed incurred responsibility under the Genocide Convention of 1948⁹² for failing to prevent the massacre and for failing to penalize those responsible for the murders in Srebrenica. More importantly, the Court also held that States can incur international responsibility for complicity in genocide.⁹³

Part Three

4.3. Non-Governmental Organisations (NGO) and the Protection of Journalists in Conflict Zones

Concern for the protection of journalists covering armed conflict has spilled into NGOs' interest. Their work records any instances of violence that comes to light, as well as any intimidation of journalists. They seek to establish a better knowledge and understanding of the risk and threats journalists reporting armed conflict face. Further, these NGOs seek dialogue with States on the matter of impunity, methods

Article I states, "the Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish." Article II states that "In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group."

⁹² Convention on the prevention and punishment of the crime of genocide in 1948, Adopted by Resolution 260 (III) A of the United Nations General Assembly on 9 December 1948

⁹³ Decision part, *Bosnia and Herzegovina vs. Serbia and Montenegro*, International Criminal Court, February 261 \ 2007

that should be taken into account to ensure that journalists are safe, and training on legislative requirements for protection of journalists covering armed conflict.⁹⁴

4.3.1. The International Programme for the Development of Communication (IPDC)

The IPDC performs a significant part in seeking to ensure the safety and protection of journalists as well as in fighting impunity. This is achieved by collaborating with organisations such as OHCHR, UNESCO and other NGOs that are recognised by the UN as such.

The decision of IPDC on March 2010 regarding the issues of both safety and protection of journalists emphasised the importance of having a process where several agencies combine their efforts to tackle the problems around the safety of journalists covering armed conflict.⁹⁵ Furthermore, the decision also stressed establishing an engagement between international organisations and regional organisations, in order to encourage the integration of media education programmes which primarily concentrate on the safety of journalists that is related to their respective policies.

⁹⁴ Thomas Hammarberg, "Protection of Journalists from Violence", Commissioner for Human Rights, Strasbourg 4 October 200, p.2

⁹⁵ United Nations Plan of Action on the Issue of the Safety of Journalists and the Issue of Impunity, April 2012

From the 13-14th of September 2011, a meeting was held for the very first time between NGOs to discuss the safety and protection of journalists as well as the problem of impunity.⁹⁶ The meeting generated a functioning strategy for the UN Plan of Action on the safety and protection of journalists as well as the problem with impunity. On the 12th of April 2013 that plan was adopted by the Chief Executive Board.⁹⁷

The so-called UN Plan of Action was established to create an environment that was both liberating and safe for journalists and to also fight against impunity for any attacks that are directed at journalists.⁹⁸ The essence of the plan was primarily to encourage NGOs and UN agencies to create “general safety endowments for journalists”. They include courses on safety training, life and health care insurance, and the admission to satisfactory compensation and social protection of free-lancers and those in full-time employment.⁹⁹

⁹⁶The meeting was attended by United Nations Agencies and also by a wide range of international and regional institutions, professional organisations, NGOs and Member States that provided recommendations to the UN family on the draft Plan. Further consultations were additionally carried out with a variety of stakeholders, including Member States, to design the final draft for its approval by the UN Chief Executives Board. See also, the Second UN Inter-Agency Meeting on the Safety of Journalists and the Issue of Impunity, Vienna International Centre. UN Office in Vienna, Austria, November 2012; and The Third UN Inter-Agency Meeting on the Safety of Journalists and the Issue of Impunity, Strasbourg, France, November 2014

⁹⁷ United Nations Plan of Action on the Issue of the Safety of Journalists and the Issue of Impunity, April 2012, CI-12/CONF.202/6., <http://www.unesco.org/new/en/communication-and-information/freedom-of-expression/safety-of-journalists/un-plan-of-action/>

⁹⁸ See, William Horsley p. 6; UNESCO and the International News Safety Institute (INSI) regularly conduct safety trainings courses and workshops for journalists and media workers in conflict areas. See, UNESCO concept note UN Inter-Agency Meeting on the Safety of Journalist and the Issue of Impunity 13-14 September 2011

⁹⁹ United Nations Plan of Action on the Issue of the Safety of Journalists and the Issue of Impunity, April 2012, CI-12/CONF.202/6., Para .5.7

The UN plan of action also encourages the development of both real-time, available emergency response mechanisms designed for media outlets and groups. This includes, being able to interact and engage with UN resources as well as missions and many other organisations that participate in the field and to reinforce the provisions required for the safety and protection of journalists practicing their progression in armed conflict zones.¹⁰⁰

In order to tackle the primary cause of violent attacks against journalists as well as the issue of impunity, the UN Plan of Action addressed the mandatory safeguards that States should ensure as a minimum. They include the requirement to tackle causative factors such as that of crime, corruption as well as creating an efficient structure with regards to the rule of law so that negative domains can be tackled.¹⁰¹

The UN Plan of Action urged Member States to “inform the Director-General of UNESCO, on a voluntary basis of the actions taken to prevent the impunity of the perpetrators and to notify her/him of the status of the judicial inquiries conducted on each of killings conducted by UNESCO.”¹⁰² Furthermore, it oversees UNESCOs efforts in preventing the crimes towards media personnel, including helping States

¹⁰⁰ Ibid, para 5, UNESCO “has undertaken a number of activities designed to raise awareness about journalists’ safety and the issue of impunity. Among UNESCO’s flagship activities in this area are World Press Freedom Day, celebrated every year on May 3rd, and the Guillermo Cano/UNESCO World Press Freedom Prize, intended to honour the work of an individual or an organisation defending or promoting freedom of expression anywhere in the world, especially in dangerous conditions.

¹⁰¹ UN Plan of Action on the Issue of the Safety of Journalists and the Issue of Impunity, April 2012, CI-12/CONF.202/6., Para .5.8

¹⁰² UNESCO concept note UN Inter-Agency Meeting on the Safety of Journalist and the Issue of Impunity 13-14 September 2011, [http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/un_interagency_meeting_safety_journalist_concept_paper_en.pdf, p.2.

create legislation and strategies that is beneficial towards the freedom of information and expression, as well as reinforcing the States' efforts to employ international values and rules already in existence.¹⁰³

4.3.2. The Press Emblem Campaign (PEC)

In 2007, a draft proposal was launched by the PEC in order to intensify the campaign to protect journalists practicing their profession in armed conflict zones.¹⁰⁴ It called for the introduction of an international treaty to enhance the protection of journalists by according them an international emblem similar to the Red Cross, to help identify journalists as workers deserving special protection.¹⁰⁵ The PEC made

¹⁰³ United Nations Plan of Action on the Issue of the Safety of Journalists and the Issue of Impunity, April 2012, CI-12/CONF.202/6., Para .5.9

¹⁰⁴ The Press Emblem Campaign PEC, "Draft Proposal for an International Convention to Strengthen the Protection of Journalists in Armed Conflicts and other Situations Including Civil Unrest and Targeted Killings" (2007). <http://www.pressemblem.ch/4983.html>

¹⁰⁵ Article 7 states that "1. In order to strengthen the protection of journalists and facilitate their identification in zones of fighting, the States Parties decide to adopt a distinctive international emblem and commit themselves to respect it and ensure that it is respected in all circumstances. 2. This international distinctive emblem for the media is composed of five capital letters, PRESS, in black on a circular orange background (orange disk). 3. A journalist wearing the distinctive emblem should be able to prove his or her identity by showing his or her press card or equivalent identity document, when it is requested by an officer on duty. The right to wear this emblem for the press is exclusively reserved to journalists. 4. The distinctive emblem shall be worn in a clearly visible manner, either on an arm band on the upper left or right arm, or on a cloth covering the chest or back. Vehicles, professional equipment and media installations may also be marked with the distinctive emblem. 5. The distinctive emblem shall be delivered by the same associations or federations of journalists which issue the press card and/or identity document, at the request of the journalist and/or his or her employer. 6. In the absence of a press association in the country or where such identity cards are not issued, the press card provided by the International Federation of Journalists (IFJ) or regional press associations media identification cards would be sufficient to use the emblem. 7. The wearing of the distinctive emblem is optional in all circumstances. Its use is left to the free choice of the journalist and/or his or her employers. No authority may impose the wearing of the distinctive emblem. When a journalist decides not to wear this emblem, he continues to benefit from all the other provisions of this Convention

the point that the number of journalists being killed would decrease if they were to wear an emblem as this will allow them to be recognised and identified.¹⁰⁶

However, fundamental organisations that work on the protection of journalists had rejected this treaty¹⁰⁷ based on the fact that journalists could be drawn towards more risks.¹⁰⁸ This included the Red Cross¹⁰⁹ and the Committee to Protect Journalists.¹¹⁰

However, carrying a press emblem would bring uncertainty regarding the question of where if at all would one would wear an emblem that guaranteed one's protection.¹¹¹ It can be argued that the emblem may be misused. However, if this were the case then this would result in a war crime under international law.¹¹² Under international law for instance, the emblem of the Red Cross is specifically protected and misuse of it is a war crime.¹¹³

The exact location of a journalist can be confirmed during armed conflict with the help of advanced technology. Parties to the armed conflict can no longer use the

¹⁰⁶ See, Isabel Dusterhoft, p.19

¹⁰⁷ See Kayt Davies and Emily Crawford, "Legal Avenues for Ending Impunity for the Death of Journalists in Conflict Zones: Current and Proposed International Agreements" (2013) 7 International Journal of Communications 2157 – 2177; Joanne M Lisosky and J Henrichsen, "Don't Shoot the Messenger: Prospects for protecting journalists in conflict situations" (2009) 2 Media, War and Conflict 129 – 148; Saul, p.27

¹⁰⁸ See, Geneva Conventions 1949 and their Additional Protocols, and their Commentaries <http://www.icrc.org/applic/ihl/ihl.nsf/vwTreaties1949.xsp>

¹⁰⁹ ICRC Commentary to Article 79 of Protocol I, para, 3254 <https://www.icrc.org/customary-ihl/eng/docs/home>

¹¹⁰ <https://www.cpj.org/>

¹¹¹ See, Kate Mackintosh 'Beyond the Red Cross: The Protection of Independent Humanitarian Organizations and their Staff in International Humanitarian Law' International Review of the Red Cross No.865 (2007) p.127.

¹¹² See, Gasser, p. 4; Mag. Hilde Farthofer pp 5-6; Isabel Dusterhoft, p.19

¹¹³ Article 8 (2) (b) (vii) of the Rome Statute of the ICC

excuse that they mistakenly identified journalists as enemies as the emblem carried by journalists is clearly recognisable. The United Kingdom's Ministry of Defence Green Book highlights that "in the often challenging situations that this engenders, mistakes resulting from misidentification weapons systems failure or mal-location, may result."¹¹⁴

The Draft Proposal urged parties to an armed conflict on the territory of a State adhering to this Convention to do their utmost to protect journalists and media installations against attacks, aggression and threats.¹¹⁵ This provision applies to all journalists without exception, whether they be embedded in military units or covering conflicts independently or representing media organisations.¹¹⁶ Moreover, any State, whether party or not to an armed conflict, has the obligation to assist journalists in the line of duty giving them free access to information and all relevant documents and to facilitate their movements.¹¹⁷

¹¹⁴ Ministry of Defence (UK), Green book 2013, p. 36

https://www.gov.uk/government/.../greenbook_v8_20130131.pdf

¹¹⁵ Article 3 (1) of the "Draft Proposal for an International Convention to Strengthen the Protection of Journalists in Armed Conflicts and other Situations Including Civil Unrest and Targeted Killings", Press Emblem Campaign PEC, (2007), <http://www.pressemblem.ch/4983.html>

¹¹⁶ Ibid, Article 3 (2)

¹¹⁷ Ibid, Article 3 (3) Article 5 states that "1. Each State Party to this Convention shall immediately take appropriate steps to undertake without delay a thorough and impartial investigation on the attacks defined in article 2 and to bring to justice the criminals responsible, in accordance with international and national law. The parties to a conflict shall cooperate in establishing the facts and communicate their findings fully and speedily to those concerned. 2. Each State Party shall take the necessary measures to hold criminally responsible any person who commits, orders, solicits or induces an attack, attempts to commit, is an accomplice to or participates in an attack against a journalist. Each State Party shall take the necessary measures to hold criminally responsible the offenders. 3. When it is established that a State, even non-Party to this Convention, is not able to investigate in an impartial manner, in a period of maximum one year, and then to hold criminally responsible the offenders, an independent international commission of enquiry will automatically be created by the International Media Committee (IMC) (see Article 10). The commission of enquiry, consisting of independent experts and the UN special rapporteur on the freedom of expression, shall carry out the function of establishing the facts and identifying the perpetrators. It will write a report to the IMC and will make recommendations. 4. Each State Party commits itself to facilitate the work of this international commission of enquiry. It shall take the necessary measures to prevent, prohibit and sanction acts that hinder the conduct of an investigation."

4.3.3. The International Committee of the Red Cross (ICRC)

The ICRC is an independent organisation that is premised on the values of neutrality and impartiality. Protecting and assisting civilians as well as military victims of armed conflict is its primary mandate. The ICRC also seeks to promote and strengthen humanitarian law in order to reduce suffering during periods of war.¹¹⁸

The ICRC has specific guidance regarding the actions it takes regarding the support and protection given to journalists that have been either arrested or kidnapped or who have disappeared.¹¹⁹ The guidelines are useful in that both employers and relatives are able to locate the whereabouts of journalists, being able to map out any journalist that goes missing as well as conducting medical withdrawals of injured journalists.

Journalists are also given the opportunity to train and learn about International Humanitarian Law, take part in first-aid courses, as well as offering support for Red Crescent Societies and National Red Cross organizations.¹²⁰ Furthermore, the ICRC has established a 24-hour hotline service which is available for professional associations and families of journalists.

¹¹⁸ Alain. Modoux, "the Protection of Journalists" International Review of the Red Cross, September-October, 1985, p. 20

¹¹⁹ Action by the International Committee of the Red Cross in the event of breaches of international humanitarian law, International Review of the Red Cross, No. 221, March-April 1981, pp. 76–83

¹²⁰ ICRC, Annual Report 2014, <https://www.icrc.org/en/document/ICRC-annual-report-2014>

The ICRC appear to offer more practical interventions for the protection of journalists covering armed conflict than do the UN Security Council or the UN General Assembly whose hollow Resolutions and Declarations have remained impotent while offences against journalists reporting armed conflict have continued to rise.

4.3.4. Reporters Without Borders (RWB)

RWB was designed to enhance both the safety and protection of journalists but more importantly, to ensure that journalists can practice their profession in armed conflict zones.¹²¹ It fights against censorship by exposing national laws that undermine press freedom. Its core value is to aid any journalist that has to deal with suffering. Each year a report is published by the RWB which document the number of journalists being attacked. Taking the year 2015 as an example, the RWB reported that there was a significant increase in the number of foreign journalists that have been killed, mainly in the States of Syria and Yemen.¹²²

In 2002, the RWB drew up a Charter for the 'Safety of Journalists Working in War Zones or Dangerous Areas'.¹²³ This Charter included eight valued adherences to which was hoped would reduce the dangers that journalists face when practicing their profession in conflict zones.

¹²¹ *en.rsf.org/*

¹²² See, Report without Borders, Report of 2015, *en.rsf.org/*

¹²³ Charter for the Safety of Journalists Working in War Zones or Dangerous Areas, Reporters Without Borders, March 2002, <http://www.rsf.org/IMG/doc-1288.pdf>.

In partnership with UNESCO, the RWB in 2014¹²⁴ expressed its proposals on the safety of journalists. It proposed that Member States should be monitored for compliance with the UN Security Council Resolution 1738 through the establishment of a new position of special advisers to the UN Secretary-General on the safety and protection of journalists.

The Special Advisor's role would include collating all available information on any violations against journalists working in armed conflict zones, as well as bringing to the UN Secretary General and the Security Council respectively, knowledge of any threats or abuse faced by journalists. Furthermore, s/he would be empowered to investigate any violent acts towards journalists and media workers in cases where the State of jurisdiction had taken no such action.

In 2015, the RWB, in reacting to the increase in risks faced by journalists, released a newer version of its guide on 'Safety Guide for Journalists'. The guide proposes useful suggestions to journalists whom are reporting from conflict zones. Further, the guide expresses the importance having effective physical and psychological preparation before leaving. They also offer any support to journalists who are showing signs of post-traumatic stress disorder once returned home.¹²⁵

¹²⁴ Safety of journalists - Recommendations by Reporters Without Borders - September 2014 https://www.google.co.uk/?gfe_rd=cr&ei=k2F_VOWjAcnn7AbJqoDACQ&gws_rd=ssl#q=the+safety+of+journalists+and+the+issue+of+impunity, *en.rsf.org/*

¹²⁵ See, Safety Guide for Journalists, A Handbook for Reporters in High-Risk Environment, 2015, *en.rsf.org/*

4.3.5. The International Press Institute (IPI)

In 1950, the IPI was founded as a global organisation. It aimed to protect both the freedom of press and advance practices of journalism. In essence, the IPI observes and responds to any intimidation or attacks against journalists by distributing letters of protest to governments. Further, the IPI legally assists and supports journalists.

The IPI, in conjunction with the media network, Al Jazeera, as well as the Africa Media Initiative and the International News Safety institute have worked collectively to draft the 'International Declaration on the Protection of Journalists.'¹²⁶ The declaration lists obligations of the States to secure the safety of journalists and to fight against impunity. It requires States to take the necessary steps in order to prevent any acts of violence, intimidation and attacks towards journalists and media professionals and thus holds States responsible for any crimes committed against journalists, media workers and associated persons on their territories. States are further urged to bring culprits *inter alia*, those who conspire and command or aid and abet or who protect such crimes. This is done through management of fast, impartial, thoroughly effective and independent enquiries into all suspected threats of danger which falls under their authority.¹²⁷

¹²⁶ International Declaration on the Protection of Journalists, Aljazeera Media Network, 2016 <http://liberties.aljazeera.com/en/>

¹²⁷ Ibid, para 4

States should also try to adopt and apply the necessary applicable jurisdiction mechanisms and measures, as a way of encouraging a more safe and permitting environment for which journalists can practice their profession independently. Further to this, States should also be encouraged to raise attentiveness within the courts as well as amongst law-enforcement officers, as well as military personnel, concerning that of humanitarian law and international human rights responsibilities and commitments that relates to the safety of journalists. Above all, States are also required to observe as well as report any violent attacks towards journalists and to ultimately condemn such attacks publicly, and to provide their resources to enquire and prosecute them.¹²⁸

Part Four

Regional Organisations Offers to Protect Journalists in Conflict Zones

4.4.1. The Organisation for Security and Cooperation in Europe (OSCE)

The OSCE is an international organisation consisting of 57 States from Europe, Central Asia and North America. The OSCE oversees a number of issues including security, economic development and human rights protection. Its principal mandate is to make sure that the Member States maintain and promote freedom of the media – a core membership requirement.

¹²⁸ Ibid, para 5

The OSCE published a report on the safety of journalists in 2011.¹²⁹ It reported that the safety and protection of journalists has become a major problem for members of the OSCE due to the fact that there has been a significant rise in violence towards journalists. Further the report by the OSCE sets out clear and sufficient practices for dealing with the issue of safety of journalists.

The report also produced evidence of several blockades on the freedom of media. Such blockades included the forbidding of foreign journalists from accessing State territory, and the problem of the physical safety of journalists.¹³⁰ The Office of Representative on Freedom on the Media was founded by the OSCE in 1997. The primary aim of establishing this office was to promote State compliance with their OSCE commitments.

Further, with regards to the safety and protection of journalists against violent attacks and tackling the issue of impunity, the office has provided its support to States on outlining the laws and regulations required.¹³¹

¹²⁹ OSCE Safety of Journalists Guidebook, commissioned by: Office of the OSCE Representative on Freedom of the Media, OSCE Lithuanian Chairmanship, edited by: Jean-Christophe Peuch Mike Stone Published in 2012

¹³⁰ William Horsley p.33

¹³¹ William Horsley p.8

4.4.2. The Institutions of the Council of Europe

Several resolutions as well as recommendations on the problem of the safety of journalists and the combating of impunity have been adopted by the Parliamentary Assembly of the Council of Europe.¹³² The Council emphasised greatly, in Resolution 1428 (2005) the need for Member and Observer States to make sure that journalists can safely practice their profession within their territories.

Resolution 1428 (2005) also emphasises that States should examine all violent attacks or fatal incidents towards journalists which happen within their territories and also applies to any violent attacks which occur overseas where their security forces might have been involved which also applies to violent acts because of friendly fire.¹³³ The Council also recommend that Member States and Observer States develop a necessary training as well as information programmes for those working as war correspondents that are embedded within the military forces.¹³⁴

Furthermore, States should also create training programmes for those working in police or law-enforcement establishments in order to protect journalists as well as media freedom.¹³⁵ Moreover, the Parliamentary Assembly encouraged the Council of

¹³² Council for Europe Resolution on Freedom of the Press and the Working Conditions of Journalists in Conflict Zones, 1428, 2005, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17326&lang=en>

¹³³ Ibid, para 9

¹³⁴ Ibid, para 10

¹³⁵ Parliamentary Assembly Recommendation on the Protection of Media Freedom in Europe, Council of Europe, Document 13664, 12 January 2015, para.3.2

Europe to fully cooperate more intensely with NGOs as well as the media with regards to enhancing the capability of the Council of Europe to assess as well as to react towards any serious abuses towards the freedom of media.¹³⁶

The Council of Europe, in 2012, approved a ‘Strategic Framework on Human Rights and Democracy’ which aims to strengthen the efficiency of the human rights strategy of the EU both outside and within.¹³⁷ The creation of the status of EU special delegates for human rights, by the ‘European External Action Service’, was mandated to endorse essential human rights which include freedom of media in States outside the EU in order to make sure that journalists are being protected from both violence and intimidation.¹³⁸

More importantly, the Council has approved the right for journalists to not reveal their information, except in certain conditions.¹³⁹ This may well permit the protection of

¹³⁶ Ibid, para 3.6

¹³⁷ Council of the European Union “the Council of Europe adopted a Strategic Framework on Human Rights and Democracy”, Luxembourg, 11855, 25/Jun/2012, para

¹³⁸ See, William Horsley p. 10

¹³⁹ See, Council for Europe Resolution on the Protection of Whistle-Blowers, 1729, 2010, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17851&lang=en>; Para 6 States that “The Assembly invites all member states to review their legislation concerning the protection of whistle-blowers, keeping in mind the following guiding principles: 6.1. Whistle-blowing legislation should be comprehensive: 6.1.1. The definition of protected disclosures shall include all bona fide warnings against various types of unlawful acts, including all serious human rights violations which affect or threaten the life, health, liberty and any other legitimate interests of individuals as subjects of public administration or taxpayers, or as shareholders, employees or customers of private companies; 6.1.2. The legislation should therefore cover both public and private sector whistle-blowers, including members of the armed forces and special services, and 6.1.3. It should codify relevant issues in the following areas of law: 6.1.3.1. Employment law – in particular protection against unfair dismissals and other forms of employment-related retaliation; 6.1.3.2. Criminal law and procedure – in particular protection against criminal prosecution for defamation or breach of official or business secrecy, and protection of witnesses; 6.1.3.3. Media law – in particular protection of journalistic sources; 6.1.3.4. Specific anti-corruption measures such as those foreseen in the Council of Europe Civil Law Convention on Corruption.”

journalists from becoming a target by preventing them from appearing as witnesses.¹⁴⁰

Guidelines were adopted by the Committee of Ministers of the Council of Europe in 2007, on Protecting Freedom of Express and Information in Times of Crisis. They highlighted the issue of impunity in conflict zones.¹⁴¹ They expressed the need to have a broader range of protection for journalists outside their physical safety. Moreover, the protection should also incorporate journalist's freedom of movement, as well as protection of their bases.¹⁴²

Sates are encouraged to protect the privacy of sources in situations of conflict, as stated by the Committee of Minister of Council of Europe.¹⁴³ The significance of the value of protecting journalists' information was expressed in *Prosecutor v Tlaic, by the International Criminal Tribunal for the form Yugoslavia*.¹⁴⁴ The Tribunal held that "compelling war correspondents to testify before the International Tribunal on a routine basis may have a significant impact upon their ability to obtain information and thus their ability to inform the public on issues of general concern. The Appeals Chamber will not unnecessarily hamper the work of professions that perform a public interest."¹⁴⁵

¹⁴⁰ See, Christof Heyns and Sharath Srinivasan, p.321

¹⁴¹ Committee of Ministers of the Council of Europe on 26 September 2007 www.coe.int/t/dlapil/c

¹⁴² Ibid, para 13; See, William Horsley p.25

¹⁴³ Council of Europe Committee of Ministers, Recommendation No R (96) 4 on the Protection of Journalists in Situations of Conflict and Tension, 3 May 1996, Principle 5

¹⁴⁴ International Criminal Tribunal for the former Yugoslavia, Case No IT-99-36-AR73.9 Prosecutor v. Radoslav Brdjanin and Momir Tlaic, Decision on interlocutory appeal, 11 December 2002.

¹⁴⁵ Ibid, para 44

The significance of the standard for the protection of the sources of journalists' reports was expressed in *Goodwin v. UK*¹⁴⁶ by the European Court. It stated that "protection of journalistic sources is one of the basic conditions for press freedom, as is reflected in the laws and the professional codes of conduct in a number of Contracting States and is affirmed in several international instruments on journalistic freedom."¹⁴⁷

The Court stated that where a superseding requirement towards the public interest was absent, a demand to reveal their sources would therefore be in violation of the freedom of expression expressed in the ECHR's Article 10.¹⁴⁸ The Council was urged to help Member States to train their law-enforcement, judges and police in order to protect journalists from violent threats, as recommended by the Parliamentary Assembly of the Council of Europe.¹⁴⁹

¹⁴⁶ *Goodwin v. UK*, No.17488/90 (27/3/1996)

¹⁴⁷ *Ibid*, para39

¹⁴⁸ *Ibid*, para 10, See also, *Sonoma Uitgevers B.V v. The Netherland*, APP. No.38224/03 (14/9/2010); Dunja Mijatovic, "Protection of Journalists from Violence" Issue Discussion Paper, 4/October/2011, p. 13, Strasbourg, WWW.commissioner.coe.int

¹⁴⁹ Recommendation 1897 (2010) <http://assembly.coe.int>; The Association of European Journalists published in 2012 a Guidebook on the Safety of Journalists. It submitted to the EU Council proposals regarding journalists' safety and security. It urged the member States to implement the proposal to enhance better protection to journalists.

4.4.3. The Organization of American States (OAS)

In 1948, the OAS was established as a forum to address such issues as the promotion of democracy, protection of human rights, development of society and the economy, as well as issues relating to national security co-operation. The OAS also conducts a range of activities in order to advance such issues, by delivering policy leadership and technical support to Member States.¹⁵⁰

The OAS, created, in 1997, is a workforce for the Special Rapporteur for Freedom of Expression.¹⁵¹ In essence, this workforce sought out to make any violent attacks towards journalists a major priority and to pay special focus on the status of enquiries towards these crimes. It also gives advice to the Inter-American Court of Human Rights in order to evaluate discrete petitions. It also gives advices to Member States on tackling violent acts against journalists as well as conducting visits on-site, and undergoes what's called 'awareness-raising activities', including condemning publicly any attacks on journalists.

The office of the Special Rapporteur found in its 'Special Study on the Status of Investigations in to the Murder of Journalists' that, many of the enquiries in cases that had never even been completed, only a minority of cases the culprits were identified, and that in the majority of the cases the masterminds had never been

¹⁵⁰ See, Peter J. Meyer, "Organization of American States: Background and Issues for Congress", Congressional Research Services, 29 August 2014, p, 19

¹⁵¹ See, Catalina Botero Marino, "Office of the Special Rapporteur for Freedom of Expression Inter-American Commission on Human Rights" 2013, P, 27, <http://www.cidh.org/relatoria>

identified.¹⁵² Furthermore, the 'Office of the Special Rapporteur' urges States to carefully enquire about any violent attack against journalists. Moreover, it emphasised the importance of how States have a fundamental responsibility to protect, prevent and investigate as well as try and punish anyone found responsible for such crimes.¹⁵³

The 'Office of the Special Rapporteur' also expressed how government officials are responsible for maintaining a public record that does not put journalists at a higher risk of violent attacks. Further, it evoked the State authorities to distinguish the value as well as the legitimacy of the profession of journalism. The 'Inter-American Commission on Human Rights' holds the power to issue a provisional or interim or preventative legally binding regulations to States in order for them to abstain from breaking rights. Further, it also holds the power to command States to take protective methods in order to protect journalists' lives.¹⁵⁴

4.4.4. Doha Conference

The Qatar National Human Rights Committee held in 2012 an international conference on journalist protection in hazardous situations.¹⁵⁵ The conference urged all institutions which represent NGOs and journalists involved in the safety and

¹⁵² See, Office of the Special Rapporteur for Freedom of Expression. Special Study on the Status of Investigations into the Murder of Journalists (1995-2005). Inter-American Court of Human Rights, OEA/Ser. L/V/II.131. Doc. 35. March 8, 2008. Para.

¹⁵³ See, Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression. Chapter II: 2010 Special Report on Freedom of Expression in Mexico, Inter-American Court of Human Rights, OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 713William Horsley p.20

¹⁵⁴ See, Christof Heyns and Sharath Srinivasan, p. 323

¹⁵⁵ International Conference for the Protection of Journalists in Dangerous Situation, Doha Centre for Media Freedom Jan 2012, <http://www.dc4mf.org/fr/node/1006>

protection of journalists to work in unison in order to guarantee the safety of journalists and squash impunity.

Furthermore, it urged all States to deliver specific defences and protections for journalists beyond what is required under relevant UN Security Council resolutions. The conference reminded States of their obligations to provide journalists the same protection as given to civilians in areas of conflict. It also urged States to expand further the existing legal provisions beyond that of their obligations to protect journalists from attacks and kidnapping, intimidation, arbitrary arrest and deportation.

Moreover, the conference emphasised the importance of governments to respect and value all international organisations that they are parties to and to honour their covenants and resolutions and declarations that they have signed up to. The conference also encouraged States to intensify domestic laws that criminalise violent acts against journalists reporting from armed conflict zones. Finally, the conference recommended that NGOs should raise awareness as well as understanding of conventions and legal international arrangements.

Conclusion

There has been an increasing tendency towards the adoption of legal initiatives, at international, regional and NGOs level, designed to respond to the specific human

rights violations experienced by journalists and other media operators. They aimed at enhancing the effectiveness of the existing rules on the protection of journalists.

United Nations resolutions appear to have had no real impact in protecting journalists covering armed conflict mainly because they are hortatory and lacking implementation or oversight procedures.

Non-binding instruments are easy to dismiss. These include NGO declarations and even UN General Assembly Resolutions. However, these instruments are indicative of international values and may in practice do present to litigants a lever for legal argumentation before national courts and within civil society debate, which may ultimately be transformative in terms of State behaviour. Nonetheless, while such arguments may be valid, soft law instruments tend to operate incrementally and any change on this basis is evolutionary rather than revolutionary.

A new single and comprehensive Convention detailing existing obligations in respect of protection of journalists covering armed conflict which criminalises attacks and violations against journalists is needed. Such a Convention would clarify State obligations and unify the law to meet the needs of journalists. A resolution from the UN Security Council to support the new Convention and asking States to comply and ratify the new Convention would aid ratification greatly.

The United Nations, IPDC Council could be reinforced, by introducing more frequent meetings, and including in its mandate the power to adopt non-binding reports on individual, collective communications as well as to undertake country visits. The resolutions might contribute to the crystallization of specific rules on the safety of journalists.

International Humanitarian Law for the protection of civilians in international and non-international armed conflict is clearly established and binding on all parties to armed conflicts - both State and non-State. The ICRC continues to believe that the current legal framework for the protection of civilians remains relevant and that the main challenge in protecting civilians hinges on greater compliance with International Humanitarian Law by all parties to armed conflicts. For the ICRC, working on the ground with the victims of armed conflict, it is obvious that political action ultimately determines the fate of civilian populations. If there are no political solutions to armed conflicts, then many millions of people will continue to endure the personal tragedy and humanitarian consequences of armed conflict, for years, decades, or even lifetimes.¹⁵⁶ Current international instruments are riddled with vagueness or normative gaps which are required to be addressed through binding rules.

¹⁵⁶ *Speech given by Christine Beerli, vice-president of the ICRC, at the UN Security Council Debate on the Protection of Civilians.*2016, ICRC

Chapter Five

Jurisdiction over Crimes Committed against Journalists in Conflict Zones

5.1. Introduction

The previous chapters concluded that journalists covering armed conflict are not specifically protected under international law. Yet without their contributions, it would be nearly impossible to hold governments accountable under norms *jus in bello* and the *jus a bellum*. There would be a democratic deficit as citizens would have nothing to go on except their own governments' own declarations about their war efforts, particularly how their weapons or their soldiers impact citizens of foreign nations.

This chapter examines international law mandate regarding offences against journalists covering armed conflicts. This mandate appears to be compelled by numerous human rights treaties and the laws governing the prosecution of war. This chapter shows that international law has been inept in providing substantive laws specific to the protection of journalists covering armed conflict. This situation needs urgent correction.

The increasing violence against journalists reporting from conflict zones can, in part, be explained by impunity.¹ The majority of the cases of threats and violence against journalists are never investigated. Thus, those that are responsible are never identified, or prosecuted, according to Reporters Without Borders.² States carry the fundamental responsibility to protect journalists and to extinguish impunity, as well as to thoroughly investigate crimes against journalists and to prosecute those responsible.³

UN Security Council Resolution 178 (2006)⁴ requires States to protect journalists' lives, and to investigate, punish, and prosecute anyone found responsible for murdering media professionals. Non-Governmental Organisations (NGOs) require States to investigate whenever attacks have occurred on journalists.⁵ They have also called for official criminalisation of violations against press freedom and against freedom of expression.⁶ Nevertheless, States appear still to be severely challenged regarding their duty to promptly and properly deal with cases involving attacks

¹ United Nations Plan of Action on the Issue of the Safety of Journalists and the Issue of Impunity, April 2012, CI-12/CONF.202/6.,<http://www.unesco.org/new/en/communication-and-information/freedom-of-expression/safety-of-journalists/un-plan-of-action/>

² Safety of journalists - Recommendations by Reporters Without Borders - September 2014, en.rsf.org/

³ Article 147 of Geneva Convention (1V) Relative to the Protection of Civilian Persons in Time of War 12 August 1949 and its Protocols I and II of 1979

⁴ UNSC Resolution on Protection of Civilian in Armed Conflict, S/RES/ 1738/28/April/2006, para 7; Article 2 of the European Convention of Human has also required that the "State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction".

⁵ International News Safety Institute 2007c, 11

⁶ In a joint statement the special experts of The United Nations Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe, Representative on Freedom of the Media, the Organization of American States, Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights, Special Rapporteur on Freedom of Expression and Access to Information said : "The category of crimes against freedom of expression should be recognised in the criminal law, either explicitly or as an aggravated circumstance leading to heavier penalties for such crimes, taking into account their serious nature; and crimes against freedom of expression, and the crime of obstructing justice in relation to those crimes, should be subject to either unlimited or extended statutes of", Joint Declaration on crimes against freedom of expression,2012: <http://www.osce.org/fom/91595>

against journalists, as well as making a referral to the public in order to increase accountability.⁷

Where a civilian is intentionally targeted, including journalists, this constitutes a severe violation of the 1949 Geneva Conventions⁸ and the 1977 Additional Protocol I.⁹ Therefore, any violent attacks on journalists reporting from conflict zones, including inhumane treatment, kidnap, torture and killing amounts to a war crime¹⁰ and a crime against humanity.¹¹ Since crimes against civilians in conflict zones fall under war crimes¹², and journalists are indeed civilians, the ICC has a major responsibility to protect such journalists working in conflict zones.

Where national courts are either unable or unwilling to act against those suspected to have committed crimes against journalists under their jurisdiction, then the jurisdiction of the ICC is triggered. Furthermore, the notion of universal jurisdiction can be triggered with regards to crimes that are committed against journalists and media workers because universal jurisdiction is based on the principle that a specific number of crimes are either abhorrent or universally recognised and States are therefore obliged and entitled to proceed to prosecute them irrespective of the

⁷Committee to Protect Journalists, <https://cpj.org/reports/2006>

⁸ Geneva Convention (1V) relative to the Protection of Civilian Persons in Time of War 12 August 1949

⁹ Article 85 of Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

¹⁰ Article 8 of the Rome Statute; Article 2 of the ICTY Statute

¹¹ Article 7 of the Rome Statute; Article 5 of the ICTY Statute

¹² Article 8 of the Rome Statute; Article 2 of the ICTY Statute

territory where the crime was committed or the domicile or nationality of the offender or victims.¹³

This Chapter is divided into two parts. Part one analyses the legal quality of crimes committed against journalists reporting from conflict zones. The idea is to establish which of such offences could be characterised as war crimes or crimes against humanity and therefore prosecutable under Article 5 of the Rome Statute establishing the International Criminal Court (ICC)? Part two examines the exercise of jurisdiction over crimes committed against journalists. It focuses firstly on, State jurisdiction over crimes committed against journalists. Secondly, it scopes ICC jurisdiction over crimes committed against journalists. Thirdly, it examines the idea of universal jurisdiction over crimes committed against journalists reporting from armed conflict zones.

Part One

5.1.1 The Nature of Crimes against Journalists

The question is whether the attacks against journalists in the form of torture, cruel treatment, murder, rape and sexual violence, when conducted in armed conflict situations should automatically fall for consideration of the Prosecutor of the ICC

¹³ See also Chigara, B. (2000) 'Pinochet and the Administration of International Criminal Justice', in Woodhouse, D. (ed.) *The Pinochet Case: A legal and Constitutional Analysis*, Hart publishing pp. 115 - 128.

under Article 5 because of the social significance of their work to democratic legitimacy both at home and abroad.

5.1.1.2. War Crimes

Fatou Bensouda, Chief Prosecutor at the ICC has stated that any attacks against journalists that were deemed to be of a deliberate nature, would constitute under International Law, a war crime.¹⁴ The contentious attacks on the Abu Dhabi and Al-Jazeera television centres in Iraq as well as on the Palestinian hotel,¹⁵ against journalists, conducted by the US, appeared to violate the 1949 Geneva Conventions.¹⁶ If this is correct, then, each of them thus constituted a war crime under the Rome Statute.¹⁷

Christopher Deloire, the Secretary-General of Reporters Without Borders (RWB) also regards attacks against journalists reporting from conflict zones as war crimes. In his letter to the President of the Security Council, he wrote that: “To shed light on the terrible acts being committed against journalists in these war zones and to deter the belligerents from continuing to commit them, we believe the Security Council should

¹⁴<http://www.un.org/en/sc/about/methods/bgarriaformula.shtml>

¹⁵ See, Daoud Kuttab “The Media and Iraq: a blood bath for and gross dehumanization of Iraqis” International Review of the Red Cross, VOL. No. 868 December 2008

¹⁶ Article 146 of the Geneva Convention (1V) relative to the Protection of Civilian Persons in Time of War 12 August 1949

¹⁷ <https://www.cpj.org>

urgently refer the situation in Syria and Iraq, and in particular the war crimes against journalists, to the ICC's prosecutor.”¹⁸

Furthermore, RWB writes that there should be an amendment to Article 8 of the Rome Statute¹⁹ so that “deliberate attacks on journalists, media workers and associated personnel” are included among war crimes.²⁰ Article 8 of the Rome Statute criminalises any attack on civilians that are not taking direct part in the hostilities in both non-international²¹ and international²² armed conflict.

¹⁸https://www.ifex.org/iraq/2015/05/01/;_RWB made this request in a letter on 16 April to the office of Lithuania's permanent representative to the United Nations in New York. this initiative was based on UN SC Resolution 1738 (2006) and on UN General Assembly Resolution on the Safety of Journalists and the Issue of Impunity 68/163 (2014)

¹⁹ Article 8 (2)(b) (iii) of the Rome Statute states that “Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts: (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict.” Article 8 (2)(e) (iii) of the Rome Statute states that “Intentionally of the Rome Statute states that Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts: (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict. “Article 8 (2) (c) of the Rome Statute states that “In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause: (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment; (iii) Taking of hostages; (iv) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.”

²⁰ RWB suggested that Article 8 of the Rome Statutes should be read as follows: “2. For the purpose of this Statute, “war crimes” means: (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts: (xxvii) Intentionally directing attacks against journalists, media professionals and associated personnel, media equipment and media installations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict.” Safety of journalists - Recommendations by Reporters Without Borders - September 2014; A. Balguy-Gallois, J. Lescs and P. Orsonneau, “Bringing predators of freedom of information to justice”, Reporters Without Borders 2013, http://en.rsf.org/IMG/pdf/note_comite_juridique_v1_gb.pdf

²¹ Article 8 (2) (c) of the Rome Statute

²² Article 8(2) (b) of the Rome Statute

Robertson writes that: “the deliberate murder of a journalist for reporting in a conflict zone should be a specific war crime. Of course, it is a crime to kill civilians, and journalists count as civilians. But they are not killed because they are civilians but because they are journalists.”²³

It can be argued that there is no valid reason to amend Article 8 of the Rome Statute to exclusively describe crimes against journalists as war crimes.²⁴ The dominant view²⁵ already is that any attacks that target journalists already constitute a war crime under Article 146 of the 1949 Geneva Convention²⁶ and under Article 85(3)(e) of the Additional Protocol I.²⁷

If attempts were made to amend Article 8 of the Rome Statute new problems might arise. They include agreeing the elements of the crime. In order for Article 8 of the Rome Statute to be amended, a two-thirds majority of the Member States parties of the Rome Statute would need to support such a proposal.²⁸

²³ G Coughlan, ‘Should killing journalists be a war crime?’

<<http://www.rnw.nl/internationaljustice/article/should-killing-journalists-be-a-war-crime>>

²⁴ Isabel Düsterhöft, P. 20

²⁵ Isabel Düsterhöft, P. 20

²⁶ Geneva Convention (1V) relative to the Protection of Civilian Persons in Time of War 12 August 1949

²⁷ Article 85(3) (e) of the Additional Protocol I states that “The provisions of the Conventions relating to the repression of breaches and grave breaches, supplemented by this Section, shall apply to the repression of breaches and grave breaches of this Protocol. 3 In addition to the grave breaches defined in Article 11, the following acts shall be regarded as grave breaches of this Protocol, when committed wilfully, in violation of the relevant provisions of this Protocol, and causing death or serious injury to body or health: (e) making a person the object of attack in the knowledge that he is ‘hors de combat’”

²⁸ Article 121 of the Rome Statute

Human rights crimes against journalists reporting from conflict zones must be classified either as crimes against humanity or as war crimes by the national courts. This is because both the 1949 Geneva Conventions²⁹ and the Rome Statute³⁰ classify crimes including torture, unlawful killings and sexual violence towards journalists within conflict zones as war crimes.³¹ Distinctions about what constitutes war crimes should be a matter for national courts and those for the ICC appear to be a matter for International Humanitarian Law, notwithstanding the complimentary jurisdiction of the ICC for crimes under its jurisdiction.³² A treaty-based system for universal criminal jurisdiction over war crimes in conflict zones was established by the 1949 Geneva Convention.³³

War crimes are described as breaches of International Humanitarian Law. They incur individual criminal responsibility.³⁴ The Rome Statute defines war crimes as, *inter alia*, “serious violations of the laws and customs applicable in international armed conflict” and “serious violations of the laws and customs applicable in an armed

²⁹ Article 146 of the Geneva Convention (1V) Relative to the Protection of Civilian Persons in Time of War 12 August 1949 and its Protocol I and II of 1979

³⁰ Article 8 of the Rome Statute

³¹ See, James K. Stewart, p. 1

³² Article 8 of the Rome Statute states that: “1-The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes. 2. For the purpose of this Statute, ‘war crimes’ means: (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention: (i) Wilful killing; (ii) Torture or inhuman treatment, including biological experiments; (iii) Wilfully causing great suffering, or serious injury to body or health; (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power; (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial; (vii) Unlawful deportation or transfer or unlawful confinement; (viii) Taking of hostages.” See, Kayt Davies & Emily Crawford, p. 215

³³ See, Saul, p.117

³⁴ Article 146 of the Geneva Convention (1V) Relative to the Protection of Civilian Persons in Time of War 12 August 1949; See, Jean S. Pictet, Commentary on the Geneva Conventions of 12 August 1949 Relative to the Protection of Civilian Persons in time of War, Geneva International Committee of the Red Cross 1958, p.611

conflict not of an international character.”³⁵ Article 146 of the 1949 Geneva Convention³⁶ states that particular breaches of the Convention constitute a war crime and should be prosecuted.

Presently, there are three obligations under the 1949 Geneva Convention³⁷ to which the system of jurisdiction relates.³⁸ The first refers to the requirement upon States to pass legislation in order to give an effective punishment for breach of convention norms. The second of the obligation requires State parties to search and investigate those that are alleged to have committed or ordered grave breaches of humanitarian law. As such, perpetrators should be prosecuted in national courts, irrespective of their nationality³⁹, under universal jurisdiction offences. The final obligation requires State parties to transfer those alleged to have committed crimes to be prosecuted in another State party, considering such State has a *prima facie* case against the alleged individual.

The hearings must however, be conducted in a consistent manner irrespective of the accused’s nationality. Whether the person accused is a national or even an enemy, they must all be subjected to the same rules of fair standard under the exact

³⁵Article 8 (b) (c) of the Rome Statute; The ICTY also provides jurisdiction over serious violation of International Humanitarian Law. Article 1 state that “The International Tribunal shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 in accordance with the provisions of the present Statute.” See, Rule 156,” Definition of War Crimes”, Customary International Humanitarian law, https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule156#Fn_16_1

³⁶ Geneva Convention (1V) Relative to the Protection of Civilian Persons in Time of War 12 August 1949

³⁷ Geneva Convention (1V) relative to the Protection of Civilian Persons in Time of War 12 August 1949

³⁸ Article 146 of the Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 12 August 1949; See, Jean S. Pictet, p.590

³⁹ Article 146 of the Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 12 August 1949;

courts.⁴⁰ Those who are accused must be given a fair and robust trial as well as a defence.

The most serious violations of the 1949 Geneva Convention⁴¹ are regarded as grave breaches that constitute war crimes if committed against protected persons or property.⁴² The 1949 Geneva Convention defines war crimes as “willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to the body or health; unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or willfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.”⁴³

⁴⁰ See, Jean S. Pictet, p. 593

⁴¹ Geneva Convention (1V) relative to the Protection of Civilian Persons in Time of War 12 August 1949

⁴² The grave breach provisions of the Geneva Conventions have been incorporated into Article 5(1)(c) of the Rome Statute and Article 2 of the ICTY.

⁴³ Article 147 Geneva Convention (1V) relative to the Protection of Civilian Persons in Time of War 12 August 1949; Article 50 of the 1949 Geneva Convention for the Amelioration of the Conditions of the Wounded and Sick in Armed Forces in the Field (Geneva Convention II) states: Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly. Article 51 of the 1949 Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Geneva Convention III) in the same terms states: Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly. Article 130 of the 1949 Geneva Convention Relative to the Treatment of Prisoners of War (Geneva Convention III) states: Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, compelling a prisoner of war to serve in the forces of the hostile

The International Criminal Tribunal for the former Yugoslavia (1993) (ICTY) defined a 'grave breach' to include threats to life or health (murder, ill-treatment, torture, mutilation, corporal punishment, rape, enforced prostitution, and indecent assault), summary executions, hostage taking, collective punishment, and pillage.⁴⁴ Therefore, violent actions comprising any of the elements above and directed against a journalist reporting from armed conflict zones may constitute 'grave' breaches of the 1949 Geneva Conventions, or other such breaches of the customs and laws of war.

The provisions of the 1949 Geneva Convention in relation to violations and grave violations are augmented by similar grave breaches of provisions in the 1977 Additional Protocol I.⁴⁵ It is considered a war crime to either purposefully or deliberately attack civilians⁴⁶ or to attack an individual that is out from combat.⁴⁷ It is also considered a war crime to deny an individual a regular and fair trial, unjustifiably.⁴⁸ The treacherous use of the emblem of the Red Crescent or the Red Cross is now included as a grave violation since Additional Protocol I of 1977

Power, or wilfully depriving a prisoner of war of the rights of fair and regular trial prescribed in this Convention.

⁴⁴ Article 2 of the ICTY states that "The International Tribunal shall have the power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949, namely the following acts against persons or property protected under the provisions of the relevant Geneva Convention: (a) wilful killing; (b) torture or inhuman treatment, including biological experiments; (c) wilfully causing great suffering or serious injury to body or health; (d) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; (e) compelling a prisoner of war or a civilian to serve in the forces of a hostile power; (f) wilfully depriving a prisoner of war or a civilian of the rights of fair and regular trial; (g) unlawful deportation or transfer or unlawfully confinement of a civilian; (h) taking civilians as hostages.

⁴⁵ Article 85 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

⁴⁶ Ibid, Article 85 (3) (a)

⁴⁷ Ibid, Article 85 (3) (a)

⁴⁸ Ibid, Article 85 (4)

lengthened the protections of the 1949 Geneva Convention in international conflicts.⁴⁹

The grave breaches of provisions under the 1949 Geneva Convention⁵⁰ as well as under the 1977 Additional Protocol⁵¹ are only viable under the context of international armed conflicts. Non-international conflicts are covered under Additional Protocol II of 1977 with no provisions of criminal responsibility. Furthermore, it has been determined that the national courts of the State that has taken part to the conflict must use its overall power in order to define the nature of such crimes that are committed against journalists in such armed conflicts.⁵²

Furthermore, breaches of Common Article 3 of the 1949 Geneva Convention which applies to non-international conflicts *qua* customary international law have been described as amounting to a war crime under the Statutes of the International Criminal Tribunal for Rwanda and Yugoslavia.⁵³ Moreover, the Rome Statute covers a list of war crimes which relate to non-international conflicts.⁵⁴

⁴⁹ Ibid, Article 85 (3) (f)

⁵⁰ Geneva Convention (1V) relative to the Protection of Civilian Persons in Time of War 12 August 1949

⁵¹ Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

⁵² Kayt Davies and Emily Crawford, p. 214

⁵³ Article 4 of the ICTR Statute; Article 3 of the Statute of the Special Court for Sierra Leone; Article 8(2)(c) of the Rome Statute; see, e.g., ICTY, *Tadić case*, Interlocutory Appeal (cited in Vol. II, Ch. 32, § 928); ICTY, *Jelisić case*, Judgment (*ibid.*, § 934). For more details, see, Customary IHL, Rule 156, "Definition of War Crime" ICRC.org/customary; Saul, "Prosecuting War Crimes at Balibo under Australian Law: The Killing of Five Journalists in East Timor by Indonesia" p. 88

⁵⁴ Article 8 (2) (c) of the Rome Statute states that "In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12

Three conditions must be met in order to classify any attack against journalists reporting from conflict zones as grave breaches amounting to a war crime under International Humanitarian Law. Firstly, a journalist's status must be that of a civilian. There are many different groups of occupational journalism that can be distinguished under the law of armed conflict. Such groups include embedded journalists, war correspondents, independent journalists and very recently citizen journalists. All of these categories of journalists are classified as civilians with the exception of war correspondents who if captured are treated as prisoners of war.⁵⁵ Therefore, International Humanitarian Law does not ascribe combatant status to independent journalists.⁵⁶ They are therefore regarded as an ordinary civilian and thus protected under the 1949 Geneva Convention⁵⁷ and the 1989 Hague Conventions.⁵⁸

Secondly, journalists must not directly take part in any of the hostilities. A clear division must be made between that of combatants and that of civilians, as clearly

August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause: (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment; (iii) Taking of hostages; (iv) The passing of sentences and the carrying out of executions without previous judgments pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.”

⁵⁵ See, Article 13 of The Hague Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. 29 July 1899 and Article 4 (A) Geneva Convention (III) relative to the Treatment of Prisoners of War 12 August 1949.

⁵⁶ See Article 79 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

⁵⁷ Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War 12 August 1949

⁵⁸ See Article 13 of The Hague Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. 29 July 1899. Article 13 of The Hague Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. 18 October 1907. Article 4 (4) of the Geneva Convention (III) relative to the Treatment of Prisoners of War 12 August 1949, Article 79 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977; Saul, p.100

established under International Humanitarian Law.⁵⁹ Thus, during armed conflicts, civilians must be protected and respected and any party taking part in the conflict must, at all times, not direct their actions against civilians.⁶⁰ The term 'direct participation', used in International Humanitarian Law refers to the status for civilians if they then take part in the hostilities. This principle has significant consequences for journalists reporting from conflict zones. Therefore, if journalists want to enjoy the protection given to them when reporting in conflict zones they must not take direct part in hostilities.⁶¹

Finally, under the Geneva Convention, journalists are protected persons. Individuals who are granted protection by the Geneva Convention⁶² are those individuals who, at a certain moment, and whatever manner, are found to be in the hands of an occupying power or party to a conflict to which they are not nationals⁶³ of during

⁵⁹ Article 48 of the Additional Protocol I to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977; For more details, See, Rogers, p. 7; Michael Meyer, p.107; Judith Gail Gardam, p.112; Yves Sandoza *et al*, para 1863

⁶⁰ Articles 48, 51(2) and 52 (2) of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Article 13 (2) of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. See, Jean-Marie Henckaerts and Louise Doswald-Beck, p. 3, Michael N. Schmitt, p.12, ICRC Customary IHL Database (2015) <https://www.icrc.org/customary-ihl/eng/docs/home> rule 1. See also, Knut Dörmann, p. 72

⁶¹ Article 79 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. See also Article 51(2) of the Protocol Additional I.

⁶² Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War 12 August 1949

⁶³ See the decisions of ICTY in, Prosecutor v. Delalic et al. (Celebici case), Judgment, and Case No. IT-96-21-T, T. Ch. II qtr, 16 November 1998, paras. 271-276; Prosecutor v. Brdanin, Judgement, Case No. IT-99-36-T, T. Ch. II, 1 September 2004, para. 125; Prosecutor v. Naletilic and Martinovic, Judgment, Case No. IT-98-34-T, T. Ch. I Section A, 18 March 2003, para. 221.

times of occupation or conflict; as highlighted by Article 4 of the 1949 Geneva Convention.⁶⁴

Those civilians, who are nationals of a country that is not bound by the Geneva Convention, are not given the status of protected person as established under the 1949 Geneva Convention.⁶⁵ This expands to nationals who are part of a neutral State.⁶⁶

5.1.1.3. Crimes against Humanity

There are currently no international Conventions on crimes against humanity as opposed to war crimes.⁶⁷ However, crimes against humanity are incorporated in statutes of specific international criminal courts as well as tribunals such as that of the Rome Statute,⁶⁸ ICTR and the ICTY Statute.⁶⁹ The classification of crimes against

⁶⁴ Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 12 August 1949

⁶⁵ Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War 12 August 1949

⁶⁶ For more details see, Saul, p.103

⁶⁷ International Law Commission Sixty-eighth session Geneva, 2 May-10 June and 4 July-12 August 2016, UN General-Assembly, A/CN.4/L.873

⁶⁸ Article 7 of the Rome Statute defines crimes against humanity “For the purpose of this Statute, ‘crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or collectively on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.”

⁶⁹ Article 5 of the ICTY Statute defines crimes against humanity “The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed

humanity in the ICTY and Rome Statutes mirrors that of customary international law.⁷⁰ The concept includes crimes such as extermination, murder, rape as well as any other inhumane acts which are conducted as part of a systematic and widespread attack that is targeted towards any civilian population, with the knowledge of the attack.⁷¹

The majority of attacks against journalists reporting from conflict zones in recent years come under the capacity of systematic or widespread attacks committed by armed factions resulting in many victims. Thus, attacks against journalists may be considered as crimes against humanity, but only if the overall conditions of such definition are met, that crimes against humanity must have taken place as part of a widespread or systematic attack directed against a civilian population.

In the case of *Jineth Bedoya*,⁷² Columbia's Prosecutor took the view that attacks against journalists reporting from conflict zones constitute crimes against humanity if such crimes were conducted as part of a systematic or widespread attack. This decision was described as an important and unique step to ensure State compliance

conflict, whether international or internal in character, and directed against any civilian population: (a) murder; (b) extermination; (c) enslavement; (d) deportation; (e) imprisonment; (f) torture; (g) rape; (h) persecutions on political, racial and religious grounds; (i) other inhumane acts."

⁷⁰Nicholas Tsagourias, "Violence against journalists and crimes against humanity" <http://www.cfom.org.uk/wp-content/uploads/2014/02/CAH-and-journalists-February-2014.pdf>, p.13

⁷¹The Charter of the International Military Tribunal at Nuremberg defined crimes against humanity as: murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated. Charter of the International Military Tribunal, Aug. 8, 1945, Article 6(c), 82 U.N.T.S. 280; See also Article 7 of the Rome Statute

⁷² <http://www.derechos.org/nizkor/colombia/doc/bedoya6.html>; See the official decision of this case on <http://www.derechos.org/nizkor/colombia/doc/bedoya6.html>

with the requirement to punish and prosecute those found accountable for crimes against journalists.

The facts in this case are not uncommon. The journalist Jineth Bedoya, who worked for the *El Espectador* daily newspaper, was kidnapped, tortured and sexually assaulted by the Armed Forces of Colombia whilst reporting from a war zone on 25th May 2000. The authorities in Colombia failed to investigate the crime and therefore took no effective measures to protect the journalist and bring those responsible before court. On 3rd June 2011, the Inter-American Commission on Human Rights received a petition filed by the Foundation for Press Freedom alleging that the State of Colombia was internationally responsible for the alleged violation of Articles 4, 5, 7, 8, 11, 13, 17, 22, 24, and 25 of the American Convention on Human Rights (1969).⁷³

The petitioner alleged that as of the date she had filed the petition, the offences had not been subjected to a trial. The investigation carried out by State authorities was characterised by long periods of inactivity and to proceedings that were unnecessary for obtaining relevant results, and with delays in performing relevant proceedings.

⁷³Article 4 (right to life) Article 5 (right to personal integrity), Article 7 (right to personal freedom), Article 8 (judicial guarantees), Article 11 (protection of honor and dignity), Article 13 (freedom of thought and expression), Article 17 (protection of the family), Article 22 (movement and residency), Article 24 (equal protection) and Article 25 (judicial protection)

Moreover, the Office of the Attorney General had failed to perform any investigation that measured up to international standards pursuant to the gravity of the rights violations involved. For those reasons she requested that the petition be exempt from the prior exhaustion of domestic remedies requirement.

The State of Colombia asked the Commission not to allow the petition on the ground that the facts presented in the petition did not represent a violation of the American Convention on Human Rights (1969) and certain domestic remedies had still not been exhausted due to the complexity of the case.

The Commission upheld the petition and granted precautionary measures and asked the Colombian State to take steps to protect the life and personal integrity of the alleged victim as well as to investigate the alleged incidents.⁷⁴ On 11th June, the case was assigned to Prosecutor No. 50 of the Human Rights Division of the Public Prosecutor's Office.⁷⁵

The Public Prosecutor had to decide whether kidnap, torture and sexual offences committed against the journalist Jineth Bedoya whilst reporting from a war zone constituted crimes against humanity. The Public Prosecutor stated that in the context of an internal armed conflict, criminal law must be interpreted in light of instruments of International Criminal Law and of International Humanitarian Law.

⁷⁴ Inter-American Commission on Human Rights, Report No. 50/14, Petition 779-11, 12 July 2014, www.cidh.org

⁷⁵ *Ibid*, p.10

Further to this, the Public Prosecutor went on to state that the crimes committed against journalists reporting from conflict zones evidenced clear violations of human rights.

The Public Prosecutor emphasised that Article 7 of the Rome Statute as well as Article 5 of the ICTY Statute prohibited acts of sexual violence and torture committed in the context of an internal armed conflict as crimes against humanity. In conclusion, the Public Prosecutor's Office of Columbia held that such crimes were part of International Criminal Law Treaties and human rights treaties, even though Colombian Criminal Law had not yet incorporated crimes against humanity as an explicit offense.⁷⁶

In an extraordinary move, the International Law Commission (ILC) is currently in the process of outlining a new treaty that would criminalise crimes against humanity under national laws.⁷⁷ Such a treaty may likely become the basis of an international convention on crimes against humanity. Furthermore, it might also serve to bring anyone found accountable for crimes against journalists to justice and thus tackle the issue of impunity.

⁷⁶ The murder of the Colombian journalists José Eustorgio Colmenares Baptista and Guillermo Cano was also classified as a crime against humanity by the public prosecutor. The public prosecutor referred to the Rome Statute and concluding that the crimes "was part of a systematic plan by the National Liberation Army against those it considered enemies for ignoring its orders and not carrying out the guerrillas' instructions via their media organisations."

<http://www.flip.org.co/resources/documents/9c4cd8980d2fe4a5956b771fadaa5a5f.pdf>

⁷⁷ International Law Commission Sixty-eighth session Geneva, 2 May-10 June and 4 July-12 August 2016, UN General-Assembly, A/CN.4/L.873

The ILC has observed that States should take fundamental steps to make sure that committing crimes against humanity or attempting to perform such barbaric crimes as well as soliciting, ordering, aiding, inducing, abetting, assisting or even participating in such a crime may constitute an offence under criminal law.⁷⁸

The ILC also has recommended that States must establish national jurisdiction over these crimes and prosecute anyone alleged to have committed crimes against humanity.⁷⁹ This must be done when the offence is committed in any territory under its jurisdiction or when the alleged offender is a national of that State or, when the victim is a national of that State if that State considers it appropriate,⁸⁰ and also in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite or surrender the person.⁸¹ Furthermore, States must be able to take the correct step to make sure that, under their criminal law, such offences are exempt from any decree of limitations so that they remain indictable on account of their severe nature.⁸²

Amnesty international has expressed concern that the ILCs new draft on the criminalisation of crimes against humanity may conflict with treaties that create similar obligations for States under the instruments of international or criminal courts or tribunals, including the ICC.⁸³

⁷⁸ ILC, Crimes against Humanity, Draft Article 5

⁷⁹ Ibid, Article 6 (1)

⁸⁰ Ibid, Article 6 (1)

⁸¹ Ibid, Article 6 (1)

⁸² Ibid, Article 6 (2)

⁸³ Amnesty International, International Law Commission second report on crimes against humanity: positive aspects and concerns, 2016, www.amnesty.org

Part Two

5.2. Exercise of Jurisdiction

The foregoing discussion indicates that attacks against journalists practicing their profession within conflict zones could represent war crimes or crimes against humanity. However, the question is how to bring to account those who commit crimes against humanity or war crimes against journalists reporting from armed conflict zones. There are, however, a number of mechanisms which exist primarily to ensure justice for journalists and accountability for those committing such crimes. They include the universal jurisdiction principle, jurisdiction of the ICC and the National Court jurisdiction.

5.2.1. Jurisdiction of National Courts over Crimes Committed Against Journalists – why it is not helpful

As stated previously, States have the ultimate responsibility to protect journalists and thus put an end to impunity by thoroughly investigating and prosecuting those found accountable for war crimes against journalists.⁸⁴ National courts have primary jurisdiction over any crimes committed against journalists occurring on their own territory or conducted by their own nationals. They are able to apply the law in order to prosecute the perpetrators.

⁸⁴ Article 147 of Geneva Convention (1V) Relative to the Protection of Civilian Persons in Time of War 12 August 1949 and its Protocols I and II of 1979; UNSC Resolution on Protection of Civilian in Armed Conflict, S/RES/ 1738/28/April/2006, para 7

Crimes against journalists reporting from conflict zones classified as war crimes or crimes against humanity can be prosecuted before national courts.⁸⁵ These crimes violate established customary international law. Therefore, such offences are prosecutable regardless of whether or not the State, where the war crimes were committed is a Member State Party to a treaty that criminalises such crimes. Moreover, even if the State does not hold such legislation or if their current legislation is ineffective, then the State is obligated to extradite the accused to another State that can exercise that.⁸⁶

The jurisdiction of national courts over crimes committed against journalists reporting from conflict zones presents immense challenges. The main challenge in States such as Syria, Yemen and Iraq, where the majority of crimes against journalists have occurred in recent years, is the lack of political will and capacity to bring criminal proceedings which meet the international fair trial principles. The majority of crimes that occur in Syria, Yemen and Iraq against journalists are conducted by armed factions, particularly those controlling a portion of the State's territory. In such cases, it is very difficult for the State, without control over its own territory, to apprehend and prosecute those alleged to have committed those crimes.⁸⁷

⁸⁵ ILC, Draft Articles 5 and 6

⁸⁶ Nicholas Tsagourias, p.13

⁸⁷ Ibid, p.16

Many States in Libya's and Syria's position lack the capacity to initiate a complex judicial process for war crimes or crimes against humanity. In particular, States such as Syria which is yet to sign any of the treaties covering war crimes have often enacted national legislation that restricts any submission to international treaties on the basis.⁸⁸

A State burdened with political corruption often lacks a legal system that is capable of functioning in a plausible manner. Therefore such a State would have difficulty in carrying out fair and robust proceedings.⁸⁹ The implementation of treaty obligations through national law may therefore limit the exercise of jurisdiction against international crimes committed by nationals or residents of such a State.

In order for States to prevent violence against journalists, it is imperative that they punish perpetrators in a manner that is proportionate to the offence committed. States should guarantee by law, their capability to punish and to try those alleged to have committed acts of violence against journalists, as recommended under Resolution 29 (1977) of the UNESCO General Conference.⁹⁰ This requires above all that the national laws establish a specific category for crimes against journalists. Unfortunately, States like Iraq, Syria and Yemen fall short of such requirements and

⁸⁸Mark Lattimer, Shabnam Mojtahedi and Lee Anna Tucker, "A Step towards Justice: Current accountability options for crimes under international law committed in Syria", Syria Justice and Accountability Centre, Ceasefire Centre for Civilian Rights, April 2015, p.19

⁸⁹Christof Heyns, Sharath Srinivasan, p. 326

⁹⁰UNESCO, Resolution 29 "Condemnation of violence against journalists." November, 1997; see also, United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. Joint Declaration on Crimes Against Freedom of Expression; See also, ILC, Crimes against Humanity, Draft Article 6

they still need to legislate to protect journalists and to end impunity for crimes against journalists.

Moreover, Article 2 (3) (a) of the International Covenant on Civil and Political Rights (ICCPR) (1966) provides that each State party undertakes “to ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by a person acting in an official capacity.” Furthermore, violations of International Human Rights Law and International Humanitarian Law give rise to a right of the victim to an effective remedy.⁹¹

Article 2 (3) (b) of the ICCPR provides that each State party shall ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy.

⁹¹ See also Article 8 of the Universal Declaration of Human Rights, Article 14 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Articles 8 and 20 of the International Convention for the Protection of All Persons from Enforced Disappearance, Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, Article 25 of the American Convention on Human Rights, Article 23 of the Arab Charter on Human Rights, Article 13 of the European Convention on Human Rights, Article 3 of the Regulations annexed to the Convention with respect to the Laws and Customs of War on Land (1907), Article 148 of Geneva Convention (1V) Relative to the Protection of Civilian Persons in Time of War 12 August 1949 and its Protocols I and II of 1979 , Articles 68 and 75 of the Rome Statute of the International Criminal Court, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Principle 11; Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, Principle 34; HRC, General Comment No. 31, paras. 8, 15-19.

A State that fails to investigate the allegations and to prosecute those responsible gives rise to independent violations of the ICCPR.⁹² Therefore, such allegations can be brought before the UN Human Rights Committee under the ICCPR.

In order for a claim to be admitted for the alleged violation of the provisions of the ICCPR, to the UN Human Rights Committee, the Optional Protocol to the ICCPR⁹³ requires that the claimant must have exhausted all available domestic remedies.⁹⁴ The UN Human Rights Committee should inform the State Party of the alleged violation of any provision of the Covenant.⁹⁵ Within six months, the State should submit to the UN Human Rights Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.⁹⁶ Once the UN Human Rights Committee has considered that the alleged violation has not been brought to another procedure for international investigation or settlement,⁹⁷ the Committee should hold closed meetings to examine the alleged violation and forward its view to the State party concerned and to the individual.⁹⁸

⁹² See also Articles 4, 5, 7, 12 and 13 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Article 3 of the International Convention for the Protection of All Persons from Enforced Disappearance, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly resolution 60/147), principle 3; the updated set of principles for the protection and promotion of human rights through action to combat impunity, principles 1 and 9; Human Rights Committee general comment No. 31 (CCPR/C/21/Rev.1/Add.13), para. 8.

⁹³ Article 3 Optional Protocol to the International Covenant on Civil and Political Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976

⁹⁴ Article 2 of the Optional Protocol I provides that Subject to the provisions of article 1, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration

⁹⁵ Article 4 (a) of the Optional Protocol I

⁹⁶ Article 4 (b) of the Optional Protocol I

⁹⁷ Article 5 (2) (a) of the Optional Protocol

⁹⁸ Article 5 (3) and (4) of the Optional Protocol

The question that arises is whether it is possible to resort to the UN Human Rights Committee under the ICCPR (1966) before completion/exhaustion of national remedies? Article 3 of the Optional Protocol to the ICCPR stipulates that in order for a claim to be admitted to the UN Human Rights Committee, the claim must have exhausted all available domestic remedies. The purpose of this requirement is to allow domestic authorities to hear cases of alleged violations of protected rights and, where appropriate, have the opportunity to resolve them before they are brought before an international authority. In *Mechani v. Algeria*,⁹⁹ the Human Rights Committee rejected the State party's view that the author has not properly exhausted domestic remedies, since he did not consider the possibility of bringing the matter before the investigating judge. The Human Rights Committee stated that, for the purposes of admissibility of a communication, the author must exhaust only the effective remedies available in respect of the alleged violation.

However, Article 2 (b) of the Optional Protocol to the ICCPR set up exceptions to this rule by providing that the requirement to exhaust domestic remedies is not applicable where there has been unjustified delay in processing the applications of remedies.

It is interesting to note here that the American Convention on Human Rights (1969) provides for more than Article 2 (b) of the Optional Protocol to the ICCPR in terms of the exceptions to the rule of the requirements to exhaust domestic remedies. Article

⁹⁹ CCPR/C/107/D/1807/2008; for more details see, Kinfe Micheal Yilma, "Reflections on the ICCPR Regime: *Mechani v. Algeria*", *State Practice & International Law Journal (SPILJ)* Vol.2 No.1, p69

46(2) of the American Convention on Human Rights (1969) stipulates that the requirement to exhaust domestic remedies is not applicable when a) the domestic legislation of the State concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; b) the party alleging violation of the rights have been denied access to the remedies under domestic law or has been prevented from exhausting them; or c) there has been an unjustified delay in the ruling on the aforementioned remedies.

The Commission stated that in the *Jineth Bedoya* case,¹⁰⁰ the period of 14 years during which the investigation had been going on in its preliminary phase does make it possible to apply the exception to exhaustion of domestic remedies for unwarranted delay set forth in Article 46(2) (c) of the American Convention.

As a judge in the Supreme Court in Qatar I have never investigated or prosecuted cases against journalists in Qatar. Such cases will have impacted on the political system of the State. Therefore, such cases are more likely to be settled away from legal proceedings to avoid publicity.

¹⁰⁰ <http://www.derechos.org/nizkor/colombia/doc/bedoya6.html>; See the official decision of this case on <http://www.derechos.org/nizkor/colombia/doc/bedoya6.html>

5.2.2. International Criminal Court jurisdiction over Crimes Committed against Journalists

The UN Security Council created several *ad hoc* international tribunals for the prosecution of war criminals in the former Yugoslavia and Rwanda setting up the International Criminal tribunal for the former Yugoslavia (ICTR) in 1993 and the International Criminal tribunal for Rwanda (ICTR) in 1994. The tribunals were set up to try individuals for grave breaches of the 1949 Geneva conventions including genocide and crimes against humanity. The tribunals have not yet looked at cases against journalists reporting from conflict zones.¹⁰¹ This section will focus only on the possibility of the International Criminal Court (ICC) taking jurisdiction over crimes committed against journalists reporting from conflict zones.

Described as an effective and sufficient instrument, the ICC is able to hold and prosecute those found responsible for committing serious crimes against journalists reporting from conflict zones.¹⁰² However, the ICC, unlike the national courts, do not possess the authority to prosecute any crimes against journalists which have been

¹⁰¹ Tumber H “Journalists, War Crimes and International Justice” Media War and Conflict 1(3) 2008 university of London, p.1

¹⁰² Article 1 of the Rome Statute states that “An International Criminal Court (‘the Court’) is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute.”

committed within States but do have the authority to do so only if the States have ratified the Rome treaty, or that are attributed to nationals of those States.¹⁰³

Even though the crimes which are committed against journalists reporting from conflict zones do not clearly fall under the Rome Statute,¹⁰⁴ they however, threaten to undermine international peace and security and are thus defined as either crimes against humanity or as war crimes. Furthermore, journalists have been granted both the protections and rights as civilians by the 1949 Geneva Convention.¹⁰⁵ Moreover, the Rome Statute expressly prohibits deliberate attacks against civilians, making this a war crime¹⁰⁶ and also a crime against humanity if such violent attacks were conducted as part of a systematic or widespread attack. This is also established under the category of customary international law (CIL).¹⁰⁷

The grave breach provisions of the 1949 Geneva Convention¹⁰⁸ have been integrated into the Rome Statute.¹⁰⁹ The ICC, by virtue of Article 5 (1) (b) and (c) of the Rome Statute has authority over crimes committed against journalists if those crimes are

¹⁰³ James K. Stewart, The protection of journalists in international criminal law Seminar and Inter-Regional Dialogue on the protection of journalists Council of Europe – Strasbourg – 3 November 2014 P.1

¹⁰⁴ Articles 5, 7 and 8 of the Rome Statute

¹⁰⁵ Article 4 of the Geneva Convention (1V) relative to the Protection of Civilian Persons in Time of War 12 August 1949; Article 79 of the Protocol Additional I to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts 8 June 1977; See, Yves Sandoza *et al*, para 3270

¹⁰⁶ Article 8, (2) (e) ((i) of the Rome Statute

¹⁰⁷ M. H Enckaerts and L. Doswarld-Beck, Customary International Humanitarian Law (Vol. 1), Cambridge, Cambridge University Press, 2005, p. 568-603.

¹⁰⁸ Article 147 of the Geneva Convention (1V) relative to the Protection of Civilian Persons in Time of War 12 August 1949

¹⁰⁹ Articles 5 and 8 of the Rome Statute

classified as a war crime or a crime against humanity¹¹⁰ and which includes violations of the 1949 Geneva Convention.¹¹¹ Therefore, in relation to Article 5, the ICC is required to protect civilians by imposing a requirement for State parties to not only protect journalists but also to refer any such crimes against them towards the ICC only if they aren't able to prosecute or investigate the criminals.¹¹²

In order for the ICC to take jurisdiction over crimes against humanity and war crimes committed against journalists, the crimes should have been committed on the territory of a Member State Party of the Rome Statute or by a national of a Member State Party.¹¹³ Article 13 of the Rome Statute provides that¹¹⁴ such crimes can be referred to the ICC either by States, NGO, UN Security Council¹¹⁵ or the Office of the Prosecutor of the ICC.¹¹⁶

¹¹⁰ Article 5 of the Rome Statute states that: "The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes: (a) The crime of genocide; (b) Crimes against humanity; (c) War crimes; (d) The crime of aggression."

¹¹¹ Geneva Convention (1V) relative to the Protection of Civilian Persons in Time of War 12 August 1949

¹¹² United Nations Security Council Resolution on Protection of Civilian in Armed Conflict, S/RES/1738/28/April/2006, para 7; Article 17 of the Rome Statute; See, Theodor Meron, "The Geneva Conventions as Customary Law", *The American Journal of International Law*, Vol. 81, No. 2. (Apr., 1987), pp. 348-37

¹¹³ Article 14 of the Rome Statute

¹¹⁴ Article 13 of the Rome Statute states that "The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if: (a) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14; (b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or (c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15."

¹¹⁵ Chapter VII of the United Nation Charter

¹¹⁶ See ICC Office of the Prosecutor, 'Prosecutorial Strategy 2009-2012' (ICC, 1 February 2010) Paras 16-17.

Referral to the ICC occurs in cases where States are unwilling or unable to prosecute war crimes or crimes against humanity committed within their jurisdictions.¹¹⁷ If the crimes are committed in a State that has ratified the Rome Statute, then the crimes can be tried by that State, or by any other Member State Party, or referred to the ICC by the State itself, or by any other Member State Party.

Moreover, a State that is not a participant to the Statute may, however, make the decision to accept the ICC's jurisdiction, in order to be able to take advantage of the ICC's expertise and services of the court, but only on an ad hoc basis.¹¹⁸ Non-signatory States that do not comply with the jurisdictions of the ICC and whereby a crime is conducted within this State, would therefore be passed on to the ICC for prosecution by either the UNSC¹¹⁹ or the ICC's prosecutor and must be signed off by all permanent members of the UNSC.¹²⁰ It must be noted that the transfer is not officially binding, and as such the ICC's prosecutor must decide whether to start an investigation and whether or not to prosecute.¹²¹

Many have doubted the capability of the ICC to have jurisdiction over crimes which are committed against journalists reporting from conflict zones.¹²² In order for the ICC to assume jurisdiction, it is argued that such crimes must have been committed as part of a policy or plan or as part of a systematic attack or widespread attack

¹¹⁷ Article 17 of the Rome Statute

¹¹⁸ Article 12 of the Rome Statute

¹¹⁹ Article 17 of the Rome Statute

¹²⁰ Kayt Davies and Emily Crawford, p. 172

¹²¹ Article 53 of the Rome Statute states that "the Prosecutor shall having evaluated the information made available to him or her, initiate an investigation unless he or she determines that there is no reasonable basis to proceed under this Statute."

¹²² Knut Dörmann, p. 72

against journalists.¹²³ It has also been stated that the ICC focuses more prominently on large scale cases as opposed to cases which include an isolated death of an individual journalist and thus are unlikely to consider such a case.

States which have formally approved the creation of the ICC under the Rome Statute have the responsibility to investigate and prosecute those found to be guilty by national courts for international crimes.¹²⁴ At national court level, both distinct and remote cases are to be prosecuted. Many States that are party to the Rome Statute have established their very own internal law which then allows crimes committed under the Rome Statute to be prosecuted in national courts.¹²⁵ This ultimately shows the significance of the protection of journalists under national jurisdiction.

The above argument, however, is undermined by the fact that crimes against journalists are not only crimes against a person. They are crimes against a profession, against democracy and against the freedom of the press. It should also be noted that a number of States are either unable or unwilling to act against the criminals. This may be due to the fact they lack the legal capability to commence investigations or, because the authorities of the States may fear that they would suffer reprisals at the hands of the perpetrators if they proceeded with criminal proceedings.

¹²³ Articles 7 and 8 of the Rome Statute

¹²⁴ See Rome Statute preamble, para 6

¹²⁵ See i.e. the United Kingdom's International Criminal Court Act 2001, 11 May 2001 (entered into force 1 September 2001) 2001 Chapter 17

It is also argued that in relation to non-international armed conflicts, that the Rome Statute contains only rudimentary provisions on war crimes and crimes against humanity. This is because the Rome Statute does not cover all positional war crimes. The ICC Prosecutor would not be able to prosecute crimes against journalists reporting from non-international conflicts as war crimes or crimes against humanity, even if a referral to the ICC was made, particularly regarding a country such as Syria which is not a party to the Rome Statute.¹²⁶ This argument is also not valid on the grounds that crimes against journalists threaten international peace and security. Therefore, the UN Security Council has the authority to make a referral of such cases to the ICC regardless of whether or not the crimes that were committed occurred in a State that is not a Member State Party to the Rome Statute.¹²⁷

5.2.3. Universal Jurisdiction over Crimes Committed against Journalists

The universal jurisdiction principle serves to benefit journalists from becoming a target when reporting in conflicts zones. It serves also as a tool for ensuring justice. Originally, universal jurisdiction was used only to hold both slave traders and pirates to accountability for war crimes. However, nowadays this has extended to ensuring against impunity for human rights abuses which include crimes against humanity, war crimes, apartheid, and genocide.¹²⁸

¹²⁶ Beth Van Schaack, "Mapping War Crimes in Syria", *International Law Study*, Vol 92, 2016, p.286

¹²⁷ UN Charter Ch, VII

¹²⁸ Bartram S. Brown, "The Evolving Concept of Universal Jurisdiction" *New England Law Review*, Vol. 35:2, 2001, p.384

In essence, universal jurisdiction is premised on the idea that a number of categories of criminal offences exist that are considered to be so inhumane that States are enjoined through international law, to possess custody of these perpetrators and may even prosecute them, regardless of where the crimes were committed or the nationalities of the criminals or of the victims. The right of a State to possess universal jurisdiction over war crimes against journalists would not weaken States' obligations towards the 1949 Geneva Convention.¹²⁹ Furthermore, treaty law supports the rights of States to possess universal jurisdiction.¹³⁰

Even though the Rome Statute does not obligate States to develop universal jurisdiction over war crimes, many States, however, have accepted most forms of universal jurisdiction and have reproduced them in their own national legislation and have authority over war crimes.¹³¹ However, it has been expressed, that it is not mandatory to have universal jurisdiction incorporated under national legislation. The legislation is deemed to only authorise the States to punish and prosecute the criminals under international law.¹³²

¹²⁹ ICRC, Customary IHL, Rule 157, <https://ihl-databases.icrc.org/customary-ihl/eng/docs/home>

¹³⁰ Article 16 (2) (a) of the Second Protocol to The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1999) states that "With respect to the exercise of jurisdiction and without prejudice to Article 28 of the Convention: a. this Protocol does not preclude the incurring of individual criminal responsibility or the exercise of jurisdiction under national and international law that may be applicable, or affect the exercise of jurisdiction under customary international law"; Article 4 of the Convention on the Prevention and Punishment of the Crime of Genocide (1948) states that "Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals." See also Jean-Marie Henckaerts, "New Rules for the Protection of Cultural Property in Armed Conflict", *International Review of the Red Cross*, No. 835, September 1999, p. 593, at 617.

¹³¹ Amnesty International reported in 2001 that 125 nations have enacted criminal legislation extending universal jurisdiction over crimes against humanity and other serious crimes.

Amnesty international, *Universal Jurisdiction: the duty of States to enact and implement legislation* 3 (2001), <http://www.amnesty.org/en/library/asset/IOR53/002/2001/en/dom>

¹³² Luz E. Nagle, "Terrorism and Universal Jurisdiction: Opening a Pandora's Box?" *Georgia State University Law Review*, Vol 27, issue 2, 2011, p. 360

In recent years, there has been an increase in the number of universal jurisdiction trials before national Courts. Eichmann was prosecuted over crimes he had committed against Jews in Germany by exercise of the universal jurisdiction principle in the national court of Israel.¹³³ Universal jurisdiction was invoked against Eichmann because he had committed both crimes against humanity and war crimes. Thus, the national courts in Israel could, under the 1949 Geneva Convention claim to exercise universal jurisdiction in order to provide justice for the victims.

The *Pinochet Case*¹³⁴ also referred to universal jurisdiction for inhumane acts such as torture during Senator Pinochet's rule of Chile. Interestingly, universal jurisdiction exercised by the House of Lords in this case was based on the grounds that International Convention, i.e. the Convention against Torture and other Cruel, Degrading or Inhumane Treatment or Punishment (1984) had been transformed into UK national law.¹³⁵ The House of Lords found that torture could only be considered an extraditable crime after the date when the State ratified the Torture Convention.¹³⁶

If national courts were to consider crimes committed against journalists as crimes against humanity or war crimes, then universal jurisdiction offers a more conventional basis of jurisdiction. The most effective and sufficient method of protecting journalists as well as putting an end to impunity is through classifying

¹³³ Attorney-General of the Government of Israel v. Eichmann (Israel Sup., Ct. (1962), Int'l L. Rep., vol. 36, p. 277, 1968

¹³⁴ Regina v. Bartle and the Commissioner of Police for Metropolis and others, Ex Parte Pinochet [1999] 2 ALL.E.R.97

¹³⁵ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec,10,1984, Article 19 (1)

¹³⁶ See, Regina v. Bartle and the Commissioner of Police for Metropolis and others, Ex Parte Pinochet [1999] 2 ALL.E.R.97

offenses against journalists as crimes against humanity or war crimes and then going on to assert jurisdiction against perpetrators of such crimes.

Many have expressed concerns with the difficulty in implementing universal jurisdiction because of political considerations.¹³⁷ It has also been stated that universal jurisdiction may be compromised where its implementation conflicts with prime interests of the State.¹³⁸

Conclusion

Whenever a journalist is attacked, it is a crime, not because s/he is a civilian but rather that s/he is a professional. The attacks on journalists reporting from armed conflicts are an attack first and foremost on press freedom and on the human right guarantee to freedom of expression. In order to defend both press freedom and freedom of expression, it is imperative to protect journalists from violent attacks for practicing their vocation.

States hold the main responsibility to ensure such protection is given to journalists by systematically investigating crimes and prosecuting perpetrators. The International Criminal Court has a vital role to ensure this in situations where States of jurisdiction are either unable or unwilling to prosecute perpetrators of offences against

¹³⁷ Jeffrey T. Smith, p.10

¹³⁸ Bartram S. Brown, p. 389

journalists. The UN Security Council, through its Charter mandate to ensure international peace and security, has a responsibility to ensure that its measures for the protection of journalists reporting from armed conflicts zones are effective and not merely hortatory.

As long as journalists do not take part in direct hostilities, then journalists should enjoy the same protections offered to civilians under the 1949 Geneva Conventions and under the Rome Statute.

The function of universal jurisdiction diminishes the survival of safe havens whereby the perpetrators of such barbaric crimes can appreciate impunity. It is a vital and imperative path towards justice for the victims who do not have anyone to turn to and thus can heighten responsibility in States where the crimes have been committed. Although there has been much resistance when applying the universal jurisdiction, foreign courts have, however, felt coerced into using it in cases where the crimes against journalists are so severe in nature and no such forum to address them currently exists.

Conclusion

Introduction

This highlights the main outcomes of this thesis, based on the research undertaken from the critical literature review and comparative analysis. It outlines the major findings that were discussed in the context of this thesis. It also provides recommendations for improving the existing rules and laws governing the protection of journalists and media reporting from armed conflict zones. The main aims of this research were to examine whether the existing rules are sufficient to protect journalists and the media operating in conflict zones, and secondly whether violence against journalists and media should be categorised as war crimes and crimes against humanity.

Observations

During this research it became clear that journalists reporting from conflict zones are serving the public interest of the whole international community. They are the key to the recognition and protection of the fundamental human rights guarantees to democratic rule; freedom of expression; and freedom of the press. Their social role is indispensable to holding democracies accountable for how they prosecute wars abroad and how they treat citizens of other nations directly during conduct of

hostilities, or indirectly by supplying armoury that are used to devastate the lives of civilians.

The research showed that although journalists are subject of mention, reference and legislative provisions in both International Humanitarian Law and International Human Rights Law treaties, this protection is minimal and insufficient to protect journalists reporting from conflict zones. Violent attacks on journalists continue to rise and their grotesque nature even darker and gruesome while perpetrators in most cases go uninvestigated and the offences unprosecuted.

Attempts made in the 1970s to improve the protection of journalists reporting from conflict zones resulted in Article 79 of the Additional Protocol I of the Geneva Conventions. This Article stated that journalists should be considered as civilians and they should be offered protection as civilians. But journalists are attacked in these situations not because they are civilians but rather because of their membership of a profession, and their practice of their vocation at the time of attack. Therefore civilian protection is a mismatch with the reason why they are targeted in the first place.

Unfortunately, Article 79 creates no new status for journalists. It codifies the customary rule that civilians are immune from attack as long as they do not participate in hostilities. The parties to the armed conflicts have to take all necessary

measures to protect journalists in conflict zones against any effects of military operations or against any violation of the rights of journalists to report from conflict zones.

Under existing rules, the level of protection given to journalists reporting from conflict zones depends either on the status of journalists or on the nature of the conflict. War correspondents are given better protection than independent journalists. For instance, in case of capture, they are treated as prisoners of war and also protected against torture and execution without a trial before an independent tribunal. On the other hand, journalists reporting international conflicts are given better protection than those reporting non-international conflicts.

Media equipment and facilities are presumed always to have civilian object status as long as they do not make an effective contribution to the military effort. Moreover, the media are not legitimate targets, merely because they engage in propaganda. The media cannot be attacked unless all precaution has been taken to prevent civilian loss. Thus, any direct attack against the media should be considered a war crime.

International Human rights Law requires State authorities to grant journalists the highest possible protection in order for them to carry out their vocation which presupposes enjoyment of the guarantee of freedom of expression to meet society's right to be adequately informed. Perhaps the provisions of International Human

Rights Law should be interpreted broadly to offer better protection to journalists operating in conflict zones.

Under International Humanitarian Law, States have a duty to protect journalists by systematically investigating crimes and prosecuting the criminals. States also have obligations to refrain from killing, ill-treating, unlawfully arresting and interfering with journalists. The authorities are responsible for the safety of any journalist working within their territory, and armed groups also must respect the status of journalists as non-combatants.

But in reality there is little within International Human Rights instruments that make an attack on journalists a crime punishable in an international legal setting. As a result, parties to an armed conflict are not deterred from kidnapping journalists and preventing them publishing information on war.

The main challenge with international human rights instruments lies in their full implementation and application in national law and practice. States are reluctant to accept supra-national monitoring institutions due to concerns that their sovereignty would be capped. Therefore, changes to national laws are needed to ensure that violence against journalists is always criminalised, investigated and prosecuted.

UN, Regional organisations and Non-Governmental organizations have also taken issue with protection of journalists reporting from armed conflict zones. They aimed

at enhancing the effectiveness of the existing rules on the protection of journalists. While these efforts should be respected, they lack the necessary mechanisms for accountability and they are not that effective in delivering physical or legal protection for journalists. United Nations Resolutions have no real value. They are not binding upon UN Members State Parties. They are mere suggestions that the UN hopes governments will follow, or at least put mechanisms in place to enhance the protection of journalists reporting from armed conflict zones. Resolutions will only become helpful when they result in criminal prosecutions and individuals and groups that target journalists are prosecuted under the full weight of International Criminal Law.

Whenever a journalist is attacked, what is targeted is press freedom and freedom of expression. The journalist is the physical embodiment and representation of those attributes and that is why they are victimised. For States to then invoke protections intended for civilians qua individuals to protect journalists is shamefully beneath what is expected of them, namely to recognise the social utility of journalists and in particular, the importance of their work to:

- (i) Facilitating the UN Security Council mission of ensuring international peace and security.
- (ii) Equipping citizens across the world with accurate information about how their governments conduct wars abroad and treat citizens of other countries.
- (iii) Holding governments to task against their human rights treaty obligations.

In order to defend both the freedom of the press and the freedom of expression, it is, therefore, imperative to protect journalists and to consider crimes against journalists as either crimes against humanity or war crimes.

This dissertation recommends that all national criminal laws must be interpreted in light of the mechanisms of International Humanitarian Law and of International Criminal Law, if evidence was found of grave violations of human rights against journalists. Journalists require specific protections and not general public/civilian protection because they are targeted not as civilians but as professionals

International Humanitarian Law treaties are not sufficient to protect journalists reporting from armed conflict zones because they refer to only general issues. Further it is recommended that relevant provisions of the Rome Statute, particularly Article 5, should be interpreted to cover all the war crimes, particularly those occurring in non-international conflicts so that crimes against journalists fall under the jurisdiction of the Court.

The function of universal jurisdiction diminishes safe havens for perpetrators of certain crimes. Universal jurisdiction provides the most hope for ending impunity for crimes against journalists reporting from armed conflict zones. This dissertation recommends the immediate categorisation of all offences against journalists reporting from armed conflict zones as universal jurisdiction offences because of the

social utility of their work to international peace and security, democratic governance, and the rule of law.

Research Findings

The major findings of the research were presented throughout this dissertation as each chapter attempted a response to the research questions. Perhaps the most significant finding to emerge from this study is that the protection of journalists covering armed conflicts under international law is absent. International Humanitarian Law is an ancient, traditional and inadequate tool for ensuring safety of journalists reporting from armed conflict zones. The Law now must meet the demands of journalists to truly reflect their professional life experiences.

A new single and comprehensive Convention detailing existing obligations in respect of journalists and criminalising attacks and violations against journalists is needed – Convention on the Safety and Welfare of Journalists Reporting from Situations of Armed Conflict (2020). Such a Convention would clarify State obligations and unify the law to meet the needs of journalists. The Convention should have a compulsory treaty monitoring body with jurisdiction to receive individual complaints from affected individuals and from NGOs. A resolution from Security Council to support the new Convention and seeking State compliance and ratification of the new Convention would be desirable.

Attacks on journalists reporting from conflict zones must be made a specific offence under international law, by including them in the Rome Statute. A mechanism for monitoring compliance with resolution 1738 (2006) by UN member States, would motivate governments to criminalize offences against journalists.

In recent conflicts such as in Iraq, Yemen and Syria, journalists were attacked based on religious and political grounds. Furthermore, journalists reporting from such hostile areas are often faced with high levels of threats from militia groups in order to force them to report on their stories and views about the conflict. Equally, the authorities in such conflict areas provide weak legal protections to journalists to intimidate them and to force them not to cover provocative topics. Unfortunately, the weakness of the political systems and the lack of local legislations to protect journalists in such countries resulted in more violence against journalists and militia groups continue to do so without fear of even been held to account.

Therefore, it could be argued that in such areas of conflict, it is deemed more necessary to develop and implement effective rules based on the legal protection of journalists than is the case in international armed conflicts where ideologies and emotions are not primarily important and where there is normally no presence of militia groups.

Procedural Recommendations

The UN General Assembly must instruct the UN International Law Commission under Article 13 (1) of the UN Charter to create a new treaty on the Safety and Welfare of Journalists Reporting from Situations of Armed Conflict (2020). The new treaty could be modelled along the lines of The Maritime Labour Convention 2006 (MLC) which has been described as Seafarers' Bill of Rights. The Safety and Welfare of Journalists Reporting from Situations of Armed Conflict (2020) would in this respect become Journalists' Bill of Rights.

The new treaty should establish an unambiguous, integrated, comprehensive regulatory framework regarding the professional life of journalists. It should provide international standards for practicing journalism. It should also establish minimum requirements for journalists to work in conflict zones as well as focusing on situations such as health protection, employment, protection of social security, and their general welfare. It must pay particular regard to methods for the protection of journalist's human rights in cases of threats or attacks whilst reporting from conflict zones.

The Safety and Welfare of Journalists Reporting from Situations of Armed Conflict Convention (2020) should apply to all journalists reporting from conflict zones, regardless of domicile, nationality, race, religion, sex and political views. Finally, it

should also be applied to all areas of conflict, whether it is international or national conflicts

A distinct and definitive meaning to the term 'journalist' is essential in order to eliminate any doubt about the legal status of a journalist practicing in zones of conflict. Furthermore, the new definition must remove the distinction between war correspondents and independent journalists. The new definition should also include all the various categories of occupational journalism. It should also stress both the practices and behaviours of conducting journalistic activities, departing from Article 79 of the Additional Protocol I's approach.

The new treaty should define journalists as all individuals who are employed or involved in any work or work-related activities as their principal occupation to which the treaty applies. This does not only include correspondents but also, photographers, reporters, their technical radio, televisions and film assistants as well as all individuals working within this occupation. If for any reason there is doubt as to whether any groups of individuals can be regarded as journalists with respect to, the matter should be referred for the opinion of the Convention's Treaty Monitoring Body.

The journalist must always abide by the code of conduct and follow their rights and responsibilities in armed conflict zones irrespective of what definition is used to express a journalist practicing in a conflict zone. In order to warrant protection and

safety of journalists operating in zones of armed conflict, they must be registered each time they enter a zone of armed conflict by direct notification sent to the Secretary of the Convention's Treaty Monitoring Body, stating the intended dates of presence, from entry to departure. These must also be notified to their own national professional body.

Furthermore, the new Treaty should also create a system for identifying journalists. Among the rights guaranteed by this treaty to journalists reporting armed conflict are:

- (i) Right to freedom of movement with respect to journalistic practice.
- (ii) Right to not be arbitrarily arrested or deported without due process being served.
- (iii) Right to diplomatic assistance.

The Treaty should also establish a method for educating journalists on their duties and responsibilities in conflict zones as well as offering training on the dangers and threats they face from working within a conflict zone.

The treaty should establish also a comprehensive system for education of governmental agencies, the public, as well as military forces, on the international principles of human rights, and the protections given to journalists reporting from conflict zones. Furthermore, the treaty should establish ways of criminalising those alleged to have violently attacked journalists. Within this context, the treaty should

establish a system of support for State with regards to developing criminal justice systems that are sensitive to the needs of journalists covering armed conflict.

As mentioned previously, organisations such as the UN, Non-Government agencies and Regional Organisations have a specific role with regards to protecting journalists practicing within conflict zones. The treaty should therefore establish a method which would allow such organisations to observe coverage of human rights and also to afford protection to those who are prohibited from being able to achieve their responsibilities. Those who should be able to provide a significant role with regards to protecting journalists include, 'The Office of the UN High Commissioner for Human Rights' and the 'UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression.

Finally, the treaty should have a comprehensive mechanism for emergency responses to journalist attacks. The treaty should also create a method that includes assessing the problems of safety and security of journalists which involves routine analysis of progress both at the international and national level.

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