

Rethinking the International Legal Framework Protecting Journalists in War and Conflict

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Abstract— Journalists reporting from conflict zones are increasingly at risk of injury or death. Not only are they at risk of becoming a casualty in the crossfire, they are now often directly targeted and killed because of their profession. This paper undertakes an examination of the international legal regime for the protection of frontline media workers in armed conflict, with a view to determining its adequacy or otherwise in protecting journalists operating in such dangerous landscapes. The examination includes a study of the current rules and principles of international humanitarian law, international human rights law, and the proposals provided by the regime and international non-governmental bodies. The legal framework protecting journalists in conflict zones consists predominantly of international humanitarian law, supplemented by international human rights law as well as international criminal law. The main body of law providing protection to journalists consists of the Geneva Conventions and their additional protocols, which are now old. The paper found that the legal framework contains, at least in theory, a significant number of provisions that continue to provide protection for journalists in conflict zones. The paper equally found that the international committee of the Red Cross report and the views of most academic literature reveal that the protection offered by the current legal framework is adequate but that the enforcement of it is lacking. This is considered the predominant reason why journalists reporting on conflicts currently face such significant risks to their safety. It concludes that the inadequacies of the current international legal regimes are unsustainable and that there is a need to holistically rethink the protections presently offered by providing a more robust treaty to distinctly cater for the wellbeing of media workers in the forefront of armed conflict.

Keywords: Journalist in War; International Humanitarian Law; Legal Framework; Geneva Conventions.

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INTRODUCTION

News reporting from conflict areas is becoming increasingly dangerous. Conflict reporting is inherently dangerous due to the circumstances in which it takes place; a disconcertingly high percentage of deaths is not related to violence inherent to conflict, such as crossfire; journalists are increasingly targeted directly because of the work (Smyth, 2013). There appears to have been a significant shift in the culture of respect towards journalists that previously existed amongst combatants. Journalists have gone from being protected by the unwritten rule of don't shoot the journalist to being a direct target in the hostilities (Tumber & Webster, 2006). The current legal framework protecting journalists in conflict zones is thus based upon a cultural outlook of respect for journalists, which no longer seems to exist. Journalists play an essential role in society. They assist in the fulfilment of one of the key components of the right to freedom of expression, recognised in various human rights treaties. The right to receive information. This collective right "empowers populations through facilitating dialogue, participation, and democracy. The influential role journalists have in society is enhanced during conflict, when ordinary checks on government behaviour and violations of law breakdown, and most of the information that reaches local and international audiences comes through journalists, who can be the last observers present to witness and report on the conflict (Kagan and Durban, 2010).

The need to protect journalists has long been recognised by International Humanitarian Law (IHL). Since the rise of the war correspondent during the crime of war, IHL has attempted to provide protection to war correspondents. This protection has largely consisted of a single provision in the Geneva Conventions and other IHL treaties, which has seen little change from its first inclusion to the extensive revision of the Geneva Conventions in 1949. The real reconsideration of the protection offered to journalists came with Additional Protocol 1 (1977) to the Geneva Conventions. Which recognised that reporting practices had changed to such an extent during the numerous conflicts post-World War II that the inclusion of a new provision to protect journalists was required. At the same time, there was significant discussion as to whether journalists reporting on conflicts should be protected through their own international convention. This suggestion was abandoned in favour of including a new, dedicated provision for the protection of journalists in Protocol I, as it was felt it would be quicker and more effective and would have the added advantage of ensuring journalists were made fully aware of IHL (ICRC 1947-1977). The suggestion of a dedicated convention has resurfaced several times over the last few decades but has never resulted in significant efforts at the international level to create one.

Over the last decade, the focus of providing additional protection to journalists has switched from creating a new dedicated convention to improving enforcement of the legal protection currently available to journalists. Crimes against journalists suffer from exceptionally high rates of impunity, with worldwide impunity levels fluctuating between roughly 85 and 90 percent over the last decade (CPJ (2014)). These statistics

have influenced the idea that the legal framework for the protection of journalists in conflict zones provides sufficient protection, at least in theory, and that “the most serious deficiency is not a lack of rules, but a failure to implement existing rules and to systematically investigate, prosecute, and punish violations (Robbin Geiss, 2010). This approach is strongly supported by academic literature (Dusterhort, 2013), and most international efforts now focus on combating impunity. Consequently, the international committee for the Red Cross’s (ICRC) four-year action plan for the implementation of humanitarian law published in 2011, which calls for enhanced protection for journalists in conflict zones, does not suggest there is a need for a new treaty.

The United Nations’s (UN) Plan of Action on the safety of journalists and the issue of impunity (UNESCO (2012)) similarly does not suggest significant revisions to the legal framework as required. This does not disagree with the strong international focus on combating impunity to enhance the protection of journalists in conflict zones. It does, however, take issue with the notion that there are no underlying issues with the current legal framework that require attention. Although the main international legal regime governing the protection of journalists in wartime is the same that governs the law of armed conflicts in general, International Humanitarian Law (IHL) (Fleck, 2008) Although IHL provides for the protection of journalists (Protocol Additional I (1949), recent attacks on reporters and in the wars in Afghanistan, Iraq, and Yemen, as well as the conflicts in the Arab world, have ignited discussions on whether the dangerous profession should be afforded special protection.

While the International Committee of the Red Cross (ICRC), which bases its work on the provisions of IHL, maintains that journalists are sufficiently protected by the Geneva Conventions (‘GCs’) and its Additional Protocols (APs) (Dinstem, 2009), a number of international scholars and practitioners (Balguy-Gallors, A. (2004) claim instead that specific provisions are required to deter attacks and afford more protections. They are joined by international non-governmental organisations (NGOs), including the CPJ, the International Federation of Journalists (‘IFJ’), Reporters without Borders (‘RSF’), the Press Emblem Campaign (‘PEC’), the International Press Institute (IPI), and the International News Safety Institute (INSI) (PEC, 2007).

These international players have created a variety of proposals and initiatives to afford better safeguards, such as enhanced ratification of the APs, reinforced protection by international instruments, creation of a special status, facilitation of identification, inclusion as a specific war crime under international criminal law, and better mitigation, advocacy, and education. With regards to the various approaches to improving journalists’ protection, so far no consensus has been made on the most appropriate initiative.

It is therefore this article’s aim to explore the current international legal protection offered to journalists in conflict zones through IHL, International Human Rights Law (IHRL), and International Criminal Law (ICL) in order to ascertain whether the claim that there are no problems with the current legal framework for the protection of

journalists in conflict zones is correct and to consider what further steps may be required.

STATEMENT OF THE PROBLEM

The statement of the problem identified in this paper is the unsustainability of the existing legal framework for protecting media workers in conflict zones or war zones. This study acknowledges that the present framework contains a significant number of provisions that today form the existing foundation for the present regime and the accomplishments of the past decades. A close look at the relevant instrument suggests that the protection attached to specific types of journalists varies, resulting in a uniformed body of laws that discriminates against certain types of media personnel in affording the protection it has designed to confer on that part of the media industry engaged in on-the-field war scholarship on this subject. I agree and assert that the current decades of framework are just about as adequate as any other lawfully promulgated or enacted instrument. This article will challenge the idea that the present body of laws, as constituted in numerous instruments, is sufficient and that only through effective enforcement can protection be adequately guaranteed.

This study has undertaken a painstaking critique of the existing international legal jurisprudence on protecting media practitioners in armed conflict, and it has consequently made a case for rethinking and rejigging the current framework to meet sustainable demands and present modern realities in warfare.

LITERATURE REVIEW

JOURNALISTS, ARMED CONFLICT AND THE GENRE OF WAR REPORTING

Journalism and the media industry as the over 200 years ago have been at the forefront in recognition of its significantly enormous power of social and political, influence in framing discourse and leading the way in the democratic expression of free speech and free exchange of ideas. However, war reporting is a distinct type of journalism that, has achieved tremendous popularity over a century ago, while drastically changing its form and purpose to align with the rapidly shifting nature of conflicts globally. While journalists have covered wars as early as the Crimean war and American Civil War (A. Lambert (2011) their engagement has increasingly gone professional, and seeing a rise in the use of audio and visual means (World Wars II and the Vietnam War), (Caruhers (n.8)c) (real time) TV reporting (Person cult and Yugoslavia Wars) (P. Hammon (2004) and most recently, 24/7 news and cyber journalism (Afghanistan and Iraq Wars (Allan and Zellizer (2006), as well as the current

Russia/Ukraine and Israel/Gaza Wars. The role of journalists from an observer to an actual member of the conflict, and the involvement of the general population in journalistic activities has changed drastically. This is enhanced by the fact that wars are today, not solely fought by means of war machinery but also by (dis)information and the control thereof—the phenomenon of information warfare (Timber and Webster).

In relation to the greater proximity of journalists to the armed conflict, their increased exposure and the (sporadic) involvement of local citizens, it is critical to distinguish between two types of occupational journalism. That is independent journalists and war correspondents. The independent journalists are not officially sanctioned by either the military or civilian administration, as such they operate independently of any influence. They are defined as any reporter, correspondent, photographer, and their technical film, radio and television assistants who are ordinarily engaged in any of these activities as the principal occupation (Draft UN Convention (1975). Thus, they are freelancers, stringers or part of a media organisation and known as unilaterals in journalist jargon (Timber and Webster, 2006).

While war correspondents are defined as “specialized journalist(s) who are present, with the authorization and under the protection of the armed forces of a belligerent, on the theatre of operations and whose mission is the provision of information on events concerning ongoing hostilities, by the *dictionnaire de droit international public* (Salmon, 2001). This definition is similar to that adopted in the United Nations Security Councils (UNSCs) Resolution 1938 which equally mentioned the Green Book of the British Armed Forces which mentioned specifically the need for accreditation (UNSC Res. 1738). This distinguishes them from independent journalists who are not officially recognized by their government and accredited by the military Yoram Dinstein, International Law professor Emeritus at Tel Aviv University and President of the UN Association of Israel, proposes a third category in addition to the earlier two, that is independent journalists and the war correspondence, which he refers as those journalists who are members of the armed forces and cover the war for military news organs (Dinstein, 2009). In categorizing these types of journalists, this paper would simply adopt the definition of journalists as simply members of the armed forces, in conflict to the independent or accredited journalists, and therefore simply classified under combatants.

In the words of Phillip Knightley, an Australian journalist, he stated that it is safer to be a soldier these days than a war correspondent (P. Knightley). It is therefore important to distinguish between traditional threats inherent to military operations and deliberate attacks on journalists.

RESEARCH DESIGN AND METHOD

In order to collect data, the current study uses the doctrinal research method. This of course has to do with both primary and secondary method of data collection. This to bare the global understanding of the media element of the legislative international framework “on key internal legal documents. Such normative texts serve as a source of study and present a valid reflection of the ideas, beliefs and concepts shared by many, while accord on their meaning is usually reached by agreement that results from viewpoint journalists to put a legislative policy framework to protect the journalist will be based on the current transitional situation, including media practices, protection of journalists in middle east in arm conflict zones.

The Problem of the Study

Journalists suffer all forms of violence against them, but they choose to work bravely, in several different ways, given dangers that define their news business in this region, including dangers from active civil wars, guerilla and militia groups, terrorism like ISIS, foreign military occupation and armies, political intimidation, and the power of mass public opinion. While there is heroism in working in the face of all these threats and confronting the control mechanism of their ruling power structure. They defy existing rules, run against the grain of prevailing public opinion, raise unpleasant issues for public discussion, and demand that public or official power be exercised equitably and humanly, according to internally accepted standards of democratic pluralism and human rights. Hundreds of journalists who have acted with such courage have been jailed, threatened, intimidated, and even killed after the Arab Spring revolutions. Several prominent journalists have recently been killed or injured in bomb attacks in Syria, Libya, Ukraine, Yemen, Iraq, Palestine, and Lebanon.

The problem of the study focused on the lack of a coherent legal framework to law didn't protect the journalists and the journalists developed new legal framework to save them. The result is a rather complicated legal framework that is not always easy to apply in practice from conflict zones where most of the countries

didn't have legal government because terrorists groups controlled most of the regions and it is not easy to apply this law. This study from the point of view of correspondent's war who work in the conflict zone they want to apply these laws from their point of view not from the perspective of international organisations.

JOURNALISTS ARMED CONFLICT AND GENRE OF WAR REPORTING

War reporting is a distinct type of journalism that has gained popularity over the past decades, while drastically changing its form and purposes to align with the rapidly shifting nature of wars worldwide. While journalists have covered wars as early as the Crimean war and American civil war (William Howard Russel, 2022), their engagement has increasingly professionalized, seeing a rise in the use of audio and visual means (World War I and II and the Vietnam War) (Carrithers, 2011), (real-time) TV reporting (Persian Gulf and Yugoslave Wars) (P. Hamman, 2004) and most recently 24/7 news and cyber journalism (Afghanistan and Iraq wars) (Allan and Zeliza, 2006) as well as the involvement of local citizens in journalism activities (Arab Uprising) (Khamis and Vaughn, 2011). The role of the journalists, from an observer to an actual "member" of the conflict and the involvement of the general population in journalistic activities has change drastically. This is enhanced by the fact that the wars are, today, not solely fought by means of war in achieving but also by disinformation and the control thereof the phenomenon of information warfare (Timber and Webster, 2016).

In relation to the greater proximity of journalists to the armed conflicts their increased exposure and the (sporadic) involvement of local citizens, it is important to distinguish between two types of occupational journalism, independent journalists and war correspondents. Independent journalists are referred to as such because they are not officially sanctioned by the military or government and operate 'independently' of these influences. They are defined as ... 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. Thus, they are freelancers, stringer or part of a media organisation and known as unilateral in journalist jargon (Timber and Webster, 2006).

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PROTECTION OF JOURNALISTS IN ARMED CONFLICT: AN INSIGHT FROM THE PERSPECTIVE OF INTERNATIONAL HUMANITARIAN LAW

International Humanitarian Law (IHL) applies the principle of distinction, and thus civilians and combatants are protected differently (1997 protocol, Art 4 (2), Art. 5 (1)) civilians and civilian objects must not be the object of attack, only combatant and military objectives are the primary or legitimate target of attack (Saul, 2008). In addition, protection of journalist are the part of *Jus in bella* (also known as IHL) which consist of a set of rules designated to regulate the conduct of armed conflicts.

It should be emphasis that, in conjunction with IHL, human rights law is applicable in the situation of armed conflicts, although most previous can be derogated from during war and have inherent limitations (Dusterhoft, 2013). If there is conflict and/or disharmonious provisions of human rights law and IHL, then IHL is to be applied as *lex specialis* in times of armed conflict (ICJ case, legality of threat or use of nuclear weapons).

a) Protection available in relation to attacks

Article 79 of Additional Protocol 1 to the Geneva Conventions (GCs) is the main and the most significant Article of international humanitarian law that explicitly refers to the protection of journalists in international armed conflicts. The article was adopted by consensus and hence no any reservations have been made. The Article provided that journalist engaged in dangerous professional missions in areas of armed conflict whether independent journalists or war correspondents shall be considered as civilians within the meaning of Article 50, paragraph 1 (1977 protocol, Art 79). This journalists regardless of their type is entitled to same protection as that of civilians. This means that whole set of Geneva Convention IV and Article 51 and 57 of Additional protocol I is applicable for the protection of journalists. Thus, attacks on journalists is strictly prohibited under IHL. In addition, indiscriminate attacks are prohibited and a variety of precautionary measures must be taken in military operations to spare civilians and civilian objects (1977

Protocol 1, Art 51 (3) (4), 57, 58). Journalist cannot be used as hostages or human shields, nor may they be made the object of reprisals (1977 Protocol 1, Art 51 (7)). These provisions apply unless and as long as journalists do not take any action that adversely affects their status as civilians, as outlined in Article 79 (2) of Additional Protocol 1. This implies that, as soon as civilians (including journalists) take 'direct participation in hostilities make such civilians (including journalists legitimate military objectives for the duration of their participation in hostilities (Saul, 2008). It has to be noted that taking direct participation in hostilities does not entitle civilians (including journalists) the privileges and immunities of combatants including POW status.

In case, the journalists (including war correspondents) are situated near or among armed forces or other military objectives which are legitimate military targets liable to attack, their incidental or collateral killing in the course of such attacks will not be unlawful (Saul, 2008). However, the attacking forces should comply with the principles of humanitarian law (ensuring civilian casualties is no greater than military advantage anticipated) (This also refers to IHL principle of necessity and proportionality).

Article 85 (3) (e) of Additional Protocol I mentions that attack on civilians is to be considered as war crimes. This provision further manifests the illegality and criminalization of attack upon journalists. The subsequent investigations, prosecution and punishment of such a war crime is subject to provisions of (international) criminal law. Attacks are only permissible if all reasonable precautions have been taken and if the collateral damage is not excessive to the concrete and legitimate military aim.

b) Protection Relative to Arrest and Detention

Journalists' major threat in armed conflicts, arrest and possible detention in armed conflicts requires the complement of both human rights law as well as the reinforcement of the IHL. All types of journalists must be treated as civilians even though their exact status depends on their nationality and place of arrest. If arrested by authorities of their own country, internal laws as well as universal human rights law apply. Journalists who are citizens of a non-belligerent state are under the protection of potential diplomatic relations between the two states and are protected by peacetime law, including human rights (Gasser, 2003). Journalists arrested by authorities of another belligerent nationality do, next to the general applicability of human rights, first and foremost enjoy protection by the fundamental guarantees afforded by Article 75 API including inter alia the prohibition of violence to life, health or physical and/or mental

wellbeing, outrages upon personal dignity, the taking of hostages, collective punishments, threats and fair and humane detention and trial (Gassar, 2003).

Article 79 (2) AP I also refers to specific protection in case of detention pursuant to Article 4 (4) (4) GC III as POWs. The protection as POW relates inter alia to persons accompanying the armed forces without actually being members thereof including war correspondents. Thus, in case of falling into the hand of adversary, war correspondence benefit from all protections relative to POWs. Article 4 (A) (4) GC III, however does not relate to nationals of a party to the conflict nor to nationals of co-belligerent or neutral states maintaining diplomatic relations with the belligerent state. Moreover, both Articles only apply to IACs.

In the case of NIACs, journalists are at least protected by the minimum guarantees enshrined in common Article 3. These are similar to and amplified by AP II but still more restricted than those afforded under Article 75 AP I. The protection under the legal regime governing NIACs. For example do not provide for special status as POW and also do not offer much help against unjustified detention (Dinstein, 2009).

Nevertheless, violations of journalists rights in detention, such as fair trial and humane treatment are considered grave breaches of IHL and lead to prosecution (Gasser).

CONCLUSION

Journalists occupy an important role in society. They stand for freedom of expression and have a vital role in ensuring people's right to information. In crisis situations, they are the watchdog for the action of belligerents. Still, they remain increasingly vulnerable in the course of their mission in war-prone areas. Although they are provided with various protections in armed conflicts, they are continually being attacked. Journalists and media practitioners who are usually to be deployed in conflict areas should be given appropriate risk awareness and hostile environment training by their media organisation. They should equally be provided with protective health and safety equipment. It is the basic duty of journalists themselves to better protect them. Additionally, journalists should be educated in relation to their responsibilities, forbidden actions, and protection afforded by IHL.

It should be noted that journalists cannot be better protected by a singular-dimensional approach. Some of the proposals mentioned in this study are dependent on each other, and a coherent and universal approach is needed for the success of protecting journalists. Moreso, focusing only on legal texts will not enhance the protection on the actual battlefield, especially with regard to the increasing nature of deliberate attacks, lack of knowledge of law, and misunderstanding about the media's role. Thus, rather than focusing on de jure protection, we need to follow a more

practical approach, which includes educating and increasing awareness among society and militaries about the value and role of journalists.

Equally, it is recommended to strengthen national laws for individual attacks on journalists. The domestic law should be able to reinforce the expressiveness of punishment for attacks on journalists, the requirement to investigate, prosecute, and punish any unlawful attacks and arrests, and further criminalise such unlawful behavior. International humanitarian law, international criminal law, international human rights law, and domestic laws should work in synergy and complement one another for effective protection of journalists.

Overall, due to the nature of their profession, it is being recognised that the dangers and threats to journalists cannot be completely eliminated, and they continue to remain famous and effective targets in the future. The only best approach is to enhance journalist protection in the future through comprehensive responsibility of both military and non-governmental organisations, journalists, media practitioners, and civil society organisations.

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