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Published in the USA
 International Journal of Media and Information Literacy
 Issued since 2016
 E-ISSN 2500-106X
 2023. 8(2): 427-435

DOI: 10.13187/ijmil.2023.2.427
<https://ijmil.cherkasgu.press>



Protection of Journalists under International Humanitarian Law: Modern Challenges for Freedom of Media under Martial Law¹

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Abstract

The article analyzes the rights of journalists in situations of armed conflict and in international documents regulating the implementation of international humanitarian law. Freedom of expression serves as the foundation for the functioning of a democratic society. The significance of journalism in ensuring the proper exercise of freedom of expression cannot be overstated. Journalists are often recognized as the "watchdogs" of the democratic process. They play a crucial role in combating corruption, fostering public dialogue on sensitive issues, and shaping societal values.

The coverage of armed conflicts and post-conflict recovery also occurs with the direct involvement of journalists. Given this, it is essential to establish mechanisms to protect journalists in conditions of armed conflict. The article analyzes acts adopted at the Council of Europe, the United Nations, the Organization for Security and Cooperation in Europe, and others, aimed at ensuring the protection of journalists in armed conflicts. International journalist organizations (Reporters Without Borders, the International Federation of Journalists, the Committee to Protect Journalists, etc.) actively contribute to shaping protective instruments for journalists.

Under international humanitarian law, journalists enjoy the same level of protection as other civilians. In the context of armed conflict, attacks on a journalist's life may result from incidental harm or deliberate targeting. In the latter case, such an attack constitutes a war crime. Depending on the circumstances, this action may fall under the jurisdiction of national courts or the International Criminal Court. If journalists join a warring party, they forfeit their protected status according to the norms of international humanitarian law.

Keywords: journalists, international humanitarian law, war crimes, armed conflicts, freedom of expression and information, press freedom.

1. Introduction

Journalism holds immense significance in contemporary society, serving as a vital pillar of democracy. It is pivotal in informing the public, fostering transparency, and holding those in power accountable. Through investigative reporting, journalism exposes corruption, addresses social issues, and contributes to shaping public opinion. In an era of information overload, journalists act as gatekeepers, helping sift through the noise to provide credible and reliable news. The diverse forms of journalism, including investigative, multimedia, and citizen journalism, contribute to a

¹ Funded by the European Union. Views and opinions expressed are however those of the authors only and do not necessarily reflect those of the European Union or the European Education and Culture Executive Agency (EACEA). Neither the European Union nor EACEA can be held responsible for them.

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rich and dynamic media landscape. Ultimately, journalism serves as a cornerstone of democracy, empowering individuals with knowledge and promoting an informed and engaged citizenry. The European Court on Human Rights (and other international bodies) provides robust protection to the freedom of the press, particularly when issues of public interest, including political matters, are openly discussed (Macovei, 2004: 12).

The role of adequate conflict information for transitional justice and post-conflict settlement cannot be overstated (Slavko et al., 2022). It is evident that journalists cannot remain aloof from such an essential social problem as war (armed conflict) and are often present near the battle line. The critical role played by journalists in disclosing facts about war crimes and testifying in criminal cases cannot be overlooked. Thus, the International Criminal Tribunal for the former Yugoslavia stated that it was the journalist Roy Gutman who was the first to discover the Omarska concentration camp through interviews with those who were kept there and saw with their own eyes the murders, torture, rape, and other atrocities committed there. The media attention generated by journalists Roy Gutman, Edward Vulliamy, and others regarding Omarska ultimately led to the camp's closure (ICTY, 1997). Edward Vulliamy, for instance, testified at nine trials, including proceeding against the president Milosevic and general Mladic (Druziuk, 2023).

In 2022, 68 journalists were killed worldwide, and another 11 died as a result of accidents. In its annual report, the International Federation of Journalists calls Ukraine the most dangerous country for media workers, considering that 12 journalists died (were killed) here in 2022. Most of the dead were on the battle line or in the occupied territory (Annual Report, 2023). The Committee to Protect Journalists operates with other figures indicating that 15 journalists were killed in Ukraine in 2022 (Journalist Deaths, 2022).

2022 also saw a sharp increase in the number of journalists killed (by 50 % compared to last year) in the world as a whole. The overwhelming number of murders fell on three states – in addition to Ukraine (12 or 15 people), Haiti and Mexico were also noted. Council of Europe Commissioner for Human Rights Dunja Mijatović spoke about the need to protect journalists in conflict conditions in her statement in the spring of 2022 in connection with the unfolding of the armed conflict in Ukraine (Not a Target, 2022).

Understanding the content and scope of the right to freedom of expression, the role of the media in ensuring it has evolved significantly in global practice since the adoption of the Geneva Conventions and Protocols. Both the forms of implementation of informational relations and the nature of confrontations between warring parties in armed conflicts have fundamentally changed. The purpose of this study is to analyze the existing legal frameworks within international humanitarian law specifically pertaining to the protection of journalists in conflict zones in the context of modern armed conflicts, thereby fostering an environment where journalists can report on conflicts freely and safely, ensuring the flow of accurate and timely information while upholding their safety and rights.

2. Materials and methods

As previously highlighted, free media is the cornerstone of any functioning democratic society. Consequently, regulations ensuring the media's operation, rights, responsibilities, and safety of journalists and other media professionals have been adequately addressed in national legislation, international law, and scholarly works. The theoretical foundation for this study draws from works exploring the content and methods of realizing media freedom and freedom of expression (Bychawska-Siniarska, 2017; Macovei, 2004). Additionally, the article's goals are pursued through insights from research in related areas, including the impact of ECtHR practice on information regulation in Council of Europe member states (Plotnikova et al., 2021), the formation of lawful behavior patterns influenced by critical information assessment levels (Lebid et al., 2020; Zavorodnia et al., 2019), legal remedies under martial law (Slavko et al., 2023), and legal protecting of journalists (Hessel, 2016; Levin, 2013; Saul, 2008).

National constitutions and international treaties serve as essential foundations for this research. Analyzing these documents enables an assessment of the establishment of freedom of expression, guarantees, and potential derogations. Significant progress has been made in this field by various international bodies and organizations, including the UN Human Rights Committee, ECtHR, the Committee of Ministers of the Council of Europe, etc. Their reports, recommendations, and decisions were scrutinized to fulfill the objectives of this study.

An essential source within the framework of the study was international humanitarian law – both the norms of the Geneva Conventions and the practice of their application, as well as customary humanitarian law.

3. Discussion

There is no uniform definition of the concept of “journalist” within the framework of international law. A potential definition is proposed in Article 2, (a) of the Draft Articles of an International Convention for the Protection of Journalists Engaged in Dangerous Missions in Areas of Armed Conflict: “The term ‘journalist’ shall encompass any correspondent, reporter, photographer, and their technical film, radio, and television assistants who are regularly involved in any of these activities as their primary occupation” (Draft..., 2018).

Legally, journalists can have two statuses under martial law:

1) military correspondents (or journalists assigned to military units) who have accreditation in the armed forces and accompany military formations but are not their members.

2) journalists who do not have accreditation but arrive in the zone of armed conflict with an editorial task of preparing materials (“engaged in dangerous professional missions”).

Both categories have the status of civilians when they are not directly participating in hostilities (Article 79 of the First Additional Protocol to the Geneva Convention) (First Protocol, 1977). However, the specificity of the first category is that journalists who accompany the army may be subjected to the regime of military captivity. According to Article 4 of the Third Geneva Convention, “Prisoners of war [...] are persons [...], who have fallen into the power of the enemy, including ones who “accompany the armed forces without actually being members thereof, such as [...], war correspondents, [...] provided that they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model” (Third Geneva Convention, 1949). If there is doubt about the applicability of the prisoner of war status, the person remains protected by international humanitarian law until a competent court resolves the issue.

Nowadays, the second group can include a relatively wide range of people - both independent journalists and employees of media organizations. The question arises as to whether bloggers, for example, persons who do not have a press card, but in one way or another disseminate information about the military conflict through the media, can be included in it. Art. 79 of the Protocol indicates that journalists “may” obtain an identity card in the form specified in Annex II to this Protocol (First Protocol, 1977). However, in practice, the legislation of parties to a military conflict requires special rules for the admission of journalists to war zones, the presence of a press card, and accreditation. For instance, according to the legislation of Ukraine, “a journalist is a creative employee of a media who professionally collects, receives, creates, edits, distributes, and ensures the preparation of information for the media. The status of a journalist is confirmed by a document issued by a media organization or a professional union or association of journalists. The document confirming the status of a journalist must contain the name and type of media, its identifier in the National Media Register or the name of a professional union (association), photo, surname, first and patronymic of the journalist, document number, date of issue and term his actions, the signature of the person who issued the document (The Law of Ukraine, 1997). Thus, “other media professionals” mentioned in the above-cited Draft Articles under Ukrainian legislation cannot belong to journalists in the absence of proper identification (press card). Thus, theoretically, a blogger, freelancer, or “citizen journalist” who does not have a press card may find himself in a military conflict zone; however, his status will be equated to that of ordinary civilians.

A journalist “on dangerous professional missions” is also legally an ordinary civilian, but having a press card can significantly simplify his/her access to certain objects or territories. Such persons cannot be held as prisoners of war but have the right to respect and protection under international humanitarian law. At the same time, the status of a military correspondent must not involve participation in hostilities, the use of weapons, or intelligence activities; otherwise, he/she loses the status of a civilian and acquires the status of a combatant.

It is also important to point out that international humanitarian law distinguishes the concepts of “international armed conflict” and “armed conflict of a non-international nature”.

All four Geneva Conventions and the Additional Protocol I to the Geneva Conventions specify that their application is confined to international armed conflicts. Common Article 2 of the Geneva Conventions asserts that international humanitarian law is relevant in situations involving declared

wars and armed conflicts between two or more states. The International Committee of the Red Cross articulates the expansiveness of this concept as follows: “Any dispute between two States that leads to the involvement of armed forces constitutes an armed conflict” ([The Handbook, 2013: 44](#)). The classification of an “armed conflict” is no longer contingent on a formal declaration of war. Consequently, the term is to be construed in a much broader sense than in the past.

In Common Article 3 of the Geneva Conventions and Additional Protocol II to the Geneva Conventions, a distinct category is acknowledged alongside international armed conflicts. Researchers define this category as a 'non-international armed conflict' or a 'national armed conflict,' stating it as: “A confrontation occurring within the national territory involving the established governmental authority and groups of individuals subordinate to this authority, or among various groups, none of which represents the government, conducted through the use of force and escalating to the level of an armed confrontation or civil war” ([The Handbook..., 2008: 54](#)).

International humanitarian law provides special protection for journalists in armed conflicts. The researchers note that a superficial look at the norms of international humanitarian law can formulate the opinion that only a few norms protect journalists and media representatives in general. In particular, such norms are Article 4 A of the Third Geneva Convention and Article 79 of the First Additional Protocol. At the same time, in the context of an international armed conflict, journalists are subject to all the rules for the protection of civilians (Article 79 of the First Additional Protocol), and customary humanitarian law contains similar guarantees for journalists in the context of a non-international armed conflict ([How does..., 2010](#)).

A reminder of the civilian status of media personnel is also contained in Resolution 1738 of the UN Security Council on the protection of the civilian population in wartime. In particular, the Security Council recalls that “journalists, media professionals, and related personnel carrying out dangerous professional missions in areas of armed conflict shall be considered civilians and shall be respected and protected as such, provided that they do not take any action that negatively affects their status as civilians” ([Resolution..., 2006](#)). At the same time, media equipment and installations are civilian objects and, in this respect, cannot be the object of attack or repression, and all parties to an armed conflict must fully comply with the obligations applicable to them under international law regarding the protection of civilians in armed conflict, including journalists, media professionals, and related personnel.

The international community's concern for journalists' well-being is evidenced by several acts adopted regarding their protection in armed conflicts. In particular, the Recommendation of the Committee of Ministers of the Council of Europe No. R (96) 4 on the protection of journalists in situations of conflict and tension provides general guidelines for member states regarding guarantees for journalists working in conflict zones. The Recommendation contains three sections that propose methods to protect journalists in several areas: protection of the physical integrity of journalists, their labor rights, non-discrimination, and investigation of cases of attacks on journalists. The Committee of Ministers particularly emphasizes that all appropriate means must be used to bring to justice those responsible for such attacks, regardless of whether they are planned, encouraged, or committed by persons belonging to terrorist organizations or other organizations, persons working for the government, or other state bodies, or by persons acting in a personal capacity ([Recommendation..., 1996](#)).

Similar norms were also repeated in the Guidelines of the Committee of Ministers on protecting freedom of expression and information in times of crisis. The Guidelines's authors indicate that in their understanding, the term “crisis” includes, but is not limited to, wars, terrorist attacks, and natural and artificial disasters. The developers emphasize that in these situations (but the specified list is not exhaustive), freedom of speech is under threat, including for reasons of ensuring state security. At the same time, the term “media professionals” covers all those engaged in collecting, processing, and disseminating information intended for the media. The developers of the Manual also include operators, photographers, translators, and drivers in this list of protected persons. The Guidebook imposes on the state the obligation to ensure the physical integrity and integrity of media workers and to conduct proper investigations into the deaths of media workers ([Guidelines..., 2007](#)).

The need to protect journalists in conflict conditions requires interregional cooperation. For instance, in May 2012, a collaborative statement from the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media (RFoM), 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 underscored the unacceptable nature of incidents involving killings, death threats, disappearances, abductions, prosecutions, imprisonments, torture, harassment, and other crimes against individuals exercising their right to freedom of expression. The declaration specifically highlighted the severity of crimes against freedom of expression when committed by State authorities and expressed concerns regarding the unique challenges and dangers faced by women journalists. It outlined a set of principles for State authorities to address threats, with guidelines detailing obligations to prevent and prohibit crimes against freedom of expression, uphold international standards, conduct effective investigations, prosecute perpetrators and instigators, and provide redress for victims. The statement also emphasized the involvement of other stakeholders. The norms of the declaration were included in the Guidebook "Safety of Journalists", developed by the OSCE. The Guidebook, in particular, recommends that states ensure the safety of journalists at work and protect them from any unlawful violence ([Safety of Journalists...](#), 2020).

At the global level, the UN shows concern for the protection of journalists. For example, UN Resolution 2222(2015) condemns all violations and abuses committed against journalists, media professionals, and associated personnel in situations of armed conflict and calls upon all parties to armed conflict to bring an end to such practices ([Resolution...](#), 2015).

The UN also calls for the release of all previously detained journalists and the ratification of the First Protocol to the Geneva Convention of 1977, which provides for the protection of the civilian population in armed conflict.

In the Resolution of the UN Human Rights Council, the authors call on member states to enhance capacity-building initiatives, provide training sessions, and raise awareness within the judiciary, law enforcement, military, and security personnel. Similarly, efforts will be directed towards media organizations, journalists, and civil society to promote understanding of States' international human rights and international humanitarian law obligations. The focus will be on ensuring the safety of journalists through comprehensive training and awareness programs ([The safety of journalists...](#), 2020).

The practice of applying the mentioned norms shows that protecting journalists is one of the essential obligations of the state. Thus, the European Court of Human Rights has repeatedly emphasized the role journalists play as a "watchdog" in society. This is due to the fact that the Court emphasizes the crucial role of freedom of expression as a fundamental requirement for a well-functioning democracy. States are obligated to guarantee that private individuals can genuinely exercise their right to communicate with one another ([Bychawska-Siniarska, 2017: 91](#)). For example, in *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland*, the Court emphasized the vital role of the media in facilitating and fostering the public's right to receive and impart information and ideas. Not only does the press have the task of imparting such information and ideas; but the public also has a right to receive them ([Case of Satakunnan...](#), 2017).

In the case of *Dink v. Turkey*, a violation of Article 2 was identified. This case revolved around the murder of journalist Hrant Dink, who faced intense hostility from extreme nationalists due to his newspaper articles on Turkish-Armenian relations. The Court concluded that the security forces could reasonably be deemed aware of the hostility towards Mr. Dink, as they had been informed about a real and imminent threat of assassination. Despite this, they failed to take adequate measures to safeguard his life. Additionally, Article 10 of the Convention was found to be breached not only due to the failure to protect Hrant Dink from the attack but also because, as a consequence of his newspaper articles, he was convicted of the crime of denigrating "Turkishness." The Court deemed this conviction unnecessary for pressing social needs ([Dink, 2010](#)).

4. Results

The main risks for journalists and other media workers in areas of armed conflict include (1) intention targeting and (2) random attacks.

War journalists face evident challenges involving intentional targeting, aiming to dissuade them from fulfilling their professional duties. These journalists often become unwilling spectators and contend with threats directed at themselves or their families, along with actual physical attacks. Targeted assaults manifest in various forms, including deliberate killings, arbitrary detentions, kidnappings, and government prosecutions under strict media or anti-terrorism laws,

among others. Additionally, journalists may have their possessions, such as filmed materials and cameras, confiscated or destroyed as a means of control or intimidation.

Moreover, the aftermath of deliberate targeting often results in consequential issues that are not adequately addressed. A notable problem is the significant number of journalists compelled to flee or go into hiding, particularly impacting local journalists who may not have the option to return after reporting on an armed conflict. Another consequential challenge is the psychological impact of being deliberately targeted. After leaving the conflict zone, it becomes crucial to provide follow-up support for war journalists, both those who have been attacked and those who have not, to prevent lasting psychological damage and enable them to continue their profession.

Journalists covering organized crime or mob activities may also face targeting. However, war journalists encounter distinct challenges compared to those reporting on general crime issues due to the inherent connection between armed conflict and violence. While violence is one method of achieving criminal goals in general crimes, it is the predominant feature in armed conflict situations, significantly increasing the likelihood of being targeted.

War journalists operating in regions of armed conflict encounter evident and varied instances of general violence. In the context of this research, 'general violence' encompasses all potential hazards and violent outcomes that emerge and transpire after the existence of violence or armed conflict but are unrelated to the journalist's professional activities.

Illustrative instances include stray bullets or unforeseen explosions when war journalists are caught in the crossfire. While war journalists exert their best efforts to avoid being struck or becoming war casualties, not all accidents can be averted. Their duty involves getting as close as possible to the fighting, often placing them near combatants and at the center of the battlefield.

Occasionally, foreigners may become victims of the conflict, as they could be singled out to attract attention or provoke the international community. In such scenarios, the decisive factor is nationality, and the journalistic profession may not necessarily be the primary trigger for the violence.

Therefore, the death of a journalist in the course of an armed conflict can be either the result of collateral losses or the result of purposeful persecution. In the latter case, it may be (1) a crime under international criminal law unless (2) the journalist has lost protection as a civilian.

1. Criminal liability for the murder of journalists in the context of armed conflict can be established under both national and international law. In the latter case, it involves proceedings in international courts (tribunals) or hybrid tribunals. Specifically, responsibility for the war crime of murdering civilians was outlined in the Nuremberg Tribunal Statute (Article 6 (b) and (c)) ([Agreement for..., 1945](#)), as well as in Articles 3 and 4 of the Statute of the International Tribunal for Rwanda ([Statute..., 2007](#)). Nowadays, the International Criminal Court, established by the Rome Statute of the International Criminal Court on July 17, 1998, can be considered a suitable mechanism for combating violence against journalists post-incident. This court has the authority to prosecute violations of both international human rights and humanitarian law, particularly if they lead to "serious crimes of international concern". Presently, intentional attacks on journalists fall under the jurisdiction of the International Criminal Court, as stated in the Rome Statute, where deliberate, direct attacks against civilians are classified as war crimes. Article 8(2)(a)(i) of the Elements of Crimes of the International Criminal Court specifies, among other things, circumstances such as the offender causing the death of one or more individuals; the mentioned individual or individuals being entitled to protection under one or more provisions of the Geneva Conventions of 1949, and the perpetrator being conscious of the factual conditions that confirmed the protected status mentioned above ([Elements..., 2013](#)). This aligns with customary international law.

The need for a well-established international mechanism with a clear legal objective, namely prosecution, arises from the significant problem of impunity. Reporters Without Borders, a non-profit organization focusing on freedom of information and preventing attacks on journalists, has advocated for an amendment to Article 8 of the Rome Statute of the International Criminal Court ([Al-Moslamani, 2017: 225](#)).

2. Civilians, including journalists, lose their immunity from attack "unless and for such time as they take a direct part in hostilities" (Protocol I of 1977, Article 51(3)). This principle explicitly applies to journalists under Article 79(2) of Protocol I, wherein journalists forfeit their protection if they engage in actions "adversely affecting their status as civilians." This entails a loss of protection during which they directly participate in hostilities, aligning with the general rule applicable to civilians at large. Participating in hostilities does not transform civilians into combatants entitled

to the privileges and immunities granted to combatants, such as Prisoner of War (POW) status. However, it designates such civilians as legitimate military targets for the duration of their involvement in hostilities. Notably, journalistic organizations themselves advise journalists against participating in hostilities.

The definition of taking a direct part in hostilities remains ambiguous. While there is no universally agreed-upon definition, state practices vary. Hostile acts or direct participation in hostilities are broadly described as "acts of war that, by their nature or purpose, target the personnel and equipment of enemy armed forces" (ICRC Commentary to Article 51 of the 1977 Protocol I). Some examples of direct participation mentioned in certain national military manuals encompass roles such as serving as guards, lookouts, intelligence agents, or spies. This is in contrast to indirect contributions by civilians, which do not result in the loss of protection. Indirect contributions include providing logistical support (such as carrying food or messages, transporting munitions, selling goods, providing medicines, or financing combat), expressing sympathy for a party, or distributing propaganda. The key requirement is the immediate threat of actual harm to an adversary (Saul, 2008).

Therefore a way that journalists, according to their legal status, are equated with civilians and, in some circumstances, with prisoners of war. However, equating journalists with ordinary civilians in terms of the necessary protection under international law ignores their critical functions and work in conflict zones.

5. Conclusion

The international community should create an international instrument that will strengthen the rights of journalists in dangerous missions, particularly in areas of armed conflict. The need to separate journalists from ordinary civilians is ripe today, given the role of the media as a watchdog of democracy. Even in the conditions of war, citizens have the right to know what is happening, how the military-political leadership makes decisions, and how these decisions can affect the personal life of each individual. It is known that during wars, corruption only increases because the price of corruption abuses increases significantly – in peacetime, it is just a monetary reward, and in times of question, the price may be human life. Adequate informational coverage of the conflict is a significant prerequisite for its assessment by the international community and proper global security decisions. Moreover, the assessment of risks and the adoption of essential security decisions by each individual also depends on what information he receives about the military conflict.

The role of States in this sense consists of the obligation to assist journalists, to facilitate the performance of their functions, and freedom of movement (except when this harms the interests of security and the achievement of military tasks).

To perform the tasks of a watchdog, normative guarantees of the confidentiality of sources and clearly defined prerequisites (factual and procedural) are necessary, under which the journalist must disclose these sources. Currently, international humanitarian law does not contain any rules on this matter. States should take on increased obligations to investigate cases of violence against journalists in armed conflict, both targeted and accidental. It is also important to determine the status of so-called "civilian journalists" or bloggers without a press card. In our opinion, these persons, despite all the realities of the modern information society, cannot claim a privileged status under international humanitarian law. Otherwise, the status of a journalist will be blurred and will lose its special significance.

6. Acknowledgments

The study is carried out within the framework of Jean Monnet Chair "The EU Standards on Freedom of Expression and Information (101127062) with the support of the European Education and Culture Executive Agency (EACEA).

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