

# Protection of Journalists in Conflict Zones

## Introduction

Journalism is the production and distribution of reports on current or past events. The word journalism applies to the occupation, as well as citizen journalists who gather and publish information. Journalistic media include print, television, radio, Internet, and, in the past, newsreels.

The proliferation of the Internet and smartphones has brought significant changes to the media landscape since the turn of the 21st century. This has created a shift in the consumption of print media channels, as people increasingly consume news through e-readers, smartphones, and other personal electronic devices, as opposed to the more traditional formats of newspapers, magazines, or television news channels. News organizations are challenged to fully monetize their digital wing, as well as improvise on the context in which they publish in print. Newspapers have seen print revenues sink at a faster pace than the rate of growth for digital revenues.

## Al Jazeera

The original Al Jazeera Arabic channel's willingness to broadcast dissenting views, for example on call-in shows, created controversies in the Arab States of the Persian Gulf. Under this structure, Al Jazeera Media Network receives funding from the government of Qatar, but maintains its editorial independence. Critics have accused Al Jazeera of supporting the positions of the Qatari government, though Al Jazeera platforms and channels have published content that has been critical of Qatar or has run counter to Qatari laws and norms. In June 2017, the Saudi, Emirati, Bahraini, and Egyptian governments demanded the closure of the news station as one of thirteen demands made to Qatar during the 2017 Qatar crisis.

The station gained worldwide attention following the outbreak of the War in Afghanistan, when its office there was the only channel to cover the war live. Al Jazeera Media Network is a news channel for public benefit under Qatari law. Al Jazeera has aired videos released by Osama bin Laden. Other media networks have spoken out in support of the network. Al Jazeera is a Qatari state-owned broadcaster in Doha, Qatar, owned by the Al Jazeera Media Network.

## CNN

CNN (Cable News Network) is an American news-based pay television channel owned by CNN Worldwide, a unit of the WarnerMedia News & Sports division of AT&T's WarnerMedia. CNN was founded in 1980 by American media proprietor Ted Turner as a 24-hour cable news channel. Upon its launch in 1980, CNN was the first television channel to provide 24-hour news coverage, and was the first all-news television channel in the United States.

CNN programming airs through CNN International, which can be seen by viewers in over 212 countries and territories. However, in October 2016, WikiLeaks published emails from John Podesta which showed CNN contributor Donna Brazile passing the questions for a CNN-sponsored debate to the Clinton campaign. In the email, Brazile discussed her concern of Clinton's ability to field a question regarding the death penalty. The following day Clinton would receive the question about the death penalty, verbatim from an audience member at the CNN-hosted Town Hall event. According to a CNN Business investigation, the debate moderator Roland Martin of TV One "did not deny sharing information with Brazile. CNN severed ties with Brazile three days later, on October 14, 2016.

### **Protection Of Journalists in Conflict Zones**

The years 2011 and 2012 were among the most deadly for journalists reporting from conflict situations worldwide. The numbers of assaults, arrests and attacks have been on a constant rise and portray a dramatic image of the journalistic profession. In light of the increasing threats in armed conflicts, being a war reporter has become an inherently dangerous task. Journalists are not only at risk of becoming so-called collateral damage during military operations, they are also increasingly targeted.

War reporting is inherently dangerous. Indeed, it could arguably be one of the most dangerous occupations in the world. Still, out of a sense of professional duty, many journalists and media professionals make the courageous choice to go to conflict zones, so as to tell the world about the stories of armed conflicts and the human cost they entail. Amidst the so-called 'fog of war', they play a vital role in keeping the world informed and ensuring that our responses are based on the facts and truths unfolding on the ground. This statement accurately illustrates that in times of armed conflict, be it international or non-international, the media's surveillance role and their importance in informing the population are enhanced. This is mainly due to the fact that during war, a functioning civil society that critically monitors the behaviour of the government and military is often absent.

As NewsWatch Canada's Co-Director Robert A. Hackett stated, 'In war time, media are not mere observers but simultaneously a source of intelligence, a combatant, a weapon, target, and a battlefield'. As a consequence of this, conflicts and media enjoy an intricate and mutual relationship.

Freedom of expression and information, which are the foundation of democracy and among the most essential human rights, are frequently under threat, as the fear of the power of words and images drastically limits journalists' leeway to report. Thus, a close link between the protection of journalists and the maintenance of freedom of expression can be detected. In fact, it could be argued that targeting journalists is a direct attack against freedom of expression and hence against democracy. Press freedom and freedom of expression cannot be enjoyed without basic security. Regardless of their essential role and responsibility, the number of journalists who disappear, are threatened, arrested, mistreated and/or killed is on a constant rise.

The Committee to Protect Journalists ('CPJ') reported in 2011 that at least 46 journalists died due to their work. Seventeen died on dangerous assignments and eight in combat situations, mostly during the uprisings in the Arab world. The number of journalists imprisoned in 2011 reached its highest level since 1996, with 179 journalists being detained worldwide. So far until 2012, nineteen journalists have already been killed in combat/crossfire, out of which seventeen have become victims of the Syrian conflict. These statistics suggest that the numbers of killed and imprisoned journalists have been on a steady rise since 2003, with small decreases depending on the bristle of conflicts, and have reached peaks as high as a total of 74 casualties in 2009. This is a trend that corresponds to the increasing dangers and difficulties that journalists face and which is further illustrated by the fact that 35 per cent of all journalists killed covered stories related to wars and conflicts.

War journalists are in the almost impossible situation where they have to try to please opposing interests of governments and demanding audiences, while attempting to stay safe from increasingly high-tech military attacks. Recognising this vital yet endangered role that journalists play in armed conflicts, the question arises whether journalists enjoy sufficient legal protection from dangers inherent to reporting on armed conflicts. The main international legal regime governing the protection of journalists in wartime is the same that governs the law of armed conflict in general, international humanitarian law ('IHL'). Although IHL provides for the protection of journalists, recent attacks on reporters in the wars in Afghanistan and Iraq as well as the conflicts in the Arab world have ignited discussions on whether this 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'), a variety of international scholars and practitioners claim instead that specific provisions are

required to deter attacks and afford more protection. They are joined by international journalist 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').<sup>30</sup> 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.

### **Journalists, Armed Conflict and the 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 purpose 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, their engagement has increasingly professionalised, seeing a rise in the use of audio and visual means (World Wars I and II and the Vietnam War), (real-time) TV reporting (Persian Gulf and Yugoslav wars) and most recently, 24/7 news and cyber journalism (Afghanistan and Iraq wars), as well as the involvement of local citizens in journalistic activities (Arab uprisings).

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, stringers or part of a media organisation and known as 'unilaterals' in journalist jargon. War correspondents are defined as 'specialized journalists 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 to provide information on events relating to ongoing hostilities' by the Dictionnaire de droit international public. This definition is similar to that adopted in the United Nations Security Council's ('UNSC') Resolution 1738 and also mentioned in the Green Book of the British Armed Forces, specifically emphasising the need for accreditation.

In many conflicts, journalists have been detained, injured or killed due to the fact that covering the frontline of conflicts is dangerous by its nature. As the CPJ's statistics show, 173 journalists have been killed since 1992 'in crossfire/combat', seeing a drastic increase in the years that were marked by conflicts extensively reported on in the media. One recent example is the death of Japanese video and photojournalist Mika Yamamoto, who was killed during clashes between Syrian government forces and rebels in Aleppo, Syria on 20 August 2012. The recent uprisings



in Libya and Egypt in 2011 for example have shown that journalists are visibly more exposed to targeted physical assaults and detention. The CPJ recorded 160 attacks on journalists during the Egyptian uprisings, 101 attacks on journalists and their facilities, as well as 50 cases of detention during the Libyan revolution.

### **International Concern for Protection**

In relation to these ever-growing dangers faced by journalists, who are essential in monitoring States' respect for the rights and wellbeing of their citizens, it must be noted that the concern for their protection can similarly be traced back as far as to the Crimean and American Civil War. This was initially focused on the protection of journalists accompanying the military as prisoners of war ('POW') and on the issuance of an identity card to attest for such Article 50 of the Lieber Code provided that citizens accompanying the army, such as reporters, should, if captured, be considered POWs. Similar provisions were subsequently integrated into the 1899 and 1907 Hague Convention on the Laws and Customs of War on Land (IV) under Article 13 as well as into the Prisoner of War GC of 1929 under Article 81. Independent journalists, however, were not afforded any protection under these initial provisions, not even in the original 1949 GCs. In the 1970s and most notably during the Vietnam War, the international community concerned itself for the first time specifically with the physical protection of independent journalists.

On 9 December 1970, the United Nations General Assembly ('UNGA') adopted Resolution 2673 (XXV), directing the Economic and Social Council to draft a 'Convention on the Protection of Journalists Engaged in Dangerous Missions in Areas of Armed Conflict' through its Human Rights Commission. This resulted in the 1975 Draft UN Convention, which was, at the invitation of the UNGA, reviewed by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts (1974-1977). The ad hoc Working Group of Committee I of this conference considered that, instead of creating a separate convention resulting in a special status for journalists, the protection should rather be incorporated into existing IHL instruments. Finally, after approval of the UNGA, this led to the inclusion of Article 79 AP I, a specific provision relating to journalists, which, however, does not afford special protections.

The wars in Yugoslavia, Iraq and Afghanistan initiated fresh discussions on how to better protect journalists, which resulted in various proposals from the international community, including: RSF's Charter for the Safety of Journalists Working in War Zones or Dangerous Areas (2002); the Geneva Declaration on Actions to Promote Safety and Security of Journalists and Media in Dangerous Situations (2004); UNSC Resolution 1738 (2006); UNESCO's Berlin Declaration (2000) and Medellin Declaration on Securing the Safety of Journalists and Combating Impunity

(2007); and PEC's Draft Convention to Strengthen the Protection of Journalists in Armed Conflicts and Other Situations Including Civil Unrest and Targeted Killings (2007). It is noteworthy that instead of resulting in a unified and coherent approach to the issue, the international concern brought about a variety of individual and rarely binding initiatives. The most common and possibly sole mutual characteristics are the call for a reaffirmation of IHL and the call upon States to ratify the APs.

### **Protection of Journalists under International Humanitarian Law**

General protective principles and the protection of journalists are part of the *jus in bello* or IHL, which comprises a set of rules 'designed to regulate the treatment of the individual – civilian or military, wounded or active' in armed conflicts. IHL applies the principle of distinction and hence protects combatants and civilians differently. This is of importance when analysing the protection of journalists, which will be outlined in the following section. Additionally, IHL recognises persons attached to the armed forces as a special group of protected persons. It is important to note that next to IHL, human rights law is also applicable to armed conflicts, even though most provisions can be derogated from during war and have inherent limitations. In case of conflicting and/or disharmonious provisions of IHL and human rights, IHL is to be regarded as *lex specialis* in times of armed conflict. Thus, in such cases IHL, as the specific law in armed conflicts, overrides human rights as the general law or *lex generalis*. The main and most important IHL Article explicitly referring to the protection of journalists in international armed conflicts ('IACs') is Article 79 AP I, which was included as a specific provision relating to journalists in the body of IHL. It provides that journalists engaged in dangerous professional missions in areas of armed conflict, whether independent journalists or war correspondents accompanying the armed forces, are to be considered as civilians within the meaning of Article 50(1) AP I.

Thus, attacks on journalists are strictly prohibited under IHL. Journalists are afforded the whole set of protections relative to civilians, including under Articles 51 and 57 AP I<sup>78</sup> and GC IV.<sup>79</sup> This is, however, only the case unless and for as long as they do not take any action adversely affecting their status as civilians, as outlined in Article 79(2) AP I. As soon as they take direct part in hostilities they lose their protection under this Article.<sup>81</sup> Journalists have a duty to not engage in any actions adverse to their status of civilians and may be held accountable for acts of perfidy pursuant to Article 37(1)(c) AP I and for spying pursuant to Article 46 AP I. Although AP II relative to non-international armed conflicts ('NIACs') does not contain specific provisions on the protection of journalists, their protection as civilians also extends to such conflicts. Journalists are protected pursuant to Article 13 AP II as well as by the minimum guarantees of Common Article 3 GCs. According to the ICRC Customary Law Study, state

practice has established the protection of and respect for journalists engaged in professional missions in armed conflicts as a norm of customary international law. This is applicable to both IACs and NIACs, providing an equivalent protection to journalists in both types of conflicts. This has been manifested in Rule 34 of the Study. The fact that both APs have not been universally ratified is thus irrelevant to the protection of journalists under this Rule. The illegality of attacking journalists is manifested by Article 85(3)(e) AP I, under which an attack on civilians can be considered a war crime. The subsequent investigation, 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. With regard to the second most important threat to journalists in armed conflicts, arrest and possible detention in armed conflicts, it is important to note that human rights complement and reinforce 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. 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 AP I, 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.<sup>89</sup> Article 79(2) AP I also refers to specific protections in case of detention pursuant to Article 4(A)(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 the adversary, war correspondents 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 protections 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'.

### **Different Protection of Independent Journalists and War Correspondents**

Journalists are civilians in the event of attacks in both IACs and NIACs. Although IHL does not define journalists or categories thereof, it distinguishes between war correspondents and independent journalists in case of arrest. While independent journalists remain civilians and are ‘solely’ afforded the protection of Article 75 AP I, Common Article 3 GCs and generally GC IV, war correspondents (including embedded journalists) are specifically mentioned in GC III and are protected by POW status as persons accompanying the military. This distinction is based on the differences inherent to the role of independent journalists and war correspondents. War correspondents accompany the military and are sanctioned by the government. They are generally more exposed to risks and threats due to having access to the frontlines of the conflict and due to being associated with the ‘war effort’. Independent journalists, who often do not have the means to get to the frontline because of restrictions on access and the lack of support, are perceived to be less exposed to immediate threats. To conclude, *de lege lata*, all types of journalists are afforded a wide range of protections.

