

Journalists In The Zone Of Armed Conflicts: The Need To Respect International Humanitarian Law

**INTERNATIONAL CONFERENCE MEDIA
& INFORMATION WARFARE: A GLOBAL
CHALLENGE IN THE 21ST CENTURY
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Azlana Khalid

ABSTRACT

Journalists and media personnel while engaged in dangerous professional missions in areas of armed conflict or in similar situations constantly face risks and are at times subjected to deliberate attacks. In such situations, provided that they do not partake in direct hostilities, they are civilians that share the rights and duties of any member of the civilian population and deserve the protection given unto them within the rules of international humanitarian law. Thus, renewed attention should be given by States and non-State actors on the responsibility to protect journalists and media personnel in the zones of armed conflict and to remind all parties in armed conflict of the need to ensure respect for the professional independence of journalists and media personnel. This responsibility encompasses the need to ensure respect for international humanitarian law during armed conflict which must then be translated into affirmative and collective action on the part of the State and non-State actors so that journalists and media personnel can enjoy the protection accrued to them under applicable international law and international humanitarian law. The Governments concerned must face up to this responsibility and accordingly encouraged by the international community to assume their responsibilities and not to shirk them.

1. Introduction

The theme underlying this paper concerns the role and the participation of subjects of international law in protecting journalists and media personnel in armed conflict. There are several categories of subjects of international law and it is important to identify them as legal action may only be taken against those subjects that are accorded legal personality or identity. Nonetheless, as there is a wide range of subjects of international law this poses some difficulties in attaching certain structural criteria and order to categorise their identity and personality but in essence, the different legal subjects need not possess the same quantum of legal capacity¹.

2. Subjects Of International Law

The conventional definition of a subject of international law recognised by customary law is an entity that is capable of possessing rights and duties and has the capacity to maintain its rights by bringing international claims². Upon attaining legal personality, the entity shall then have the capacity to make claims for breaches of international law; they may enter into treaties and international agreements and shall enjoy privileges and immunities.

2.1 State Actors

The sovereign state possesses such capacities and immunities and in the sphere of international law, the actions of states and its organs are politically and legally significant.

The organs of the state include the executive, the legislative and

¹ Christopher Harding, *The Role of Non-State Actors in International Conflict: Legal Identity, Delinquency and Political Representation* (International Humanitarian Law Series Volume 13: The Challenge of Conflict: International Law Responds) (Martinus Nijhoff Publishers)

² Ian Brownlie, *Principles of Public International Law* (6th ed, Clarendon Press, 2003)

the judicial organs of the state including the police, the army, state agencies and departments and state corporations.

The general rule is that the state is responsible for the activities of its organs and the acts of these organs may be attributed to the state even if their actions exceeds their scope of competence as defined in national law³. Hence, as long as the state organ was acting on behalf of the state at the material time and even if it exceeds its powers in the commission of such acts, the state may not excuse itself from responsibility.

This is particularly important in international conflicts as not only will the state be made responsible but individuals too shoulder individual responsibility for their role and actions in military conflict.

2.2 Non-State Actors

The emerging role of non-state actors particularly in contemporary armed conflict cannot be overlooked. Although non-state actors may not possess the same capacity of legal personality as states nor do they enjoy similar privileges and immunities, they do nonetheless bear some measure of responsibility to the extent of their actual role during armed conflicts.

During armed conflicts, the non-state actors would *inter alia* include the civilian population, insurgent groups or non-liberation movements (NLMs), humanitarian organisations, international organisations, non-governmental organisations (NGOs) and media personnel.

3. International Humanitarian Law (IHL) And The Protection Of Journalists

Before journalists and media personnel undertake assignments in zones of armed conflict it is highly recommended that they are informed of

³ Ibid.

the protection granted unto them under International Humanitarian Law (IHL). What then is IHL?

IHL and its scope of application

International Humanitarian Law (IHL) is a branch of international law that comprises of a set of rules that seek to limit the effects of armed conflict with a view to alleviate suffering. The rules of IHL protect persons who do not or no longer directly participate in hostilities and the rules seek to limit the means and methods of warfare.

The sources of IHL are contained in treaties and conventions and the customary norms of the laws of armed conflict. The principal sources of IHL lay in the Geneva Conventions 1949 and its two Additional Protocols 1977.

Both the Geneva Conventions and the Additional Protocols are applicable during international armed conflict and non-international armed conflict upon ratifying states. In addition, IHL applies contemporaneously with human rights law and these branches of international law complement each other.

3.2 Protection Of Journalists Under Ihl In International Armed Conflicts

The Geneva Conventions and the Additional Protocols expressly provides that journalists that are engaged in dangerous professional missions in armed conflict areas are considered as civilians and shall benefit from the special status and protection afforded to civilians. Nonetheless, IHL distinguishes between “war correspondents” i.e. those journalists who do not form part of the armed forces but follow them as attaches and newspaper correspondents and reporters that are not associated to the armed forces. With regards to war correspondents accredited to the armed forces, they retain their special status as provided for in Article 4(A) (4) of the Third Geneva Convention.

This protection is granted unto journalists unless they partake in direct hostilities whereby they then become ‘lawful’ targets that may be attacked by the enemy forces.

During armed conflict, parties to a conflict are to clearly distinguish

between combatants and civilians. This core principle of IHL, known as the principle of distinction, requires that combatants (i.e. members of the armed forces) are to openly distinguish themselves from civilians.

Civilians on the other hand, are persons who do not take a direct part in hostilities and because of this; they have a right to be respected and must not be subjected to attacks protected against the effects of hostilities. In international armed conflicts, captured civilians shall not be interned except if it is necessary for security reasons or for safety measures. During the period of internment they should be treated humanely in all circumstances and shall benefit from fundamental guarantees whereby their person, honour, convictions and religious practices must be respected.

Such acts as violence to the life, health and physical or mental well-being of the persons are strictly prohibited particularly, murder, torture, corporal punishment, mutilation. Also, outrages upon personal dignity especially humiliating and degrading treatment, indecent assault, enforced prostitution are prohibited including the taking of hostages by the enemy forces is also expressly prohibited.

The International Committee of the Red Cross (ICRC) or representatives of the Protecting power may visit detained journalists and other civilians to check on their conditions of internment. They also have a right to communicate with their relatives.

Foreign journalists may also receive the support from their country's diplomatic or consular representative or if diplomatic relations have been severed, they may receive assistance from the representative of a third country defending the interests of that State in the detaining country.

By virtue of Article 4(4) of the Geneva Convention III, war correspondents are to be provided by the respective national authorities, with an identity card to certify their status. However, journalists must have received authorisation to follow the armed forces and this identity card is sufficient proof of authorisation which the enemy may demand to be shown. This identity card

does not confer any special legal status nor do they confer any rights and privileges but is merely a document verifying their status as journalists.

In the event that the war correspondent falls into enemy hands, he shall likewise be treated as a prisoner of war, same as the members of the armed forces that he accompanies.

Essentially, by granting war correspondents the status of prisoners of war, they are entitled to certain rights and obligations with regards to the protection and treatment of their physical state; the physical conditions of their internment including the moral and psychological conditions of internment; the right to exercise their religious duties including attendance at religious services and the authorised work that they may undertake including the working conditions.

Protection of journalists under IHL in non-international armed conflicts

In armed conflicts of a non-international nature, journalists may find themselves at greater risk and vulnerability. The applicable law in non-international armed conflicts, namely Article 3 common to the four Geneva Conventions and Additional Protocol II does not cover journalists. The protection conferred by Common Article 3 includes the prohibition of violence to life and person, particularly murder, mutilation, torture, cruel treatment, the taking of hostages, outrages upon personal dignity and executions in situations of a non-international armed conflict.

Also, if journalists are detained during a non-international armed conflict, there is not much recourse against unjustified or excessive detention. State parties may likely expel foreign journalists whom they consider to be undesirable. Belligerent groups on the other hand, is most unlikely to give due regard to the rules of engagement nor are they likely to observe basic rules to grant minimum standards and humanitarian considerations to detainees.

In the light of the increasing number of journalists that are killed in the conflict between state parties and belligerent groups and the heightened intensity of hostilities in non-international armed conflicts, journalists face similar risks as in international armed

conflicts. I opine that new provisions are urgently enacted as the existing provisions of Article 13 of Additional Protocol II may not be interpreted by the insurgent groups as extending to journalists and there is no satisfactory guarantee that State parties or belligerent groups will abide by their international commitments in a non-international armed conflict. Furthermore, the number of states that have ratified Additional Protocol II is far less than the number of those states that have ratified Additional Protocol I thus leaving journalists far more exposed to the increased dangers when undertaking assignments in non-international armed conflict zones.

3.3 Legal Recourse Under International Law And International Humanitarian Law

As such, journalists do benefit from the respect and protection of persons granted by their status as civilians. However, in covering different zones of armed conflict journalists need to know whether the State in which they are entering is a party to the Geneva Conventions and its Additional Protocols. This is crucial as it will have a direct bearing on the measure of protection that they should expect to get and in the event that the rules of IHL are violated and journalists are taken hostage, subjected to outrages upon personal dignity or to any of the prohibited actions, then subsequent legal action may be taken against the State and the individual perpetrators.

The principles of State responsibility in international law, rest on the notion that legal action may be taken against any State that has breached an international obligation that is derived from a treaty or customary law. Therefore if journalists in the zones of armed conflict were to find themselves subjected to these violations of the rules of IHL then they should be alerted that the State in which they are in and its relevant organs are in actual violation of international obligations of the rules of *jus in bello* (the laws on the conduct of hostilities) that are enshrined in the various treaties and conventions in force and in the rules of customary law. That State has a responsibility to prevent individuals or state organs

from committing harmful acts in its territory against foreigners which clearly extends to foreign journalists within that territory.

By accepting foreign journalists in their territory, States have agreed to allow journalists to perform their jobs and are presumed to remain within the limits imposed upon them and if they do overstep these limits, they may face the possibility of being accused of espionage.

Nonetheless, foreign journalists in dangerous zones of armed conflict are protected from any violations of the rules of IHL committed by members of the enemy armed forces or any other organs of that particular State. Such breaches of IHL will render the State legally responsible as the actions of the armed forces may be attributed to the state and the actions of those particular individuals who committed these breaches of IHL too will be made legally accountable on an individual basis.

At the international level, individuals have been made legally accountable for their actions during conflict. Individual criminal responsibility for war crimes, crimes against humanity has been established in various international tribunals and in national courts.

In sum, the State that has committed breaches of the rules of IHL may be made internationally legally responsible and may be ordered to make reparations for the injury caused by the internationally wrongful act while individual legal action may be taken against individuals who have committed such breaches.

4. 'Open Risks'

Caution has to be given to journalists who stay too close to a military unit or approach military targets, as they are lawful military targets open to attacks by enemy forces.

Similarly, journalists may be subject to attacks if they are accompanied by an armed escort supplied through private agencies under the orders of the publication or network to which they belong. The presence of an armed escort does not alter the civilian status of the journalist per se so long as they do not engage in direct hostilities.

However the mere presence of the armed escort may mislead the enemy into believing that the escorted journalist is a lawful military target thus increasing the vulnerability of such journalists to attacks.

Yet another category of journalists that face open risks are free-lance journalists who do not work for any publication or network and travel independently to conflict zones. These free-lance journalists do not possess any identity card affirming their status as journalists and if captured by enemy forces or belligerent groups their life and safety is in no way guaranteed.

In the case of embedded journalists that are trained to follow the armed forces in their missions with real weapons, to resist biological and chemical attacks and to learn to live in a war situation, they are given the option to stay with the unit until the end of the conflict or until they decide to leave. The concept of embedded journalists began when journalists were incorporated into the American troops by the Pentagon in 2003.

This category of embedded journalists cannot in my opinion be considered as civilians if that is their *modus operandi* and they should not be granted the protection granted to civilians under IHL.

5. Implementation And Ensuring Respect Of Ihl

Nonetheless, journalists must be aware that the risks they are exposed to differ from country to country. This is even more so if the area to which they are assigned to is in the midst of a non-international armed conflict. Journalists should first have the knowledge of the place where he is going to pursue a news story in order to prepare themselves for the possible risks involved.

Media organisations and journalists can minimise risks in hostile environments by providing media staff by providing courses informing them of their basic rights and protection under international humanitarian laws, the possible legal recourses available including safety training, providing protective gear, giving counselling, medical and health safeguards.

Only when states and non-state actors recognize the role of media in conflict situations and respect international humanitarian laws can journalists be kept relatively safe.

The international laws that seek to protect journalists and other

civilians must be made known or disseminated to both state and non-state parties, particularly to belligerent groups that are engaged in non-international armed conflicts. This work is largely at present being undertaken by the International Committee of the Red Cross (ICRC) but the same should also be done by non-governmental groups, religious bodies and humanitarian organisations.

Particularly in South-East Asia where there are several on-going non-international conflicts especially in relation to purported "Muslim" rebel groups or terrorists, concrete efforts have to be made by the ICRC to reach out to Islamic organisations and Muslim Religious Councils to disseminate the rules of IHL and to eradicate the misconception that Islamic laws and principles promote or encourage terrorist activities.

Initial prejudices, misconceptions and biasness and other preconceived notions that each may have of the other must be removed before engaging in talks and joint efforts to disseminate the rules of IHL and customary rules of IHL. The ICRC has to be more receptive in engaging in discussions with eminent Muslim jurists and scholars so that they will also learn that Islamic laws and principles do in fact complement IHL. In turn, Muslim organisations have to look beyond the emblem of the ICRC and be more amenable to working with an international organisation that actively engages in humanitarian assistance in predominantly conflict ridden Muslim countries.

Journalists too can play a pivotal role as a direct source of disseminating the rules of IHL in their news reports. Specific mention must be made in the news reports of the actual breaches of specific rules of IHL during armed conflict so that the public will know that there are existing provisions and that violators of these rules are subject to legal punishment. Only then will the rules of IHL will be respected by all parties concerned.

International organisations for journalists such as the International Centre for Journalists and Reporters without Borders also play a crucial role in disseminating the rules of IHL and in educating journalists and all media personnel of these rules.

Universities with faculties of mass communication and media studies should incorporate International Humanitarian Law as a subject in the course of study. Consequently, if IHL is inculcated as a subject to students of journalism then this exposure may indeed be educated in the very rules that seek to protect them when they go into the field. In turn

this will also reiterate my earlier point that they will readily mention these rules in their news reports.

The role of both non-state and State actors also extend to the protection of detainees and victims of armed conflict. Every effort must be made to ensure respect and compliance with IHL to protect the detainees and victims of armed conflict.

On the part of the state, they must accept responsibility for their actions and for the actions of their organs. More states should make it their priority to ratify the Additional Protocol II which should in turn be amended to grant specific protection to journalists in non-international armed conflicts.

States must adopt national legislation to make the rules of IHL operational and incorporate these rules within their constitutional system so as to have direct applicability on the State organs. National legislation fixing the penalties for grave breaches of the rules of IHL must be enacted and strictly enforced on state organs and individuals. Individual responsibility for such grave breaches of IHL must be dealt with by a commensurable punishment. In this manner states clearly demonstrate their commitment, respect and compliance with international humanitarian laws.

States should exercise universal jurisdiction to extradite war criminals and should provide mutual assistance to national courts and international tribunals in the extradition process.

With respect to the law of State responsibility, States should grant minimum standards of humanity to all victims of armed conflict and should be prepared to make reparations if its established that the State has breached an international obligation. States must enforce their duty to stop and repress violations of IHL.

6. Concluding Remarks

Clearly, with regard to respect and compliance with international law and international humanitarian laws, the commitment of the State is paramount and states cannot and should not be allowed to shirk this responsibility.

Non-state actors too play an important role in ensuring those journalists and all protected persons benefit from the rules of IHL that seeks to protect them.

Co-operation, mutual understanding and assistance, objectivity are key in ensuring the rules of IHL are effectively disseminated to parties in either international or non-international armed conflict. Ensuring respect of IHL cannot be made unilaterally.

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Azlana Khalid

Faculty of Law

Universiti Teknologi MARA (UiTM), Shah Alam

azlena_khalid@hotmail.com