

# Protection of Journalists in Armed Conflict: @PKO Now!

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### Why attacked, why protected?

'Accurate, impartial media reports conveyed from conflict zones serve a fundamental public interest: in the information era, images and news can have a decisive impact on the outcome of armed conflicts.'<sup>1</sup> Due to the specific nature of their activities in the field, journalists – media professionals, including, but not limited to, correspondents, photographers and their technical assistants – are often exposed to dangers associated with armed conflict. What is even worse is that in many cases they are also subject to deliberate acts of violence, in violation of international humanitarian law (IHL). In recent armed conflicts, such as Iraq, Afghanistan and Syria, journalists are increasingly at risk of being wounded, killed, detained or kidnapped whilst pursuing their mission.<sup>2</sup> In response to such vulnerability peculiar to conflict situations, IHL draws special attention to journalists for their protection.

### Legal status of journalists under IHL

In the first place, journalists are all to be protected as civilians under the fundamental principle of distinction from combatants, unless and for such time as they take a direct part in hostilities. This principle has been established as a norm of customary law applicable in both international and non-international armed conflicts.<sup>3</sup> Additionally, IHL specifically refers to the protection of journalists in their two distinct categories: (1) 'war

correspondents' ("accredited" journalists) and (2) "freelance" journalists. The former are '[p]ersons 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'.<sup>4</sup> If these journalists are captured, they are granted the same legal status as combatants – prisoners of war – under the Third Geneva Convention (GC),<sup>5</sup> for their close relationship with armed forces.<sup>6</sup> On the other hand, the latter are '[j]ournalists engaged in dangerous professional missions in areas of armed conflict', without accompanying armed forces and having accreditation.<sup>7</sup> Those journalists are to consistently be protected under the Fourth GC, even upon capture, as long as they retain civilian status. As a result, the different rules of IHL are applicable, as supplemented by the Additional Protocol I (AP I),<sup>8</sup> depending on which of the categories the journalists concerned belong to. In any case, it has nevertheless been a norm of customary law that all civilian journalists must be respected and protected, regardless of the nature of armed conflict – international or non-international.<sup>9</sup> In addition, the same is true of media equipment and facilities used by journalists; civilian objects must be distinguished from military objectives.<sup>10</sup>

## **Towards better protection**

The existing rules, including those in international human rights law, do provide adequate protection to journalists, however they have not been implemented in an appropriate manner.<sup>11</sup> It is the States' responsibility, albeit challenging in reality especially for some political reasons, to make sure that violations of such laws will be investigated, prosecuted and punished in order to end impunity and prevent further crimes in the future. Needless to say, violations of the relevant IHL principles constitute so-called 'grave breaches' of the four GCs and the AP I,<sup>12</sup> and intentionally directing attacks against civilians also amount to war crimes whether in an international or in a non-international armed conflict.<sup>13</sup> Journalists working in the field are also expected to take the best possible measures to better protect themselves at the individual level. For example, IHL allows journalists to wear an identity card so as to easily be distinguished from combatants and be protected as civilians.<sup>14</sup> Moreover, journalists, their families and media organisations may contact a 24-hour "hotline" operated by the International Committee of the Red Cross (ICRC) and request assistance if

they are wounded, detained or missing.<sup>15</sup> Nevertheless, the obligation to protect civilians, including journalists, still remains primarily with all parties to armed conflict, including dissident armed forces and other organised armed groups.

## End Notes

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<sup>1</sup> Interview with Robin Geiss (ICRC legal expert), “How does international humanitarian law protect journalists in armed-conflict situations?” (<https://www.icrc.org/eng/resources/documents/interview/protection-journalists-interview-270710.htm>)(27 July 2010) (consulted 10 March 2015).

<sup>2</sup> For analytical statistics, see the website of the Committee to Protect Journalists (CPJ) (<http://www.cpj.org/>)(consulted 10 March 2015).

<sup>3</sup> Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Volume I: Rules (Cambridge University Press, 2005), pp. 3-8.

<sup>4</sup> Article 13 (4) of the First and Second Geneva Conventions (1949).

<sup>5</sup> Article 4 A (4). See also Article 13 of the Hague Regulations (1907).

<sup>6</sup> Supra note 1.

<sup>7</sup> Article 79 (1) of the Additional Protocol I (1977).

<sup>8</sup> In addition to Article 79, it is worthy to recall that Article 75 sets out ‘[f]undamental guarantees’ for ‘persons who are in the power of a Party to the conflict and who do not benefit from more favourable treatment under the Conventions or under this Protocol shall be treated humanely in all circumstances and shall enjoy, as a minimum, the protection provided by this Article ...’.

<sup>9</sup> Supra note 3, pp. 115-118. As no explicit or specific provision on journalists is found in the AP II, Article 4 also lays down ‘[f]undamental guarantees’, supplementing common Article 3 of the GCs.

<sup>10</sup> Ibid, pp. 25-36.

<sup>11</sup> Supra note 1.

<sup>12</sup> Articles 50 of the GC I, 51 of the GC II, 130 of the GC III, 147 of the GC IV, and 11 and 85 of the AP I. No provision on ‘grave breaches’ is found in the AP II.

<sup>13</sup> See, for example, Article 8 (2) (b) (i) and (e) (i) of the Rome Statute of the International Criminal Court (1998).

<sup>14</sup> Article 4 A (4) of the GC III and Article 79 (3) of the AP I. The possession of such a card is ‘a supplementary safeguard’ and should not be considered as an absolute requirement for the protection. See Commentary on the GC III (1960) <https://www.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?viewComments=LookUpCOMART&articleUNID=2F681B08868538C2C12563CD0051AA8D>(consulted 10 March 2015); Commentary on the AP I (1987), paras. 3272-3278

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<https://www.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?viewComments=LookUpCOMART&articleUNID=6E95E63184FD05C8C12563CD0051E0FB>(consulted 10 March 2015). For the practice of Japan, for example, see the website of the MoFA (in Japanese) open a new window (consulted 10 March 2015).

<sup>15</sup> See the website of the ICRC

<https://www.icrc.org/eng/resources/documents/publication/p0394.htm>(consulted 10 March 2015). See also supra note 1; Interview with Dorothea Krimitsas (ICRC deputy head of public relations), “When journalists’ safety is at stake, the ICRC hotline can help” (2 May 2012)<https://www.icrc.org/eng/resources/documents/interview/2012/protection-journalists-interview-2012-05-02.htm>(consulted 10 March 2015).