Journalists in armed conflicts – Protection measures in the International Humanitarian Law

Paper presented at the SGIR 7th Pan-European International Relations Conference, Stockholm, 9-11 September 2010

Mag. Hilde Farthofer

Abstract:
According to international humanitarian law "independent journalists" are protected as civilians during armed conflicts. This paper argues that this provision is not enough regarding the current situation.

Introduction

Every year, a large number of journalists are killed or wounded in armed conflicts. This year alone, six journalists were killed on a battlefield or in a military context before the end of July, i.e. in Afghanistan.¹ There are several reasons why this occupational group is at risk. On the one hand, they want to be as close as possible to the events, while on the other hand, the parties of an armed conflict or a crisis situation often see the unpleasant truth exposed by journalists as a threat. Therefore, international humanitarian law provides special protection for journalists and media personnel.

The protection of journalist in international humanitarian law

The "independent" journalist has to be strictly distinguished from the war correspondent, who is a member of one of the conflict parties or who accompanies their military units. According to Art. 79 Prot. Add. I, journalists and media personnel in armed conflicts are civilians. The term "journalist" encompasses "all representatives of the media, namely all those engaged in the collection, processing and dissemination of news and information including cameramen and photographers, as well as support staff as drivers and interpreters"². While practising his profession, the journalist has to be treated as a civilian as long as he does not act to the contrary, i.e. actively engages in combat actions. For example, every person loses his protection as civilian by arming himself. Reporter Without Borders points out to journalists actions which conduct can lead to a loss of the status as civilian according to international humanitarian law.³ The journalist's protection becomes ef-

¹ For further information: www.cpj.org
² Reporters Without Border, Handbook for Journalists, Chapter 10, p. 94.
³ For this and other advice regarding the actions of journalists in armed conflicts, cf.: Reporters Without Borders, Handbook for Journalists, Chapter 9, Principle 8.
effective again as soon as he ceases to engage in the conflict.

The protection of civilian is regulated in a large number of international law treaties. According to Art. 79 Prot. Add. I, all these protective measures apply to journalists and media personal as well. According to Art. 48 Prot. Add. I, the adverse enemy parties have to distinguish civilians from members of the military units at all times during the conflict. Therefore, attacking civilian facilities and/or civilians is forbidden according to international humanitarian law.\(^4\)

According to Art. 51 Prot. Add. I, the civilian population has to be protected from all effects of military operations. Paragraph 4 includes the interdiction of arbitrary attacks targeted at the population. Military operations are therefore solely directed at combatants and military facilities. Hence, the principle of proportionality already has to be considered in the planning of military operations. There must be a weighing between the expected civil losses and the actual military advantage.\(^5\) If the number of possible civilian causalities is disproportionated to the possible military benefit, the operation may not be realized. For this reason, the usage of cluster bombs in populated areas constitutes a violation of international humanitarian law. For example during the armed conflict between Israel and the Hizbollah in 2006, the Israeli military forces used cluster bombs in vast areas of southern Lebanon. The Under-Secretary-General for Humanitarian Affairs of the United Nation Jan Egeland criticised the use of cluster bombs as "immoral", concerning to their indiscriminate and disproportionate effects.\(^6\)

These protective measures are not only to be regarded in international, but also in non-international armed conflicts, i.e. between a state and a non-state actor within the country. In these conflicts, both parties also have to strictly distinguish between members of combat units and civilians, and protect the latter from the effects of combat actions.\(^7\) Art. 8 Para. 2 (e) (i) Rome Statute regarding conflicts of non-international character is formulated likewise. Every person who does not engage in combat actions may not be directly attacked.\(^8\)

If journalists or media personnel become victims of an attack intentionally targeted at them, this constitutes a grave breach of international humanitarian law. According to Art. 85 Para. 5 Prot. Add. I, such a violation of international humanitarian law is regarded as a war crime.\(^9\) The Rome Statute in Art. 8 Para. 2 (b) (i) stipulates responsibility under international

---

\(^6\) UN News Service, «Israel's immoral use of cluster bombs in Lebanon poses major threat» (2006).
\(^7\) Fleck, «The Law of Non-international Armed Conflicts», margin no. 1203.
\(^8\) Zimmermann, «Article 8», margin no. 305 et seq.
\(^9\) Wolfrum/Fleck, «Enforcement of International Humanitarian Law», margin no. 1409.
criminal law for attacks targeted civilians. The military necessity of the attack may only serve as justification for such an action if the attack was not directly targeted at the civilian population but had bearings on them in the sense of collateral damage.\textsuperscript{10}

Resolution 1738, which has been approved by the Security Council in 2006\textsuperscript{11}, refers to the problematic practical implementation of the protection measures for journalists and media personnel. According to the resolution, the member states are obligated to consider the professional independence and other rights of journalists. Now, after four years, the everyday practical situation for journalists, in the sense of the above-mentioned definition, in areas of armed conflicts or unrest is not changed.

**War correspondents**

A war correspondent is a journalist who works for one of the adverse party or who accompanies a military unit. According to Art. 79 Prot. Add. I, "embedded journalists" lose their status as civilians in an armed conflict by joining military units of a conflict party. They are embedded into the military but not members of the forces. If an "embedded journalist" is wounded or killed during combat action, it does not constitute a direct attack against civilians as would be the case with an "independent" journalist.\textsuperscript{12}

War correspondent, if they are taken captive while practising their profession, have the protection of prisoners of war according to Art. 4 Para. 4 Geneva Convention III. According to Art. 13 Geneva Convention III prisoners of war may not be subjected to reprisals. They have to be treated in such a way that their life and health are not threatened at any time. War correspondent may be detained, i.e. their freedom of movement may be limited.\textsuperscript{13}

The guaranteed rights of prisoners of war as a result of an international armed conflict include the provision of sufficient food, clothing and other everyday commodities. Furthermore, they have to be provided with medical attention, especially if the person taken captive is wounded or suffers from a disease.\textsuperscript{14}

According to Art. 3 Geneva Convention III the captive does not have the same rights of a prisoner of war in the case of a non-international conflict, but he has to be guaranteed a minimum of rights. Hence, torture, inhumane and humiliating treatment, and execution without a preceding ruling by an independent tribunal, are strictly prohibited. Medical aid must be given to wounded person.\textsuperscript{15}

If the convention is violated during an international conflict, the state has to take all

\begin{enumerate}
\item Dörmann, «Article 8», margin no. 31 et seq.
\item S/RES/1738 (2006).
\item Also cf. Verschingel (2008), pp. 452 et seq.
\item Fischer, «Protection of Prisoners of War», margin no. 706.
\item Fischer, «Protection of Prisoners of War», margin no. 717, 719.
\item Fleck, «The Law of Non-international Armed Conflicts», margin no. 1215.
\end{enumerate}
necessary steps to bring the perpetrator to justice. This applies to the direct perpetrator as well as to an individual who incite someone to commit the offence.\textsuperscript{16} Also according to Art. 8 Para. 2 (a) Rome Statute the prisoners of war are persons who are protected against inhumane treatment, execution without preceding trial, torture and so on, just like civilians.\textsuperscript{17} The same protection is stipulated for captive in the case of a conflict of non-international character, according to Art. 8 Para 2 (c) Rome Statute.\textsuperscript{18}

The more and more common practice of "embedded journalism" has to be objected to. It is opposed to the principle of establishment the truth, which is the goal of coverage of war zones or areas of unrest. A journalist who accompanies a military unit day and night runs the risk of losing his journalistic impartiality.\textsuperscript{19} The general guide for journalists of the Ministry of Defence establishes rules for "embedded journalists" accompanying British military units. The release of information will be controlled because it "might be of benefit to an enemy.\textsuperscript{20} The question comes up if a coverage about atrocities committed from a British military unit fulfil the requirements because of having negative effects for the image of the British forces as a whole.

\textbf{Protection of media equipment as civilian objects}

Materials and facilities used for practising the journalistic profession are civilian objects according to Art. 52 Prot. Add. I. An attack may only targeting at military facilities, these are objects which by "their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, [...] offers a definite military advantage" (Art. 52 Para. 2 Prot. Add. I).\textsuperscript{21}

In any case, a bombardment of a TV or radio station, even if it is partly used for propaganda, is not reconcilable with international humanitarian law. According to Art. 85 Prot. Add. I, this constitutes a war crime.\textsuperscript{22} Also according to Art. 8 Para. 2 (b) (ii) Rome Statute, the direct attack against a civilian object is a war crime.\textsuperscript{23} A similar formulation is used in the Resolution 1738 of the Security Council.\textsuperscript{24} It is pointed out once more that the facilities and equipment of the media are civilian objects and therefore may not be directly attacked or become victims of reprisals. This applies to both international and internal conflicts. Such

\begin{flushright}
\textsuperscript{16} Wolfrum/Fleck, «Enforcement of International Humanitarian Law», margin no. 1410.
\textsuperscript{17} Dörmann, «Article 8», margin no. 16 et seq.
\textsuperscript{18} Zimmermann, «Article 8», margin no. 284 et seq.
\textsuperscript{19} Cf. Tuosto (2008).
\textsuperscript{20} Ministry of Defence, \textit{Greenbook}, p. 10.
\textsuperscript{22} Balguy-Gallois (2007), pp. 9 et seq. lists several examples of unjustified attacks in cases of both military and civilian usage.
\textsuperscript{23} Dörmann, «Article 8», margin no. 36.
\textsuperscript{24} S/RES/1738 (2006)
\end{flushright}
an action constitutes a war crime and the perpetrator must be brought to justice by the respective member states.

**Responsibility of journalists under criminal law**

The work of journalist does not only bear positive aspects, however. With politically charged exposés, reporters can contribute to the outbreak or the escalation of an armed conflict. This includes reports on alleged atrocities committed by the enemy party, but also the incitement to commit genocide against national, ethnical, racial or religious groups.\(^{25}\) Nowadays, the adverse parties in an armed conflict have recognised the power of the media in influencing the population in the desired fashion. The journalist are either forced into positive news coverage by reprisals from the people in charge via censorship or the media personnel acts under self-censorship triggered by various reasons.\(^ {26}\)

The resolution 1738 of the Security Council\(^ {27}\) also refers to this issue. An individual who incite to genocide, crimes against humanity or other grave breaches of international humanitarian law, has to be punished under criminal law. This occurred in Rwanda in 1994, for example. *Georges Ruggio* of the Radio des Milles Collines was sentenced to 12 years imprisonment for inciting genocide and committing crimes against humanity.\(^ {28}\)

**A special status for journalists**

There have been a lot of discussions about a special status for journalists in international humanitarian law. The main argument against such an additional protection is the fear that the implementation of a special status for journalists would weaken the status in international humanitarian law of other groups in particular staff of medical, religious and civil defence and delegates of the protecting powers and of the ICRC because they are acting on behalf of victims of armed conflict. This reasoning, however, leads to a weighing of the importance of the lives of persons who are in conflict areas without participating in combat or similar actions. To claim that the lives of individuals who, for example, works for medical services like the red crescent, are more worthy to protect than the life of a journalist who tries to make public the atrocities committed during armed conflict is counterproductive.\(^ {29}\) Without the efforts of journalists many war crimes and crimes against humanity and their backgrounds would never come to light. Therefore, from the author’s view, it is abso-

\(^{25}\) Further information to genocide: Schabas, *Genocide in International Law*.

\(^{26}\) Verschinel, «Towards a better protection for journalists in armed conflicts», pp. 453 et seq.

\(^ {27}\) S/RES/1738 (2006).

\(^ {28}\) Prosecutor v. Georges Ruggio, ICTR-97-32-I.

\(^ {29}\) Cf. among others Gasser, «The protection of journalists engaged in dangerous professional missions», pp. 4 et seq.
olutely necessary to create a new protection status for journalists. This includes all media personnel cited in the above mentioned definition.

The Draft Convention of the Press Emblem Campaign for the safety of journalists in armed conflicts\(^\text{30}\) contains in Art. 2 actions which may not be directed against journalists. Beneath others, this includes "deliberate attack or aggression, threats, kidnapping or detention". As in Art 79 Prot. Add. I, it is stated that a journalist loses the protection of the international humanitarian law during an armed conflict if he, for example, participates in a military operation of a party engaged in the conflict.

However, the request in Art. 3 Draft Convention to apply the Convention to all journalists, including the "embedded journalists", is problematic. As explained above, the coverage by journalists accompanying military units cannot been seen as impartial or at least not as fully independent. Even if the bias are not obvious to the party whose military unit he or she accompanies informs the journalistic report, it cannot be prevented. The journalist spends a long time – days and nights – with the same group of people, which leads to personal mutual trust between the involved persons. This is reflected in the coverage, knowingly or unknowingly.

Another suggestion in the Draft Convention to protect the journalists is to adopt an international emblem for journalists, like the Red Cross or the "blue helmet" for members of UN-peacekeeping missions. It should be recognizable over long distances to prevent attacks by mistake. The Press Emblem Campaign proposes the word "PRESS" in black lettering on an orange background. This sign is just accepted in some countries in the national area, among them Austria and Germany, with the difference that the sign is not round but rectangular (Art. 7 Para. 2 Draft Convention).

Arguments against the adoption of an international valid emblem, similar to the Red Cross, are the possibly misuse and the engagement of the civilian population by the visible presence of journalists.\(^\text{31}\) This view does not hold in today's situation. With new technical means it is absolutely possible to locate the position of journalists during an armed conflict. If they were recognisable by an emblem visible at greater distance, the parties of an armed conflict could no longer justify attacks targeted directly against journalists by claiming erroneous identification as enemies. In the Greenbook of the Ministry of Defence of the United Kingdom\(^\text{32}\) it is pointed out that "[i]n the often challenging situations that this engenders, mistakes resulting from misidentification, weapons systems failure or mal-location, may result".


\(^{31}\) Cf. Gasser, «The protection of journalists engaged in dangerous professional missions», pp. 4 et seq.

\(^{32}\) Ministry of Defence (UK), *Greenbook*, p. 3.
In any case, the civilian population is not subjected to more threat to life or health during armed conflicts than they are already. Possible abuse of an international recognized emblem can never be fully ruled out, not only with the emblem designated for journalists, but also, for example, with the Red Crescent. The implementation of a general valid emblem is still strongly recommended, despite or especially because of the above mentioned reasons. Journalists would be ensured a better protection, at least on paper. Nowadays, most of the journalists working in conflict zones use labellings to be readily identifiable as observer.

Conclusions

The toll of killed or wounded journalists in armed conflicts is rising. They are not only in a risk during combat actions but also because of reporting about background stories i.e. corruption. The profession of journalists has to be divided between war correspondents and "independent journalists". The international humanitarian law provides in Art. 79 Prot. Add. I for the latter the protection as civilians in armed conflicts. They may not be targeted directly and may not be used as a shield. The military forces have to take all necessary measures to protect civilians in conflict zones against any effects of military operations. However, a journalist as well as every civilian lose this safety status by participating in the conflict, for example, by being armed or being a spy for the adverse party.

According to Art. 79 Prot. Add. I the protection for war correspondents differs from the provided status for "independent journalists". In case of capture, the war correspondent has to be treated as prisoner of war, according to Art. 4 Para. 4 Geneva Convention III. This includes the access to medical care for wounded as well as the provision with sufficient food and other everyday commodities. The captive persons must not be tortured or executed without a trial before an independent tribunal.

Media equipments are not military facilities, even if they are used for propaganda or to incite the population to commit atrocities against racial or religious groups or other minorities. According to Art. 52 Prot. Add. I they have to be seen as civilian objects. For example, a radio station may not be targeted directly and has to be protected against every effect of military operations.

Nowadays, a new protection category in international humanitarian law has to be discussed. The safety of existing groups of protected persons, for example the members of medical services, is important and may not be weakened. However, this cannot be used as justification not to protect journalists as best as possible. A main part of the work of journalists in armed conflicts is the observation of combat actions as well as to report from the
background of conflicts. This reports are needed to prevent atrocities or at least to bring the perpetrators before trial. The new category of protected persons in armed conflict should include a sign to make them recognisable as journalists. Lots of attacks against journalists are never been investigated because of maintained mistakes by recognition. Journalists will always be targeted but the international community as a whole should do its utmost to prevent such actions. Attacks against journalists are a threat for peace and well-being of all states in the world. Their work is by all means necessary for democratic systems.

Bibliographie


