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## **Protecting the Messenger - an international humanitarian law perspective**

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# Protecting the messenger - an international humanitarian law perspective

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## Abstract

The war in and against Ukraine has brought home the importance of accurate, trustworthy reporting – even from dangerous places.

In mediation, particularly mediation arising from armed conflict, it is difficult to overstate the importance of accurate information to help mediate between claim and counter-claim.

The media, in particular journalists, including camera operatives, are the world's eye in both national and international conflict zones. This essay discusses the legal protection of those courageous individuals and their equipment under international humanitarian law.

The question of legal protection for journalists is essential to global access to reliable information. While the war in and against Ukraine has reminded us of this, it has been recognised as being of crucial importance for many years. Both the Review Committee's Report to the ICTY's (the International Criminal Tribunal for the former Yugoslavia) Prosecutor concerning the bombing of Belgrade by NATO forces during the Bosnian war and the ICTR's (the International Criminal Tribunal for Rwanda) judgment in the so-called Media case raise the question whether it is reasonable to target media stations and personnel.

It is essential to oppose these arguments. Intelligent and well-informed mediation of conflict depends upon the work of those who strive to accurately describe what is going on behind the fog of war.

Attacks on the media and on their places of work often take place in murky circumstances. But I will argue that, even if media stations are also used for military purposes (dual use), they ought to be protected as civilian objects. Also, I will summarise ways to improve protection for the media before observing that compliance with existing laws seems to plunge in times of conflict.

### **Current status of the media's protection in armed conflicts**

The media is a very broad term. For the purposes of this discussion, I will use it to refer to journalists, war correspondents, camera operatives, the press generally and other personnel reporting from conflict zones.

Journalism is an integral part of establishing historical truth. It is the first version of what becomes history and is key to forming the truths that allow for post-war reconciliation. It is an essential part of the means by which both national and international public opinion about a conflict is formed (UN HRC 28 February 2008, para 36; Garner 2019, 'media').

The media has repeatedly uncovered atrocities committed by military personnel – during, for example, the most recent Iraq war (see The Bureau of Investigative Journalism 2012). It has also repeatedly raised awareness of violations of international humanitarian law and international human rights law (Gasser 2022, para 17). It is the work of the media which led, amongst other things, to establishing the International Criminal Tribunal for the former Yugoslavia (ICTY) (*The Prosecutor v Radoslav Brdjanin and Momir Talic*, para 26; Powles 2003, 476-477). The media is, therefore, aptly referred to as a 'public watchdog' (*Observer and Guardian v The United Kingdom*, para 59(b); *Jersild v Denmark*, para 31; *The Prosecutor v Radoslav Brdjanin and Momir Talic*, para 13).

Currently, the media's importance in uncovering and reporting the facts about the Russian Federation's continuous war of aggression against Ukraine (UNGA 1 March 2022, para 2) underscores the essential role it plays at a time when people are searching for reliable and unbiased information. An essential part of this work is to

report on alleged war crimes (see Troianovski 17 April 2022). In Ukraine, media revelations have already led the International Criminal Court's Prosecutor to open investigations into what has taken place there with a view to establishing whether war crimes have been committed (International Criminal Court's Prosecutor 2022).

Although coverage of what takes place in war zones is generally supported and acclaimed, the media are sometimes seen by a party involved in a conflict as "playing an adverse role in the propaganda battle so essential to modern warfare" (Kirby and Jackson 1986, 1). Worse, they are sometimes viewed as potential spies and, consequently, treated as the enemy (Kirby and Jackson 1986, 1). When this is the case, the media not only face the dangers inherent in armed conflicts but is exposed to even greater perils, such as arbitrary arrests, sexual violence, confiscation of and damages to their equipment, illegal surveillance, intimidation, or death threats and even assassination (UN HRC 4 June 2012, para 48; Kirby and Jackson 1986, 1).

According to the International Federation of Journalists, by the beginning of May this year (2022), a total of 2,660 journalists have been killed in the course of their work since 1990. Many, in countries like Mexico or Colombia, were not war correspondents, but domestic media personnel killed because they were regarded as a threat to drug cartels. The death rate amongst those recognised as war correspondents was 1.3%.

The International Programme for the Development of Communications and the United Nations Educational, Scientific and Cultural Organization's reports (UNESCO 2021) underscore the threats to media safety inside and outside armed conflicts (IPDC 27 October 2020). Whereas in 2018 and 2019 together 89 journalists were killed in countries with no armed conflict, 67 journalists were killed in countries with armed conflict (IPDC 27 October 2020, 9-10, 13).

In 2018, 13 were killed when covering the armed conflicts in Yemen (7), Syrian Arab Republic (5), Libya (1), compared to 2019: Syrian Arab Republic (6), Chad (1), Libya (1), Somalia (1), Yemen (1); plus journalists killed in terror attacks: 20 in 2018 and 4 in 2019; see (IPDC 27 October 2020, 9-10, 13).

During the Russian Federation's ongoing war of aggression against Ukraine, at least seven journalists are known to have been killed in the first two months (Hassan and Francis 29 April 2022; Gallagher 28 March 2022). There may be more deaths that the media has been unable to report.

Deliberate attacks on journalists have frequently and explicitly been condemned by the United Nations (UN) Security Council, UN General Assembly, and the UN Human Rights Council (UNSC 23 December 2006; UNGA 23 January 2020; UN HRC 12 October 2020). It is worth remembering that every attack not only violates a journalist's right to report, but risks having a deterrent effect on future coverage. This, in turn, impedes the public's access to important information (UN HRC 4 June 2012, para 95).

This raises the question of whether and how the media are protected in international humanitarian law.

Later this essay provides an overview of the regulatory framework in international humanitarian law which is supposed to protect the media. It will then focus on two examples, including:

- The Review Committee's Report to the ICTY (International Criminal Tribunal into the former Yugoslavia) Prosecutor on NATO's bombing of the Belgrade headquarters of RTS, the Radio Television of Serbia (Review Committee 2000) and

- The ICTR (International Criminal Tribunal for Rwanda) Media case (*The Prosecutor v Ferdinand Nahimana, Jeasn-Bosco Barayagwiza, and Hassan Ngeze*).

I will evaluate whether the current rules in international humanitarian law, following the legal revisions by the Review Committee's Report to the ICTY Prosecutor and ICTR, enhance the media's protection. I will also suggest ways to further improve the media's protection.

There are specific rules of international humanitarian law which relate to protecting the media. These receive special mention in The Hague Commitment to increase the Safety of Journalists 9 December 2020, para 9 – a commitment which was endorsed by 58 States. They are also mentioned by the UNESCO's International Programme for the Development of Communication (IPDC 27 October 2020, 5).

### **The media's protection in international humanitarian law**

Article 13 of the Annex to the Hague Convention IV (Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land), makes special reference to newspaper correspondents and reporters following an army without belonging to it. Similarly, Article 13(4) of the Geneva Convention I (Geneva Convention for the amelioration of the condition of the wounded and sick in armed forces in the field), Article 13(4) of the Geneva Convention II (Geneva Convention for the amelioration of the condition of the wounded, sick and shipwrecked members of the armed forces at sea), and Article 4(A)(4) of the Geneva Convention III (Geneva Convention relative to the treatment of prisoners of war) refer to 'war correspondents'. It is on the protection to the media and the scope of these rules as set out in these articles that I will later focus this discussion.

Since 1978, Article 79 of the Additional Protocol I (Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I)) makes special reference to journalists as

a wider group of protected persons (for a historical overview, see Kirby and Jackson 1986, 4-15). Later, I will present these protections in more detail and summarise how international humanitarian law seeks to protect media equipment and stations.

It is worth noting that the provisions of the Geneva Conventions and Hague Convention only regulate international armed conflicts. Also, the Additional Protocol II (Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the protection of victims of non-international armed conflicts (Protocol II)) and common Article 3 of the Geneva Conventions I-III, regulating non-international armed conflicts, do not have any specific provisions regarding journalists, war correspondents, or the media in general (Gasser 2022, para 2).

It is also worth noting that the Geneva Conventions and Hague Convention IV only apply to the parties to an armed conflict that have ratified the respective treaties. Therefore, foreign journalists who are nationals of a neutral country which has normal diplomatic relations with a party to a conflict are not covered by international humanitarian law but protected by the general rules of international human rights law. For further discussion on this, see also Article 4(2) of the Geneva Convention IV (Gasser 2022, para 13).

### **War correspondents**

War correspondents take a number of different forms. Some are freelance, selling their stories, and information to a variety of media outlets. Others are sent out by media outlets. What they have in common is that they accompany the armed forces of a conflicting State without themselves being members of the armed forces, that they are accredited to these forces, and in possession of an identity card confirming this – see Article 13 Annex to the Hague Convention IV, 4(A)(4) Geneva Convention III.

However, the actual possession of such an identity card is not the only means for a war correspondent to achieve recognition as a non-combatant or to enjoy special

treatment, such as prisoner-of-war (POW) status (Mukherjee 1995: 35). A card only helps to identify who is entitled to a special status (Gasser 2022, para 3; Cameron et al. 2021, para 1050). This is also seen as a reason why Article 13(4) of the Geneva Conventions I and II do not mention such a requirement (Cameron 2017, para 1499).

Instead, the scope of these Geneva Conventions is wider in that it also applies not only to war correspondents but also to the embedded journalists who accompany armed forces without formally being accredited by or belonging to them, see Article 13(4) of the Geneva Conventions I and II (Cameron 2016, para 1456; Cameron 2017, para 1498-1499).

However, States differ in how they treat embedded journalists when they are captured. Some States, including the United States and the United Kingdom, grant embedded journalists POW (prisoner-of-war) status whereas others, including France, see them as entitled to civilian status under Article 79 of the Additional Protocol I (Sassòli et al. 2011, Case No 37 p 3; Foster 2015: 459-460). Because of this divided State practice, the presumption that an embedded journalist is a civilian, set out in Article 50(1)(2) of the Additional Protocol I, could be applied as a default rule, granting POW status only to war correspondents *strictu sensu* (Geiß 2008:293).

Overall, war correspondents remain civilians as long as they are not members of the military forces of a State and are not working as correspondents as part of their military duties (Geiß 2008, 294 (with citations); regarding cyber operations, see Schmitt 2017, Rule 139 para 5). However, embedded journalists are often treated as combatants when captured (Gasser 2022, para 3). This *de facto* shift of status reflects their close connection to the military forces (Gasser 2022, para 11).

Military forces must discriminate between military objectives and civilians. Whenever there is the possibility that civilians are harmed due to an armed attack,



the military advantage must outweigh the harm caused to civilians, which includes war correspondents (Gasser 2022, para 11).

From a practical point of view, it can be difficult to distinguish between embedded war correspondents and combatants. They might, for example, hardly be recognisable as civilians if they are dressed in military fatigues or camouflage clothing. This becomes particularly problematic if they behave like military personnel or carry weapons (Gasser 2022, para 11).

When embedded journalists report on non-international armed conflict, they are protected by customary international law comparable to Article 13(4) of the Geneva Conventions I and II (Sassòli et al. 2011, Case No 43 Rule 34).

### **Journalists**

Contrary to war correspondents or embedded journalists, most journalists in conflict zones do not usually accompany military units (see the parallelism of both regimes, Pilloud et al. 1987, para 3271). And even if they were to accompany them, journalists who are clearly identifiable as civilians do not lose their status as civilians (Pilloud et al. 1987, para 3257; Crawford and Davies 2014: 15-16).

Therefore, Article 79 of the Additional Protocol I is only of a declaratory nature, clarifying that journalists are regarded as civilians (Geiß 2008:293) (Pilloud et al. 1987, para 3257). Also, Article 79 of the Additional Protocol I has a wider scope compared to the Geneva Conventions I-III encompassing also ‘journalists/reporters, cameramen, photographers, and technical support personnel’ (Gasser 2022, para 5; Pilloud et al. 1987, para 3260) who are not officially accredited with military forces. This demonstrates that a journalist’s protection does not depend on what he or she is doing in a conflict zone or where they have been encountered – at the frontline, in a village distant from the actual fighting, or in a military camp.

An open question remains as to whether, in times of online and social media, every individual who hosts a web blog or posts a comment online might be perceived as a

journalist under international humanitarian law. This creates a vagueness about status which has been criticised by Foster 2015:460-461. However, since current international humanitarian law, in contrast to international human rights law, does not grant civilian journalists more rights or protection than other civilians, there is no need to discuss this further (see cyber operations Schmitt 2017, Rule 139 para 4).

Due to their civilian status, journalists must not be targeted, according to Article 51(2) of the Additional Protocol I, and, even if captured remain protected as civilians according to the Geneva Convention IV (Geneva Convention relative to the protection of civilian persons in time of war). This fundamental rule also applies to non-international armed conflicts according to customary international law and Article 13(2) Additional Protocol II (Geiß 2008:293; Sassòli et al. 2011, Case No 43, Rule 34; Gasser 2022, para 6). Moreover, intentionally directing an attack in an international or non-international armed conflict against a journalist is punishable as a war crime, according to Article 8(2)(b)(i), (e)(i) of the Rome Statute (Rome Statute of the International Criminal Court) (Geiß 2008:293; Mukherjee 1995: 36).

Under international humanitarian law, journalists themselves, although not their activities or products, such as published content, shall be respected in international and non-international armed conflict. This also applies to material published online or in the cyber world (Schmitt 2017, Rule 139 paras 1, 3). However, it has never been established in international humanitarian law that forces in armed conflict have an active duty to protect these journalists or their work (Schmitt 2017, Rule 139 para 3). This means, effectively, that even censorship is not prohibited by international humanitarian law (Schmitt 2017, Rule 139 para 6).

Journalists may, however, lose their protection as civilians if they adversely affect their status – see Article 79(2) of the Additional Protocol I. This might be the case if journalists disclosed, in exceptional circumstances, tactical targeting

information in real time or transmitted information of high military value (Geiß 2008: 296 and regarding cyber warfare Schmitt 2017, Rule 139 para 8). Such acts may be perceived as direct participation in hostilities or acts of espionage. Mere filming, recording, or interviewing, however, constitute the very basis of a journalist's work and do not suffice to lift the protection (Gasser 2022, para 10).

In addition, journalists may lose their protection as civilians when they take up arms or violently oppose arrest (Article 51(3) of the Additional Protocol I; see Pilloud et al. 1987, paras 1942-1945). However, Article 13(2) of the Additional Protocol I (Geiß 2008:296) implies that carrying small arms or using such weapons for self-defence does not invalidate their protected status (Kirby and Jackson 1986, 16). Journalists should be reminded, though, that more military-like equipment, such as weapons, bulletproof vests, or armoured cars, are likely to render the mandatory discrimination between civilians and military personnel more difficult, if not impossible (Kirby and Jackson 1986: 16; Pilloud et al. 1987, para 3269).

A particularly thorny question is whether journalists lose their status as protected civilians when they spread hate propaganda or incite to commit war crimes. This question will be further discussed during our discussion of what occurred in Rwanda and Serbia.

### **Media equipment and stations**

Just as we might presume that a person is a civilian unless it is established that it is military personnel, objects are also presumed to be civilian objects used for civilian purposes, Art 52(3) of the Additional Protocol I (Sassòli et al. 2011, Case No 37 p 4; Crawford and Davies 2014: 15-16). This holds especially for media equipment and stations but may be analysed on a case-by-case basis in situations of so-called dual use – for example where a media station is used for both civilian and military purposes (Gasser 2022, para 12; Geiß 2008:297-298; and for further examples of legitimate dual use aims Balguy-Gallois 2004, note 49). If a dual use

object is targeted, the destruction must offer a definite military advantage, Art 52(2) of the Additional Protocol I.

If media stations are used for propaganda purposes, there must be even more definitive arguments as to why their destruction would constitute a definitive military advantage (see Article 52(2) of the Additional Protocol I; Review Committee 2000, para 76). Undermining a population's morale, which might be one, if not the, objective of preventing the further spreading of propaganda, usually does require time and therefore does regularly not qualify as an effective contribution to a military action (Review Committee 2000, para 76; Geiß 2008:299; Pilloud et al. 1987, paras 2024, 2027-2028). In addition, the definition of what constitutes (il)legitimate propaganda is disputable so that a wide understanding of that notion could render the principal protection of civilian objects null and void. Even incitement to genocide or war crimes can only, in very exceptional circumstances, revoke the principal protection of a civilian object. In the event of a media centre being used for heinous crimes, this may become the subject of a war crimes case - at latest - after a conflict ends.

The media equipment and station's civilian status also holds for cyber attacks (Schmitt 2017, Rule 139 para 7). Since confiscation of equipment is not prohibited under international humanitarian law, the same applies to the confiscation of journalistic data. When it comes to destroying journalistic data, such data must at least constitute a dual use and the deletion must offer a direct military advantage. Confiscating as well as deleting a journalist's data, however, impairs their fundamental journalistic function – to inform the public. Therefore, the proportionality of such measures must be weighed against the journalist's 'watchdog' function.

### **Relevant cases regarding international and non-international armed conflicts**

Media stations have sometimes been targeted during international or non-international armed conflicts, as with the NATO aerial campaign against RTS, the United States' bombings of Al-Jazeera in Baghdad and Abu Dhabi, or Israel's

destruction of the Voice of Palestine radio and television offices in Ramallah (Sassòli et al. 2011, Case 37 p 7).

Also, media stations have been used to incite hatred and war crimes, for example in Rwanda.

NATO's bombing of RTS, constituted an attack on the media during an international armed conflict. By contrast, the ICTR's Media case, concerned genocide committed by Hutus, who were encouraged by their local radio station to kill about 800,000 members of the rival Tutsi tribe in the course of a non-international armed conflict.

#### **Review Committee's Report to the ICTY Prosecutor over the bombing of RTS**

On 23 April 1999, a NATO aerial campaign targeted and severely damaged the Belgrade headquarters of RTS (Review Committee 2000, para 71). The broadcasting station was state-owned and integrated as an armed forces transmitter in the so-called C3 network. In other words, in addition to being a regular radio station transmitting programmes, it also functioned as a military command, control, and communication network. As such it was as dual use object, being used for military objectives (Review Committee 2000, para 75). In principle, such dual use objects can be legally attacked – see Article 52(2) of the Additional Protocol I (Sassòli et al. 2011, Case No 37 p 5; Review Committee 2000, para 77).

After the bombing, the broadcasting recommenced within hours of the attack due to a decentralised and complicated network of communication that NATO had already expected (Review Committee 2000, para 78). Since the communication network was very unlikely to be destroyed by bombing the dual use media facility, there was no definitive and immediate military advantage (for a different view, see Sassòli et al. 2011, Case No 37 p 4). So, if alternative means of communication persist, the presumption of Article 52(3) of the Additional Protocol I – that in case of doubt an object remains a civilian one – and the restrictive justification offered in Article 52(2) of the Additional Protocol I, would seem to invoke a wide

protection of dual use objectives. This holds even more definitively if the targeted object has a high value for the civilian population, which would, in particular yet not exclusively, be the case with widely read, watched, or listened to media.

The dissemination of information becomes even more important at times of conflict and emergency compared to ‘normal’, quiet, and non-emergency, times.

Even if the RTS might have been used as part of a propaganda machinery, the destruction of such infrastructure nonetheless has a detrimental effect on the civilian population, especially if it is largely cut off from receiving information. If at the same time, the military advantage of such an attack is not immediate or is judged to have only a small chance of being effective (see for these requirements Geiß 2008:299), the idea underlying the presumption of protection for civilian objects militates against an armed attack (see Balguy-Gallois 2004, at note 53, who makes the case for higher requirements of precaution when a dual use object is a target).

Overall, the Review Committee concluded that the attack was justified despite journalists being killed, which it accepted as civilian casualties, since the military advantage prevailed, and it recommended that no investigation should be commenced (Review Committee 2000, paras 75-77, 91; see also the critical assessment by Benvenuti 2001, 522-524). The Review Committee even cited the ICTRs Media case decision to justify the destruction of a media facility if that facility was used to incite hatred (Review Committee 2000, para 76; Sassòli et al. 2011, Case No 37 p 6). We will consider this argument further later in this essay.

### **ICTR’s media case**

In 1994, Hutu extremists committed a three-month genocide in which 800,000 Tutsi were killed (see the summary by Harvard Law Review 2004, 2769). In the Media case (*The Prosecutor v Ferdinand Nahimana, Jeasn-Bosco Barayagwiza, and Hassan Ngeze*), the ICTR had to decide whether hate speech and incitement of genocide constituted crimes under international criminal law. For this the editor-

in-chief of an extremist newspaper, having called for the extermination of the Tutsi, and the founder and director of a prominent radio station, having fomented hatred towards the Tutsi, were indicted (*The Prosecutor v Ferdinand Nahimana, Jeasn-Bosco Barayagwiza, and Hassan Ngeze*, paras 8-9; see only Harvard Law Review 2004, 2770).

Without going into the decision's criminal law details, the ICTR clearly stated that hate propaganda, also in the form of journalists' reports, can constitute, amongst other things, an active participation in genocide (*The Prosecutor v Ferdinand Nahimana, Jeasn-Bosco Barayagwiza, and Hassan Ngeze*, paras 949-969; see also Kagan 2008, 87-90). This is a monumental finding and certainly a just assessment of the facts and law in the case.

However, that judgment ought not to be understood as depriving a media station or the media of their status as civilian objects or civilians under international humanitarian law. At this point, a differentiation between crimes, punishable by (international) criminal law in the aftermath of a conflict, and losing protection under rules of international humanitarian law during a conflict, must be made. Although public interest will ask to prevent media stations and journalists from committing heinous crimes, such as inciting genocide, it is questionable whether that result should be achieved militarily.

Firstly, international humanitarian law, also relating to protection for the media, is based on the distinction between military and civilian objects. What foundation exists to classify a broadcasting station as a military object if it is used to incite hatred or genocide? If the foundation is the spreading of propaganda, the classification of the use of media (stations) as military objects taking direct part in the hostilities is still not settled in international humanitarian law (Schmitt 2017, Rule 139 para 9). Spreading propaganda does not *per se* constitute direct participation (Sassòli et al. 2011, Case 37 p 1; Foster 2015:464).

Also the ICTR makes no reference to the loosening of the media's protection as civilian objects under international humanitarian law (see *Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze v The Prosecutor*, paras 677-715; but Schmitt 2017, Rule 139 paras 9-10).

Secondly, even if a broadcasting station, such as in the ICTR's media case, could be interpreted as also having a military objective (regarding cyber warfare, Schmitt 2017, Rule 139 paras 9-10), it will usually only constitute a dual use object. The only clear exception is where the broadcasting station itself is run by military personnel, owned by the military or State, and used for military purposes. If, however, a dual use object constitutes the standard, why should its military objective prevail over its civilian use?

The answer hinges, thirdly, on the question of what military advantage another party to an international or non-international armed conflict would gain from destroying such a broadcasting station? One might argue that the protection of human rights would be seen as a legitimate military objective under international humanitarian law (see only the concept of humanitarian intervention, Lowe and Tzanakopoulos 2022). This argument in itself is debatable since violations of human rights would attract retaliation – usually by similar means, the use of force, destruction, and killing.

Therefore, the protection of human rights by means of the use of force must be limited to self-defence and defence of others without reverting to active armed attacks, at least as far as possible. Otherwise, international humanitarian law would allow the life of one person to be valued higher than the life of another.

Forthly, the immediate killing of people is not perpetuated through words, newspapers, or online posts. Although it must be acknowledged that such dissemination of hatred and incitements can have severe effects, as was stated by the ICTR in its Media case, preventing people from actively killing others would be



the more direct approach. Also, destruction and even more so killing is definitive and irreversible and must therefore constitute a means of last resort.

With these arguments in mind, it might seem that using modern technology such as computer viruses and means of cyber warfare to prevent the further dissemination of hatred might be a more proportionate means. Such approaches can also be temporary in that they avoid the permanent destruction of important and valuable infrastructure. In international humanitarian law, such attacks are, however, only allowed when accepting that media stations can, in principle, constitute military objects.

In conclusion, the two questions (1) whether inciting hatred and genocide are punishable under international criminal law and (2) whether a (primarily) civilian object loses its protection and becomes a military object, must be clearly kept apart. Since the dissemination of information is of high value to the public and propaganda, in general, does not constitute a direct participation in a conflict, media stations must be protected unless there is no other means available to destroy them.

### **How to improve protection for the media**

Focussing on the purpose of the media's protection under international humanitarian law, namely, protecting its duty, if not also right, to inform the public, a right to access conflict zones for some or all journalists would seem to be crucial (see only Gasser 2022, para 14). As such, the public interest in the unhampered activities of journalists must prevail in most cases, allowing them to report from conflict areas. Such coverage may provide important leads for uncovering serious violations of international humanitarian law, which in turn is integral to the important task of promoting justice at both a domestic and international level. Of course, such access rights need to be accompanied by special rules for ceasefires or equivalent instruments to protect, not just to respect, journalists while performing their tasks.

Also, media stations and personnel could be added as a special category to the international humanitarian law framework in order to protect the media's relevance – keeping its 'watchdog' function in mind. Developing this idea even further, the concept of notifying the parties in a conflict of demilitarised zones for media purposes, instead of agreeing on them according to Article 60(1) of the Additional Protocol I, could help to protect the dissemination of information.

In the past, an additional distinctive symbol identifying media representatives in the field has been discussed and rejected by media representatives fearing that journalists would be more easily and directly targeted (Gasser 2022, para 9; Crawford and Davies 2014: 24-26; Foster 2015: 473-475). However, this suggestion would be more likely to be received positively by the media if the proposed distinctive symbol came with an internationally accepted requirement for combatant nations to provide a higher level of protection to the media. In addition, not only respecting journalists as civilians in conflict zones but protecting their work and data, would further enhance their role in both international and non-international armed conflicts.

Overall, the best of the laws protecting the media only work if the parties to a conflict comply with the rules in a conflict zone (Crawford and Davies 2014: 27). However, compliance with the law and the protection of civilians – including the media – seems to be declining in times of war and conflict. Continuously training all military staff and informing the public on the contents and meaning of the Geneva and Hague Conventions is worthwhile, though it does not offer a complete solution.

## **Conclusion**

This essay has demonstrated that war correspondents, journalists, their equipment, and media stations are, in principle, protected as civilian objects and civilians in international humanitarian law. If the media adopt military techniques and equipment, the necessary discrimination in international humanitarian law will become more difficult.

This essay has also demonstrated that two consequential situations that have been evaluated by the ICTR and the ICTY Prosecutor's Review Committee led to possible misconceptions of international humanitarian law that might jeopardise the media's protection in international and non-international armed conflict.

For journalists to fulfil their task, namely making sure that the world community cannot say they did not know about severe violations of international humanitarian law and international human rights law (see only Edwards et al. 2010: 53 et passim), they need a better protection.

Mediators must recognise the important role of the media and the need to protect the source of so much of the information used to develop realistic settlements and agreements.

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