

Seminar on International Law for Media: Emerging Issues for Journalists

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Embedded Journalism: The Rights and Protection of Journalists Covering Armed Conflict **By Red Batario**

Journalists today face a broad range of conflict situations that are extremely complex and confusing. From conventional wars with defined battle lines to acts of terrorism that blur boundaries, from banditry to extremism or even pocket wars between feuding clans, journalists have to put themselves in ever increasing danger to get the story out.

Over the last 10 years more than 1,000 journalists and media staff worldwide have been killed in the line of duty. In many parts of the globe, especially the Philippines, coping with threats, harassment, intimidation or worse has become part of the journalist's job description.

Journalists, especially those who cover conflict and other dangerous environments, can never be completely safe. It is their job to be in the danger zone to bring to the public's attention the progress of international and national conflicts. Their work often requires them to expose wrongdoing, to open for public scrutiny what some people would prefer to keep hidden. This puts them at grave risk. And the risks have become terribly high.

The International News Safety Institute (INSI) points out, "as modern warfare, terrorism and crime follow different patterns, journalists reporting these conflicts and events are ever more at risk of being caught in a crossfire or taken hostage. The free flow of information, on which enlightened governments and peoples depend, suffers." Violent attacks on journalists tend to have a chilling effect. Attacks hamper the journalists' ability to probe deeply and report accurately thus depriving the public of its right to know.

Article 19 of the Universal Declaration of Human Rights adopted on December 10, 1948 states that journalists have the right to "seek, receive, and impart information." This right is restated in the International Covenant on Civil and Political Rights which has been signed or ratified by more than 140 states, and in several regional conventions and charters, such as the European Convention for the Protection of Human Rights and the African Charter of Human and People's Rights.

To exercise this right journalists often have to put themselves in harm's way. But the exercise of this right should be viewed in the context of modern conflict situations that journalists may find themselves covering or reporting on.

Understanding Conflict

“In terms of international law, there are three broad categories of conflict which journalists may encounter. Superimposed on any of these broad categories there can be additional threats of violence posed, for example, by terrorism, extremist ideology, and insurgency.”ⁱ

International armed conflict – arises when one State uses armed force against another State or several others. Both sides are clearly defined and militaries wear different and distinct uniforms. There are identifiable front lines and the armed forces follow a chain of command. Parties to the conflict are generally aware of their obligations under international humanitarian law.

Internal armed conflict – occurs within the territory of the State and does not involve the military of another State. In many instances, the armed forces of the State are used against dissident forces, rebel or insurgent groups as in the case of the New People’s Army (NPA) and the Moro Islamic Liberation Front (MILF) in the Philippines, to cite some examples. In other cases, there are two or more armed groups fighting within the State but not necessarily involving the armed forces like what is happening in East Timor.

If the opposition forces are better organized, have a clear command-and-control structure, and have the ability to carry out military operations and even, to some extent, operate a system of governance, slightly different provisions of the law apply. Each belligerent party is “bound to apply, as a minimum, the fundamental humanitarian provisions of international law contained in Article 3 common to all four Geneva Conventions.”

Internal disturbances and tensions – a situation usually referred to by the military as “internal security operations” such as mass arrests, violent demonstrations and riots, proclaiming a state of emergency, large numbers of persons detained for long periods, ill-treatment and torture of detainees, harassment of journalists and lawyers representing detainees or suspects or drawing attention to repression, allegations of forced disappearances or unlawful killings.ⁱⁱ

Internal disturbances and tensions are not covered by international humanitarian law but by international human rights law and standards and the domestic laws of the State.

In the Line of Fire

By the very nature of their work journalists and media staff must be at the forefront of unfolding events, be it something mundane as a ribbon-cutting ceremony for a new government program or something life-threatening like the eruption of hostilities between two warring forces.

Journalists covering armed conflict and investigating human rights violations are of course open to greater dangers such as getting caught in a cross fire or being targeted. Those who embed with armed forces or cover the frontlines are particularly vulnerable to physical harm.

During a news safety conference and training last December in Bali for Southeast Asian frontline journalists organized by INSI, a female reporter from an Indonesian television station narrated how she was kidnapped and held for seven days in Iraq by insurgents.

She was after a story that would have helped people understand not only the horrors of war but also the often horrific acts committed by combatants in defiance of international humanitarian law.

In an extract from the International Review of the Red Cross in 1983, Alain Modoux, head of the ICRC Information Department, wrote: "let us not forget that under Article 85 of Protocol I, the most serious of these violations are considered as war crimes. Whenever journalists witness such violations, it is therefore their duty to report them. I am convinced that public opinion, conditioned by the media, is an excellent means of bringing pressure to bear on belligerents and is capable of favorably modifying the attitude of combatants to victims protected by humanitarian law."

But this often comes with a huge price tag for journalists in armed conflict situations: injury or death.

As had been pointed out earlier, journalists covering armed conflict are constantly exposed to physical dangers and can become victims of the direct effects of hostilities like getting caught in a bombing raid or artillery barrage, being hit by shrapnel from a mortar round or by a stray bullet.

Journalists can also become victims of arbitrary arrest, physical abuse such as torture, disappearance, etc. by authorities, in particular the military, police or paramilitaries operating in the conflict area.

It is interesting to note that the International Federation of Journalists (IFJ) has pointed out that of the more than 1,192 journalists killed worldwide since 1990 more than 90 per cent were born and grew up in the land where they died. Local journalists and members of news gathering teams are at a disadvantage compared to international correspondents who can easily board an airplane and fly away after the story is done. Yet very little attention is focused on the plight of local journalists covering armed conflict.

Protection of Journalists Afforded by International Humanitarian Law

A journalist on a dangerous professional assignment in a conflict area is a civilian and is entitled to all rights granted civilians per se. The Geneva Conventions of 1949 and the two Protocols of 1977 guarantee these rights provided the journalist "does not undertake any action which could jeopardize his civilian status."ⁱⁱⁱ

Knowing the law may spell the difference between getting killed and staying alive. Surviving and effectively working in a conflict area depends to a large extent on journalists' knowledge and understanding of how the law protects both them and victims of conflict or when the law is being violated.

International humanitarian law, developed to protect in times of conflict persons who do not take part in the hostilities and to limit the violence in achieving military gains, exists in the Geneva Conventions of 1949 and their Additional Protocols of 1977 and other related conventions and treaties.

Under the Geneva Conventions and their Additional Protocols, “civilians are protected from harm. Additional Protocol I, for example, states that in order to ensure respect for, and protection of, the civilian population and civilian property, those fighting must at all times distinguish between the civilian population and combatants and between civilian property and military objectives.”^{iv}

According to David Lloyd Roberts, who wrote the *Safety and Security Guidelines for Humanitarian Volunteers in Conflict Areas*, “...the Statute of the International Criminal Court makes it a war crime to carry out intentional attacks against the civilian population or against individual civilians not taking a direct part in hostilities.”

As a civilian, journalists do not enjoy special status apart from those provided by law respecting and protecting the rights of civilian populations.

Again, because of the demands and nature of their profession, journalists are lumped under an ill-defined category of people who either closely follow or “embed” with armed forces without necessarily being part of these forces. Journalists operating with military units in the frontlines run the risk of getting hurt or killed either by the attack of an opposing armed force or by so-called friendly fire. The law offers no protection because rockets fired by an airplane on an armored vehicle on which a journalist is riding cannot stop in mid-flight and say, “hey, there’s a reporter on that tank, I better look for another target.”

Journalists may lose not their right to protection as civilians but *de facto* protection if they stay too close to a military unit in an operational area.

Aside from the law, there are practical ways by which journalists can protect themselves while operating in hostile environments. The International News Safety Institute, formed in 2003 by the IFJ, International Press Institute, and news organizations like the BBC, recommends safety training and raising awareness among journalists and media staff worldwide. It also provides support and develops safety assistance programs for journalists and freelance staff especially in areas of conflict.

With the world becoming ever more dangerous for journalists and access to conflict zones increasingly denied the media for independent and comprehensive reporting, the fate, in the words of Alain Modoux, “of thousands and even millions of human beings, theoretically protected by the Geneva Conventions, is thus abandoned to the arbitrary decisions of the belligerents, who can act with full impunity, unobserved by embarrassing witnesses.”

For journalists to continue being witnesses while staying safe, it is obvious that a complete knowledge as possible of the Geneva Conventions, the Additional Protocols, other treaties and conventions is an absolute must. Knowledge is one of the most powerful weapons that journalists can have in their reporting arsenal. It can, one day, even save their lives.

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ⁱ David Lloyd Roberts, *Staying Alive: Safety and Security Guidelines for Humanitarian Volunteers in Conflict Areas* published by the International Committee of the Red Cross

ⁱⁱ Violence can come from different groups like gangs, bandits, militants, and forces opposing government forces as put forward in defining conflict by the ICRC to the first Conference of Government Experts in 1971.

ⁱⁱⁱ A journalist is protected by the Conventions and the Protocol in the same way as all other civilians; Article 79 can thus be considered as a cross-reference to the articles which deal with the protection of the civilian population in general as pointed out by Hans Peter Gasser in his article *The Protection of Journalists Engaged in Dangerous Professional Missions*

^{iv} Article 48; also refer to Articles 17 and 51 of Additional Protocol 1. ICRC Handbook for Humanitarians