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***The Protection of Journalists
in Armed Conflict***

Master Thesis of the ‘Master of Laws’

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| | |
|--|-----------|
| Foreword | 7 |
| Chapter 1 – INTRODUCTION..... | 9 |
| Title 1. The research goal of this master thesis | 9 |
| Title 2. The importance of war journalism..... | 9 |
| Title 3. The ever increasing vulnerability of war journalists | 10 |
| Title 4. The conceptual framework, research methods and delimitations of this research 11 | |
| Section 1. The conceptual framework..... | 11 |
| 1. ‘War journalists’ | 11 |
| 2. ‘Armed conflict’ | 12 |
| 2.1. ‘Armed conflict’ in the international legal framework | 12 |
| 2.1.1. International human rights law | 12 |
| 2.1.2. International humanitarian law | 12 |
| 2.1.2.1. Definitions..... | 13 |
| 2.1.2.1.1. ‘International armed conflict’ | 13 |
| 2.1.2.1.2. ‘Non-international or national armed conflict’ | 14 |
| 2.1.2.2. Distinction between international and national armed conflict..... | 15 |
| 2.2. Relevance of the term ‘armed conflict’ to this master thesis | 15 |
| 3. ‘Safety’ | 16 |
| Section 2. Research methods..... | 16 |
| Section 3. Delimitations | 16 |
| 1. National versus international war journalists | 16 |
| 2. The ‘citizen journalist’ | 17 |
| 3. Journalist’s access to a state | 17 |
| Chapter 2 – PROBLEMS AND DANGER WAR JOURNALISTS ENCOUNTER.. 19 | |
| Title 1. Types of problems war journalists encounter | 19 |
| Section 1. Deliberate targeting..... | 19 |
| Section 2. General violence in armed conflict zones | 20 |
| Title 2. Introduction to the numbers | 20 |
| Section 1. Journalists affected: who/where/by who? | 20 |
| 1. Numbers and their evolution throughout the years | 20 |
| 1.1. Journalists who have been killed | 20 |
| 1.2. Other dangers that journalists encounter..... | 27 |
| 2. Top of the iceberg..... | 28 |
| Section 2. Impunity | 29 |
| Chapter 3 – LEGAL FRAMEWORK TO PROTECT WAR JOURNALISTS..... 31 | |
| Title 1. Introduction | 31 |
| Title 2. Current legal framework..... | 31 |
| Section 1. International human rights law..... | 32 |
| 1. Human rights of relevance to war journalists..... | 32 |
| 1.1. The Universal Declaration of Human Rights..... | 33 |
| 1.2. The International Covenant on Civil and Political Rights | 33 |
| 1.2.1. Human rights of war journalists | 33 |
| 1.2.2. Exceptions to the human rights of war journalists | 34 |
| 1.2.2.1. Emergency clause..... | 34 |
| 1.2.2.2. Restriction to Article 19 of the ICCPR | 35 |
| 1.2.2.3. Reservations | 36 |
| 1.3. The European Convention on Human Rights | 38 |
| 1.3.1. Human rights of war journalists | 38 |
| 1.3.2. Exceptions to the human rights of war journalists | 38 |
| 1.3.2.1. Emergency clause..... | 38 |
| 1.3.2.2. Restriction to Article 10 of the European Convention on Human Rights..... | 39 |
| 1.3.2.3. Reservations | 39 |
| 1.4. The American Convention on Human Rights..... | 39 |
| 1.5. The African Charter on Human and Peoples’ Rights | 40 |
| 2. What with media infrastructure? | 41 |
| Section 2. International humanitarian law | 41 |

| | |
|---|-----------|
| 1. Protection of war journalists in international humanitarian law | 42 |
| 1.1. Conventional international humanitarian law | 42 |
| 1.1.1. International armed conflict..... | 43 |
| 1.1.1.1. ‘Freelance’ journalists..... | 43 |
| 1.1.1.1.1. Who?..... | 43 |
| 1.1.1.1.2. Conditional protection as civilians | 43 |
| 1.1.1.1.3. Protection upon capture | 44 |
| 1.1.1.1.4. Identity card | 45 |
| 1.1.1.2. War correspondents..... | 45 |
| 1.1.1.2.1. Who?..... | 45 |
| 1.1.1.2.2. Conditional protection as civilians | 46 |
| 1.1.1.2.3. Special protection upon capture: “prisoners of war” | 46 |
| 1.1.1.2.4. Identity card | 47 |
| 1.1.2. Non-international armed conflict..... | 47 |
| 1.1.2.1. Conditional protection as civilians..... | 48 |
| 1.1.2.2. Protection upon capture..... | 48 |
| 1.2. Customary international humanitarian law | 49 |
| 1.2.1. Additional norms regarding non-international armed conflict | 49 |
| 1.2.1.1. Conditional protection as civilians..... | 49 |
| 1.2.1.2. Protection upon capture..... | 50 |
| 1.2.2. Confirmation about the two-folded task for states | 50 |
| 2. What with media infrastructure? | 50 |
| Section 3. Soft law | 51 |
| 1. International soft law..... | 51 |
| 2. Regional soft law..... | 52 |
| Title 3. The implementation of the international legal framework | 53 |
| Section 1. National, governmental methods of implementation | 54 |
| 1. Inherent problems of the state with jurisdiction..... | 55 |
| 2. National case law on attacks against war journalists | 55 |
| 3. Positive measures to ensure freedom of expression and safety of journalists..... | 56 |
| 4. National measures with a negative impact on war journalism..... | 57 |
| Section 2. International and regional methods..... | 58 |
| 1. Regional human rights courts..... | 59 |
| 1.1. Case law | 59 |
| 1.2. Interim measures | 59 |
| 1.3. Special Rapporteurs | 60 |
| 2. The International Criminal Court..... | 60 |
| 3. Measures at the level of the United Nations..... | 62 |
| 3.1. Interim measures of the Human Rights Committee..... | 62 |
| 3.2. Quasi-judicial administration of justice | 63 |
| 3.3. Reports following Resolution 1738 of the United Nations Security Council..... | 64 |
| 3.4. Special procedures of the United Nations Human Rights Council..... | 64 |
| Title 4. Evaluation of the available legal protection..... | 65 |
| Chapter 4 – PRACTICAL ASSISTANCE TO WAR JOURNALISTS | 67 |
| Title 1. Limitations of a mere legal protection | 67 |
| Title 2. War journalism has become an expensive ‘accessory’? | 67 |
| Title 3. Which entities are responsible for which practical safekeeping? | 68 |
| Section 1. United Nations | 68 |
| 1. Information, sensitization and lobbying | 69 |
| 2. Practical assistance and support | 70 |
| 3. Plans and goals of UNESCO..... | 71 |
| Section 2. Organizations focused on journalists’ safety | 71 |
| 1. International initiatives..... | 72 |
| 1.1. Lobbying | 72 |
| 1.2. Practical assistance by journalists’ safety organizations | 73 |
| 1.2.1. Assistance before war journalists travel to armed conflict..... | 74 |
| 1.2.2. Assistance during the presence of war journalists in armed conflict | 75 |
| 1.2.3. Assistance after war journalists have reported on armed conflict..... | 76 |
| 2. National and regional initiatives..... | 77 |

| | |
|---|-----------|
| Section 3. The military, law enforcement and non-State armed groups | 77 |
| Section 4. War journalists' employers | 78 |
| Section 5. War journalists themselves | 79 |
| Section 6. Civil society | 79 |
| Title 4. Evaluation of the available practical assistance | 80 |
| Chapter 5 – CONCLUSION AND RECOMMENDATIONS | 81 |
| Chapter 6 – BIBLIOGRAPHY | 83 |
| Chapter 7 – APPENDIX | 95 |

Foreword

Investigating the safety of war journalists I came across many cases of foreign correspondents being harmed or murdered and uncountable cases of local journalists becoming the victim of targeted killings. My eyes opened for the vastness and the pressing nature of the issue. The safety of journalists all over the world is facing extreme conditions and, as the example of the current situation in Ukraine exemplifies, the future of us all is at stake when journalists are being attacked.

Journalists fulfil an essential task in providing the public with information. The profession is indispensable for an open and free society. To collect this information journalists have to go where the events take place. In the case of an emerging armed conflict, the front lines will be the place they need to be. This makes war journalism a dangerous profession. War journalists report on shootings and attacks, human rights abuses, political movements, rebellions, etc. We need war journalists to inform us about the world and about the atrocities that happen, and they need us to protect them in order to collect this information.

The danger lies not only in situations of hazardous bullets flying around and accidentally harming war journalists. A worryingly staggering number of war journalists are being deliberately targeted because of their professional activities. Not everywhere war journalism is considered to be a desired product of human rights, but rather an annoying habit of curiosity exemplified by the majority of journalists coming from the West with a focus on what they deem to be injustice. This debate is the background against which war journalists try to gather information in situations of armed conflict.

The topic of this master thesis is the protection of those war journalists fighting all odds. In the global quest to protect human rights and provide safety it has proven necessary to grant war journalists special protection. The explicit mentioning in international treaties and committees' recommendations has known a long history and certainly has a long future ahead. It remains important to re-evaluate the challenges war journalists face. A constant attention is required to ensure that their safety is the highest priority. If we do not keep addressing this problem in human rights debates and at high-level summits, the situation will even deteriorate. War journalism will become an activity only few (or even fewer) countries will be able to afford. And if there are not journalists to do the job, how can we independently and objectively know what happens in areas of armed conflict?

Chapter 1 – INTRODUCTION

Title 1. The research goal of this master thesis

I will be investigating the quality of the legal protection for journalists in armed conflict. This master thesis will focus on the accomplishments and the deficits of legal protection for war journalists. Next to this, the benefits of legal protection will be compared with the benefits of non-legal, practical protection. With this framework I will consider the future of any legal and practical efforts to be made to ensure a better protection for war journalists.

The currently available protective measures do not seem to suffice to keep war journalists safe or to prosecute those responsible for harming war journalists. The number of media casualties because of armed conflict keeps rising. This master thesis will take a close look at whether more effective preventive and/or deterrent measures are to be considered. One of the solutions that will be investigated is how the responsibility of the states to protect war journalists can be stimulated. Another solution will focus on a better use of the preventive measures offered by regional human rights courts and international committees. A third focus of this master will be on the possibility of creating explicit jurisdiction for the International Criminal Court to deal with cases regarding the safety of war journalists.

This master thesis wants to improve the safety of war journalists in two ways. On the one hand, it wishes to enable lawyers, advocates and war journalists to learn about the available legal framework and how it can be used more efficiently. On the other hand, it wants to illustrate what the problems are and which future actions would ensure a more successful protection for journalists in armed conflict.

Title 2. The importance of war journalism

Since the utmost beginning of war, journalism has been proven an important aspect of waging war. Conflicting parties have used war journalism for many purposes. Through war journalism a party to the conflict can try to manipulate the public opinion in such a way that the war gains a lot of support or, at least, understanding. Showing atrocities committed by the enemy in combat is a very effective way to demonize the opponent and justify war.¹

In the twentieth century, war journalism has begun to serve more liberal and higher goals. The growing international acceptance of the existence of human rights has given war journalism more honourable rationales. The need for war journalism was based, for example, on the right to freedom of expression and the right to information. Like every human being, war journalists have the right to information and to freedom of expression. Their individual human rights have to be realized in order to ensure that the public opinion will be informed about war and conflict. War journalists have to be given access to the battlefield as a precondition to be able to realize everybody's human right to information. The human rights argument, therefore, gives war journalists a legally accepted justification for being in conflict zones and reporting on what happens in war.

Because war journalists ensure the realization of the human right to information of citizens all over the world, they have an essential role in upholding and creating democratic states. Reporting on war and conflict creates possibilities to discuss it in different forums. It

¹ I. DÜSTERHÖFT, "The Protection of Journalists in Armed Conflicts: How Can They Be Better Safeguarded?", *Merkourios* 2013, vol. 29 (76), 7, available from <http://www.merkourios.org/index.php/mj/article/viewFile/55/60>.

enables the national and international growth of a more global, educated and mature society. War journalists fulfil the important function of ‘watch dogs’ in armed conflict.

By preventing one single journalist to broadcast his/her recordings and testimonies to the public a much larger audience is prevented from being informed. Access to information by its citizens ensures a state to move towards transparency, informed citizenship and democracy. Attacking journalists is a guarantee to successfully curtail the access of its citizens to information and create more uncertainty and insecurity, which may result in having more control over the population. Also other people of foreign countries might be affected by such measures, because they remain in oblivion. The right to freedom of expression is so important for society that Frank La Rue, the United Nations Special Rapporteur on the protection and the promotion of the right to freedom of opinion and expression, speaks of a collective human right.² Additionally, Christof Heyns, the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, considers the right to freedom of expression to be a meta-right, on which many other human rights depend.³

Title 3. The ever increasing vulnerability of war journalists

Each victim of armed conflict is one too many. If this victim is a war journalist, lots of other victims of armed conflict might go unnoticed. In such a case, the primarily victim is the war journalist, but beyond that also public awareness, press freedom and democracy are crippled. The safety of war journalists, therefore, affects us all. Despite many efforts on many levels the number of media casualties keeps increasing.⁴ Why are war journalists so vulnerable?

War journalists are spectators objectively trying to report on a conflict. They put their lives at risk being around areas of highly concentrated violence, because that is the place to get the best story or all the facts. By definition, war journalists often find themselves in life-threatening situations. It is an extremely dangerous profession, because war journalists have to be at the frontline to get the news they need. In such circumstances no safety measures can ensure full protection at all times.

Albeit the inherent insecurity that comes with the job, war journalists should receive satisfactory protection. War journalists are not taking part in the hostilities. They are civilians, who happen to have the professional duty to report on the facts of the hostilities. While journalists are clearly no combatants, they still often face the same risks as combatants because of two main reasons.

- 1) War journalists sometimes accompany the armed forces in combat to get a closer view of the hostilities. It can be necessary or useful, for example, to go embedded with an army in areas where civilians otherwise have no access. War journalists, however, remain civilians even if they are accompanying the military troops and even if they are wearing a military uniform. In such situations it might, however, become difficult for the enemy to make the necessary division between combatants and civilians when they attack military troops.

² Paragraphs 39 and 105 of the Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue (20 April 2010), *UN Doc. A/HRC/14/23* (2010).

³ Paragraph 23 of the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns (10 April 2012), *UN Doc. A/HRC/20/22* (2012).

⁴ I. DÜSTERHÖFT, “The Protection of Journalists in Armed Conflicts: How Can They Be Better Safeguarded?”, *Merkourios* 2013, vol. 29 (76), 4, available from <http://www.merkourios.org/index.php/mj/article/viewFile/55/60>.

- 2) While the first reason for physical insecurity is based on accidental or inevitable injury, the second reason is based on deliberate actions. More and more often, war journalists become the specific object of military or non-state attacks. The targeting of journalists can be aimed at keeping events hidden from the enemy or the world, at merely silencing the nosy and noisy media or at frightening whoever will listen. A clear result is that it becomes dangerous to start shouting “*I am a journalist*” on the battlefield.

Statistics about war journalists being captured, tortured or murdered, demonstrate the deficiency of the currently available protection of war journalists in Chapter 2 – Problems and danger war journalists encounter. Scrutiny will have to show which measures can meet the somehow discordant demands of physical safety on the one hand and discrete presence on the other hand. Whereas both demands are valuable and enabling factors for the war journalism profession, the balance between them is not obvious. There is, however, a pressing need for improvement.

Title 4. The conceptual framework, research methods and delimitations of this research

Section 1. The conceptual framework

1. ‘War journalists’

Because there are no legally binding definitions available that can be assumed to be in usage worldwide, we have to look at the most adequate description of the term in other sources. A possible definition can be found in Article 2, (a) of the Draft Articles of an International Convention for the Protection of Journalists Engaged in Dangerous Missions in Areas of Armed Conflict: “*The word ‘journalist’ shall mean any correspondent, reporter, photographer, and their technical film, radio and television assistants who are ordinarily engaged in any of these activities as their principal occupation and who, in countries where such activities are assigned their particular status by virtue of laws, regulations or, in default thereof, recognized practices, have that status (by virtue of the said laws, regulations or practices).*”⁵⁶

In most legal and other frameworks the term ‘journalist’ will have a similar meaning as the description above. In this master thesis as well the term is used very broadly. The word ‘journalist’ will be interpreted to include both photojournalism and written journalism, both international and national journalism, both independent and embedded journalism, and both reporters and other media workers.

In Chapter 2 – Problems and danger war journalists face, most statistics will give a very limited interpretation to the term ‘journalist’. Most sources will discuss media workers, such as assisting technical personnel, as a separate group of victims to indicate more precisely the seriousness of the problem for the actual reporters.

Those media workers, who go to areas of armed conflict with the aim of exercising their profession, will be called ‘war journalists’ in this master thesis unless explicitly mentioned

⁵ Human Rights in Armed Conflict: Protection of Journalists Engaged in Dangerous Missions in Areas of Armed Conflict, Annex I (1 August 1975), *UN Doc. A/10147* (1975).

⁶ The Union of Soviet Socialist Republics submitted an amendment to Article 2 of the Draft articles proposed by Australia, Austria, Denmark, Ecuador, Finland, France, Iran, Lebanon, Morocco and Turkey, because it wanted the words “*or press technician*” removed. Human Rights in Armed Conflict: Protection of Journalists Engaged in Dangerous Missions in Areas of Armed Conflict, Annex II (1 August 1975), *UN Doc. A/10147* (1975).

otherwise. Their protection will be the topic of this master thesis. The media personnel employed by the military will not be included in the term ‘war journalist’. What makes these journalists different is that they are considered combatants, because of their direct participation in the armed conflict. The deaths of combatants are, although regrettable, lawful according to international humanitarian law as opposed to most deaths of civilians. This will be further explained in Chapter 3 – Legal framework to protect war journalists.

2. ‘Armed conflict’

Some explanation on how the term ‘armed conflict’ will be used in this master thesis is advised. War journalists are not only vulnerable or possibly targeted in explicit war situations. Situations of internal conflict, such as an uprising against the government, can create equally dangerous situations and more isolated acts of violence can as well. The areas, in which war journalists could be in danger, are very diverse, broad and difficult to define.

It is important to understand to what extent the war journalist is protected. Journalists are to be protected all over the world to ensure that the human right to freedom of expression and to information is guaranteed. This master thesis, however, will focus on the protection of war journalists, journalists in armed conflict, only. The definition of an ‘armed conflict’ will define who is considered a war journalist.

2.1. ‘Armed conflict’ in the international legal framework

2.1.1. International human rights law

In the international human rights context, the term ‘armed conflict’ is not often used. The term also does not have a defined meaning. To understand what kind of protection journalists have under international human rights law it is not relevant to determine the existence of some sort of armed conflict, because human rights are awarded to all human beings regardless of the circumstances. They install basic rights applicable at all times. War journalists, thus, enjoy their human rights regardless the possible existence of an armed conflict.

The international community did create some exceptions in this regard and has inserted the possibility to limit the scope of certain human rights in certain circumstances. Although the provisions relevant to the protection of war journalists do not involve an exception related to the situation of an armed conflict, there are some exceptions that do affect their protection. Examples are the exceptions of national security or public order, which will be further discussed in Chapter 3 – Legal framework to protect war journalists.

2.1.2. International humanitarian law

When discussing the legal framework of international humanitarian law, the interpretation of ‘armed conflict’ will define the scope of applicability of international humanitarian law. Today, the term is no longer limited to situations of ‘war’, which will be explained below.

The following treaties indicate the existence of two categories of armed conflict, namely an international versus a non-international armed conflict: the Geneva Convention for the amelioration of the condition of the wounded and sick in armed forces in the field of 12 August 1949, the Geneva Convention for the amelioration of the condition of the wounded, sick and shipwrecked members of armed forces at sea of 12 August 1949, the Geneva Convention relative to the protection of civilian persons in time of war of 12 August 1949, the Geneva Convention relative to the protection of civilian persons in time of war of 12 August 1949, the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I) of 8 June 1977 and the

Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the protection of victims of non-international armed conflicts (Protocol II) of 8 June 1977.⁷

2.1.2.1. Definitions

2.1.2.1.1. 'International armed conflict'

All four Geneva Conventions and Additional Protocol I to the Geneva Conventions indicate that their application is limited to international armed conflicts.⁸ Common Article 2 of the Geneva Conventions states that international humanitarian law is applicable to situations of declared war on the one hand and situations of armed conflict between two or more states on the other hand.

The following phrasing of the International Committee of the Red Cross describes how broad this should be understood: “*Any difference arising between two States and leading to the intervention of members of the armed forces is an armed conflict.*”⁹ The existence of an ‘armed conflict’ does not depend on a formal declaration of war anymore.¹⁰ Because of this, the term is to be interpreted much broader than before.

It is, however, unclear if any intervention or any problem between states, in which armed violence is involved, suffices for making international humanitarian law applicable. There are two views on the necessary intensity of the armed intervention.¹¹ A first theory is called the ‘first-shot theory’ and implies that every single event, which involves armed force by a state, leads to the application of international humanitarian law. According to this view, all border

⁷ There are four Geneva Conventions. The First and the Second Geneva Convention deal with the status of members of the armed forces. This category, which may include media personnel employed by the armed forces, is not the topic of this master thesis. Only the Third and the Fourth Geneva Convention are of importance to war journalists.

- Geneva Convention for the amelioration of the condition of the wounded and sick in armed forces in the field of 12 August 1949, *United Nations Treaty Series*, vol. 75, 31, hereafter the First Geneva Convention.
- Geneva Convention for the amelioration of the condition of the wounded, sick and shipwrecked members of armed forces at sea of 12 August 1949, *United Nations Treaty Series*, vol. 75, 85, hereafter the Second Geneva Convention.
- Geneva Convention relative to the protection of civilian persons in time of war of 12 August 1949, *United Nations Treaty Series*, vol. 75, 135, hereafter the Third Geneva Convention.
- Geneva Convention relative to the protection of civilian persons in time of war of 12 August 1949, *United Nations Treaty Series*, vol. 75, 287, hereafter the Fourth Geneva Convention.

The two Additional Protocols of importance to war journalists are:

- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I) of 8 June 1977, *United Nations Treaty Series*, vol. 1125, 3, hereafter the Additional Protocol I to the Geneva Conventions.
- Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the protection of victims of non-international armed conflicts (Protocol II) of 8 June 1977, *United Nations Treaty Series*, vol. 1125, 609, hereafter the Additional Protocol II to the Geneva Conventions.

⁸ Common Article 2 of the Geneva Conventions.

⁹ D. FLECK (ed.), *The Handbook of International Humanitarian Law* (3rd ed.), New York City, NY, Oxford University Press Inc., 2013, p. 44.

¹⁰ D. FLECK (ed.), *The Handbook of International Humanitarian Law* (3rd ed.), New York City, NY, Oxford University Press Inc., 2013, p. 46-47.

¹¹ D. FLECK (ed.), *The Handbook of International Humanitarian Law* (3rd ed.), New York City, NY, Oxford University Press Inc., 2013, p. 44-45.

clashes, singular abduction cases, military strikes, etc. will induce a large numbers of rules theoretically controlling the armed actions. Following a second theory only armed violence of certain intensity renders international humanitarian law applicable. The difference between both theories is important and according to the Handbook of International Humanitarian Law, edited by Dieter Fleck, the legal gap and uncertainty that would rise in the case of a border clash if one would opt for the second theory is not desirable.¹² Nevertheless, there is no definition of armed conflict available and the necessity of a ‘threshold of intensity’ remains disputed.¹³

2.1.2.1.2. ‘Non-international or national armed conflict’

In Common Article 3 of the Geneva Conventions, as well as in Additional Protocol II to the Geneva Conventions another category besides the international armed conflict is mentioned. A ‘non-international armed conflict’ or a ‘national armed conflict’ is described by Christopher Greenwood as: “*A confrontation between the existing governmental authority and groups of persons subordinate to this authority or between different groups none of which acts on behalf of the government, which is carried out by force of arms within national territory and reaches the magnitude of an armed confrontation or a civil war.*”¹⁴ This definition indicates that the factual seriousness of each specific case is to be measured. A certain magnitude of violence has to be reached, before the conflict can be seen as a non-international armed conflict. The definition also indicates that many possible fighting parties are included.

The determination whether certain violent situations are considered a national armed conflict, is dependent on two factors. A first factor is the intensity of the fighting and a second factor is the level of organization of the fighting parties.¹⁵ Based mainly on the jurisprudence before the International Criminal Tribunal for the former Yugoslavia, the International Committee of the Red Cross has defined those two elements as follows:¹⁶

- 1) The necessary ‘intensity of the fighting’ to qualify as an armed conflict is met when there is a collective support for the fighting or when the state has to deploy the military instead of mere law enforcement.
- 2) The ‘level of organization of the fighting parties’ in the case of non-state armed groups requires that they are under a command structure and are able to conduct military operations.

It is important to note that Additional Protocol II to the Geneva Conventions is stricter regarding the scope of application. This protocol does not apply to fighting between non-state

¹² D. FLECK (ed.), *The Handbook of International Humanitarian Law* (3rd ed.), New York City, NY, Oxford University Press Inc., 2013, p. 45.

¹³ Office of the High Commissioner for Human Rights, *International legal protection of human rights in armed conflict*, New York and Geneva, United Nations, 2011, p. 34-35, available from http://www.ohchr.org/Documents/Publications/HR_in_armed_conflict.pdf.

¹⁴ D. FLECK (ed.), *The Handbook of International Humanitarian Law* (2nd ed.), New York City, NY, Oxford University Press Inc., 2008, p. 54.

¹⁵ D. FLECK (ed.), *The Handbook of International Humanitarian Law* (3rd ed.), New York City, NY, Oxford University Press Inc., 2013, p. 49-50.

¹⁶ International Committee of the Red Cross, *How is the Term "Armed Conflict" Defined in International Humanitarian Law?*, International Committee for the Red Cross, 2008, p. 3, available from <http://www.icrc.org/eng/assets/files/other/opinion-paper-armed-conflict.pdf> and Office of the High Commissioner for Human Rights, *International legal protection of human rights in armed conflict*, New York and Geneva, United Nations, 2011, p. 38, available from http://www.ohchr.org/Documents/Publications/HR_in_armed_conflict.pdf.

armed groups only and has more demands for non-state armed groups to be seen as a party to the conflict, such as control over territory.¹⁷

2.1.2.2. Distinction between international and national armed conflict

Both terms result in a factual determination whether or not international humanitarian law will apply and are subjected to changes and interpretations. This fluctuating nature of the term is necessary because of the variety of forms, in which armed conflicts manifest themselves, and because of the rapidly shifting global relations.

The distinction between an international and a non-international armed conflict is important, because the status of a war journalist is different in an international versus a non-international armed conflict. This will be extensively discussed in Chapter 3 – Legal framework to protect war journalists.

The Office of the High Commissioner for Human Rights, hereafter the OHCHR, mentions two reasons why the distinction remains important. A first reason is that some rules cannot be applied to a non-international armed conflict. For example, the OHCHR states that it is “*uncontroversial that combatant immunity against prosecution for acts of hostility not prohibited by international humanitarian law (a central feature of prisoner-of-war status in international armed conflicts) [...] cannot be applied by analogy to non-international armed conflicts.*”¹⁸ Another reason the OHCHR gives, is that if the combatants in a non-international armed conflict have to abide by the more stringent rules of the legal framework for international armed conflicts, this will not always be attainable in the case of non-state armed groups.¹⁹

2.2. Relevance of the term ‘armed conflict’ to this master thesis

In this master thesis, the term of ‘armed conflict’ will serve as a method of distinction between the casualties that take place during international and non-international armed conflicts and casualties that occur during peaceful protests, riots, accidents, etc. It will demarcate the application of international humanitarian law, in which journalists have received special attention. Journalists are, however, often in danger beyond official conflict areas and targeting journalists has become a phenomenon related to all sorts of crimes.²⁰

The protected status of journalists in international law is, therefore, not limited to situations of armed conflict. International human rights law is not dependent on the legal status of the conflict and those rules will protect journalists at all times. Also, journalism

¹⁷ Article 1, paragraph 1 of the Additional Protocol II to the Geneva Conventions, International Committee of the Red Cross, *How is the Term "Armed Conflict" Defined in International Humanitarian Law?*, International Committee of the Red Cross, 2008, p. 4, available from <http://www.icrc.org/eng/assets/files/other/opinion-paper-armed-conflict.pdf> and Office of the High Commissioner for Human Rights, *International legal protection of human rights in armed conflict*, New York and Geneva, United Nations, 2011, p. 38, available from http://www.ohchr.org/Documents/Publications/HR_in_armed_conflict.pdf.

¹⁸ Office of the High Commissioner for Human Rights, *International legal protection of human rights in armed conflict*, New York and Geneva, United Nations, 2011, p. 41, available from http://www.ohchr.org/Documents/Publications/HR_in_armed_conflict.pdf.

¹⁹ Office of the High Commissioner for Human Rights, *International legal protection of human rights in armed conflict*, New York and Geneva, United Nations, 2011, p. 41, available from http://www.ohchr.org/Documents/Publications/HR_in_armed_conflict.pdf.

²⁰ J.M. LISOSKY and J.R. HENRICHSEN, *War on Words: Who Should Protect Journalists?*, Santa Barbara, CA, ABC-CLIO, 2011, p. 157-158.

organizations that provide practical assistance to journalists, do not distinguish between war journalists and other journalists in dangerous situations.

It is important to note that the protection of journalists outside armed conflict will require a different approach than the protection of war journalists. During armed conflict war journalists risk more than other journalists to be accidentally hurt in the crossfire or to be inconspicuously targeted or targeted faster in the process. Nevertheless, journalists targeted or accidentally killed in other dangerous situations are of equal importance to the realization of the right to freedom of expression and the right to information. The protection of all journalists is important and as stated by Joanne Lisosky and Jennifer Henrichsen: “*targeting of journalists anywhere [is] a threat to journalism everywhere.*”²¹

In this master thesis, only the protection of war journalists, namely journalists operating in armed conflict, will be discussed. Briefly the protection of other journalists will be touched upon when discussing international human rights law in Chapter 3 – Legal framework to protect war journalists.

3. ‘Safety’

Journalists need protection against any kind of oppression. The provided protection should ensure physical safety, but also safety from intimidation without any actual physical harm. Physical safety implies that journalists must not be intimidated, arbitrarily detained, kidnapped, tortured and murdered. This is not an exhaustive list, because any attack against their person is prohibited under international law. Journalists’ safety also includes protection from any other means to deter journalists from further exercising their profession in the conflict area or elsewhere. An example would be threatening the journalist or his/her family with physical harm.

War journalists should be given protection irrespectively of the origin of the violence committed against them. It is irrelevant whether war journalists need to be protected against attacks from armed groups, the state or individuals, because they have the right to be kept safe from all harm. All perpetrators should be held accountable.

Section 2. Research methods

Research will be based on applicable international and regional law, ‘soft law’, such as recommendations and declarations, administration of justice, legal doctrine, websites of journalism organizations, databases on casualties, a conference on the status of war journalists during military operations and interviews with war journalists. Using these all-round possibilities of research, I will try to draw a comprehensive picture of all the protection created for war journalists and of how the effectiveness of the protection is perceived from several points of view.

Section 3. Delimitations

1. National versus international war journalists

The focus in this master thesis will be on international rules, customs and practice. It would be beyond the possible reach of this master thesis to list all nationally available legal provisions for the safety of war journalists, because nearly all states have created their own views on media, human rights and protection. This master thesis wants to give a comprehensive view on the problem and does not want to limit itself to national

²¹ J.M. LISOSKY and J.R. HENRICHSEN, *War on Words: Who Should Protect Journalists?*, Santa Barbara, CA, ABC-CLIO, 2011, p. 159.

implementation methods. In Chapter 3 – Legal framework to protect war journalists, however, national trends will be discussed in order to give a general overview of possibilities of positive and negative national implementation.

Nevertheless, it needs mentioning that international human rights and humanitarian law protect war journalists working in their own country – for example, local journalists who report on an uprising – in the same way as international war journalists, if their state has signed the relevant treaties.

The national journalists are often a more vulnerable group, because targeting nationals usually provokes less international outrage than international victims do. This will be clarified when statistics are being discussed in Chapter 2 – Problems and danger war journalists encounter.

2. The ‘citizen journalist’

The ‘citizen journalist’ belongs to a category of news providers who do not have the actual profession of a journalist, but collect and disperse information on their own initiative. It is often unclear who is and who is not a professional journalist, but most journalists will obtain an identity card or press card, of which the necessity is explained in Chapter 3 – Legal framework to protect war journalists.²² There is no special protection for this, yet vulnerable, group of people. They have the same rights as regular civilians, which in many occasions will even be the same protection official journalists receive.

There is an on-going debate whether there should be a different approach to protecting the two different categories and whether or not these citizen journalists should be separately protected at all. This debate, however, goes beyond the possible reach of this master thesis. The fate of the citizen journalist will only be instantly addressed when discussing the total of affected journalists in Chapter 2 – Problems and danger war journalists encounter.

3. Journalist’s access to a state

The state is the sole decision-maker who determines who is allowed to pass its borders. This discretionary power is completely governed by the sovereignty of the state and is not subject to international law. The states have the sovereign right to create laws that accept or

²² Having a press card is not always sufficient for averting danger. This problem is closely connected to the Press Emblem Campaign, which attempts to convince the international community of the importance of adopting a press emblem as well as an international convention for the protection of journalists. www.presseblem.ch. The pros and cons of a press emblem were considered as well during the creation of Article 79 of the Additional Protocol I to the Geneva Conventions. In this discussion there was decided against the proposal, because a press emblem would endanger war journalists even more. J. DE PREUX, P. EBERLIN, H.-P. GASSER, S.-S. JUNOD, C. PILLOUD, C. WENGER, and B. ZIMMERMANN, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Dordrecht, ICRC/Martinus Nijhoff Publishers, 1987, p. 919.

Reporters Without Borders is against a press emblem, because of two other reasons. A first reason is that such a press emblem might lessen the value of the existing emblems. A second reason is that the already available legal framework provides sufficient legal protection. UNESCO, “Press freedom – safety of journalists and impunity”, 2007, p. 38, available from <http://unesdoc.unesco.org/images/0015/001567/156773e.pdf>.

This second reason is convincing to a lot of stakeholders who want the focus to be on a better implementation of the existing legal framework. Croix-Rouge Croissant-Rouge, “Protéger les témoins”, *Le Magazine du Mouvement International de la Croix-Rouge et du Croissant-Rouge* 2012 (2), 7.

refuse the entry of people on their territory. War journalists are not always a wanted spectator and are often denied entry.

Joanne Lisosky and Jennifer Henrichsen explain that journalists can be accepted to enter a country in several possible ways.²³ Dictatorial states and the media have known a difficult history of mistrust and this has led to many possibilities for a state to accept journalists within its borders, ranging from a virtual exclusion of reporting to granting all journalists visas. Through controlling the visa application process, a government can easily choose who they distribute visas to. The state can turn down applications from certain journalists if it believes them to be too critical of the regime or the internal situation or not good for the external image of the state. Journalists can also be admitted through a pool system.²⁴ This guarantees certain control over the amount of journalists that are present in the state, because only a certain amount of journalists are selected to enter the country and will afterwards report to the other news agencies. Also possible is that only ‘embedded’ reporters are allowed to enter.²⁵ This means journalists have to accompany armed forces in order to be allowed on the state’s territory. Journalists may be obliged to follow either foreign or domestic armed forces. The state will have less control over the former, but more over the latter. Only accepting journalists who travel with the state army, gives the state the possibility to show itself at its best. Embedded journalism has, however, often been criticised to compromise quality journalism.²⁶ There has been tension between two types of journalists: embedded journalists versus unilateral journalists, who travel independently.²⁷ Although embedded journalists have access to certain inside information, unilateral journalists will have the additional value of being able to cover both sides of the armed conflict. Unilateral journalists will, however, often not be desired visa applicants.

The states have a large margin of appreciation to choose from this variety of options. They are able to portray themselves as moderate and democratic by letting some journalists in, while they still have control over the media through the way in which they accept journalists to enter. Because of course the presence of some journalists is better than no journalists at all, these possibilities give a better chance at freedom of expression in the long run.

Whether or not states grant access to war journalists will only scarcely be dealt with in this master thesis when discussing the national negative trends in Chapter 3 – Legal framework to protect war journalists. The restrictive measures of accepting journalists are not always deemed acceptable by international law.

When journalists do not abide by these national laws and illegally enter a state, because they are not allowed to do so legally, they can be forbidden to work and reside in that state.²⁸ Because of this, journalists who illegally entered the state, will try to stay under the radar and avoid governmental attention. A journalist illegally entering a state might get evicted or penalized according to state regulations.

²³ J.M. LISOSKY and J.R. HENRICHSEN, *War on Words: Who Should Protect Journalists?*, Santa Barbara, CA, ABC-CLIO, 2011, p. 41-42.

²⁴ J.M. LISOSKY and J.R. HENRICHSEN, *War on Words: Who Should Protect Journalists?*, Santa Barbara, CA, ABC-CLIO, 2011, p. 24.

²⁵ J.M. LISOSKY and J.R. HENRICHSEN, *War on Words: Who Should Protect Journalists?*, Santa Barbara, CA, ABC-CLIO, 2011, p. 12.

²⁶ J.M. LISOSKY and J.R. HENRICHSEN, *War on Words: Who Should Protect Journalists?*, Santa Barbara, CA, ABC-CLIO, 2011, p. 44-45.

²⁷ J. SYLVESTER and S. HUFFMAN, *Reporting from the Front – The Media and the Military*, Lanham, MD, Rowman & Littlefield Publishers, Inc., 2005, p. 212-213.

²⁸ J.-M. HENCKAERTS and L. DOSWARLD-BECK, *Customary International Humanitarian Law* (Vol. 1), Cambridge, Cambridge University Press, 2005, p. 117.

Chapter 2 – PROBLEMS AND DANGER WAR JOURNALISTS ENCOUNTER

Title 1. Types of problems war journalists encounter

War journalists face two different kinds of danger: deliberate attacks against them because of their profession and violent circumstances in general, which accompany the areas they report on.

Section 1. Deliberate targeting

There are the obvious problems of deliberate targeting, which have the aim of discouraging war journalists to exercise their profession. War journalists are not always a wanted spectator and often have to deal with threats against themselves or their relatives or with actual attacks.²⁹ These targeted attacks come in different shapes, such as targeted killings, arbitrary detention or kidnapping, governmental prosecutions based on rigorous laws on the media or anti-terrorism laws, etc.³⁰ Also, journalists' possessions, such as filmed material and cameras, may also be confiscated or destroyed as a measure of control or frightfulness.

Additionally, some consequential problems war journalists encounter, are not given enough attention. An example of these problems is the large number of journalists who are forced to flee or go into hiding. This might be a bigger problem for local journalists, because foreign war journalists are able to return to their country after their task to report on an armed conflict is done.³¹

Another consequential problem is the psychological aftermath of being deliberately targeted.³² After leaving the armed conflict zone, a follow-up for war journalists, both when they have been the object of attack and when they have not, is necessary. It is important to prevent permanent psychological damage and to give the journalist the opportunity to continue to exercise his/her profession.

Journalists covering, for example, the mob or organized crime, sometimes end up being targeted as well. The specific problems that war journalists encounter compared to journalist covering such general crime issues, are caused by the fact that armed conflict in se is related to violence. With general crimes violence is one way of securing the goal of the crime, but with armed conflict situations violence is the predominant way. The chances of being targeted are, therefore, much higher.

²⁹ E. RUBIN, *Roots of Impunity: Pakistan's Endangered Press and the Perilous Web of Militancy, Security, and Politics*, Committee to Protect Journalists, 2013, p. 28-37, available from <http://cpj.org/reports/2013/05/pakistan-roots-impunity.php>.

³⁰ International News Safety Institute, *Journalism Safety: Threats to Media Workers and Measures to Protect Them*, INSI, 2014, p. 15, available from <http://www.newssafety.org/latest/news/insi-news/detail/insi-publishes-good-practice-safety-guide-for-journalists-and-media-workers-1354/>.

³¹ National Union of Somali Journalists, *Impunity: War on Somali's Journalists*, NUSOJ, 2012, p. 14, available from <https://en.rsf.org/somalia-impunity-war-on-somalia-s-23-11-2012,43711.html>.

³² W. COTÉ and R. SIMPSON, *Covering Violence – A Guide to Ethical Reporting about Victims & Trauma*, New York, Columbia University Press, 2000, p. 42-55.

Section 2. General violence in armed conflict zones

The general violence war journalists face in areas of armed conflict, is very obvious and diverse. Under ‘general violence’ this master thesis understands all possible dangers that manifest themselves and all violent outcomes that take place following the existence of violence or armed conflict, but which are not related to the professional activity of the journalist.

Examples are lost bullets or random explosions when war journalists are caught in the crossfire. Of course war journalists do their best to avoid being hit or becoming a war casualty, but not all accidents can be prevented. It is their task to get as close as possible to the fighting, which often means they find themselves very close to the combatants and in the middle of the battlefield.

Sometimes foreigners will be the victims of the fighting, because they might be targeted to get attention from or to provoke the international community. In that case the decisive factor is the nationality and the journalistic profession may not have been the (primary) trigger.

Title 2. Introduction to the numbers

Statistics always have to be treated with caution. Whereas this master thesis only discusses a specific category of journalists, namely war journalists, the numbers provided by journalism organizations will not perfectly represent this specific problem. Most numbers deal with the journalists in general. Nevertheless, they can certainly indicate how persistent the problem is – and how urgent a solution needs to be found – for this vulnerable profession.

Section 1. Journalists affected: who/where/by who?

1. Numbers and their evolution throughout the years

1.1. Journalists who have been killed

The Committee to Protect Journalists has collected data on all the journalists who have been killed since 1992.³³ Since 1992 1054 journalists have been killed according to their statistics.³⁴ This means that about one journalist has been killed every single week during a period of more than twenty years.³⁵ They use a rather broad definition, which includes bloggers and citizen journalists, but only killings, of which the Committee to Protect Journalists is reasonably sure that they occurred in a direct reprisal of the journalist’s profession, in the crossfire or during a dangerous assignment, are included in this number.³⁶ An additional 410 journalists have been killed since 1992, but with an unclear motive. Since 2003 the Committee to Protect Journalists has begun to keep track of media support workers as well. This category consists of translators, drivers, guards, fixers and administrative

³³ The overview of all the numbers and statistics can be found at <http://cpj.org/killed/>.

³⁴ It would be interesting to compare the number of journalists covering armed conflict with this large number of killed journalists, because war journalism is an important, yet not overpopulated, profession. The ratio could be quite shocking and serve as an additional incentive for action.

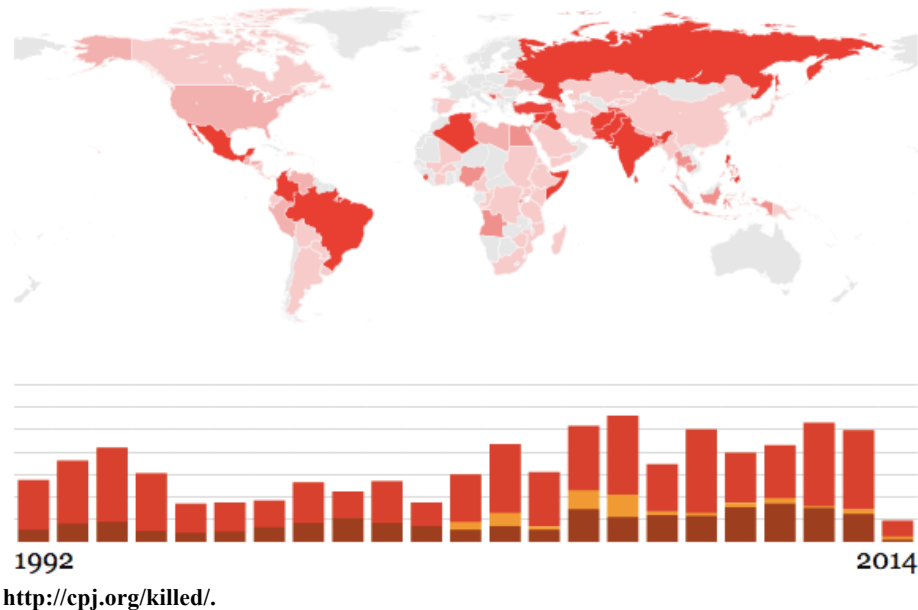
³⁵ Committee to Protect Journalists, “News from the Committee to Protect Journalists, December 2013”, available from <https://cpj.org/2013/12/cpj-impact-53.php>.

³⁶ The number 1054 only includes the killings of which the motive was ‘confirmed’. Committee to Protect Journalists, “Terminology”, available from <https://cpj.org/killed/terminology.php>.

workers.³⁷ This is also a vulnerable group and the Committee to Protect Journalists has tracked 83 media support workers being killed since 2003.³⁸

In the last decade there has been a significant increase in casualties.³⁹ This is a worrying trend visible at the bottom of Graphic 1. This graphic also shows a map that indicates where casualties have occurred since 1992. The countries in the darkest colour have known the most casualties. From its research the Committee to Protect Journalists has concluded that Iraq has known foremost the most killed journalists and that the Philippines, Syria, Algeria, Russia, Pakistan and Somalia are the closest followers.⁴⁰

Graphic 1: Journalists killed worldwide since 1992



³⁷ Committee to Protect Journalists, “Terminology”, available from <https://cpj.org/killed/terminology.php>.

³⁸ Reporters Without Borders has counted 94 media assistants being killed since 2003. This category of media support workers is in other databases often included in the total of media casualties.

³⁹ Descending from 2013 to 2003 the numbers of killed journalists – excluding those of which the motive was not confirmed – are 70, 74, 47, 44, 74, 42, 70, 57, 48, 61 and 42 according to the Committee to Protect Journalists. These numbers are the lowest, compared to the ones below, which is probably related to the fact that the Committee to Protect Journalists only includes casualties of which the motive was confirmed.

Other statistics about the last years:

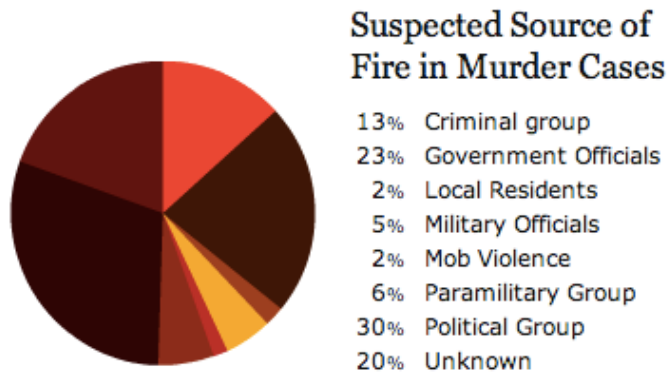
- The numbers that Reporters Without Borders has collected, confirm a similar increasing trend: 76, 88, 67, 58, 75, 60, 87, 84, 64, 63 and 43. Media support workers and citizen journalists are not included in these numbers. <http://en.rsf.org/press-freedom-barometer-journalists-killed.html?annee=2013>.
- The International Press Institute also has created a media death watch since 1997 and in the last decennia they have counted the following journalists and media staff casualties: 120, 133, 102, 101, 110, 66, 94, 100, 65, 78, 64. <http://ipi.freemedia.at/death-watch.html>.
- Also, the International News Safety Institute keeps track of the media casualties and they have recorded 110 casualties in 2013, 172 in 2012 and 124 in 2011. In these numbers media staff and citizen journalists are included. <http://www.newssafety.org/casualties/>.
- Lastly, the International Federation of Journalists reports 123 media casualties in 2013. <http://ifj-safety.org/en/2013/killings/killed>.

⁴⁰ <http://www.cpj.org/killed/>.

The Committee to Protect Journalists has collected the following statistics about the killed journalists since 1992:⁴¹

- In 67 per cent of the killings, the direct cause was the journalistic profession. Both premeditated and spontaneous actions are included in this percentage. In the last years there was a slow decrease of this direct casualty group compared to the casualties that occurred during crossfire and dangerous assignments. Nevertheless, in 2013 still 44 per cent of the victims were murdered and the total of media casualties is still increasing. The declining practice of targeting journalists compared to more accidents happening, is not a very promising evolution when taking into account the rising number of overall casualties.
- In Graphic 2 the suspected sources of fire are listed. A significant amount of the attacks, 28 per cent, originates from governmental and military officials. The other sources are not directly controlled by the state. Examples are political groups, criminal groups and mob violence.

Graphic 2: Suspected source of fire in murder cases



<http://cpj.org/killed/>.

- Most killed journalists are local journalists. Only 12 per cent of the killed journalists are foreign journalists. In the media coverage, however, the killing of foreign journalists receives a lot more attention and ignites international outrage. If the focus is on the journalists who have been targeted, the percentage of foreign journalists even goes as low as 6 per cent. Foreign journalists have a much higher chance of being an accidental casualty than being a calculated casualty. Of the accidents that happen in crossfire foreign journalists constitute nearly a third of the casualties.⁴² This means that foreign journalists are still less in danger of getting murdered than local journalists. The dangers local journalists face and their added value and complimentary role in war reporting, are often underappreciated.⁴³ It is important to stand still at the remark of Richard Sambrook that foreign war journalists might become less necessary to cover armed conflicts, because of the growing confidence of local journalists.⁴⁴ Encouraged to practice war journalism, local journalists have

⁴¹ <http://www.cpj.org/killed/>.

⁴² <http://cpj.org/killed/in-combat.php>.

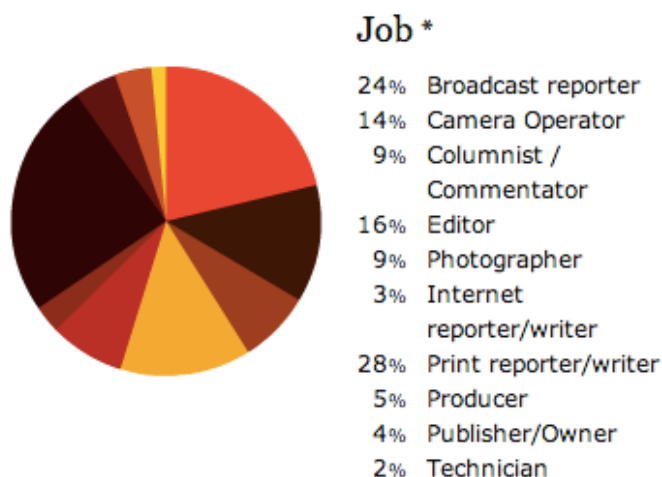
⁴³ Paragraphs 34 and 102 of the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns (10 April 2012), *UN Doc. A/HRC/20/22* (2012).

⁴⁴ R. SAMBROOK, *Are Foreign Correspondents Redundant? The Changing Face of International News*, Oxford, Reuters Institute for the Study of Journalism, 2010, p. 98, available from https://reutersinstitute.politics.ox.ac.uk/fileadmin/documents/Publications/Challenges/Are_Foreign_Correspondents_Redundant.pdf.

become a bigger target. Whereas international human rights and humanitarian law protect both the local and the foreign war journalist, the local war journalist has proven more vulnerable.

- There is a lot of variety in the types of work the victims performed. As can be seen in Graphic 3 no group is spared, but the main groups affected are the print reporters (28 per cent), the broadcast reporters (24 per cent), the editors (16 per cent) and the camera operators (14 per cent). The United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, highlights the worrying trend of more photojournalists being targeted.⁴⁵

Graphic 3: Job of killed journalists



<http://cpj.org/killed/>.

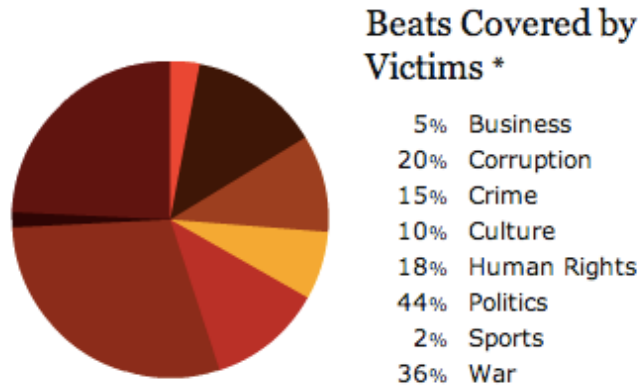
* Adds up to 114% because more than one category applies in some cases.

- The topics, which the killed journalists covered, also vary a lot. From Graphic 4 we can conclude that the two main topics are politics (44 per cent) and war (36 per cent). Corruption (20 per cent) and human rights (18 per cent) are also a large proportion of the dangerous subject areas. If we merely look at the journalists who have been targeted, the percentage of journalists who were covering war is much lower (24 per cent).⁴⁶ This proves that war journalists encounter a lot more danger than other types of journalists, but not because they are more targeted compared to other crimes. The danger is due more to the generally dangerous environment of armed conflict.

⁴⁵ Paragraph 35 of the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns (10 April 2012), *UN Doc. A/HRC/20/22* (2012).

⁴⁶ <http://cpj.org/killed/murdered.php>.

Graphic 4: Beats covered by victims



<http://cpj.org/killed/>.

* Adds up to 150% because more than one category applies in some cases.

- 38 per cent of the journalists who were killed since 1992, received threats beforehand according to the casualty database of the Committee to Protect Journalists. In 2011 even 70 per cent of the journalists had received threats and in 2012 and 2013 respectively 43 and 55 per cent did.⁴⁷
- The low percentage of female journalists being killed, namely 7 per cent, proves that women are not excluded from danger. Women also often face additional dangers, such as sexual violence.⁴⁸

An analysis of media casualties by the Cardiff School of Journalism provides statistics to the International News Safety Institute about the 134 journalists that were killed in 2013.⁴⁹

- The number of media casualties is fluctuating and often dependent on the number of ongoing armed conflicts. Roughly 50 per cent of the casualties occurred during an armed conflict.⁵⁰ In Graphic 5 we can see how the two casualties in international armed conflicts compare to the 63 casualties in national armed conflicts on the one hand and the 69 casualties in peacetime on the other hand.

⁴⁷ Committee to Protect Journalists, “Risks Shift as Coverage of Political Unrest Proves Deadly”, available from <http://www.cpj.org/2012/02/attacks-on-the-press-in-2011-journalists-killed-an.php>.

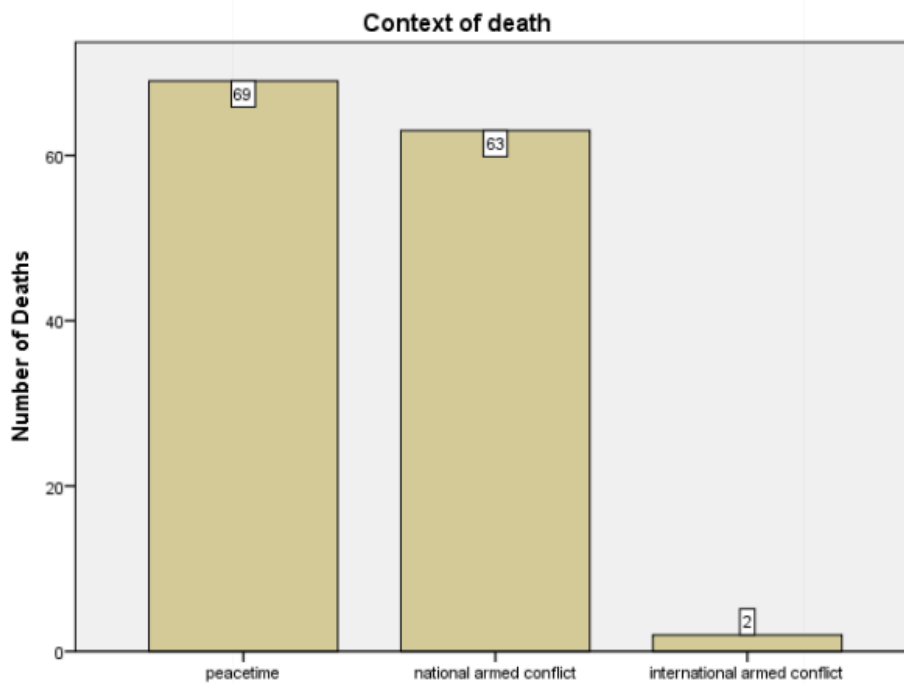
⁴⁸ Paragraphs 48 and 94 of the Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue (4 June 2012), UN Doc. A/HRC/20/17 (2012).

⁴⁹ Cardiff School of Journalism, *Killing The Messenger – 2013*, available from http://www.newssafety.org/uploads/KTM2013_Final%203.pdf.

⁵⁰ This percentage of Reporters Without Borders does not correspond with the percentage of 34 per cent of killed journalists covering armed conflict. It is likely that the exact number is somewhere in between both percentages.

Graphic 5: Context of death of journalists killed in 2013

| Context of death | Number of deaths |
|------------------------------|------------------|
| peacetime | 69 |
| national armed conflict | 63 |
| international armed conflict | 2 |
| Total | 134 |

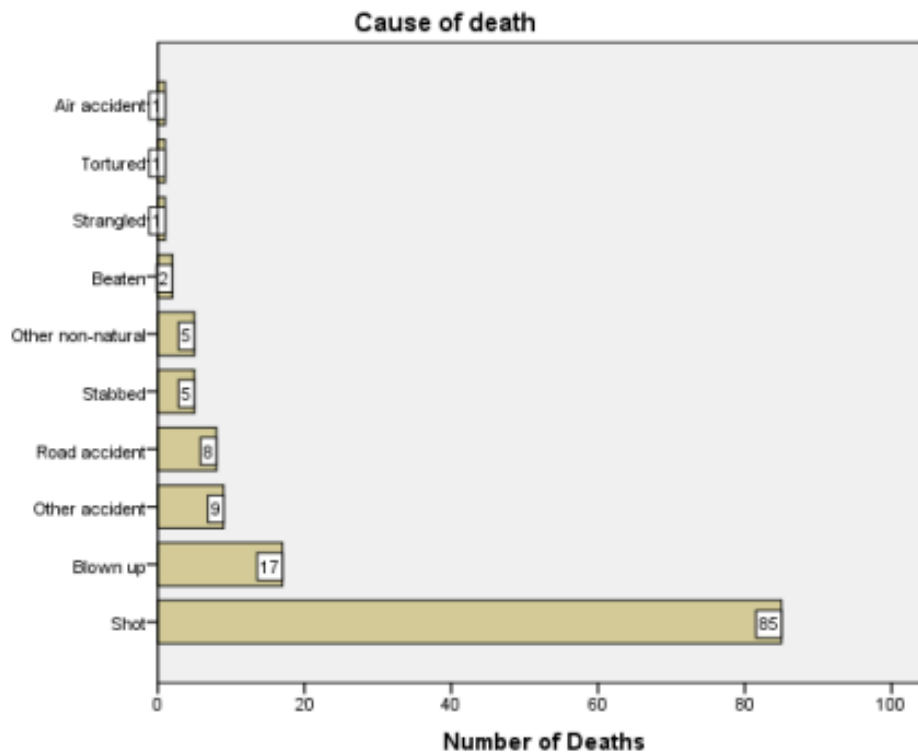


Cardiff School of Journalism, *Killing The Messenger – 2013*, available from http://www.newssafety.org/uploads/KTM2013_Final%203.pdf.

- The causes of death are illustrated in Graphic 6. 63 per cent of the journalists were shot and 13 per cent was blown up. Among the causes of death in the remaining 24 per cent are stabbing, torture and road accidents.

Graphic 6: Cause of death of journalists killed in 2013

| Cause of death | Number of deaths |
|--------------------------------|-------------------------|
| Shot | 85 |
| Blown up | 17 |
| Other accident ³ | 9 |
| Road accident | 8 |
| Stabbed | 5 |
| Other non-natural ⁴ | 5 |
| Beaten | 2 |
| Strangled | 1 |
| Tortured | 1 |
| Air accident | 1 |
| Total | 134 |



³ This includes one boat accident; one construction site accident; one struck by a train; one killed by an elephant. Natural disasters are also included in this category (one killed in an avalanche and four killed by Typhoon Haiyan in the Philippines).

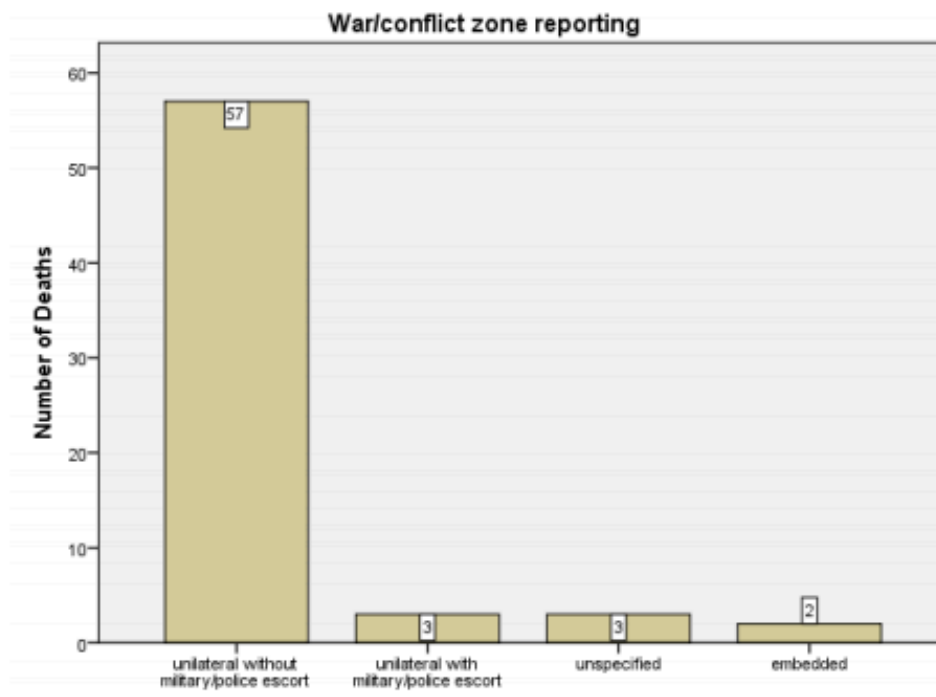
⁴ All cases of violent death where the bodies were found subsequently.

Cardiff School of Journalism, *Killing The Messenger – 2013*, available from http://www.newssafety.org/uploads/KTM2013_Final%203.pdf.

- 65 of the 134 casualties occurred during war or conflict zone reporting. 92 per cent of these casualties were unilateral reporters and only 3 per cent were embedded reporters. Graphic 7 shows that nearly all of the unilaterally operating media casualties were without military or police support when they were killed.

Graphic 7: Unilateral versus embedded journalists killed in conflict zones in 2013

| War/Conflict zone reporting | Number of deaths |
|---|------------------|
| Unilateral without military/police escort | 57 |
| Unilateral with military/police escort | 3 |
| Unspecified | 3 |
| Embedded | 2 |
| Total | 65 |



Cardiff School of Journalism, *Killing The Messenger – 2013*, available from http://www.newssafety.org/uploads/KTM2013_Final%203.pdf.

1.2. Other dangers that journalists encounter

The Committee to Protect Journalists also keeps track of imprisoned journalists. After the record high of 2012, when 232 journalists were held in prison, 2013 has known another high number of imprisonments of journalists.⁵¹ In 2013 the Committee to Protect Journalists has counted 211 journalists worldwide being held in prison.⁵² Detained journalists illustrate the larger picture of a problematic freedom of expression. They are the symptom of the root causes that lead to more violence against journalists – not only against war journalists. It is, however, likely that a segment of these imprisonments is related to situations of armed conflict, because 59 per cent of the imprisonments in 2013 were based on anti-state charges,

⁵¹ This includes both war journalists and journalists working outside armed conflict zones.

⁵² <http://cpj.org/imprisoned/2013.php>.

According to Reporters Without Borders there are 165 journalists in prison as well as 14 media assistants. <http://en.rsf.org/press-freedom-barometer-journalists-killed.html?annee=2014>.

such as counterterrorism, subversion or other national security reasons.⁵³ In 21 per cent of the imprisonments no charges were disclosed by the state.⁵⁴ Because war journalists are covering situations that are very likely to affect the national security of a state, it is a serious risk for war journalists to be facing states abusing their power to incarcerate. This national practice will be further discussed in Chapter 3 – Legal framework to protect war journalists.

A comparison of numbers made in 2011 by Reporters Without Borders shows that the numbers of journalists killed or imprisoned do not even take into account the vastness of the problem: in 2011 66 journalists were killed, 71 were abducted, 1044 were arrested and 1959 were assaulted or threatened.⁵⁵ Also the Committee to Protect Journalists keeps track of the missing journalists.⁵⁶

Also, there are journalists who have been forced to flee or go into hiding. The Committee to Protect Journalists has counted 456 journalists in exile since 2008.⁵⁷ Reporters Without Borders stated that more than 80 journalists fled their country in 2012.⁵⁸

2. Top of the iceberg

The previous numbers and percentages do not encompass all effects war journalists experience exercising their profession in armed conflict. The known numbers only form the top of the iceberg.

The main reason that the numbers do not reveal the magnitude of the problem, is that many facets cannot be measured in precise statistics and numbers. For example, the psychological damage war journalists face being the object of attack or threats is huge. The conditions they face because of the vulnerability of their profession are often very disturbing and frightening, and come on top of the obvious dangers of working in armed conflict. Even if they haven't been targeted themselves, most of the war journalists know colleagues who have been. Trauma and fear are deterrent factors that occasionally prevent journalists to continue practising war journalism. This psychological damage is not easily measured in numbers.

Another reason for caution when looking at the list of attacks is a general warning with all statistics. The journalism organizations carefully gather information about attacks against journalists and base their results only on reliable and clear information.⁵⁹ A number of attacks, therefore, don't make it to the list, if the causes for the attack are unsure. On the one hand, that strictness makes the numbers very trustworthy, but on the other hand the actual number of deliberate attacks against journalists is probably higher than their statistics suggest. Additionally, not all journalists report attacks committed against them, because they fear this will increase their vulnerability.

⁵³ E. BEISER, "Second worst year on record for jailed journalists", 2013, available from <http://cpj.org/reports/2013/12/second-worst-year-on-record-for-jailed-journalists.php>.

⁵⁴ <http://cpj.org/imprisoned/2013.php>.

⁵⁵ F. CASIER, "Study Conference: The status of journalists during operations" (22 October 2012), the Study Center for Military and War Law, Brussels, available from <http://www.ismllw-be.org/session/archives.htm>.

⁵⁶ Committee to Protect Journalists, "Journalists Missing", available from <http://www.cpj.org/reports/2008/02/journalists-missing.php>.

⁵⁷ <http://cpj.org/exile/>.

⁵⁸ Reporters Without Borders, "Exile journalists, support without borders", available from <http://20juin.rsf.org/en/>.

⁵⁹ Committee to Protect Journalists, "Terminology", available from <https://cpj.org/killed/terminology.php>.

Section 2. Impunity

Roughly 9 out of 10 journalist attacks do not result in compensation or legal prosecution. According to the Committee to Protect Journalists there was complete impunity in 88 per cent of the cases. In 8 per cent there was partial justice and in 5 per cent there was full justice.⁶⁰ The Committee to Protect Journalists has an annual Impunity Index that shows which countries know the most deadliest, unpunished violence against journalists.⁶¹ In 2013 this index was updated and the twelve worst countries in the past decade were established to be Iraq, Somalia, the Philippines, Sri Lanka, Colombia, Afghanistan, Mexico, Pakistan, Russia, Brazil, Nigeria and India.

This vast lack of justice and consequences for the perpetrators creates an atmosphere of impunity, which is very discouraging and dreadful for journalists. An already vulnerable group of professionals becomes even more vulnerable if the legal system fails to restore damages and if perpetrators are not held accountable. Many journalists will be scared and try to stay under the radar, others will even renounce journalism and some will abandon their country for reasons of self-preservation.⁶² An environment of impunity is not healthy to foster freedom of expression and informed citizenship and the country will – in a downward spiral – become even less stabilized. Impunity is an encouragement for future perpetrators to unleash upon war journalists without fear of persecution.

The causes for impunity for attacks against war journalists are diverse. A main issue is found in the national legal system. Investigation by the Committee to Protect Journalists shows that in countries where a lot of journalists are the objects of attack, there is a generally high impunity rate.⁶³ The problems lie in corruption of governmental officials, in prosecutors who do not have enough safety guarantees to work independently, etc. Another problem is that the perpetrators of the attacks are often governmental officials themselves. This is a problem that is not easily countered, because any attempts of the civil society or the international community to provide more resources will be deflected towards other goals and well-meant advice will fall on deaf ears. If governmental officials, such as the military or law enforcement, have harmed war journalists during armed conflict, states will not easily prosecute because it is their core of sovereignty that seems under attack. A third problem worth mentioning is the lack of political will, which can be an underlying problem to the other problems mentioned above. Not all states are concerned with media freedom and even have installed restrictive media laws. In these states it will be a big challenge to motivate the ones with judicial or political power and to convince them of the importance of no impunity for violence against war journalists.

Moreover, the Committee to Protect Journalists has established that local journalists are more vulnerable to injustice than foreign journalists. Only 6 per cent of the unsolved cases regard foreign journalists, while 12 per cent of the journalists who are killed over the years, are foreign journalists.⁶⁴ This comparison of percentages makes clear that foreign journalists have a better chance of receiving partial and/or full justice. This is explained by the

⁶⁰ <http://cpj.org/killed/>.

⁶¹ Committee to Protect Journalists, “Getting Away With Murder”, 2013, available from <http://www.cpj.org/reports/2013/05/impunity-index-getting-away-with-murder.php>.

⁶² Committee to Protect Journalists, “Getting Away With Murder”, 2013, available from <http://www.cpj.org/reports/2013/05/impunity-index-getting-away-with-murder.php>.

⁶³ Paragraph 32 of the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns (10 April 2012), *UN Doc. A/HRC/20/22* (2012) and Committee to Protect Journalists, “Getting Away With Murder”, 2013, available from <http://www.cpj.org/reports/2013/05/impunity-index-getting-away-with-murder.php>.

⁶⁴ Committee to Protect Journalists, “Getting Away With Murder”, 2013, available from <http://www.cpj.org/reports/2013/05/impunity-index-getting-away-with-murder.php>.

international outrage, which is more easily triggered and will lead to diplomatic relations being used and threatened, and by the higher efforts states will display to investigate the attacks within their jurisdiction and to compensate those foreign journalists for their losses.

Chapter 3 – LEGAL FRAMEWORK TO PROTECT WAR JOURNALISTS

Title 1. Introduction

The need for a legal protection for war journalists has become more pressing in the last decades. A lot of civil uprisings, armed conflicts and military coups have manifested in many parts of the world. The war journalist, foreign as well as local, has become to fulfil an important link to establish the circumstances and the events taking place. The profession is much more known than before in both international and national context. It has received special recognition in legal codes and international and national guidelines. Nevertheless, this explicit mentioning has not resulted in a safer environment for war journalists.

Due to a competitive environment for the profession the resources to enable war journalism have certainly not been expanded. The number of war journalists in the field is, therefore, not large and their identity can easily be derived from national television or radio stations. This contributes to the unsafe conditions and leads to even less people on the field due to the danger. This vicious circle eventually facilitates targeting of war journalists and will require extra funding for protective measures.

Title 2. Current legal framework

Rules defining the status and the rights of journalists in conflict areas can be found in international human rights law and (customary) international humanitarian law. Both sets of law protect the war journalist in different circumstances. International humanitarian law is created specifically for situations of armed conflict. International human rights law is applicable at all times.

Whereas international human rights law can be considered the ‘lex generalis’ and, therefore, applicable in all circumstances, international humanitarian law precedes international human rights law as ‘lex specialis’.⁶⁵ Although this master thesis focuses on situations of armed conflict, it is important to look into both sets of rules. In general international human rights law knows a concurrent application with international humanitarian law, because the former is applicable irrespective of the existence of an armed conflict.⁶⁶ Two important considerations are key:

- 1) International human rights law is often applicable in situations of armed conflict, because the criterion of ‘effective control’ by the state is met or because the violations

⁶⁵ C. HEYNS and S. SRINIVASAN, “Protecting the Right to Life of Journalists: The Need for a Higher Level of Engagement”, *Hum. Rts. Q.* 2013, vol. 35 (2), p. 324.

⁶⁶ Paragraph 11 of General Comment No. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant (29 March 2004), *UN Doc. CCPR/C/21/Rev.1/Add.13* (2004) and Office of the High Commissioner for Human Rights, *International legal protection of human rights in armed conflict*, New York and Geneva, United Nations, 2011, p. 55-58, available from http://www.ohchr.org/Documents/Publications/HR_in_armed_conflict.pdf.

are not directly related to the hostilities.⁶⁷ For example, if the rights of war journalists are being violated by law enforcement, international human rights law is applicable.⁶⁸

- 2) Only if there is a conflict between the results of both applicable sets of rules, the principle of 'lex specialis' comes into play. Which set of rules is applicable to which extent, will be dependent on the facts of the case and the specific protection international human rights law and international humanitarian law provide.⁶⁹ Also, if in the case of conflicting rules one legal framework is more detailed than the other, the former will prevail.⁷⁰

Next to the legally binding framework, there are a lot of declarations and resolutions that try to raise awareness about the dangers war journalists encounter and about the duty of all conflicting parties to safeguard war journalists. Although these are not legally binding and certainly not enforceable, many media and human rights organizations live by this soft law and endeavour to promote these guidelines with all relevant parties to the issue of the safety of journalists.

Section 1. International human rights law

Human rights can be found both in treaties and in less binding sources. One of the most basic and early international enumerations is the list of human rights contained in the Universal Declaration of Human Rights of 10 December 1948.⁷¹ This non-binding declaration specifically mentions the freedom of expression as a human right, in a similar way another very important international source does, namely the International Covenant on Civil and Political Rights of 16 December 1966,⁷² which is a legally binding document.

Firstly, this section explains which human rights are of relevance to war journalists and under which circumstances international human rights law is not applicable in armed conflict. Secondly, this section elaborates on the protection of media infrastructure.

States bear the primary responsibility for respecting and protecting the human rights of people present on their territory. In Title 3. The implementation of the international legal framework, practical implications and means of monitoring compliance with the human rights obligations mentioned below will be the object of discussion.

1. Human rights of relevance to war journalists

This section explains the internationally and regionally recognized human right to freedom of expression. Also more general human rights are of tremendous importance to the safety of war journalists as well as to their right to freedom of expression. Examples are the

⁶⁷ Office of the High Commissioner for Human Rights, *International legal protection of human rights in armed conflict*, New York and Geneva, United Nations, 2011, p. 61-64, available from http://www.ohchr.org/Documents/Publications/HR_in_armed_conflict.pdf.

⁶⁸ Office of the High Commissioner for Human Rights, *International legal protection of human rights in armed conflict*, New York and Geneva, United Nations, 2011, p. 62, available from http://www.ohchr.org/Documents/Publications/HR_in_armed_conflict.pdf.

⁶⁹ Office of the High Commissioner for Human Rights, *International legal protection of human rights in armed conflict*, New York and Geneva, United Nations, 2011, p. 61, available from http://www.ohchr.org/Documents/Publications/HR_in_armed_conflict.pdf.

⁷⁰ Office of the High Commissioner for Human Rights, *International legal protection of human rights in armed conflict*, New York and Geneva, United Nations, 2011, p. 60, available from http://www.ohchr.org/Documents/Publications/HR_in_armed_conflict.pdf.

⁷¹ Universal Declaration of Human Rights of 10 December 1948, available from <http://www.un.org/en/documents/udhr/>, hereafter the UDHR.

⁷² International Covenant on Civil and Political Rights of 16 December 1966, *United Nations Treaty Series*, vol. 999, 171 and vol. 1057, 407, hereafter the ICCPR.

right to life, the right not to be held in arbitrary detention or the prohibition of being subjected to torture. Whereas the right to freedom of expression illustrates a justification for their profession, the other rights need to be guaranteed in order to be able to successfully practise war journalism. The perpetrators of violence against war journalists know this and silence war journalists in more literal ways than only through limiting their reporting. In this section, however, the research is limited to an extensive examination of the human right to freedom of expression.

1.1. The Universal Declaration of Human Rights

The UDHR was adopted by the United Nations General Assembly with the goal of guaranteeing human rights for all people.⁷³ The international community recognized in the preamble of the UDHR that “*the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people*” (emphasis added). Freedom of speech was clearly seen a central and vital part of today’s human endeavours.

Freedom of expression is mentioned in Article 19 of the UDHR.⁷⁴ This article clearly states that the profession of a journalist – to seek and impart information – is considered a human right. Next to this, there are the other human rights, such as Article 3 of the UDHR, which states the “*the right to life, liberty and security of person*”. The UDHR forms an explicit, although not enforceable basis for the rights of war journalists in general.

1.2. The International Covenant on Civil and Political Rights

In the ICCPR the international community has ensured basic human rights to all human beings to strive for the ‘ideal of free human beings enjoying civil and political freedom’.⁷⁵ With a current number of 167 State Parties the ICCPR has become a worldwide applicable legal framework. It describes binding principles to which State Parties will adhere and human rights and freedoms which they will uphold within their sphere of influence.

The human rights relevant to journalists include the right to life, protection from torture and cruel, inhuman or degrading treatment or punishment, protection from arbitrary arrest or detention and the right to freedom of expression. Journalists are entitled to these rights in the same way as all other human beings.

1.2.1. Human rights of war journalists

Regardless of the political view on the journalistic profession, the State Parties have agreed to respect and protect freedom of expression as a fundamental right for all human beings in Article 19 of the ICCPR. Although even less open and democratic states are among those State Parties, this theoretic acceptance has a significant value in fighting against abuses against war journalists.

War journalists also have to be careful with the content of their war reporting, because they may not violate Article 20 of the ICCPR that prohibits propaganda of war. This article, therefore, limits the right to freedom of expression.

⁷³ Article 2 of the UDHR.

⁷⁴ Article 19 of the UDHR:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

⁷⁵ Preamble of the ICCPR.

1.2.2. Exceptions to the human rights of war journalists

States are able to shirk of their responsibility to guarantee people's human rights and freedoms at all times in two different ways. They can either preventively decide they don't want to commit fully to the treaty or they can use escape routes, which are provided for in the treaty.

1.2.2.1. Emergency clause

In Article 4 of the ICCPR an emergency clause has been included, which under strict conditions enables states to unilaterally derogate from human rights listed in the covenant.⁷⁶ General Comment No. 29 of the Human Rights Committee explains how states should interpret and use this possible suspension correctly.⁷⁷ The derogation of certain human rights and freedoms is meant as an 'exceptional and temporary' measure,⁷⁸ which is only permissible in the case of a 'public emergency' that is officially declared to be threatening the existence of a state.⁷⁹

The Human Rights Committee explains that even in situations of armed conflict this condition of such urgent and disastrous circumstances is not met by definition.⁸⁰ Also in the case of an armed conflict, the following conditions must be satisfied:

- Firstly, the proportionality principle entails that solely measures that are strictly necessary, may be used.⁸¹
- Secondly, the Human Rights Committee clearly states that a derogation based on Article 4 of the ICCPR does not give a free pass to neglect other international obligations that states have, among which, for example, international humanitarian law.⁸²
- Thirdly, derogation is not allowed from all human rights. On the one hand, states are not permitted to derogate from the articles mentioned in Article 4, paragraph 2 of the

⁷⁶ Article 4 of the ICCPR:

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.
3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

⁷⁷ General Comment No. 29 on Article 4: Derogations during a State of Emergency of the Human Rights Committee (31 August 2001), *UN Doc. CCPR/C/21/Rev.1/Add.11* (2001).

⁷⁸ Paragraph 2 of General Comment No. 29 on Article 4: Derogations during a State of Emergency of the Human Rights Committee (31 August 2001), *UN Doc. CCPR/C/21/Rev.1/Add.11* (2001).

⁷⁹ Article 4, paragraph 1 of the ICCPR.

⁸⁰ Paragraph 3 of General Comment No. 29 on Article 4: Derogations during a State of Emergency of the Human Rights Committee (31 August 2001), *UN Doc. CCPR/C/21/Rev.1/Add.11* (2001).

⁸¹ Paragraph 4 of General Comment No. 29 on Article 4: Derogations during a State of Emergency of the Human Rights Committee (31 August 2001), *UN Doc. CCPR/C/21/Rev.1/Add.11* (2001).

⁸² Paragraph 9 of General Comment No. 29 on Article 4: Derogations during a State of Emergency of the Human Rights Committee (31 August 2001), *UN Doc. CCPR/C/21/Rev.1/Add.11* (2001).

ICCPR. On the other hand there are certain other human rights, which are not derogable according to the Human Rights Committee.⁸³ Examples of relevance to war journalists are the prohibitions ‘against taking of hostages, abductions or unacknowledged detention, which cannot be suspended, because they are norms of general international law.’⁸⁴ A state and its military can, therefore, not use Article 4 of the ICCPR to remove war journalists. Another relevant example is the consideration by the Human Rights Committee that certain fundamental aspects of the right to a fair trial must be safeguarded and cannot be derogated from, because they are guaranteed even in international humanitarian law.⁸⁵ This leads to, for example, a war journalist who must be brought before a court to decide upon the lawfulness of his/her detention.

This exception in emergency situations of Article 4 of the ICCPR is different from the possible restrictions to specific articles of the ICCPR, of which an example is mentioned below. The Human Rights Committee accepts that the latter might even take place in ‘normal times’ as compared to the ‘emergency situations’ of the former.⁸⁶

1.2.2.2. Restriction to Article 19 of the ICCPR

In Article 19, paragraph 3 of the ICCPR it is stated that restrictions to the right to freedom of expression are permitted.⁸⁷ According to the OHCHR and General Comment No. 34 of the Human Rights Committee, there are three conditions that must be met in order to be able to invoke this paragraph.⁸⁸

The first condition entails that the restriction should be prescribed by law.⁸⁹ This condition is not satisfied if the restriction is based on ‘traditional, religious or other such

⁸³ Paragraphs 13 until 16 of General Comment No. 29 on Article 4: Derogations during a State of Emergency of the Human Rights Committee (31 August 2001), *UN Doc. CCPR/C/21/Rev.1/Add.11* (2001).

⁸⁴ Paragraph 13, (b) of General Comment No. 29 on Article 4: Derogations during a State of Emergency of the Human Rights Committee (31 August 2001), *UN Doc. CCPR/C/21/Rev.1/Add.11* (2001).

⁸⁵ Paragraph 16, (b) of General Comment No. 29 on Article 4: Derogations during a State of Emergency of the Human Rights Committee (31 August 2001), *UN Doc. CCPR/C/21/Rev.1/Add.11* (2001).

⁸⁶ Paragraph 4 of General Comment No. 29 on Article 4: Derogations during a State of Emergency of the Human Rights Committee (31 August 2001), *UN Doc. CCPR/C/21/Rev.1/Add.11* (2001).

⁸⁷ Article 19 of the ICCPR:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

⁸⁸ Office of the High Commissioner for Human Rights, *International legal protection of human rights in armed conflict*, New York and Geneva, United Nations, 2011, p. 50-51, available from http://www.ohchr.org/Documents/Publications/HR_in_armed_conflict.pdf and paragraph 22 of General Comment No. 34 on Article 19: Freedoms of opinion and expression of the Human Rights Committee (12 September 2011), *UN Doc. CCPR/C/GC/34* (2011).

⁸⁹ Article 19, paragraph 3 of the ICCPR.

customary law'.⁹⁰ The law must be precise and made public in order for the people to be adequately abide by it.⁹¹ Also, the penalties must be compatible with the ICCPR, which means that, for example, if a war journalist was to be found in violation of the law, he/she may not be subjected to torture, which is forbidden by Article 7 of the ICCPR.⁹²

The second condition requires compatibility with the right itself and the promotion of the general welfare. A restriction is allowed, but it must not have as a consequence that the right to freedom of expression becomes the exception to the rule.⁹³ In paragraph 3, (b) of Article 19 of the ICCPR it is stated that a possible ground for a restriction to the right to freedom of expression is the case in which this is necessary for reasons of 'national security'. In situations where war journalists are covering armed conflict there is arguable that this condition will be met. The Human Rights Committee, however, explicitly warns that restricting democratic use of the right to freedom of expression is not justified and attacks on journalists for that reason are not compatible with Article 19 of the ICCPR.⁹⁴ The purpose of the invocation of paragraph 3 may not be to prosecute journalists for informing the public on topics, which do not harm 'national security'.⁹⁵ In this regard the national trends that prosecute journalists based on anti-terrorism laws, will be discussed in Title 3. The implementation of the international legal framework.

The third condition states that the restriction must be necessary and proportionate. Other human rights must be included in the outweighing of this proportionality test.⁹⁶ The restriction must be the least intrusive method of attaining the result of a stabilized country.⁹⁷ In a similar way as in Article 4 of the ICCPR it is not allowed to make unlimited restrictions.

1.2.2.3. Reservations

Some countries made reservations to the ICCPR. Reservations are remarks made by states, which entail an interpretation of an article or an exemption by a state from the application of a certain article.⁹⁸ The ICCPR is silent about the possibility of reservations and

⁹⁰ Paragraph 24 of General Comment No. 34 on Article 19: Freedoms of opinion and expression of the Human Rights Committee (12 September 2011), *UN Doc. CCPR/C/GC/34* (2011).

⁹¹ Paragraphs 25 and 27 of General Comment No. 34 on Article 19: Freedoms of opinion and expression of the Human Rights Committee (12 September 2011), *UN Doc. CCPR/C/GC/34* (2011).

⁹² Paragraph 26 of General Comment No. 34 on Article 19: Freedoms of opinion and expression of the Human Rights Committee (12 September 2011), *UN Doc. CCPR/C/GC/34* (2011).

⁹³ Paragraph 21 of General Comment No. 34 on Article 19: Freedoms of opinion and expression of the Human Rights Committee (12 September 2011), *UN Doc. CCPR/C/GC/34* (2011).

⁹⁴ Paragraph 23 of General Comment No. 34 on Article 19: Freedoms of opinion and expression of the Human Rights Committee (12 September 2011), *UN Doc. CCPR/C/GC/34* (2011).

⁹⁵ Paragraph 30 of General Comment No. 34 on Article 19: Freedoms of opinion and expression of the Human Rights Committee (12 September 2011), *UN Doc. CCPR/C/GC/34* (2011).

⁹⁶ Office of the High Commissioner for Human Rights, *International legal protection of human rights in armed conflict*, New York and Geneva, United Nations, 2011, p. 51, available from http://www.ohchr.org/Documents/Publications/HR_in_armed_conflict.pdf.

⁹⁷ Paragraph 34 of General Comment No. 34 on Article 19: Freedoms of opinion and expression of the Human Rights Committee (12 September 2011), *UN Doc. CCPR/C/GC/34* (2011).

⁹⁸ Office of the High Commissioner for Human Rights, *International legal protection of human rights in armed conflict*, New York and Geneva, United Nations, 2011, p. 52-53, available from http://www.ohchr.org/Documents/Publications/HR_in_armed_conflict.pdf and Article 2, paragraph 1, (d) of the Vienna Convention on the Law of Treaties of 23 May 1969, *United Nations Treaty Series*, vol. 1155, 331.

the Vienna Convention on the Law of Treaties of 23 May 1969 in that case accepts their legality if they are not incompatible with the object and purpose of the treaty.⁹⁹

Reservations that potentially could affect the rights of war journalists, are the ones that states made regarding Article 19 of the ICCPR. This article is essential to the war journalists, who travel to areas of armed conflict for the purpose of exercising their right to freedom of expression. Reservations to this article inevitably implicate that journalists are less protected from governmental intrusion and have less freedom in their profession. The following reservations were made regarding Article 19 of the ICCPR:¹⁰⁰

- A reservation by Malta concerns the restriction on the freedom of expression of public officers, which Malta considers compatible with the article;
- Italy, Luxembourg, Monaco and the Netherlands inserted a reservation on how they interpret the article concerning the authorization or licensing of radio and television companies;
- A reservation, made by Pakistan, states that “*the provisions of Articles 3, 6, 7, 18 and 19 shall be so applied to the extent that they are not repugnant to the Provisions of the Constitution of Pakistan and the Sharia laws*”.

While the two first reservations also curtail the right to freedom of expression, they do not facilitate circumstances, in which it would be possible to restrict the content of war journalism or in which the safety of war journalists would be compromised. The general nature of the Pakistani reservation, however, makes this possible and is the most worrying in the light of the safety of war journalists, because there is no clear understanding of or clarification on how this will be interpreted. The reservations have been criticized by many states,¹⁰¹ because according to those states the reservations are deemed incompatible with the object and purpose of the ICCPR, have a too general scope and/or cast doubt upon the commitment of Pakistan to respect the ICCPR. There are, however, only legal consequences of the many objections to the reservation in question, if it is specifically mentioned that the entry into force between states is precluded because of the reservation, which is not the case here.¹⁰²

Next to this, several countries, such as Denmark, Finland and Iceland, have made a reservation concerning the prohibition against propaganda for war of Article 20, 1 of the ICCPR. This article, which prohibits media being used for propagandizing war, would according to them endanger and limit the right to freedom of expression. Following this article journalists have certain restrictions to their freedom of expression in armed conflict. The countries that made reservations, did not agree with this. Article 20, 1 of the ICCPR, however, nor the reservations have an implication for the war journalists’ right to safety and

⁹⁹ Article 19 of the Vienna Convention on the Law of Treaties of 23 May 1969, *United Nations Treaty Series*, vol. 1155, 331.

¹⁰⁰ United Nations Treaty Collection, “Declarations and reservations to the ICCPR”, available from https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en#EndDec.

¹⁰¹ Objections were made by Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Norway, Poland, Portugal, Slovakia, Spain, Sweden, Switzerland, United Kingdom and the United States of America. United Nations Treaty Collection, “Declarations and reservations to the ICCPR”, available from https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en#EndDec.

¹⁰² Office of Legal Affairs United Nations United Nations, “Reservations and Declarations in Multilateral Treaties”, 2009, available from <https://treaties.un.org/doc/source/training/regional/2009/13-17October-2009/reservations-declarations.ppt>.

their right to redemption in the case they have been attacked. The article merely limits their right to freedom of expression.

1.3. The European Convention on Human Rights

1.3.1. Human rights of war journalists

In the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950¹⁰³ Article 10 proclaims the right to freedom of expression and with it, in the first paragraph, the right for war journalists to “*receive and impart information and ideas without interference by public authority and regardless of frontiers*”. This description is very promising, because it explicitly mentions that the state should not interfere. This right, however, can be limited by the states for many reasons, mentioned in paragraph 2 of Article 10 of the European Convention on Human Rights, among which are of importance to war journalists the exceptions for “*national security, territorial integrity or public safety, for the prevention of disorder or crime*”.¹⁰⁴

1.3.2. Exceptions to the human rights of war journalists

1.3.2.1. Emergency clause

In Article 15 of the European Convention on Human Rights a derogation clause has been included,¹⁰⁵ which can be used in a similar way as Article 4 of the ICCPR.

¹⁰³ Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, *European Treaty Series*, 5, hereafter the European Convention on Human Rights.

¹⁰⁴ Article 10 of the European Convention on Human Rights:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

¹⁰⁵ Article 15 of the European Convention on Human Rights:

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.
3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

1.3.2.2. Restriction to Article 10 of the European Convention on Human Rights

In paragraph 2 of Article 10 the possibility is created to restrict the right to freedom of expression for certain reasons. The reasons of relevance to war journalists are ‘national security, territorial integrity or public safety’ and ‘prevention of disorder’, because in situations of armed conflict such reasons become easily defensible. This restriction only concerns the right to freedom of expression of journalists, but might still affect war journalists’ physical safety if a state considers it necessary to literally silence a journalist.

1.3.2.3. Reservations

The following reservations were made regarding Article 10 of the European Convention on Human Rights:¹⁰⁶

- Similar reservations to the ones made to Article 19 of the ICCPR were made concerning the European alternative by Malta and Monaco, respectively regarding the freedom of expression of public officers and regarding the existing monopoly on the technical aspects of broadcasting;
- Monaco added a reservation concerning the constitutional privacy rights of the Prince and his family;
- Spain made reservation stating that it considered its current broadcasting system compatible with the article;
- A reservation by Azerbaijan interpreted the article as compatible with the requirement of foreign mass media being established in accordance with interstate treaties.

Whereas these reservations do not have an impact on the right of war journalists to physical safety, they might slightly interfere with their right to exercise profession and, thus, their right to freedom of expression.

1.4. The American Convention on Human Rights

Article 13 of the American Convention on Human Rights of 22 November 1969¹⁰⁷ protects the right to freedom of expression in a very similar way as the UDHR, the ICCPR and the European Convention on Human Rights.¹⁰⁸ Also, there is a derogation clause in

¹⁰⁶ Treaty Office of the Council of Europe, “List of declarations made with respect to treaty No. 5”, available from <http://www.conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=005&CM=8&DF=04/05/2014&CL=ENG&VL=1>.

¹⁰⁷ American Convention on Human Rights of 22 November 1969, *United Nations Treaty Series*, vol. 1144, 143, hereafter the American Convention on Human Rights.

¹⁰⁸ Article 13 of the American Convention on Human Rights:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:
 - a. respect for the rights or reputations of others; or
 - b. the protection of national security, public order, or public health or morals.
3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

Article 27 of the American Convention on Human Rights.¹⁰⁹ The difference with Article 4 of the ICCPR and Article 15 of the European Convention on Human Rights lies in the fact that no threatening of the ‘life of the nation’ is required in order to be able to invoke the derogation clause. It is sufficient if the ‘independence or security’ of the state is threatened.

The American Convention on Human Rights is, however, stricter in accepting restrictions to the right to freedom of expressions. A first difference is the prohibition of prior censorship. The exceptions of relevance for war journalists, namely ‘national security’ and ‘public order’, may only lead to liability and not to prior restrictions. This gives a little less freedom of movement for states, but still enables states to prosecute war journalists for exercising their right to freedom of expression. A second difference regards the explicit prohibition of indirect means of limiting the right to freedom of expression. By clearly affirming the wide scope of the prohibition this provision strengthens the position of war journalists.

There are no reservations to Article 13 of the American Convention of Human Rights.

1.5. The African Charter on Human and Peoples’ Rights

Article 9 of the African Charter on Human and Peoples’ Rights of 27 June 1981¹¹⁰ states the right to receive information and free expression.¹¹¹ This article is a lot less elaborate compared to the other regional human rights treaties and the international human rights treaties, because it does not describe how the right must be interpreted or how broad the scope of the article is.

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4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.
 5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

¹⁰⁹ Article 27 of the American Convention on Human Rights:

1. In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin.
2. The foregoing provision does not authorize any suspension of the following articles: Article 3 (Right to Juridical Personality), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 6 (Freedom from Slavery), Article 9 (Freedom from Ex Post Facto Laws), Article 12 (Freedom of Conscience and Religion), Article 17 (Rights of the Family), Article 18 (Right to a Name), Article 19 (Rights of the Child), Article 20 (Right to Nationality), and Article 23 (Right to Participate in Government), or of the judicial guarantees essential for the protection of such rights.
3. Any State Party availing itself of the right of suspension shall immediately inform the other States Parties, through the Secretary General of the Organization of American States, of the provisions the application of which it has suspended, the reasons that gave rise to the suspension, and the date set for the termination of such suspension.

¹¹⁰ African Charter on Human and Peoples’ Rights of 27 June 1981, *United Nations Treaty Series*, vol. 1520, 217, hereafter the African Charter on Human and Peoples’ Rights.

¹¹¹ Article 9 of the African Charter on Human and Peoples’ Rights:

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

The African Charter on Human and Peoples' Rights does not include a derogation clause¹¹² and Article 9 of the charter does not provide any possibilities for restricting freedom of expression. The states have a broad and unconditional obligation to uphold this human right.

Using Article 75 of the African Charter on Human and Peoples' Rights, which allows reservations to the charter, one reservation has been made regarding Article 9. Egypt interpreted the first paragraph, namely the right to receive information, as only allowing for the right to receive “*such information as could be obtained within the limits of the Egyptian laws and regulations*”.¹¹³ This clearly affects the right of a war journalist to spread information.

2. What with media infrastructure?

Media infrastructure is not mentioned in legally binding international human rights law. The right to property is only mentioned in Article 17 of the UDHR, which is not a binding instrument. It is not mentioned in the ICCPR or in the International Covenant on Economic, Social and Cultural Rights of 16 December 1966.¹¹⁴

In the regional human rights conventions, however, the right to property is explicitly established as a legally binding human right. In the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11 of 20 March 1952,¹¹⁵ a first protocol to the European Convention on Human Rights, Article 1 proclaims the right of person to the “*peaceful enjoyment of his possessions*”. The American Convention on Human Rights and the African Charter on Human and Peoples' Rights also make mention of the right to property respectively in Article 21 and Article 14.

One can, however, consider the use of media infrastructure as an essential part of the right to freedom of expression. Without cameras and other recording material war journalists are not able to exercise their profession. Confiscating or destroying the equipment of war journalists should, therefore, also be considered a violation of their right to freedom of expression, regardless of the existence of a legally enforceable right to property.

Section 2. International humanitarian law

International humanitarian law – also called ‘laws of armed conflict’ – is the set of rules applicable in situations of armed conflict.¹¹⁶ International humanitarian law regulates the conduct of hostilities as well as the people who one can legitimately fight against.¹¹⁷ Additionally, international humanitarian law creates obligations before and after the armed

¹¹² T. KARIMOVA, “Derogation from human rights treaties in situations of emergency”, available from http://www.geneva-academy.ch/RULAC/derogation_from_human_rights_treaties_in_situations_of_emergency.php.

¹¹³ African Commission on Human and Peoples' Rights, “Reservations and declarations to the African Charter”, available from <http://www.achpr.org/instruments/achpr/#eg>.

¹¹⁴ International Covenant on Economic, Social and Cultural Rights of 16 December 1966, *United Nations Treaty Series*, vol. 993, 3.

¹¹⁵ Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11 of 20 March 1952, *European Treaty Series*, 9.

¹¹⁶ D. FLECK (ed.), *The Handbook of International Humanitarian Law* (3rd ed.), New York City, NY, Oxford University Press Inc., 2013, p. 1.

¹¹⁷ D. FLECK (ed.), *The Handbook of International Humanitarian Law* (3rd ed.), New York City, NY, Oxford University Press Inc., 2013, p. 79-80 and 231-234.

conflict.¹¹⁸ Examples are teaching combatants on topics of international humanitarian law and adopting national legislation and jurisdiction to enforce compliance with international humanitarian law.

International humanitarian law has developed some specific provisions regarding the protection of war journalists. By the nature of their profession war journalists will find themselves in violent situations and vulnerable positions. Besides this evident and rather natural danger, however, journalists have become subject to targeted attacks by belligerent parties. According to international humanitarian law, however, war journalists are not to be considered combatants. If war journalists do not take part in the hostilities, then they have the same guarantees to safety as civilians. They certainly cannot be accepted to become the target of hostilities. To clarify that war journalists enjoy this protection the first part of this section discusses the specific rules that have emerged in international humanitarian law. The second part explains the status of media infrastructure in international humanitarian law.

1. Protection of war journalists in international humanitarian law

There is a difference in applicable international humanitarian law depending on the existence of an international or a national armed conflict. The legal protection offered to journalists has the same global consequence of journalists not being allowed to be harmed or targeted, but there are some specific differences to take a closer look at.

In defining the legal framework both conventional international humanitarian law and customary international humanitarian law are of importance. The status of journalists in an international armed conflict has been formally established in the Third and Fourth Geneva Conventions and the Additional Protocols I and II to the Geneva Conventions. To complement these rules, it is necessary to look at Rule 34 of the customary international law compiled by the International Red Cross.¹¹⁹

1.1. Conventional international humanitarian law

In the Geneva Conventions there were no specific provisions that mentioned war journalists or other journalists, except for the mentioning of the war correspondent receiving the status of prisoner of war upon capture in the Third Geneva Convention.¹²⁰ Only with the adoption of the Additional Protocol I to the Geneva Conventions in 1977 the war journalist received explicit protection from targeting, which was a great step forwards in guaranteeing war journalists' safety.¹²¹

The following examination of the status of war journalists in international humanitarian law is characterized by the fact that journalists are considered civilians. Consequently, the protection war journalists receive in an armed conflict is described in the Fourth Geneva Convention, which entails the protection of civilians in armed conflict, and in the Additional

¹¹⁸ Office of the High Commissioner for Human Rights, *International legal protection of human rights in armed conflict*, New York and Geneva, United Nations, 2011, p. 33, available from http://www.ohchr.org/Documents/Publications/HR_in_armed_conflict.pdf.

¹¹⁹ J.-M. HENCKAERTS and L. DOSWARLD-BECK, *Customary International Humanitarian Law* (Vol. 1), Cambridge, Cambridge University Press, 2005, p. 115-118.

¹²⁰ This will be further discussed in the section 1.1.1.2. War correspondents.

¹²¹ J. DE PREUX, P. EBERLIN, H.-P. GASSER, S.-S. JUNOD, C. PILLOUD, C. WENGER, and B. ZIMMERMANN, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Dordrecht, ICRC/Martinus Nijhoff Publishers, 1987, p. 918 and E. WILMSHURST and S. BREAU (eds.), *Perspectives on the ICRC Study on Customary International Humanitarian Law*, Cambridge, Cambridge University Press, 2007, p. 174.

Protocols I and II to the Geneva Conventions, which protect the victims of respectively international and non-international armed conflicts.

1.1.1. International armed conflict

The applicable legal framework for an international armed conflict makes a distinction between the legal status of a war journalist, who accompanies the armed forces, or the legal status of a war journalist that doesn't and travels independently. Both are protected, but the first group has more specialized rights than the second group.

Important to note is that the second paragraph of Article 4 of the Fourth Geneva Convention indicates that the nationality of the war journalist matters, because nationals of a state, which has not signed the Geneva Conventions, are not protected by these conventional international humanitarian rules.

1.1.1.1. 'Freelance' journalists

1.1.1.1.1. Who?

International humanitarian law protects the journalists, who find themselves in an armed conflict because of their profession. The first category is the journalist who is not following the armed forces. These journalists are sometimes also called 'unilateral journalists'. The Commentary of 1987 to Article 79 of the Additional Protocol I to the Geneva Conventions calls this category of war journalists "freelance journalists".¹²² This term has to be used with caution, because it must not be confused with independent journalists. For example, Peter Verlinden is a Belgian journalist employed with the Flemish Television Company. If he travels with his crew to an armed conflict zone, he qualifies as a freelance journalist in the meaning of the Commentary. Nevertheless, he is employed, receives a wage and is not completely independent.¹²³ The category of the 'freelance journalist' is much broader than the category of the independent journalist.

The extent to which the word "journalist" encompasses all media workers is not clear, because the text does not provide any clarification. The interpretation by the International Red Cross is that the ordinary meaning applies.¹²⁴ They refer to the Article 2 of Annex I to the Draft Articles of an International Convention for the Protection of Journalists Engaged in Dangerous Missions in Areas of Armed Conflict, which is discussed in Chapter 1 – Introduction, and conclude that the word has a broad meaning.

1.1.1.1.2. Conditional protection as civilians

The protection of these freelance journalists is made explicit in Article 79 of the Additional Protocol I to the Geneva Conventions.¹²⁵ This article states that journalists are to be considered civilians, provided that they do not undertake actions that compromise this

¹²² J. DE PREUX, P. EBERLIN, H.-P. GASSER, S.-S. JUNOD, C. PILLOUD, C. WENGER, and B. ZIMMERMANN, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Dordrecht, ICRC/Martinus Nijhoff Publishers, 1987, p. 923.

¹²³ Interview with Peter Verlinden, a Belgian television journalist, on January 28th, 2014.

¹²⁴ J. DE PREUX, P. EBERLIN, H.-P. GASSER, S.-S. JUNOD, C. PILLOUD, C. WENGER, and B. ZIMMERMANN, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Dordrecht, ICRC/Martinus Nijhoff Publishers, 1987, p. 921.

¹²⁵ No reservations have been made to Article 79 of the Additional Protocol I to the Geneva Conventions. J.-M. HENCKAERTS and L. DOSWARLD-BECK, *Customary International Humanitarian Law* (Vol. 1), Cambridge, Cambridge University Press, 2005, p. 115.

status. Their protection as civilians is conditional. Actions that compromise their status of civilians are actions, by which they take direct part in the hostilities.¹²⁶ This is also true for the second category of journalists, the ‘war correspondents’. If they wish to maintain their status of civilian, they must not participate in the conflict. This means that war journalists who are being used for military purposes or are suspected of combatant behaviour, become legitimate military targets.¹²⁷

Combatants are obliged by international humanitarian law to obey several principles concerning the safekeeping of civilians.¹²⁸ The following principles are also valid for war correspondents.

- 1) The principle of distinction means that no attack may be directly aimed at civilians. Only military targets are legitimate objects of attack. This principle also includes a ban on non-distinctive attacks, because these attacks do not distinguish between civilians and combatants.¹²⁹
- 2) According to the proportionality principle excessive collateral damage is prohibited. If the consequences of the attack would outweigh the negative side effects, the attack may not be effectuated. An attack directed at military targets may only be carried out, if there is no disproportional loss of civilians or civilian property.¹³⁰
- 3) Following the precautionary principle precautions must be taken regarding both planning and execution of a military strategy.¹³¹ Verification of the military nature of the target is necessary as well as an effective warning or evacuation of civilians, if possible.¹³²

The combatants are required to abide by these principles during armed conflict. These principles, however, do not result in overly clear guidelines on the battlefield. Nevertheless, these principles are binding by international humanitarian law. Also, in case of doubt the last sentence of Article 50, paragraph 1 of the Additional Protocol I to the Geneva Conventions decides that person shall be considered a civilian.

1.1.1.1.3. Protection upon capture

Part III of the Fourth Geneva Convention describes the additional protection war journalists receive upon capture, namely when they become ‘protected persons’ according to

¹²⁶ ‘Direct participation’ means “acts of war which by their nature or purpose are likely to cause actual harm to the personnel and equipment of the enemy armed forces”. J. DE PREUX, P. EBERLIN, H.-P. GASSER, S.-S. JUNOD, C. PILLOUD, C. WENGER, and B. ZIMMERMANN, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Dordrecht, ICRC/Martinus Nijhoff Publishers, 1987, p. 619.

¹²⁷ D. FLECK (ed.), *The Handbook of International Humanitarian Law* (3rd ed.), New York City, NY, Oxford University Press Inc., 2013, p. 104.

¹²⁸ Office of the High Commissioner for Human Rights, *International legal protection of human rights in armed conflict*, New York and Geneva, United Nations, 2011, p. 65, available from http://www.ohchr.org/Documents/Publications/HR_in_armed_conflict.pdf and R. NEYRINCK, “Study Conference: The status of journalists during operations” (22 October 2012), the Study Center for Military and War Law, Brussels, available from <http://www.ismlw-be.org/session/archives.htm>.

¹²⁹ Article 48 of the Additional Protocol I to the Geneva Conventions.

¹³⁰ Article 57, paragraph 2, (a), (iii) and (b) of the Additional Protocol I to the Geneva Conventions.

¹³¹ Articles 57 and 58 of the Additional Protocol I to the Geneva Conventions.

¹³² Article 57, paragraph 2, (a), (i) and (c) of the Additional Protocol I to the Geneva Conventions.

the first paragraph of Article 4 of the Fourth Geneva Convention. The war journalists have the following guarantees upon capture:¹³³

- 1) The right to contact with family members (Articles 25-26 of the Fourth Geneva Convention);
- 2) The right to humane treatment (Article 27 of the Fourth Geneva Convention);
- 3) The right to visits from the International Committee of the Red Cross (Article 30 of the Fourth Geneva Convention);
- 4) Prohibition of torture (Articles 31-32 of the Fourth Geneva Convention);
- 5) Prohibition of collective penalties and pillage (Article 33 of the Fourth Geneva Convention);
- 6) Prohibition of hostage-taking (Article 34 of the Fourth Geneva Convention);
- 7) Internment only possible with procedural guarantees and in exceptional circumstances (Article 42, 43 and 78 of the Fourth Geneva Convention).

Depending on where freelance journalists are being captured, they either have to be prosecuted or an inquiry has to be instituted, or they have to be released.¹³⁴

Based on Article 11 of the Additional Protocol I to the Geneva Conventions war journalists also enjoy rights regarding their physical and mental health or integrity, such as the prohibition of physical mutilations or scientific experiments.¹³⁵

1.1.1.1.4. Identity card

In order to attest to being a journalist paragraph 3 of Article 79 of the Additional Protocol I to the Geneva Conventions states that an identity card can be issued.¹³⁶ The non-existence of the card does not affect the legal status and neither does not carrying the card.¹³⁷

1.1.1.2. War correspondents

1.1.1.2.1. Who?

The journalists, who accompany the armed forces, are called ‘war correspondents’ in the Third Geneva Convention.¹³⁸ These journalists are also commonly known as ‘embedded’ journalists. It means they travel with and are accredited to armed forces. For war journalists this means they travel to an armed conflict zone or within an armed conflict zone, with local or international armed forces. Alexandre Balguy-Gallois understands the term to mean “*each specialized journalist who is present, with authorization and protection of the armed forces of one of the belligerents, on the place of the operations and who has as a mission to inform on the events related to the hostilities*” (translated).¹³⁹

¹³³ R. NEYRINCK, “Study Conference: The status of journalists during operations” (22 October 2012), the Study Center for Military and War Law, Brussels, available from <http://www.ismllw-be.org/session/archives.htm>.

¹³⁴ Article 42 and 78 of the Fourth Geneva Convention and S. PERRAKIS and M.-D. MAROUDA (eds.), *Armed Conflicts & International Humanitarian Law*, Athens, Ant. N. Sakkoulas & Bruylant, 2009, p. 573.

¹³⁵ Article 11, paragraph 2, (a) and (b) of Additional Protocol I to the Geneva Conventions.

¹³⁶ Article 3 of the Additional Protocol I to the Geneva Conventions.

¹³⁷ J. DE PREUX, P. EBERLIN, H.-P. GASSER, S.-S. JUNOD, C. PILLOUD, C. WENGER, and B. ZIMMERMANN, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Dordrecht, ICRC/Martinus Nijhoff Publishers, 1987, p. 923.

¹³⁸ Article 4, A., (4) of the Third Geneva Convention.

¹³⁹ A. BALGUY-GALLOIS, “Le rôle des médias et l’accès des journalistes sur le terrain des hostilités: une garantie supplémentaire du respect du droit international humanitaire?”, *Université Paris I*

This process of traveling with armed forces does not affect their objectivity and neutrality to the conflict. International humanitarian law mentions this specific category of journalists in order to grant them a specific additional protection when they are captured in an international armed conflict.

1.1.1.2.2. Conditional protection as civilians

Generally, a war correspondent in international armed conflict receives the same status as a civilian and his/her protection is the same a freelance journalist receives. This can be deduced from paragraph 2 of Article 79 of the Additional Protocol I to the Geneva Conventions, which states that the status as a prisoner of war comes on top of the protection as a civilian. They are perceived not to participate in the violence, although they find themselves in the war zone and in the company of armed forces.

It is, however, not always reasonable to expect the enemy to know war correspondents, considered civilians, are among the fighting troops. Some circumstances will cast doubt upon the civilian identity of the war correspondent and will, therefore, excuse the enemy if they wrongly target him/her. The Commentary of 1987 explains that a war journalist may lose effective protection, even if the journalist does not lose the actual right to protection.¹⁴⁰ If a war journalist gets too close to legitimate military objectives, then it is highly likely that combatants will not be able to identify him/her as a civilian. Another example the Commentary of 1987 gives is the wearing of clothing similar to military uniform. In that case as well the war journalists may lose the protection that they are entitled to, because of their risky behaviour. Another example might be the installing of a camera on a tripod, which can be seen as a weapon.¹⁴¹

Combatants must abide by the same principles towards combatants, as they are obliged to take into account towards freelance journalists, because war correspondents are also considered civilians.¹⁴²

1.1.1.2.3. Special protection upon capture: “prisoners of war”

Since 1949 they receive the special status of a prisoner of war when captured by the enemy.¹⁴³ Before the Third Geneva Convention took effect, they were considered to receive analogous protection, but did not receive the actual status.¹⁴⁴ Thus, this improvement of their legal position grants them a firmer protection. As a prisoner of war the war correspondent is entitled to several rights:¹⁴⁵

- 1) The right to humane treatment (Article 13 of the Third Geneva Convention);

Panthéon-Sorbonne / Centre d'Étude et de Recherche en Droit International 2010, p. 86, available from http://fr.rsrf.org/IMG/pdf/a._balguy_gallois-medias_conflits_armes-1.pdf.

¹⁴⁰ J. DE PREUX, P. EBERLIN, H.-P. GASSER, S.-S. JUNOD, C. PILLOUD, C. WENGER, and B.

ZIMMERMANN, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Dordrecht, ICRC/Martinus Nijhoff Publishers, 1987, p. 922.

¹⁴¹ Interview with Peter Verlinden, a Belgian television journalist, on January 28th, 2014.

¹⁴² D. FLECK (ed.), *The Handbook of International Humanitarian Law* (3rd ed.), New York City, NY, Oxford University Press Inc., 2013, p. 104.

¹⁴³ Article 4, A., (4) of the Third Geneva Convention.

¹⁴⁴ J. DE PREUX, P. EBERLIN, H.-P. GASSER, S.-S. JUNOD, C. PILLOUD, C. WENGER, and B.

ZIMMERMANN, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Dordrecht, ICRC/Martinus Nijhoff Publishers, 1987, p. 918.

¹⁴⁵ Article 51 of the Additional Protocol I to the Geneva Conventions and R. NEYRINCK, “Study Conference: The status of journalists during operations” (22 October 2012), the Study Center for Military and War Law, Brussels, available from <http://www.ismllw-be.org/session/archives.htm>.

- 2) The right to medical care (Article 15 of the Third Geneva Convention);
- 3) The right not to answer when being questioned (Article 17 of the Third Geneva Convention);
- 4) The right to possess objects of personal use (Article 18 of the Third Geneva Convention);
- 5) Minimum norms regarding housing, food, clothing and circumstances of the captivity (Articles 25-28 of the Third Geneva Convention).

1.1.1.2.4. Identity card

War correspondents will only be awarded special protection if they are authorized to accompany the armed forces. To prove this status the armed forces are required to provide the war correspondent with an identity card.¹⁴⁶ The protection awarded to them by the Third Geneva Convention, however, does not depend on the card, but on the authorization to accompany the armed forces.¹⁴⁷ Roeland Neyrinck, a legal advisor for Red Cross-Flanders,¹⁴⁸ concludes that the war correspondent has to have the card in his/her possession, but does not need to carry it everywhere he/she goes.¹⁴⁹

1.1.2. Non-international armed conflict

In the case of a non-international armed conflict there is no special mentioning of the war journalist in international humanitarian law. The question rises if journalists are to be considered civilians in a non-international conflict. Whereas conventional international humanitarian law does not clearly give an answer to this question, customary international humanitarian law will solve this legislative uncertainty in the next section, 1.2. Customary international humanitarian law.¹⁵⁰

The law applicable to non-international armed conflicts can be found in Common Article 3 of the Geneva Conventions, which states minimum norms, and in Additional Protocol II to the Geneva Conventions.¹⁵¹ Customary international humanitarian law will also supplement these rules on the protection journalists receive.

¹⁴⁶ Article 4, A., (4), final subordinate clause of the Third Geneva Convention.

¹⁴⁷ J. DE PREUX, P. EBERLIN, H.-P. GASSER, S.-S. JUNOD, C. PILLOUD, C. WENGER, and B. ZIMMERMANN, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Dordrecht, ICRC/Martinus Nijhoff Publishers, 1987, p. 64-65.

¹⁴⁸ Red Cross-Flanders is part of the Belgian National Red Cross and Red Crescent Society, which has counterparts all over the world. Together with the International Federation of Red Cross and Red Crescent Societies and the International Committee of the Red Cross these national partners work with the International Red Cross and Red Crescent Movement, the 'largest humanitarian network in the world'. International Committee of the Red Cross, "International Red Cross and Red Crescent Movement", available from <http://www.icrc.org/eng/who-we-are/movement/> and International Committee of the Red Cross, "Cooperation with National Societies", available from <http://www.icrc.org/eng/what-we-do/cooperating-national-societies/index.jsp>.

¹⁴⁹ R. NEYRINCK, "Study Conference: The status of journalists during operations" (22 October 2012), the Study Center for Military and War Law, Brussels, available from <http://www.ismllw-be.org/session/archives.htm>.

¹⁵⁰ K. DÖRMANN, "International Humanitarian Law and the Protection of Media Professionals Working in Armed Conflicts", 12 January 2007, available from <http://www.icrc.org/eng/resources/documents/article/other/media-protection-article-.htm>.

¹⁵¹ D. FLECK (ed.), *The Handbook of International Humanitarian Law* (3rd ed.), New York City, NY, Oxford University Press Inc., 2013, p. 31.

1.1.2.1. Conditional protection as civilians

If journalists are considered civilians, Article 13 of the Additional Protocol II to the Geneva Conventions is applicable and states that they may not be the object of attack, provided that they do not participate in the hostilities.

In a similar way as in international armed conflict, war journalists are entitled to be treated humanely following Article 4 of the Additional Protocol II to the Geneva Conventions and the first paragraph of Common Article 3 of the Geneva Conventions. The other minimum norms of Common Article 3 of the Geneva Conventions ensure the war journalists the following rights:

- 1) The right to humane treatment without a discriminatory distinction made, which could lead to detrimental effects;
- 2) Prohibition of violence to life and person and prohibition of cruel treatment and torture;
- 3) Prohibition of hostage-taking;
- 4) Prohibition of humiliating and degrading treatment;
- 5) Prohibition of sentences and executions which are not based on a judgment by a regularly constituted court;
- 6) The right for the wounded and the sick to be cared for;
- 7) The International Committee of the Red Cross is allowed to offer services. This help might, however, be rejected by the parties to the conflict.¹⁵²

Besides the special rights, which are awarded to children in Article 4, paragraph 3 of the Additional Protocol II to the Geneva Conventions, this article adds some very important rights for war journalists compared to the minimum norms of Common Article 3 of the Geneva Conventions.¹⁵³

- 1) The right to respect for their person, honour and convictions and religious practices (Article 4, paragraph 1 of the Additional Protocol II to the Geneva Conventions);
- 2) Prohibition of collective punishments, acts of terrorism, slavery, pillage, rape, enforced prostitution and indecent assault or threats to commit these acts (Article 4, paragraph 2 of the Additional Protocol II to the Geneva Conventions);

1.1.2.2. Protection upon capture

Upon capture of a war journalist in a non-international armed conflict his/her protection is listed in Article 5 of the Additional Protocol II to the Geneva Conventions. The article protects both persons who have been deprived of their liberty because of reasons related to the armed conflict and persons who have been for other reasons.¹⁵⁴ The protection entails the rights granted in Article 4 of the Additional Protocol II to the Geneva Conventions, which are described above, as well as practical guidelines for the detention or internment, such as instructions regarding health, hygiene and religion.¹⁵⁵ Upon release of the interned or detained war journalist his/her safety must also be kept in mind.¹⁵⁶

Article 6 of the Additional Protocol II to the Geneva Conventions states the procedural guidelines of penal prosecutions for crimes related to the non-international armed conflict in paragraphs 2 and 3. This article also prohibits the death penalty for persons under the age of

¹⁵² S. PERRAKIS and M.-D. MAROUDA (eds.), *Armed Conflicts & International Humanitarian Law*, Athens, Ant. N. Sakkoulas & Bruylant, 2009, p. 574.

¹⁵³ L. MOIR, *The Law of Internal Armed Conflict*, Cambridge, Cambridge University Press, 2002, p. 110-111.

¹⁵⁴ Article 5, paragraphs 1 and 3 of the Additional Protocol II to the Geneva Conventions.

¹⁵⁵ Article 5, paragraphs 1 and 2 of the Additional Protocol II to the Geneva Conventions.

¹⁵⁶ Article 5, paragraph 4 of the Additional Protocol II to the Geneva Conventions.

eighteen at the time of the offence, but this seems not extremely relevant for war journalists, and stimulates states to grant the broadest amnesty after the hostilities have ended.¹⁵⁷

According to Themistocles Chatzikonstantinou, there are no rules for this type of armed conflict that make a detention illegal, if the state correctly applies its own national laws.¹⁵⁸ This stands in contrast with Article 42 of the Fourth Geneva Convention, which only allows for internment or assigned residence in an international armed conflict.

1.2. Customary international humanitarian law

War journalists are specifically mentioned in the compilation that the International Committee of the Red Cross made of customary international humanitarian law based on ‘a general practice accepted as law’.¹⁵⁹ Rule 34 of this compilation states that “*civilian journalists engaged in professional missions in areas of armed conflict must be respected and protected as long as they are not taking a direct part in hostilities.*”¹⁶⁰ A ‘civilian journalist’ may not be confused with the ‘citizen journalist’, but must be interpreted as ‘war journalist’. Their protection is the same as the protection civilians receive, which also only exists under the precondition they do not take up arms to join the armed conflict.

1.2.1. Additional norms regarding non-international armed conflict

1.2.1.1. Conditional protection as civilians

From practice the International Committee of the Red Cross deduced that war journalists are qualified as civilians in both international and non-international armed conflicts.¹⁶¹ Whereas this is merely a confirmation of the conventional legal framework for international armed conflicts, customary international humanitarian law fulfils a necessary complementary role in determining the status of a war journalist in a non-international armed conflict. The text of the Additional Protocol II to the Geneva Conventions does not clearly bring the war journalists under the protection for civilians.

The International Committee of the Red Cross mentions in its compilation of customary international humanitarian law that no contrary practice has been found against war journalists being considered civilians and that most of the general condemnations of attacks against journalists even concern non-international armed conflicts.¹⁶² In “Perspectives on the ICRC Study on Customary International Humanitarian Law”, edited by Elizabeth Wilmshurst

¹⁵⁷ Article 6, paragraphs 4 and 5 of the Additional Protocol II to the Geneva Conventions.

¹⁵⁸ S. PERRAKIS and M.-D. MAROUDA (eds.), *Armed Conflicts & International Humanitarian Law*, Athens, Ant. N. Sakkoulas & Bruylant, 2009, p. 574.

¹⁵⁹ International Committee of the Red Cross, “Customary international humanitarian law”, available from <http://www.icrc.org/eng/war-and-law/treaties-customary-law/customary-law/> and International Committee of the Red Cross, “Statement: Study on Customary International Humanitarian Law”, available from <http://www.icrc.org/eng/resources/documents/statement/customary-law-statement-210705.htm>.

¹⁶⁰ J.-M. HENCKAERTS and L. DOSWARLD-BECK, *Customary International Humanitarian Law* (Vol. 1), Cambridge, Cambridge University Press, 2005, p. 115-118.

¹⁶¹ They have based their research on treaties, military manuals, national legislation and case law, work of international organizations, such as the United Nations, the ICRC, etc. J.-M. HENCKAERTS and L. DOSWARLD-BECK, *Customary International Humanitarian Law* (Vol. 2), Cambridge, Cambridge University Press, 2005, p. 660-670 and R. NEYRINCK, “Study Conference: The status of journalists during operations” (22 October 2012), the Study Center for Military and War Law, Brussels, available from <http://www.ismllw-be.org/session/archives.htm>.

¹⁶² J.-M. HENCKAERTS and L. DOSWARLD-BECK, *Customary International Humanitarian Law* (Vol. 1), Cambridge, Cambridge University Press, 2005, p. 115-116.

and Susan Breau the assumption is accepted that Rule 34 is customary international humanitarian law in international armed conflict, but questioned in non-international armed conflict because no confirming practice has been found.¹⁶³

1.2.1.2. Protection upon capture

For the non-international armed conflict customary international humanitarian law provides an additional clarification of and a stronger protection than the minimum norms of Common Article 3 of the Geneva Conventions and Article 4 to 6 of the Additional Protocol II to the Geneva Conventions. Rules 87 until 105 and 118 until 128 of the compilation by the International Committee of the Red Cross describe the basic rights for civilians that are accepted to count as customary international humanitarian law in non-international armed conflicts.¹⁶⁴

Rule 99 of the compilation, for example, prohibits arbitrary deprivation of liberty in non-international conflicts.¹⁶⁵ This is a complementary rule to conventional international humanitarian law, as discussed above. Another important example regarding detention of war journalists is Rule 128, which clarifies that war journalists have to be released in a non-international armed conflict, if the reasons for the deprivation of liberty cease to exist unless legal proceedings are pending or the war journalist is serving a lawfully imposed sentence.¹⁶⁶

1.2.2. Confirmation about the two-folded task for states

According to the International Committee of the Red Cross the national task of protecting journalists consists of two very different aspects.¹⁶⁷ On the one hand there is a duty to respect journalists' rights. This means a state has to refrain from infringing their rights and can be considered a negative duty. On the other hand the state also has a positive duty. The state is required to protect journalists from harm by third parties. This task asks for a lot more resources and good will.

2. What with media infrastructure?

No specific protection is created for media infrastructure.¹⁶⁸ Both in the regulation of an international and a national armed conflict conventional international humanitarian law does not mention media infrastructure as a protected object. Media infrastructure is, therefore,

¹⁶³ E. WILMSHURST and S. BREAU (eds.), *Perspectives on the ICRC Study on Customary International Humanitarian Law*, Cambridge, Cambridge University Press, 2007, p. 185.

¹⁶⁴ J.-M. HENCKAERTS and L. DOSWARLD-BECK, *Customary International Humanitarian Law* (Vol. 1), Cambridge, Cambridge University Press, 2005, p. 306-383 and 428-456 and R. NEYRINCK, "Study Conference: The status of journalists during operations" (22 October 2012), the Study Center for Military and War Law, Brussels, available from <http://www.ismllw-be.org/session/archives.htm>.

¹⁶⁵ J.-M. HENCKAERTS and L. DOSWARLD-BECK, *Customary International Humanitarian Law* (Vol. 1), Cambridge, Cambridge University Press, 2005, p. 344-352.

¹⁶⁶ J.-M. HENCKAERTS and L. DOSWARLD-BECK, *Customary International Humanitarian Law* (Vol. 1), Cambridge, Cambridge University Press, 2005, p. 451-456.

¹⁶⁷ J.-M. HENCKAERTS and L. DOSWARLD-BECK, *Customary International Humanitarian Law* (Vol. 1), Cambridge, Cambridge University Press, 2005, p. 117-118.

¹⁶⁸ R. NEYRINCK, "Study Conference: The status of journalists during operations" (22 October 2012), the Study Center for Military and War Law, Brussels, available from <http://www.ismllw-be.org/session/archives.htm> and A. BALGUY-GALLOIS, "The protection of journalists and news media personnel in armed conflict", *International Review of the Red Cross* 2004, vol. 86 (853), 37-67, available from http://www.icrc.org/eng/assets/files/other/irrc_853_gallois.pdf.

generally considered a civilian object.¹⁶⁹ Because media infrastructure is considered to have a civilian nature, the principles of distinction, of proportionality and of precaution must be abided by and are described in Article 48, 57 and 58 of the Additional Protocol I to the Geneva Conventions. Paragraph 2 of Article 52 of the Additional Protocol I to the Geneva Conventions only consider media infrastructure to become a military target, if certain conditions are met.¹⁷⁰

Also, paragraph 3 of Article 52 of the Additional Protocol I to the Geneva Conventions creates a ‘presumption of civilian use’, which considers media infrastructure a civilian object in the case of doubt.¹⁷¹ There are some doubtful circumstances that create difficulties in determining the purpose of media infrastructure, which is relevant to decide whether or not media infrastructure has become a legitimate military target. If media infrastructure is being used within a military context, it will become hard to prove that the media infrastructure still serves the civilian goal of objective war reporting.

In customary international humanitarian law the practice of media infrastructure being considered a civilian object is confirmed in the chapter on “Distinction between civilian objects and military objectives”, which contains Rule 7 until Rule 10 and covers both international and non-international armed conflicts.¹⁷²

Section 3. Soft law

There are a number of international and regional declarations and resolutions, which confirm the legal framework being applicable to war journalists for both armed conflict and non-conflict zones.

1. International soft law

Resolution 1738 adopted by the United Nations Security Council in 2006 is the most important soft law on the safety of journalists in armed conflict until now.¹⁷³ In this resolution the United Nations Security Council condemned all intentional attacks against journalists in areas of armed conflict and it reiterated their civilian status. The council also explicitly mentioned the provisional protection of media infrastructure and the responsibility of the state to end impunity. The firm stance of the United Nations Security Council on the protected status of war journalists has been confirmed in its resolutions concerning Syria and Somalia in 2012 and 2013.¹⁷⁴ Resolution 1738 also asked the Secretary-General of the United Nations to include the item in its reports on the ‘protection of civilians in armed conflict’.¹⁷⁵

¹⁶⁹ Following Article 52, paragraph 1 of the Additional Protocol I to the Geneva Conventions all objects that are not specifically considered military objects, are seen as civilian objects which may not be the object of attack.

¹⁷⁰ Article 52, paragraph 2 of the Additional Protocol I to the Geneva Conventions states that “*military objectives are limited to those 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, in the circumstances ruling at the time, offers a definite military advantage*”. This means that media infrastructure will usually not become a military target.

¹⁷¹ A. BALGUY-GALLOIS, “The protection of journalists and news media personnel in armed conflict”, *International Review of the Red Cross* 2004, vol. 86 (853), 37-67, available from http://www.icrc.org/eng/assets/files/other/irrc_853_gallois.pdf.

¹⁷² J.-M. HENCKAERTS and L. DOSWARLD-BECK, *Customary International Humanitarian Law* (Vol. 1), Cambridge, Cambridge University Press, 2005, p. 25-36.

¹⁷³ Resolution 1738 of the United Nations Security Council (23 December 2006), *UN Doc. S/RES/1738* (2006).

¹⁷⁴ Resolution on the situation in Syria of the United Nations Security Council (14 April 2012), *UN Doc. S/RES/2042* (2012), Resolution on the situation in Somalia of the United Nations Security

Other important soft law of the United Nations that concerns the safety of journalists, is soft law adopted by UNESCO, the United Nations Human Rights Council and the International Programme for the Development of Communication, which is applicable in both armed conflict and non-conflict zones. In Resolution 29 UNESCO urged the member states to prosecute the perpetrators of attacks against journalists and advised to have no statute of limitations for such crimes.¹⁷⁶ In the First Decision of the International Programme for the Development of Communication the responsibility of states was reiterated and they were asked to voluntarily provide information about how they fight impunity and on the status of the cases, which UNESCO condemns.¹⁷⁷ The decision also asked for projects, which “*support local capacity building in safety and protection of journalists*”. The Resolution on the safety of journalists of the United Nations Human Rights Council is very explicit in stating the council condemns all attacks, among which “*torture, extrajudicial killings, enforced disappearances and arbitrary detention, as well as intimidation and harassment*”.¹⁷⁸ Next to this, the resolution underlines the variety of tasks that states need to fulfil: on the one hand, preventive legal tasks and lobbying and on the other hand, the repressive tasks of monitoring, condemning and prosecuting. Finally, in its resolution the United Nations Human Rights Council encourages ‘voluntary protection programmes for journalists’, which should be adapted to the national struggles.

2. Regional soft law

Also at the regional level soft law has emerged, of which the first two focus on conflict zones and the other four have a more general focus.

At the European level there have been both declarations and resolutions on journalists’ safety. The Declaration on the protection of journalists in situations of conflict and tension of the Committee of Ministers of the Council of Europe stressed the protected status of journalists and committed itself to investigating how exchanging information and undertaking action to protect journalists could be ameliorated within the Council of Europe.¹⁷⁹ Resolution 1438 of the Parliamentary Assembly of the Council of Europe is very comprehensive and advises compulsory safety training for war correspondents and clarifications in the media

Council (18 September 2012), *UN Doc. S/RES/2067* (2012) and Resolution on the situation in Somalia of the United Nations Security Council (6 March 2013), *UN Doc. S/RES/2093* (2013).

¹⁷⁵ Last paragraph of Resolution 1738 of the United Nations Security Council (23 December 2006), *UN Doc. S/RES/1738* (2006).

¹⁷⁶ Resolution 29 on the condemnation of violence against journalists of the 29th session of the General Conference of UNESCO (12 November 1997), available from http://www.unesco.org/new/fileadmin/MULTIMEDIA/FIELD/Brussels/pdf/ipdc_resolution_29.pdf

¹⁷⁷ First Decision on the Safety of Journalists and the Issue of Impunity of the Intergovernmental Council of the International Programme for the Development of Communication (27 March 2008), available from http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/ipdc2008_decision_safety_of_journalists.pdf.

¹⁷⁸ Resolution on the safety of journalists of the United Nations Human Rights Council (27 September 2012), *UN Doc. A/HRC/RES/21/12* (2012).

¹⁷⁹ Declaration on the protection of journalists in situations of conflict and tension of the Committee of Ministers of the Council of Europe (3 May 1996), available from <https://wcd.coe.int/ViewDoc.jsp?id=550547&Site=COE&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

about which information originates from embedded journalists.¹⁸⁰ The resolution also asks that the military may only limit freedom of expression if the war reporting of the embedded journalist would jeopardize ongoing military operations. The Parliamentary Assembly of the Council of Europe also recommends that “*the media should declare publicly that no financial payments or political concessions will be made to kidnappers and that political statements made by kidnapped journalists are made under coercion and are hence without any value*”. Other important advice is the explicit task for states to issue visas to journalists.

Besides the requirement of an independent, speedy and effective investigation, there are some other recommendations of the Joint Declaration on Crimes Against Freedom of Expression that deserve special attention, such as the advice that attacks against the right to freedom of expression should be considered an aggravating circumstance and should be subjected to unlimited or extended statutes of limitations.¹⁸¹ The Special Rapporteurs concerned with the right to freedom of expression and the OSCE Representative on Freedom of the Media also recommend that states provide training, healthcare and insurance for journalists, which differs from the current situation, which will be discussed in Chapter 4 – Practical assistance to war journalists. Another recommendation is a better system to guarantee a flow of information on the prosecution of attacks against journalists.

Besides a focus on the new trend of digitisation, the Resolution on the freedom of press and media in the world of the European Parliament of the European Union states that the European Union should lead by example and that a comprehensive strategy is lacking.¹⁸² It also advises sustainable funding for the safety of journalists and a better support for ‘local capacity-building’.

The Inter-American Commission on Human Rights has adopted the Declaration of Principles on Freedom of Expression, in which it expressed the illegality of targeting ‘social communicators’ or their equipment and the responsibility of the state to prevent, investigate, punish and ensure compensation.¹⁸³

The African Commission on Human and Peoples’ Rights has created Resolution 166 on the Deteriorating Situation of Freedom of Expression and Access to Information in Africa.¹⁸⁴ In this resolution member states are encouraged to abide by and investigate possible violations of human rights. Additionally, journalists are acknowledged to have a responsibility to be credible and avoid harm.

Title 3. The implementation of the international legal framework

Numbers of casualties and reports of journalists about captivity and assaults are the shocking proof that journalism in areas all over the world is a dangerous profession. No

¹⁸⁰ Resolution 1438 on freedom of the press and the working conditions of journalists in conflict zones of the Parliamentary Assembly of the Council of Europe (26 April 2005), *Doc. 10521*, available from <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=17326&lang=EN>.

¹⁸¹ Joint Declaration on Crimes Against Freedom of Expression (25 June 2012), available from <http://www.osce.org/fom/91595>.

¹⁸² Resolution on the freedom of press and media in the world of the European Parliament of the European Union (13 June 2013), P7_TA(2013)0274 (2013).

¹⁸³ Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights (2-20 October 2000), available from <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=26&IID=1>.

¹⁸⁴ Resolution 166 on the Deteriorating Situation of Freedom of Expression and Access to Information in Africa of the African Commission on Human and Peoples’ Rights (12-26 May 2010), available from <http://www.achpr.org/sessions/47th/resolutions/166/>.

preventive and repressive measures can take away the evident risks related to war journalism. Due to the inherent nature of the profession war journalists will always encounter moments of peril and insecurity. Protecting journalists from deliberate violence and attacks against their human right to information and to freedom of expression, however, is a task that has more prospects and options.

First of all, it is a legal duty for all states to protect and respect following customary international humanitarian law. It lies within their power to implement the necessary means to dissuade repetition and to initiate investigations and prosecution. The first section of this title indicates how their primary responsibility has resulted in several methods for restoring the accountability of perpetrators of attacks against war journalists.

Secondly, the states are not able to complete this task by themselves. A more global solution is helpful in supporting national efforts. Also, some states do not show a lot of perseverance or are even reluctant to fight impunity for perpetrators of attacks against war journalists. International and regional methods prove necessary and are the focus of the second section of this title.

Important to note is that the implementation of the legal framework discussed below illustrates the administration of justice in a broad sense containing both judicial and quasi-judicial cases, as well as measures, which are developed based on the legal obligations. Some methods of implementation of the international human rights and humanitarian legal framework are preventive and others are repressive, some are legally binding and others are merely guidelines. The purpose of bringing them all together is to give a comprehensive overview of the consequences the legal framework has led to.

Section 1. National, governmental methods of implementation

The United Nations Security Council has emphasized that the states are the main responsible in protecting the safety of journalists.¹⁸⁵ This responsibility for the state on which territory the attacks occurred, is rooted in the principles of territoriality and sovereignty and is further explained in the first section. All national legal systems across the globe possibly have to deal with attacks against war journalists. The low impunity rate regarding violence against journalists, however, indicates that not many of the attacks resulted in actual prosecutions of the perpetrators. In a second section reference is made to national cases mentioned by the International Committee of the Red Cross in their compilation of customary international law.¹⁸⁶

Because the adoption of international law in se depends on national commitment, the states have a lot of control over the implementation and over the methods they use to incorporate the internationally desired outcome. The amount of state cooperation sometimes is substantially less than desired in many human rights procedures.¹⁸⁷

National goodwill is required to adequately guarantee human rights. General trends in national commitment – both positive and negative – have been perceived by international non-governmental organizations. In a third section some national constructive engagements to counter impunity will be discussed. These positive steps to upgrade the protection for war journalists are undertaken by willing governments. Other states are very aware of their control over human rights and humanitarian issues and have used this control to their advantage. In

¹⁸⁵ Press release of the 6917th Meeting of the United Nations Security Council (12 February 2013), available from <http://www.un.org/News/Press/docs/2013/sc10913.doc.htm>.

¹⁸⁶ J.-M. HENCKAERTS and L. DOSWARLD-BECK, *Customary International Humanitarian Law* (Vol. 2), Cambridge, Cambridge University Press, 2005, p. 660-670.

¹⁸⁷ Paragraphs 119, 121 and 122 of the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns (10 April 2012), *UN Doc. A/HRC/20/22* (2012).

this way they have managed to curtail the freedom of war journalists through less alarming methods. In a fourth section these negative steps are examined.

1. Inherent problems of the state with jurisdiction

The state with jurisdiction to prosecute the crime of harming a war journalist will usually be the state governing the territory on which the crime took place. This is based on the territoriality principle. Most states criminalize murder and physical aggression, if those crimes occur within their jurisdiction, which covers their national territory.¹⁸⁸

There are a lot of problems when the main prosecution power lies with the state where the war journalist was attacked. The fact that a war journalist has travelled to a specific state to report on violence indicates that this state knows armed conflict or extreme violent situations. In most open, informed and democratic societies armed conflicts do not rise, but in states where they do rise, there is already a lenient attitude towards curtailing freedom of expression, because those aspects often give existence to the armed conflict in the first place. Additionally, justice or redemption unfortunately becomes a 'second-class' problem in states dealing with armed conflict, because the main concern is to stop future violence and disturbance. In some regimes it even comes in handy that the tumult facilitates atrocities against unwanted spectators. Poignantly, this impunity for the perpetrators of attacks against war journalists becomes a stimulant for more violence against the press and a vicious circle begins.

Sometimes the state of the territory is not the only state that has jurisdiction. In the rare occasion that the perpetrator is not that state's national, the state of which the perpetrator has the nationality, will be able to prosecute as well.¹⁸⁹ Also, the state, of which the attacked war journalist has the nationality, normally does not have any power to prosecute the perpetrator, but some states will use the active personality principle in their criminal legal provisions, on which basis they can prosecute when their nationals have become the victim of a crime abroad.¹⁹⁰ Nevertheless, this usually does not result in a successful prosecution.¹⁹¹ The main reason why other states than the state of the territory are not successful, is the lack of investigative power they have.

2. National case law on attacks against war journalists

The prosecution of attacks against war journalists often does not require the creation of additional laws. Although the protection is based on international human rights and/or humanitarian law, most attacks against war journalists are prosecutable under the existing national laws. It goes beyond the reach of this master thesis to investigate national specifics for the benefit of war journalists or national interpretations of the international protected status for war journalists.

¹⁸⁸ Article 29 of the Vienna Convention on the Law of Treaties of 23 May 1969, *United Nations Treaty Series*, vol. 1155, 331.

¹⁸⁹ This will eventually result in a request for extradition if the criminal is still to be found on the territory of the state, where the attacks occurred. Lecture on International Criminal Law by Edgardo Rotman, Senior Lecturer in International & Comparative Law, from January until May 2013.

¹⁹⁰ Lecture on International Criminal Law by Edgardo Rotman, Senior Lecturer in International & Comparative Law, from January until May 2013.

¹⁹¹ An example thereof could be the case in which France tried to investigate the killing of the French journalist, Gilles Jacquier. Interview with Peter Verlinden, a Belgian television journalist, on January 28th, 2014.

There are, however, two cases on which the International Committee of the Red Cross has based its compilation of the practice sustaining Rule 34. In a case before the Colombian Constitutional Court in 2007,¹⁹² it was stated that war journalists in non-international armed conflicts are specially protected persons in international humanitarian law.¹⁹³ In a case before the Constitutional Court of the Russian Federation in 1995,¹⁹⁴ it was held unconstitutional that the state deprived war journalists of their accreditation.¹⁹⁵

These two cases illustrate that national high-ranking courts are taking the existence of international humanitarian law protecting war journalists into account and have attempted to hold the state accountable for violations of these rules.

3. Positive measures to ensure freedom of expression and safety of journalists

Attempts to comply with the international rules have stimulated some states to inquire about new ways that attempt to reduce violence against journalists or to fight impunity after journalists have been attacked.

A first example is the transfer of the prosecution of violence against journalists to the federal or state level. The Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, supports this trend, because it ensures that problems of corruption and influence at the local level are avoided.¹⁹⁶ After a lot of lobbying from international non-governmental organizations,¹⁹⁷ in Mexico a new law was adopted in 2012 to give the federal attorney general the authority to possibly take over jurisdiction over cases at the state level where the press was the victim of a crime.¹⁹⁸ This, however, has not resulted in an effective overtaking of the jurisdiction in the two cases of murdered journalists since the new law took effect.¹⁹⁹

A second positive measure to create a better protection for war journalists is the protection programme of Mexico, which is a more practical part of the implementation of the new law mentioned above. Veronica Basurto Gamero, a Mexican journalist, explains how the Federal Mechanism for the Protection of Human Rights Defenders and Journalists should be able to respond to applications within twelve hours and how they can provide alarm buttons which can be accessed from phones, police patrol cars which drive around journalists' houses, and a

¹⁹² Colombia, Constitutional Court, *Constitutional Case No. C-291/07*, Judgment of 25 April 2007.

¹⁹³ International Committee of the Red Cross, "Practice relating to Rule 34. Journalists – V. National Case-law", available from http://www.icrc.org/customary-ihl/eng/docs/v2_cha_chapter10_rule34#_VNaCa.

¹⁹⁴ Russian Federation, Constitutional Court, *Situation in Chechnya Case*, Judgment of 31 July 1995.

¹⁹⁵ J.-M. HENCKAERTS and L. DOSWARLD-BECK, *Customary International Humanitarian Law* (Vol. 2), Cambridge, Cambridge University Press, 2005, p. 663.

¹⁹⁶ Paragraphs 74, 93 and 113 of the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns (10 April 2012), *UN Doc. A/HRC/20/22* (2012).

¹⁹⁷ M. O'CONNOR, "Mexican senators say journalist murders to be federal crime", *Committee to Protect Journalists Blog* 2012, available from <http://cpj.org/blog/2012/03/mexican-senators-say-journalist-murders-to-be-fede.php> and M. O'CONNOR, "In Mexico, a movement and a bill against impunity", *Committee to Protect Journalists Blog* 2013, available from <http://www.cpj.org/blog/2013/04/in-mexico-a-movement-and-law-against-impunity.php>.

¹⁹⁸ M. O'CONNOR, "Mexico's special prosecutor hesitates over early cases", *Committee to Protect Journalists Blog* 2013, available from <http://www.cpj.org/blog/2013/08/mexicos-special-prosecutor-hesitates-over-early-ca.php>.

¹⁹⁹ M. O'CONNOR, "Mexico's special prosecutor hesitates over early cases", *Committee to Protect Journalists Blog* 2013, available from <http://www.cpj.org/blog/2013/08/mexicos-special-prosecutor-hesitates-over-early-ca.php>.

special safety hostel.²⁰⁰ According to her these protection methods are, however, not reliable and take a lot more time than they should in order to be helpful. Another article, written by the Washington Office on Latin America, highlights other problems the mechanism has, such as bureaucratic problems with funding, excessive delays in analysing cases, a lack of judicial investigations and limited staff because of a several resignations.²⁰¹

A third idea is the installation of a special ‘commission of inquiry’, if high-scale attacks must be investigated and which may suggest reconciliation methods.²⁰² For example, the National Union of Somali Journalists advises an “*Independent Commission of Inquiry to investigate the killings of journalists and other violent attacks against them*”, which should be installed in Somalia.²⁰³ Also, the United Nations Security Council is capable of requesting the Secretary-General for international commissions of inquiry.²⁰⁴ Examples are the international commissions of inquiry in Syria and Libya, which are mandated by the United Nations Human Rights Council to address human rights violations and which documented serious attacks against war journalists.²⁰⁵

A fourth positive trend is marked by the agreement between journalists and security forces in Iran.²⁰⁶ This agreement has been worked towards and supported by many actors and is a clear sign of commitment on both the governmental side and the side of the media. A joint code of conduct as well as workshops for both journalists and security forces should result in a better mutual understanding. Such initiatives of mutual recognition and attempts to improve cooperation in a very direct way are very useful, because of the required personal commitment.

All these examples and trends illustrate that there are new ways to promote war journalists’ safety. It is important that states are encouraged in their endeavours to implement these good practices.

4. National measures with a negative impact on war journalism

In the last decennia, the countries in which armed conflict takes place have been led mostly by dictatorial or oppressive governments, for whom freedom of press is not the first concern. In those countries the general climate for journalism is often not healthy and the climate for war journalism even dangerous. Some states have turned the available and legal

²⁰⁰ Reporters Without Borders, “Journalist who fled abroad describes protective mechanism’s flaws”, 2013, available from <http://en.rsf.org/mexico-journalist-who-fled-abroad-27-05-2013,44684.html>.

²⁰¹ Washington Office on Latin America, “Concerns about Protection of Human Rights Defenders and Journalists in Mexico”, 2014, available from http://www.wola.org/commentary/concerns_about_protection_of_human_rights_defenders_and_journalists_in_mexico.

²⁰² Paragraph 115 of the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns (10 April 2012), *UN Doc. A/HRC/20/22* (2012).

²⁰³ National Union of Somali Journalists, *Impunity: War on Somali’s Journalists*, NUSOJ, 2012, p. 22, available from <https://en.rsf.org/somalia-impunity-war-on-somalia-s-23-11-2012,43711.html>.

²⁰⁴ Centre for Law, Justice and Journalism at City University London and Centre for Freedom of the Media at the University of Sheffield, “The Initiative on Impunity and the Rule of Law: A Policy Research and Advocacy Project on the Safety and Protection of Journalists: A Responsibility for the World”, 2011, p. 30-31, available from https://www.city.ac.uk/_data/assets/pdf_file/0017/106424/CLJJ-Impunity-Report.pdf.

²⁰⁵ Paragraph 36 of the Report of the Office of the United Nations High Commissioner for Human Rights (1 July 2013), *UN Doc. A/HRC/24/23* (2013).

²⁰⁶ International Media Support, “New agreement to boost safety of Iraqi journalists”, 2014, available from <http://www.i-m-s.dk/new-agreement-to-boost-safety-of-iraqi-journalists/>.

exceptions provided in international human rights and humanitarian law into loopholes, through which they legally limit the rights and freedoms of war journalists.

In Ethiopia, Iran, China, Vietnam and Turkey journalists are being prosecuted for exercising their profession based on anti-terrorism, national security or anti-state laws.²⁰⁷ The Ethiopian case of two Swedish journalists, being jailed and only released on a pardon after they admitted to the terrorism allegations, proves that Ethiopia wanted to set an example for journalists covering things the government didn't want to be known.²⁰⁸ Armed conflict situations are, by definition, highly intense and, consequently, war journalists will often cover stories or events that are affecting the nation. It becomes easily explainable to the public and to the ratio of courts and government that the laws restricting freedom of expression apply to safeguard the nation. Nevertheless, the Human Rights Committee has stated that these measures count as restriction of the human right to freedom of expression and they must be compatible with Article 19, paragraph 3 of the ICCPR.²⁰⁹

Another loophole is also based on the third paragraph of Article 19 of the ICCPR, namely the limited entry of journalists on a state's territory. On this matter the Human Rights Committee considers several practices under regular circumstances incompatible with Article 19, paragraph 3 of the ICCPR.²¹⁰

- Restrictions to the freedom of journalists to leave the state
- Restrictions to the freedom of journalists of certain nationalities to enter the state
- Restrictions to the freedom of journalists to move freely within the state

The Human Rights Committee also deems limited accreditation or 'embedded' reporters to be unacceptable and incompatible with Article 19 of the ICCPR, unless it is necessary in order to be able to give journalists special access.²¹¹ All these restrictions are dangerous in light of the legal obligations states have to respect the right to freedom of expression. War journalists who are not granted visas to enter a state, could start a case before the Human Rights Committee based on this interpretation of Article 19, paragraph 3 of the ICCPR.

Section 2. International and regional methods

Both international and regional methods have emerged to supplement the national protective measures in monitoring compliance with international human rights law and international humanitarian law. In this section the order of the implementation methods is dependent on the magnitude of the reach they have and each time it will be mentioned whether they seek compliance with human rights or humanitarian law.

The first part explains the case law and the preventive measures of the regional human rights courts. The second part deals with the jurisdiction of the International Criminal Court regarding violence against journalists. The third part enumerates the preventive and repressive implementation at the United Nations level.

²⁰⁷ M. CAMPBELL, "Under Cover of Security, Governments Jail Journalists", 2013, available from <http://cpj.org/2013/02/attacks-on-the-press-misusing-terror-laws.php>.

²⁰⁸ M. CAMPBELL, "Under Cover of Security, Governments Jail Journalists", 2013, available from <http://cpj.org/2013/02/attacks-on-the-press-misusing-terror-laws.php>.

²⁰⁹ Paragraph 46 of General Comment No. 34 on Article 19: Freedoms of opinion and expression of the Human Rights Committee (12 September 2011), *UN Doc. CCPR/C/GC/34* (2011).

²¹⁰ Paragraph 45 of General Comment No. 34 on Article 19: Freedoms of opinion and expression of the Human Rights Committee (12 September 2011), *UN Doc. CCPR/C/GC/34* (2011).

²¹¹ Paragraph 44 of General Comment No. 34 on Article 19: Freedoms of opinion and expression of the Human Rights Committee (12 September 2011), *UN Doc. CCPR/C/GC/34* (2011).

1. Regional human rights courts

There are three regional human rights courts, which seek compliance with regional human rights law: the European Court of Human Rights, the Inter-American Court of Human Rights and the African Court of Justice and Human Rights. All three regional human rights systems offer a complaint procedure for individuals who claim to have suffered a human rights violation and they also have the competence to issue interim measures. The Inter-American Commission on Human Rights and the African Commission on Human and Peoples' Rights have established Special Rapporteurs.

1.1. Case law

The European Court of Human Rights has established extensive administration of justice regarding Article 10 of the European Convention on Human Rights.²¹² In the case of *Özgür Gündem versus Turkey*, for example, it was decided that the state had failed to live up to the positive obligation of investigating the attacks against journalists associated with the newspaper, *Özgür Gündem*, and of protecting them from the attacks.²¹³ In the case of *Dink versus Turkey* the state was held accountable for “*abandoning a charge against policemen for negligence in protecting journalist Hrant Din*”.²¹⁴

Also the Inter-American Court of Human Rights has ruled in favour of journalists. In the case of *Vélez Restrepo and family versus Colombia* the court stated that the state had violated, inter alia, the right to freedom of expression and the right to personal integrity of Vélez Restrepo.²¹⁵ Two of the reparations, which the court had ordered, were:

- 1) A specific module on the role of journalists and the right to freedom of expression in the human rights education programs for the Colombian armed forces.
- 2) More research on whether other measures could be undertaken to find the perpetrators of threats and acts of violence against journalists.

Although the case law of the European Court of Human Rights and the Inter-American Court of Human Rights does not deal with situations of armed conflict, the governmental protection that the courts deem necessary, is very promising for war journalists.

1.2. Interim measures

The United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, encourages journalists to make more use of the interim measures of the regional human rights courts, if they have received threats.²¹⁶ These measures, either called ‘provisional’ or ‘interim’ measures are legally binding and concern urgent situations of possible human rights violations. These possible interim measures are an opportunity for war journalists who fear governmental or non-governmental pressure or reprisals. The following legal bases explain the competence of the regional human rights courts to issue such measures:

²¹² E. BROWNE and T. PROBERT (eds.), *Safety of Journalists Research Pack*, Centre of Governance and Human Rights, University of Cambridge, 2012, 68 p., available from http://mws.polis.cam.ac.uk/cghr/docs/CGHR_Journalists_Research_Pack_2012.pdf.

²¹³ European Court of Human Rights, *Özgür Gündem v. Turkey*, ECHR 2000-III.

²¹⁴ European Court of Human Rights, *Dink v. Turkey*, available from <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-100383>.

²¹⁵ Inter-American Court of Human Rights, *Vélez Restrepo and family v. Colombia*, Serie C No. 248, available from http://www.corteidh.or.cr/docs/casos/articulos/seriec_248_ing%20.pdf.

²¹⁶ Paragraph 62 of the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns (10 April 2012), *UN Doc. A/HRC/20/22* (2012).

- Based on Rule 39 of the Rules of Court of the European Court of Human Rights ‘interim measures’ can be adopted in exceptional circumstances, “*in the interests of the parties or of the proper conduct of the proceedings*” and according to the practice direction issued by the President of the European Court of Human Rights.²¹⁷
- Article 63 of the American Convention on Human Rights permits the Inter-American Court of Human Rights to adopt provisional measures “*in cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons*”.
- The African Court of Justice and Human Rights, which replaces the African Court on Human and Peoples’ Rights and was established by the Protocol on the Statute of the African Court of Justice and Human Rights of 1 July 2008,²¹⁸ is able to issue provisional measures based on Article 35 of the previously mentioned protocol, if “*it considers that circumstances so require any provisional measures which ought to be taken to preserve the respective rights of the parties*”.

Next to this, the Inter-American Commission on Human Rights is able to issue ‘precautionary’ measures²¹⁹ and has done so on several occasions.²²⁰ Christof Heyns welcomes the use of this possibility by the Inter-American Commission on Human Rights to ask the states to protect the lives of many journalists, but he also highlights the controversy surrounding this type of measures.²²¹

1.3. Special Rapporteurs

Both the Inter-American Commission on Human Rights and the African Commission on Human and Peoples’ Rights have established Special Rapporteurs regarding the right to freedom of expression. The former has created the Special Rapporteur for Freedom of Expression²²² and the latter has a Special Rapporteur on Freedom of Expression and Access to Information in Africa.²²³ These mandates have the goal of raising awareness and condemning human rights violations regarding freedom of expression.²²⁴

2. The International Criminal Court

Because there has been a lot of international condemnation of violence against journalists, it is also advisable to create international repressive measures. To this end, the International

²¹⁷ Rules of Court of the European Court of Human Rights (1 January 2014), available from http://www.echr.coe.int/Documents/Rules_Court_ENG.pdf and Practice Direction concerning Requests for Interim Measures (5 March 2003), available from http://www.echr.coe.int/Documents/PD_interim_measures_ENG.pdf.

²¹⁸ Protocol on the Statute of the African Court of Justice and Human Rights of 1 July 2008, available from <http://www.refworld.org/docid/4937f0ac2.html>.

²¹⁹ Article 25 of the Rules of Procedure of the Inter-American Commission on Human Rights (13 November 2009), available from <http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp>.

²²⁰ Examples of cases in which journalists were granted precautionary measures can be found in the database available from Inter-American Commission on Human Rights, “Precautionary Measures”, available from <http://www.oas.org/en/iachr/decisions/precautionary.asp>.

²²¹ Paragraph 62 of the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns (10 April 2012), *UN Doc. A/HRC/20/22* (2012).

²²² Inter-American Commission on Human Rights, “Special Rapporteurship for Freedom of Expression”, available from <http://www.oas.org/en/iachr/expression/index.asp>.

²²³ African Commission on Human and Peoples’ Rights, “Special Rapporteur on Freedom of Expression and Access to Information”, available from <http://www.achpr.org/mechanisms/freedom-of-expression/>.

²²⁴ Paragraphs 60 and 61 of the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns (10 April 2012), *UN Doc. A/HRC/20/22* (2012).

Criminal Court – installed by the Rome Statute of the International Criminal Court of 17 July 1998²²⁵ – can be viewed as an adequate and proper mechanism to fight violence against journalists after the facts. This court is able to prosecute both international human rights and humanitarian law if the violations thereof result in ‘serious crimes of international concern’.²²⁶ Currently, deliberate attacks against journalists fall within the jurisdiction of the International Criminal Court, because the Rome Statute mentions that intentional, direct attacks against civilians are war crimes²²⁷ and this is confirmed by customary international law.²²⁸

The necessity of having an established international coping mechanism with a clear legal goal, namely prosecution, originates from the large problem of impunity. Whereas the causes for impunity often lie with the national or local government, a clear complementary international mechanism is very helpful to compensate for these problems. Having an international watchdog creates an extra and more independent way of monitoring compliance as well as an extra impulse to safeguard journalists. The preventive power of the International Criminal Court stimulates the use of less violence against journalists.

Reporters Without Borders, a non-profit organization with a focus on freedom of information and preventing attacks on journalists,²²⁹ has urged for an amendment to Article 8 to the Rome Statute of the International Criminal Court, on which will be elaborated below.²³⁰ Although this will not be the final step in stopping violence against journalists, it seems an essential one to be taken. Reporters Without Borders clearly states how this amendment will create another useful incentive to stop impunity for violence against journalists.

A drawback that has been noted is the global ineffectiveness of prosecutions before the International Criminal Court. It can be argued that this seemingly perfect international solution might not have the desired outcomes of less impunity and, therefore, less violence against journalists. Due to the limited number of State Parties relevant to the topic of journalists’ safety, it can be alleged that the amendment will often not even be serviceable in practice. Countries where journalists have suffered the most, such as Syria, Iraq and Egypt,²³¹ have often not signed the Rome Statute.²³² In practice this means that crimes committed on their territory cannot be prosecuted unless the offender was a national from a State Party²³³ or if the United Nations Security Council refers the case to the Prosecutor of the International Criminal Court.²³⁴ However, most of the time this is not the case and the perpetrators will be those countries’ own citizens or government officials and, therefore, not prosecutable.

²²⁵ Rome Statute of the International Criminal Court of 17 July 1998, *United Nations Treaty Series*, vol. 2187, 3, hereafter the Rome Statute.

²²⁶ Article 1 of the Rome Statute.

²²⁷ Article 8, paragraph 2, e, i of the Rome Statute.

²²⁸ J.-M. HENCKAERTS and L. DOSWARLD-BECK, *Customary International Humanitarian Law* (Vol. 1), Cambridge, Cambridge University Press, 2005, p. 568-603.

²²⁹ <http://en.rsf.org/>.

²³⁰ A. BALGUY-GALLOIS, J. LESCS and P. ORSONNEAU, “Bringing predators of freedom of information to justice”, *Reporters Without Borders* 2013, available from http://en.rsf.org/IMG/pdf/note_comite_juridique_v1_gb.pdf.

²³¹ E. BEISER, “Syria, Iraq, Egypt most deadly nations for journalists”, 2013, available from <http://www.cpj.org/reports/2013/12/syria-iraq-egypt-most-deadly-nations-for-journalis.php>.

²³² International Criminal Court, “The States Parties to the Rome Statute”, available from http://www.icc-cpi.int/en_menus/asp/states%20parties/Pages/the%20states%20parties%20to%20the%20rome%20statute.aspx.

²³³ Reporters Without Borders, “World Press Freedom Day”, 2013, available from <http://en.rsf.org/world-press-freedom-day-03-05-2013,44560.html>.

²³⁴ Article 13, (b) of the Rome Statute.

Nevertheless, the explicit mentioning of the safety of journalists and the hideousness of the crimes committed against them in an internationally binding system could have a great deterrent effect on future perpetrators. Violence against journalists is already prosecutable under the Rome Statute. Reporters Without Borders, however, suggests inserting ‘journalists, media workers and associated personnel’²³⁵ alongside the explicit mentioning the humanitarian and peacekeeping personnel in Article 8, paragraph 2, b, iii and Article 8, paragraph 2, e, iii of the Rome Statute. This would mean a much greater denouncement of the hideousness of violence against journalists.

Whereas this might not give rise to more cases before the International Criminal Court, this possibility of a specific charge would be a major step towards an even stronger position against attacks on journalists.

3. Measures at the level of the United Nations

The measures the United Nations has established, are based on the obligations imposed by international human rights law and international humanitarian law and on the fact that national implementation thereof is not sufficient in a global world facing global issues. There are many different types of actions that can be undertaken. On the one hand, the first and the second section deal with case-specific measures. On the other hand, the third and the fourth section are general ways of condemning malpractices.

3.1. Interim measures of the Human Rights Committee

The Human Rights Committee, which is the body monitoring compliance with the ICCPR,²³⁶ has the mandate to recommend interim measures in a pending case, which are “*desirable to avoid irreparable damage*”.²³⁷ The Committee against Torture,²³⁸ the Committee on Enforced Disappearances²³⁹ and the Committee on the Elimination of Discrimination against Women²⁴⁰ have similar mechanisms and according to the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, all of these measures should be more frequently used.²⁴¹

It is questionable what the actual protection is that those interim measures provide, because the committees can only advise a government of state to act on behalf of war journalists. This obviously draws attention to their cause, but the state cannot be forced into helping or caring. It seems that war journalists are not using these interim measures often for

²³⁵ A. BALGUY-GALLOIS, J. LESCS and P. ORSONNEAU, “Bringing predators of freedom of information to justice”, *Reporters Without Borders* 2013, p.5, available from http://en.rsf.org/IMG/pdf/note_comite_juridique_v1_gb.pdf.

²³⁶ Office of the High Commissioner for Human Rights, “Human Rights Committee – Monitoring civil and political rights”, available from <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx>.

²³⁷ Rule 92 of the Rules of Procedure of the United Nations Human Rights Committee (11 January 2012), *UN Doc.* CCPR/C/3/Rev.10 (2012).

²³⁸ Rule 114 of the Rules of Procedure of the Committee against Torture (13 August 2013), *UN Doc.* CAT/C/3/Rev.6 (2013).

²³⁹ Rule 70 of the Rules of Procedure of the Committee on Enforced Disappearances (22 June 2012), *UN Doc.* CED/C/1 (2012).

²⁴⁰ Rule 63 of the Rules of Procedure of the Committee on the Elimination of Discrimination against Women (28 May 2008), *UN Doc.* HRI/GEN/3/Rev.3 (2008).

²⁴¹ Paragraph 54 of the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns (10 April 2012), *UN Doc.* A/HRC/20/22 (2012).

several reasons. One reason could be the ineffectiveness, but a main motivation seems to be that their war reporting would come to a sure end because of the publicity.²⁴²

3.2. Quasi-judicial administration of justice

The study by the International Committee of the Red Cross of customary international humanitarian law reveals that there are no data from “International or Mixed Judicial and Quasi-judicial Bodies”, which have dealt with Rule 34 of customary international humanitarian law.²⁴³ There is, however, some relevant administration of justice from which conclusions can be derived regarding the protection of human rights of war journalists. Before the Human Rights Committee two cases have emerged with regard to the protection of a journalist outside the boundaries of an armed conflict. The Human Rights Committee monitors compliance with the ICCPR and the following two cases exemplify this.²⁴⁴

A first case of importance to the matter is the case of *Afuson Njaru versus Cameroon*.²⁴⁵ The Human Rights Committee found that there has been a violation by the state of Article 19, paragraph 2 in conjunction with Article 2, paragraph 3 of the ICCPR. In this case, a journalist wrote on corruption and violence among security forces and according to the committee “there can be no legitimate restriction under Article 19, paragraph 3, which would justify the arbitrary arrest, torture, and threats to life of the author and thus, the question of deciding which measures might meet the ‘necessity’ test in such situations does not arise”.²⁴⁶ The denouncement of the facts by the Human Rights Committee is a clear sign in favour of the duty of states to respect the rights of journalists.

In a second case, the case of *Zoya Kholodova versus the Russian Federation*,²⁴⁷ the Human Rights Committee has ruled that the state did not violate Article 19 of the ICCPR, because based on the present evidence it could not conclude that the state acted with the aim of preventing the journalist, Dmitrii Kholodov, from exercising his profession.²⁴⁸ The committee did, however, conclude that a violation occurred of the right to life of Article 6, paragraph 1 in conjunction with Article 2, paragraph 3 of the ICCPR.

Whereas the views adopted by the Human Rights Committee are binding and in both cases an effective remedy for the infringement was recommended, the cases are an essential step in reproving the actions of states that are detrimental for the rights of journalists. Because international humanitarian law only prevails in certain cases of impossible co-existence with international human rights law, as discussed above, the cases are of relevance to war journalists.

²⁴² Interview with Jens Franssen, a Belgian radio journalist, on January 10th, 2014.

²⁴³ J.-M. HENCKAERTS and L. DOSWARLD-BECK, *Customary International Humanitarian Law* (Vol. 2), Cambridge, Cambridge University Press, 2005, p. 660-670.

²⁴⁴ Office of the High Commissioner for Human Rights, “Human Rights Committee – Monitoring civil and political rights”, available from <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx>.

²⁴⁵ Human Rights Committee, *Afuson Njaru v. Cameroon*, Views (19 March 2007), *UN Doc. CCPR/C/89/D/1353/2005*.

²⁴⁶ Paragraph 6.4 of Human Rights Committee, *Afuson Njaru v. Cameroon*, Views (19 March 2007), *UN Doc. CCPR/C/89/D/1353/2005*.

²⁴⁷ Human Rights Committee, *Zoya Kholodova v. the Russian Federation*, Views (1 November 2012), *UN Doc. CCPR/C/106/D/1548/2007*.

²⁴⁸ Paragraph 10.6 of Human Rights Committee, *Zoya Kholodova v. the Russian Federation*, Views (1 November 2012), *UN Doc. CCPR/C/106/D/1548/2007*.

3.3. Reports following Resolution 1738 of the United Nations Security Council

Following Resolution 1738 of the United Nations Security Council²⁴⁹ the annual reports of the Secretary-General to United Nations General Assembly on the “Protection of Civilians” have reiterated the necessary protection of journalists as a category of civilians in situations of armed conflict.²⁵⁰ The Security Council Report, a non-profit organization, has stated in its monthly forecast in July 2013 that there remains a lot more to be done by the United Nations Security Council and the organization suggested a Presidential Statement on the issue of journalists’ safety.²⁵¹ An open debate and an Arria formula meeting with the specific focus on the protection of journalists in international humanitarian law served to bring the United Nations Security Council more knowledge and focus on the topic.²⁵²

3.4. Special procedures of the United Nations Human Rights Council

The United Nations Human Rights Council, which is an intergovernmental body that promotes compliance with human rights obligations,²⁵³ has established several special procedures, which are relevant to the safety of war journalists. Those special procedures, namely the ‘Special Rapporteurs’, are individuals who focus on thematic or country-specific issues and are mandated to perform country visits, monitor abuses, write reports and state recommendations.²⁵⁴ They receive support from the OHCHR and report to the United Nations Human Rights Council. The ones of highest importance to the protection of war journalists are the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns,²⁵⁵ and the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue.²⁵⁶ The latter, for example, referred to the protected position of journalists in his reports of 2010 and 2012,²⁵⁷ whereas the former dedicated an entire report to the subject in 2012.²⁵⁸ Other

²⁴⁹ Resolution 1738 of the United Nations Security Council (23 December 2006), *UN Doc. S/RES/1738* (2006).

²⁵⁰ For example, paragraphs 5, 14 and 15 of the Report of the Secretary-General on the protection of civilians in armed conflict (22 May 2012), *UN Doc. S/2012/376* (2012).

²⁵¹ The Security Council Report is suggesting a Presidential Statement specifically on the safety of journalists, compared to a Presidential Statement that was issued a few months earlier on the protection of civilians in general. Security Council Report, “July 2013 Monthly Forecast – Protection of Journalists”, available from http://www.securitycouncilreport.org/monthly-forecast/2013-07/protection_of_journalists.php?print=true and Presidential Statement on the protection of civilians (12 February 2013), *UN Doc. S/PRST/2013/2* (2013).

²⁵² Security Council Report, “The Protection of Civilians in Armed Conflict”, 2013 (3), p. 7-8, available from http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/cross_cutting_report_3_protection_of_civilians_2013.pdf.

²⁵³ Office of the High Commissioner for Human Rights, “United Nations Human Rights Council”, available from <http://www.ohchr.org/en/hrbodies/hrc/pages/hrcindex.aspx>.

²⁵⁴ Office of the High Commissioner for Human Rights, “Human Rights Bodies”, available from <http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>.

²⁵⁵ Office of the High Commissioner for Human Rights, “Special Rapporteur on extrajudicial, summary or arbitrary executions”, available from <http://www.ohchr.org/EN/Issues/Executions/Pages/SRExecutionsIndex.aspx>.

²⁵⁶ Office of the High Commissioner for Human Rights, “Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression”, available from <http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/OpinionIndex.aspx>.

²⁵⁷ Paragraphs 132 and 132 of the Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue (20 April 2010), *UN Doc. A/HRC/14/23* (2010) and Report of the Special Rapporteur on the promotion and protection of the

relevant special procedures are the United Nations Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya,²⁵⁹ whereas many war journalists are perceived as human rights defenders because they often document and report on human rights violations, and the United Nations Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo,²⁶⁰ because female journalists often face additional problems, such as sexual violence.

Title 4. Evaluation of the available legal protection

The protection for war journalists is very clear. On the one hand, international human rights law protects war journalists as human beings and makes states responsible for guaranteeing their human rights. When violent circumstances do not give rise to the existence of an armed conflict, those rules will protect the war journalist exercising their profession. On the other hand the war journalist is explicitly mentioned in the Geneva Conventions and their Additional Protocols. On that basis they will receive protection during armed conflict. This entails the general protection awarded to all civilians in armed conflict. Next to this, they receive the additional protection of a prisoner of war upon capture when they are accompanying the army. The clarity of the legal protection for journalists awarded by international law is a good thing.

The gist of the legal protection for war journalists is not different from the protection other civilians receive in armed conflict. In soft law, however, there is a growing tendency to specifically denounce attacks against war journalists because of their important informational task. More and more attention is being asked and given to fight against impunity for crimes against war journalists. This special attention given to the cause of war journalists is really helpful and should continue to be stimulated.

The administration of justice, interpreted in a broad sense, knows a lot of variety, but also a lot of growing potential. An important limitation of international legal protection is the general lack of adequate national implementation. The states often do not sufficiently protect war journalists. One of the reasons therefor is that states are not very keen on foreign spectators. Another reason can be found in the general judicial problems and impunity issues, which some states face. To work towards compliance with the international guidelines protecting war journalists the global community has to keep encouraging all states to take their responsibility in protecting war journalists.

It is, however, not enough to stimulate states without providing a practical guidance on how they should implement international law. Cooperation of states with the international level and between states is necessary to give states a more precise view on the possibilities to protect journalists and on effective and workable good practices. Examples thereof are the secondment of experts to local UNESCO offices in order to spread good practices,²⁶¹ as well as the Report of the OHCHR, which enumerates such good practices.²⁶²

right to freedom of opinion and expression, Frank La Rue (4 June 2012), *UN Doc. A/HRC/20/17* (2012).

²⁵⁸ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns (10 April 2012), *UN Doc. A/HRC/20/22* (2012).

²⁵⁹ Office of the High Commissioner for Human Rights, “Special Rapporteur on the situation of human rights defenders”, available from <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/SRHRDefendersIndex.aspx>.

²⁶⁰ Office of the High Commissioner for Human Rights, “Rashida Manjoo, Special Rapporteur on Violence against Women, its causes and consequences”, available from <http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/RashidaManjoo.aspx>.

²⁶¹ UNESCO, “Secondments to Support the Safety of Journalists”, available from <http://www.unesco.org/new/en/communication-and-information/freedom-of->

Although there is an adequate set of rules to apply to the protection of journalists, exercising the job of war journalist remains a real precarious venture and it is sometimes expressed that on the ground these rules are not a great help. This problem exists for many other categories of vulnerable people, such as woman or children. Their human rights are all guaranteed through international law, but in practice these laws do not result in effective protection through the administration of justice. A large part of fighting impunity is managing a better administration of justice. The question then rises whether an adaption to the legal framework is in order. According to most journalists the current legal framework, however, suffices.²⁶³ Nevertheless, there is a large problem with the implementation, because there seems to be a large gap both on the level of prevention of future violence against war journalists as well as on the level of repressive measures. According to the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, impunity is the biggest problem to prevention.²⁶⁴

expression/extrabudgetary-projects-on-freedom-of-expression/projects/secondments-to-support-the-safety-of-journalists/.

²⁶² Paragraphs 47 until 68 of the Report of the Office of the United Nations High Commissioner for Human Rights (1 July 2013), *UN Doc. A/HRC/24/23* (2013).

²⁶³ Interviews with Jens Franssen, a Belgian radio journalist, on January 10th, 2014 and Peter Verlinden, a Belgian television journalist, on January 28th, 2014 and P. HUBLET, *La Protection des Civils dans les Conflits Armés – Les cas des acteurs humanitaires et des journalistes*, Croix-Rouge de Belgique, 2010, p. 66-107.

²⁶⁴ Paragraphs 43 and 95 of the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns (10 April 2012), *UN Doc. A/HRC/20/22* (2012).

Chapter 4 – PRACTICAL ASSISTANCE TO WAR JOURNALISTS

Interviewing journalists about how they see their legal status and their legal protection made painfully clear that international law does not necessarily have the aspired effects on the ground. Because legal protection for war journalists is available but not always enforceable, many organizations and other stakeholders have developed practical assistance for war journalists. This practical assistance has many aspects. On the one hand it consists of preventive measures and on the other hand it entails practical help during dangerous situations or after attacks.

A legal protection does not suffice for guaranteeing war journalists' safety. On the ground many people have not heard about the existence of international humanitarian or human rights law, let alone they have heard of war journalists being protected by it. If a young crowd, who haven't even seen a video camera, is enlisted for an armed conflict, it is unrealistic to expect them to know that this technologic equipment is not going to harm them in any way. In the end, the war journalist will not be able to 'use' the law in a manner the legal field would want him/her to. The legal protection needs to be seen as a repressive measure to fight impunity diminishing the likeliness of future attacks against journalists.

Title 1. Limitations of a mere legal protection

A legal protection for war journalists will not solve the problem entirely, because the root causes for the attacks against journalists still remain. According to the International Programme for the Development of Communication of UNESCO, fighting impunity should not be limited to 'after-the-fact action'.²⁶⁵ They cite examples, which should be addressed by the government: an effective judicial system, corruption and restrictive media laws. The relation between the high impunity rate and the many root causes is explained in Chapter 2 – Problems and danger war journalists encounter.

Also, not all dangers can be prevented through a legal protection, because accidents do happen. Sometimes combatants do everything in their power to make sure civilians are not victimized by the attack, but journalists are still hurt or badly affected. Accidents do happen – even in war, when consequences might be disastrous. In the UN Plan of Action the International Programme for the Development of Communication, which is a UNESCO programme, also mentions the responsibility of media organizations to improve the journalists' expertise and professional circumstances. Their and others' responsibilities will be discussed in Title 3. Which entities are responsible for which practical safekeeping?

Title 2. War journalism has become an expensive 'accessory'?

Although war journalism is extremely essential, because human lives are at stake in armed conflict zones and need media to become known across the globe, there are not many war journalists. Their limited safety has resulted in war journalism being a very expensive profession. The many risks to be covered have result in war journalism becoming more of a risky and fancy accessory, than an affordable need for more human knowledge.

²⁶⁵ International Programme for the Development of Communication, *UN Plan of Action on the Safety of Journalists and the Issue of Impunity*, UNESCO, 2012, 8 p., available from http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/WPFD/UN%20Plan%20of%20Action_Safety%20of%20Journalists.pdf, hereafter the UN Plan of Action.

Professional media organizations often do not have a large number of war journalists. They form an expensive category, which is not only noticeable in the fragility of the profession and the human cost of lives, but also in the major financial cost of equipment and provisional aid structures.

With some professional media organizations this has resulted in a dangerous trade-off between quality and quantity of war journalism. It is important not to compromise the quality of war journalism and the safety of journalists for being more competitive as a professional media organization. The safety of war journalists, which is guaranteed by international human rights and humanitarian law, may not be subject to such a trade-off.²⁶⁶

Title 3. Which entities are responsible for which practical safekeeping?²⁶⁷

Section 1. United Nations

The United Nations is a promoter of human rights and respect for international law.²⁶⁸ Through soft law the United Nations has helped to elucidate the legal framework and to draw further the boundaries of the protection of journalists. Besides this quasi-judicial task, the United Nations has mandated the United Nations Educational, Scientific and Cultural Organization, hereafter UNESCO, to promote freedom of expression worldwide. As a specialized agency UNESCO is funded by states' contributions, has a well-established international position and has developed different ways of advocating a better protection of journalists.²⁶⁹

On the one hand, UNESCO informs and sensitizes the international community about violence committed against journalists. In this regard, for example, UNESCO has helped the International Programme for the Development of Communication to create the "UN Plan of Action on the Safety of Journalists and the Issue of Impunity", hereafter the UN Plan of Action,²⁷⁰ and has lobbied for more recognition of the problem. On the other hand, UNESCO has given practical assistance and support to the cause of journalists' safety. This assistance has known many beneficiaries, such as war journalists, media schools, national projects, etc.

²⁶⁶ The difficulties that economical considerations create, are exemplified by the low number of war journalists, which, for example, the Flemish Television Company is able to afford, as well as by the costs of safety trainings, which need to be constantly evaluated and lead to changes in provider (for example, the Flemish Television Company has changed from a safety training offered by the military to a safety training by a private company, which was less costly). Interview with Peter Verlinden, a Belgian television journalist, on January 28th, 2014.

²⁶⁷ A preliminary remark has to be made regarding the beneficiary of the practical assistance. While most of the practical assistance is specifically directed at war journalists, some practical assistance is available for all journalists regardless of whether they are traveling to armed conflict zones.

Also, the enumeration of practical assistance is not exhaustive.

²⁶⁸ <http://www.un.org/>.

²⁶⁹ UNESCO, "Fostering Freedom of Expression", available from <http://en.unesco.org/themes/fostering-freedom-expression>.

²⁷⁰ International Programme for the Development of Communication, *UN Plan of Action on the Safety of Journalists and the Issue of Impunity*, UNESCO, 2012, 8 p., available from http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/WPFD/UN%20Plan%20of%20Action_Safety%20of%20Journalists.pdf.

1. Information, sensitization and lobbying

Raising awareness is indispensable when trying to successfully implement international law. War journalists remain an extremely vulnerable group and too often the perpetrators of violence against them go unpunished. The United Nations keeps pushing for regular attention for this problem through numerous measures and institutions. In this way the organization attempts to create a different culture for media workers all over the world. The most important examples are listed below.

On May 3rd World Press Freedom Day is celebrated as an important recognition of the importance of freedom of expression in today's world.²⁷¹ One of the three themes for the World Press Freedom Day of 2014 is "Rule of Law to Ensure Safety of Journalists and Combating Impunity".²⁷² The celebrations include the annual UNESCO/Guillermo Cano World Press Freedom Prize being awarded.²⁷³ The annual World Press Freedom Day International Conference takes place around this day as well and has led to many declarations concerning the safety of journalists.²⁷⁴ The Belgrade Declaration focused on how media should be treated in conflict and post-conflict zones. UNESCO clarified the importance of independent, non-governmentally owned media. In the Medellín Declaration the scope of the state's responsibility to protect and to respect journalists' human rights in both conflict and non-conflict zones was reiterated, as well as their duty to abide by international humanitarian law. The declaration also initiated the proposal that institutions of international aid and cooperation should make guaranteeing journalists' safety and fighting impunity conditions of

²⁷¹ UNESCO, "About World Press Freedom Day", available from <http://www.unesco.org/new/en/unesco/events/prizes-and-celebrations/celebrations/international-days/world-press-freedom-day/about-world-press-freedom-day/>.

²⁷² UNESCO, "Rule of Law to Ensure Safety of Journalists and Combating Impunity", available from <http://www.unesco.org/new/en/unesco/events/prizes-and-celebrations/celebrations/international-days/world-press-freedom-day/2014-themes/rule-of-law-to-ensure-safety-of-journalists-and-combating-impunity/>.

²⁷³ UNESCO, "Ahmet Şik laureate of UNESCO Guillermo Cano World Press Freedom Prize 2014", available from <http://www.unesco.org/new/en/communication-and-information/freedom-of-expression/press-freedom/unesco-world-press-freedom-prize/>.

²⁷⁴ The conferences have led to, inter alia, the following declarations:

- Belgrade Declaration on Support to Media in Violent Conflict and Countries in Transition of the UNESCO Conference (3 May 2004), available from <http://www.unesco.org/new/en/unesco/events/prizes-and-celebrations/celebrations/international-days/world-press-freedom-day/previous-celebrations/worldpressfreedomday2009000000/belgrade-declaration/>, hereafter the Belgrade Declaration.
- Medellín Declaration on Securing the Safety of Journalists and Combating Impunity of the UNESCO Conference (3-4 May 2007), available from <http://www.unesco.org/new/en/unesco/events/prizes-and-celebrations/celebrations/international-days/world-press-freedom-day/previous-celebrations/worldpressfreedomday2009000/medellin-declaration/>, hereafter the Medellín Declaration.
- Carthage Declaration on press freedom and the safety of journalists of the UNESCO Conference (3-5 May 2012), available from http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/WPFD/carthage_declaration_2012_en.pdf, hereafter the Carthage Declaration.
- San Jose Declaration, "Safe to Speak: Securing Freedom of Expression in all Media" of the UNESCO Conference (2-4 May 2013), available from <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/WPFD/WPFD-San-Jose-Declaration-2013-en.pdf>, hereafter the San Jose Declaration.

eligibility. Next to this, UNESCO asked for more action by journalists' safety organizations and professional media organizations. In the Carthage Declaration there was a more elaborate focus on the importance of freedom of expression in general, a reference was made to the UN Plan of Action, which will be discussed further on, and cooperation with civil society was put on the agenda. In the most recent declaration of 2013, the San Jose Declaration, all previous recommendations were reiterated and the safety of digital media was explicitly mentioned. The Paris Declaration, the result of World Press Freedom Day International Conference of 2014, focuses on the part media will have in the post-2015 situation, namely the importance for freedom of expression with regard to the Millennium Development Goals and sustainable development.²⁷⁵

The United Nations General Assembly has proclaimed November 2nd as the International Day to End Impunity for Crimes against Journalists.²⁷⁶ Another important day for war journalists is November 23rd as it is the International Day to End Impunity.²⁷⁷

UNESCO also regularly condemns killings of journalists and demands explanations as well as investigations by the states.²⁷⁸ They also exercise 'quiet diplomacy'.²⁷⁹

2. Practical assistance and support

UNESCO has attempted to stimulate journalism education to focus on preparing journalists (in spe) for armed conflict. These media schools and organizations have a certain responsibility to educate journalists on all facets of war reporting. For this purpose, UNESCO developed a basic model curriculum for journalism education together with journalism educators and instructors in 2007.²⁸⁰ One of the courses that the model advises is media law.²⁸¹ One of the components of this course is explaining international human rights and humanitarian law. For example, the curriculum recommends lectures about the Geneva Conventions and national and international justice systems. In 2013 UNESCO presented a new compilation of specialized curricula to satisfy the new challenges in an ever-changing

²⁷⁵ Paris Declaration on "Media Freedom for a Better Future: Shaping the Post-2015 Development Agenda" (5-6 May 2014), available from http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/images/WPFD/2014/wpfd_2014_statement_final.pdf.

²⁷⁶ Article 3 of the Resolution on the safety of journalists and the issue of impunity of the UN General Assembly (18 December 2013), *UN Doc. A/RES/68/163* (2013) and UNESCO, "UN General Assembly adopts resolution on journalist safety and proclaims 2 November as International Day to End Impunity", 2013, available from http://www.unesco.org/new/en/media-services/single-view/news/un_general_assembly_adopts_resolution_on_journalist_safety_and_proclaims_2_november_as_international_day_to_end_impunity/#.U1_cWuZ_vj8.

²⁷⁷ IFEX, "International Day to End Impunity", available from <https://daytoendimpunity.org/?day=01>.

²⁷⁸ Report by the Director-General on the Safety of Journalists and the Danger of Impunity (27 March 2012), available from www.unesco.org/new/en/communication-and-information/freedom-of-expression/safety-of-journalists/unescos-director-general-report/.

²⁷⁹ Paragraph 2.1 of the UN Plan of Action and paragraph 55 of the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns (10 April 2012), *UN Doc. A/HRC/20/22* (2012).

²⁸⁰ UNESCO, "Model curricula for journalism education", available from <http://www.unesco.org/new/en/communication-and-information/resources/publications-and-communication-materials/publications/full-list/model-curricula-for-journalism-education/>.

²⁸¹ UNESCO, *UNESCO Series on Journalism Education: Model curricula for journalism education*, UNESCO, 2007, p. 22, available from <http://unesdoc.unesco.org/images/0015/001512/151209E.pdf>.

society, such as intercultural dialogue, humanitarian crisis and community participation.²⁸² For this master thesis the Safety and Journalism syllabus is the most relevant syllabus of this compilation. The object of this course is to help journalists “to identify potential risks, to learn safe protocols and to know about those institutions and procedures that can help them.”²⁸³ It deals with both the legal context of international human rights and humanitarian law and the practical context of threats, safety and security from the national to the global level.

UNESCO also leads projects that are sponsored by donors, such as the Dutch governmental financial support for the training of the military and of law enforcement in Tunisia,²⁸⁴ as well as works together with several partners to be able to provide safety training to journalists themselves and to security personnel.²⁸⁵

3. Plans and goals of UNESCO

The UN Plan of Action is a compilation of the future aspirations, guiding principles and proposed actions of UNESCO regarding journalists’ safety and the fight against impunity. UNESCO has attempted to create a “comprehensive, coherent, and action-oriented UN-wide approach to the safety of journalists and the issue of impunity”.²⁸⁶ The “Operationalizing the UN Plan of Action on Safety of Journalists and the Issues of Impunity at the Country Level” and the “Implementation Strategy 2013-2014” elaborate respectively on how to motivate stakeholders to take up responsibility regarding the UN Plan of Action and on a work plan with specific actions and expected results to implement the UN Plan of Action.

UNESCO has a broad goal and several partnerships regarding journalists’ safety. It has structured and made explicit its aspirations and its working methods in the “UNESCO Work Plan”.²⁸⁷

Section 2. Organizations focused on journalists’ safety

There are many organizations of all kinds that are concerned with the safety of journalists. It is important to distinguish these organizations with ‘professional media organizations’, which employ journalists. Both types of organizations care about the well-being of journalists, but the organizations discussed below do not have a financial incentive and will be referred to as ‘journalists’ safety organizations’.

²⁸² UNESCO, “Model curricula for journalism education: a compendium of new syllabi”, available from <http://www.unesco.org/new/en/communication-and-information/resources/publications-and-communication-materials/publications/full-list/model-curricula-for-journalism-education-a-compendium-of-new-syllabi/>.

²⁸³ F. BANDA, *UNESCO Series on Journalism Education: Model curriculum for journalism education: a compendium of new syllabi*, Paris, UNESCO, 2013, p. 190-207, available from <http://unesdoc.unesco.org/images/0022/002211/221199E.pdf>.

²⁸⁴ UNESCO, “Training of security forces on freedom of expression, freedom of press and security of journalists to promote democratic principles in Tunisia”, available from <http://www.unesco.org/new/en/communication-and-information/freedom-of-expression/extrabudgetary-projects-on-freedom-of-expression/projects/training-of-security-forces-on-freedom-of-expression/>.

²⁸⁵ UNESCO, “Safety Training and Journalism Curricula on Safety of Journalists”, available from <http://www.unesco.org/new/en/communication-and-information/freedom-of-expression/safety-of-journalists/safety-training/>.

²⁸⁶ UN Plan of Action, p. 4.

²⁸⁷ UNESCO, *UNESCO Work Plan on the Safety of Journalists and the Issue of Impunity*, UNESCO, 2013, 11 p., available from <http://unesdoc.unesco.org/images/0022/002223/222363e.pdf>.

1. International initiatives

A lot of international non-governmental organizations are occupied with the protection of journalists. The most known among them with regard to journalists' safety are the Committee to Protect Journalists, the International New Safety Institute, Reporters Without Borders and the International Federation of Journalists. Other relevant organizations are the International Press Institute, International Media Support, the European Broadcasting Union, the Press Emblem Campaign and Article 19. Additionally, the International Committee of the Red Cross has a special interest in protecting war journalists. Some of these non-governmental organizations have obtained consultative status with the United Nations.²⁸⁸ The organizations have an important role in keeping war journalists safe. Their international and independent character makes their assistance more global and more adapted to specific needs.

Contrary to the non-governmental organizations, there is also the Organization for Security and Co-operation in Europe, hereafter the OSCE, which has named journalists' safety as one of its priorities.²⁸⁹ The organization has 57 members from Europe, Central Asia and North America²⁹⁰ and as an exception to the unofficial rule it is the "*world's only inter-governmental media watchdog*" (sic).²⁹¹ These factors enable the OSCE to have a closer connection with the primary responsible in protecting war journalists than non-governmental organizations. Their different approach might shine some new light on some previously dead-ends.

The help from both the journalists' safety organizations and the inter-governmental organization occupied with media freedom can be divided in two large categories. On the one hand, they all have developed a variety of practical assistance for journalists. On the other hand, these organizations have a strong voice to attract attention for the fate of journalists and use this to put the topic of their safety on the international agenda and to ensure donations for the cause.

1.1. Lobbying

The journalists' safety organizations lobby for more awareness and sensitize the public. On the one hand, they provide statistics as illustrated in Chapter 2 – Problems and danger war journalists encounter. On the other hand they highlight worrying trends. To this extent the World Press Freedom Index by Reporters Without Borders²⁹² or the Impunity Index by the

²⁸⁸ For example, Reporters Without Borders and the International Federation of Journalists have special consultative status with the United Nations Economic and Social Council and the European Broadcasting Union, which has consultative status with UNESCO, and Article 19 have been placed on the Roster. List of non-governmental organizations in consultative status with the Economic and Social Council as of 1 September 2013 by the United Nations Secretary-General (4 October 2013), *UN Doc. E/2013/INF/6* (2013).

Only the International Committee of the Red Cross has consultative status with the United Nations General Assembly. United Nations, "Permanent Observers", available from <http://www.un.org/en/members/intergovorg.shtml>.

²⁸⁹ OSCE Representative on Freedom of the Media, "Safety of journalists remains top priority, OSCE media freedom representative tells Russian journalists", 2011, available from <http://www.osce.org/fom/83190>.

²⁹⁰ OSCE, "Participating States", available from <http://www.osce.org/who/108218>.

²⁹¹ A.B. MCKENZIE, "A great threat to media freedom", available from <http://www.rfom15.org/experts/a-great-threat-to-media-freedom-alison-bethel-mckenzie/>.

²⁹² Reporters Without Borders, *Crackdowns on protests cause big changes to index positions*, 2012, 19 p., available from http://en.rsf.org/IMG/CLASSEMENT_2012/C_GENERAL_ANG.pdf.

Committee to Protect Journalists²⁹³ serve to keep track of such developments. Also, Reporters Without Borders has made a list of the predators of freedom of expression in 2013.²⁹⁴

In this regard they ask for initiatives regarding perceived and persisting problems, which the international community should address. Besides the request to insert a specific charge before the International Criminal Court, Reporters Without Borders has asked for a mechanism to monitor adherence to Resolution 1738 of the United Nations Security Council in order to reinforce state efforts.²⁹⁵

A different example of lobbying by journalists' safety organizations, which is closely linked to the protection of journalists in armed conflict, relates to their protection in peaceful protests. Lobbying by Reporters Without Borders²⁹⁶ has resulted in the Resolution on the promotion and protection of human rights in the context of peaceful protests of the United Nations Human Rights Council on March 24th, 2014.²⁹⁷ The adoption of this resolution shows that the strict lines of armed conflict are not always desirable with regard to journalists' safety. The protection of journalists who do not find themselves in armed conflict, goes beyond the reach of this master thesis, but is certainly an important matter in international human rights law.

Another example of lobbying has occurred on the intergovernmental level. The OSCE has created a "Safety of Journalists Guidebook", which focuses on how states can take more responsibility to uphold their legal duty to protect journalists.²⁹⁸ The OSCE Representative on Freedom of the Media also regularly condemns attacks and assaults against journalists²⁹⁹ and has spoken out against a denial of entry of journalists.³⁰⁰

Journalists' safety organizations, such as Reporters Without Borders and the Committee to Protect Journalists, also lobby for more funding through donations from the public.³⁰¹

1.2. Practical assistance by journalists' safety organizations

The practical assistance that these international journalists' safety organizations provide, is very diverse and comprehensive. The examples can be divided in three stages of help: before, during and after the war journalists find themselves reporting in armed conflict.

²⁹³ E. WITCHEL, "Getting Away With Murder", 2014, available from <http://www.cpj.org/reports/2014/04/impunity-index-getting-away-with-murder.php>.

²⁹⁴ Reporters Without Borders, *Predators of freedom of information in 2013*, Reporters Without Borders, 2013, 52 p., available from http://fr.rsf.org/IMG/pdf/predators_2013_en.pdf.

²⁹⁵ Reporters Without Borders, "World Press Freedom Day", 2013, available from <http://en.rsf.org/world-press-freedom-day-03-05-2013,44560.html>.

²⁹⁶ Reporters Without Borders, "Resolution recognizes role of journalists covering protests", 2014, available from <http://en.rsf.org/resolution-recognizes-role-of-01-04-2014,46066.html>.

²⁹⁷ Resolution on the promotion and protection of human rights in the context of peaceful protests of the United Nations Human Rights Council (18 March 2014), *UN Doc. A/HRC/22/L.10* (2014).

²⁹⁸ J.-C. PEUCH and M. STONE (eds.), *OSCE Safety of Journalists Guidebook*, 2012, 74 p., available from <http://www.osce.org/fom/85777>.

²⁹⁹ OSCE, "Representative on Freedom of the Media – Safety on Journalists", available from <http://www.osce.org/fom/106283>.

³⁰⁰ D. MIJATOVIĆ, "Statement by the OSCE Representative on Freedom of the Media on denial of entry of journalists from one OSCE participating State to another", 2014, available from <http://www.osce.org/fom/117092>.

³⁰¹ Reporters Without Borders, "Donate", available from <https://donate.rsf.org/form/>.

1.2.1. Assistance before war journalists travel to armed conflict

Many organizations have developed handbooks, guidelines and informative sessions for war journalists in order for them to prepare more adequately for all aspects of an armed conflict. Examples are the following:

- There is the “Handbook for Journalists” created by Reporters Without Borders.³⁰²
- The Committee to Protect Journalists has established the guidebook “On Assignment: A Guide to Reporting in Dangerous Situations”³⁰³ as well as a “Journalist Security Guide: Covering News in a Dangerous and Changing World”.³⁰⁴
- The “Survival Guide for Journalists”³⁰⁵ of the International Federation of Journalists is another example.
- The International News Safety Institute has created a webpage about advice for journalists who work in dangerous places.³⁰⁶

Next to this, there are safety trainings, which prepare war journalists to abductions, instruct on first-aid, teach about firearms, focus on risk awareness, etc.

- The International News Safety Institute offers safety training free of charge to people who would otherwise not receive safety training.³⁰⁷
- Through the Rory Peck Trust it is possible as a freelance journalist to apply for free safety training.³⁰⁸
- Reporters Without Borders works together with the French Red Cross to provide safety training for journalists who are going on dangerous assignments.³⁰⁹

Additionally, there are also some organizations that support training for people who have to work with war journalists or who will interact with them. These preventive actions attempt to educate possible future perpetrators.

- For example, UNESCO has taken the lead on a project, financed by the Netherlands, to make security forces in Tunisia, namely the police, the National Guard and the Emergency Preparedness, more aware of the protected status of journalists.³¹⁰

³⁰² Reporters Without Borders, *Handbook of Journalists*, 2005, 121 p., available from http://issuu.com/rsf_webmaster/docs/handbookissuu?e=4673624/2749961 and http://www.rsf.org/IMG/pdf/guide_gb.pdf.

³⁰³ F. SMYTH, *On Assignment: A Guide to Reporting in Dangerous Situations*, Committee to Protect Journalists, 70 p., available from http://issuu.com/ohchrlibrary/docs/hr_3 and http://www.cpj.org/Briefings/2003/safety/journo_safe_guide.pdf.

³⁰⁴ F. SMYTH and D. O'BRIEN, *Journalist Security Guide: Covering News in a Dangerous and Changing World*, Committee to Protect Journalists, 68 p., available from <http://cpj.org/security/guide.pdf>.

³⁰⁵ P. MCINTYRE, *Live News: A Survival Guide for Journalists*, Brussels, International Federation of Journalists, 2003, vi + 135 p., available from http://www.ifj.org/fileadmin/images/Live_News_versions/Live_News_EN.pdf.

³⁰⁶ International News Safety Institute, “Advice”, available from <http://www.newssafety.org/safety/advice/>.

³⁰⁷ International News Safety Institute, “Training”, available from <http://www.newssafety.org/safety/training/>.

³⁰⁸ Rory Peck Trust, “Rory Peck Training Fund”, available from <https://rorypecktrust.org/freelance-assistance/Rory-Peck-Training-Fund>.

³⁰⁹ Reporters Without Borders, “Training for journalists on dangerous assignments”, 2007, available from <http://en.rsf.org/training-for-journalists-on-17-04-2007,21750.html>.

³¹⁰ UNESCO, “Training of security forces on freedom of expression, freedom of press and security of journalists to promote democratic principles in Tunisia”, available from <http://www.unesco.org/new/en/communication-and-information/freedom-of-expression/extrabudgetary-projects-on-freedom-of-expression/projects/training-of-security-forces->

- The International Committee of the Red Cross gives instructions to combatants on the existence and the content of international humanitarian law.³¹¹ In their action plan the International Red Cross and Red Crescent Movement state that they will continue their efforts.³¹²

1.2.2. Assistance during the presence of war journalists in armed conflict

A telephone or online hotline is a useful measure to ask for assistance in a fast way. There are many organizations, which offer a hotline, and they do not condition the use on nationality or type of journalism.

- The hotline by the International Committee of the Red Cross is created for the purpose of providing humanitarian help. For example, members of the committee will be able to go visit detained journalists and inform their relatives. Also, they might investigate a reported arrest or deadly casualty of a journalist or evacuate a wounded journalist.³¹³
- The “Press SOS” hotline of Reporters Without Borders enables the organization to provide advice or contact information or to bring the situation under the attention of the local or consular authorities.³¹⁴

The International News Safety Institute promotes a special insurance for war journalists, which is created for professionals travelling to dangerous areas that present a higher risk at casualties and injuries.³¹⁵ This insurance is evidently expensive, because it is often a life insurance that is recommended.³¹⁶ The necessity of such insurances, however, lays in the necessity of having war journalists do their job. Freelance reporters are a vulnerable group in this regard, because often employers tend not to provide insurances for them. Reporters Without Borders, for example, has initiated a program for such cases.³¹⁷

on-freedom-of-expression/ and UNESCO, “Tunisia: Enhancing cooperation between security forces and journalists”, 2013, available from http://www.unesco.org/new/en/communication-and-information/resources/news-and-in-focus-articles/all-news/news/tunisia_enhancing_cooperation_between_security_forces_and_journalists/#.U2ejrOZ_vj9.

³¹¹ International Committee of the Red Cross, “Building respect for the law”, 2011, available from <http://www.icrc.org/eng/what-we-do/building-respect-ihl/overview-building-respect-ihl.htm>.

³¹² Objective 3 of the Resolution on the 4-year Action Plan for the Implementation of International Humanitarian Law of the 31st International Conference of the International Red Cross and Red Crescent Movement (1 December 2011), available from <http://www.icrc.org/eng/resources/documents/resolution/31-international-conference-resolution-2-2011.htm>.

³¹³ International Committee of the Red Cross, “HOTLINE: assistance for journalists on dangerous assignments”, 2011, available from <http://www.icrc.org/eng/resources/documents/publication/p0394.htm> and D. KRIMITSAS, “When journalists' safety is at stake, the ICRC hotline can help”, 2012, available from <http://www.icrc.org/eng/resources/documents/interview/2012/protection-journalists-interview-2012-05-02.htm>.

³¹⁴ Reporters Without Borders, “A Hotline for Journalists in Danger”, 2007, available from <http://en.rsf.org/a-hotline-for-journalists-in-17-04-2007,21749.html>.

³¹⁵ International News Safety Institute, “Insurance”, available from <http://www.newssafety.org/safety/advice/insurance/>.

³¹⁶ P. MCINTYRE, *Live News: A Survival Guide for Journalists*, Brussels, International Federation of Journalists, 2003, p. 135, available from http://www.ifj.org/fileadmin/images/Live_News_versions/Live_News_EN.pdf.

³¹⁷ Reporters Without Borders, “Insurance for freelance journalists”, 2007, available from <http://en.rsf.org/insurance-for-freelance-17-04-2007,21746.html>.

Another important remark in this regard is the fact that some media organizations employ local journalists to avoid having to pay for insurances.³¹⁸ This practice is not promoting journalists' safety at all. The employer carries the direct costs in order to guarantee their personnel this qualitative and comprehensive practical protection. In minimizing the costs in this drastic way, accidents and targeted killings will still happen and the journalists and their families will suffer even more.

1.2.3. Assistance after war journalists have reported on armed conflict

After leaving areas of armed conflict war journalists often need some medical attention and psychological help. If war journalists have been the object of an attack, they will also be in demand of legal assistance. In the – sometimes few – cases where it comes to a prosecution of the perpetrators of attacks committed against journalists, the war journalist cannot win this battle on his/her own. Several journalists' safety organizations, therefore, provide legal aid or have collected funds to pay for such assistance.

- Amnesty International has created the Fair Trial Manual in order to guide the journalist on his/her rights of fair trial, with a focus on international humanitarian law in Chapter 32.³¹⁹
- The Committee to Protect Journalists sponsors legal aid for journalists who are facing prison time.³²⁰
- The Rory Peck Trust provides assistance grants to freelance journalists, which cover legal aid.³²¹

Another need for assistance exists for local war journalists who have to flee their country or hometown and for both local and foreign journalists if they are forced to go into hiding. These actions are often only considered as a last resort, but are sometimes indispensable for the safety of journalists and/or their family.

- The Journalist Assistance Program of the Committee to Protect Journalists, for example, for fleeing journalists³²²
- Also Reporters Without Borders asks attention for the fate of journalists who were forced to flee their country.³²³ They have created guidelines for journalists who are forced to flee.³²⁴
- The Rory Peck Trusts provides assistance grants to freelance journalists, which cover rehabilitation and relocation costs.³²⁵

³¹⁸ J.M. LISOSKY and J.R. HENRICHSEN, *War on Words: Who Should Protect Journalists?*, Santa Barbara, CA, ABC-CLIO, 2011, p. 162-163.

³¹⁹ Amnesty International, *Fair Trial Manual* (2nd ed.), London, Amnesty International, 2014, p. 239, available from <http://www.amnesty.org/en/library/asset/POL30/002/2014/en/7aa5c5d1-921b-422e-8ca4-944db1024150/pol300022014en.pdf>.

³²⁰ Committee to Protect Journalists, "Journalist Assistance – What we do", available from <http://www.cpj.org/campaigns/assistance/what-we-do.php>.

³²¹ Rory Peck Trust, "Assistance Grants", available from <https://rorypecktrust.org/freelance-assistance/Assistance-Grants>.

³²² Committee to Protect Journalists, "Journalist Assistance – What we do", available from <http://www.cpj.org/campaigns/assistance/what-we-do.php>.

³²³ Reporters Without Borders, "Report of support activities by RWB in 2012", available from <http://20juin.rsf.org/en/report-of-support-activities-by-rsf-in-2012/>.

³²⁴ Reporters Without Borders, "Guidelines for exiled journalists", 2009, available from <http://en.rsf.org/guidelines-for-exiled-journalists-29-07-2009,34008.html>.

³²⁵ Rory Peck Trust, "Assistance Grants", available from <https://rorypecktrust.org/freelance-assistance/Assistance-Grants>.

According to Reporters Without Borders there are no procedures to help journalists resettle or to protect journalists in transit countries.³²⁶ This seems to be a loophole in the international legal protection of war journalists. This is, however, an extremely essential part of the protection of war journalists and the mere practical and occasional help journalists' safety organizations can provide, is not sufficient. Also, if there is no assistance for war journalists leaving areas of armed conflict, this is a deterrent factor for future ventures of other war journalists and for possible ventures of regular journalists.

2. National and regional initiatives

All the organizations mentioned above are international organizations. The national nature of the primary state responsibility has spiked many others to highlight the problems states face regarding the protection of journalists on the local level.

Examples of national journalism organizations are the 'Glasnost Defence Foundation',³²⁷ the 'Nigerian Union of Journalists',³²⁸ and the 'National Union of Journalists of the Philippines'.³²⁹ Another example is 'Journalistes en Danger' for the Democratic Republic of Congo.³³⁰ The 'Inter-American Press Association' is a regional journalism organization, which covers Latin America.³³¹ What these organizations do is often similar to what the international organizations attempt, but more specified to the national or local problems journalists face. For example, in the Philippines there is the Freedom Fund for Filipino Journalists, which gives legal and financial assistance when journalists have been murdered.³³²

Next to the organizations that are focused on journalists, the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, highlighted the importance of national human rights institutions, which have a more general focus.³³³ Because of their local embedding they have a closer view on the national challenges and will be able to help war journalists more adequately, if their human rights have been violated.

Section 3. The military, law enforcement and non-State armed groups

The states do not offer much practical assistance, apart from an occasional protection programme or a safe house in Sweden.³³⁴ Besides their heavy duty in ensuring journalists' safety in their legal system, they also are obliged to adequately inform the military and law enforcement about the protected status of war journalists, because this is a part of the enforcement of their legal obligations imposed by international humanitarian and human rights law. The international legal framework clearly mentions that war journalists are civilians and that the combatants have to take measures to respect and protect their rights.

³²⁶ Reporters Without Borders, "RWB Secretary-General to Address UN Security Council", 2013, available from <http://en.rsf.org/rwb-secretary-general-to-address-13-12-2013,45617.html>.

³²⁷ <http://www.gdf.ru/english/>.

³²⁸ <http://www.nujnig.org/>.

³²⁹ <http://www.nujp.org/>.

³³⁰ <http://www.jed-afrique.org/fr/>.

³³¹ <http://www.impunidad.com/>.

³³² Committee to Protect Journalists, "Global Campaign Against Impunity - Resource Center", available from <http://cpj.org/campaigns/impunity/links.php>.

³³³ Paragraph 77 of the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns (10 April 2012), *UN Doc. A/HRC/20/22* (2012).

³³⁴ Paragraph 88 of the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns (10 April 2012), *UN Doc. A/HRC/20/22* (2012).

Whereas non-State armed groups often have no organized fighting methods or instructive guidelines on who is exempted from attack, it is interesting to take a closer look at how the state has implemented this responsibility to protect war journalists through instructing its military.

Many military manuals confirm this civilian status as well as the status of war correspondents.³³⁵ The translation of these legal instructions on safekeeping into more explanatory guidelines happens through education. The Study Center for Military and War Law in Belgium, for example, gave an instructive session, mainly addressed to military personnel, about how soldiers and other military personnel should see the journalists.³³⁶ They explained both the status of the war correspondent, who accompanies the army, as well as the status of the freelance journalist. The various speakers explained which rights and which responsibilities the journalists and the military have. This seminar is a practical example of how the military effectively addresses its responsibility to instruct its personnel.

Additionally, at the Royal Military Academy of Belgium a compulsory course on international humanitarian law is instructed in the academic master programmes for future officers.³³⁷ In most countries this might be sufficient in order to be able to reach all the relevant actors who will travel to armed conflict zones, but in many other countries – which are often unstable – the combatants will not only come from military schools with instructive guidelines. In this regard, reference can be made to the efforts by the International Committee of the Red Cross to make international humanitarian law known among all fighting parties, which are mentioned above.

Section 4. War journalists' employers

The employer of a war journalist will usually be a professional media organization. This is a category of organizations not included in Section 2. Organizations focused on journalists' safety, because their concern is not overall journalists' safety, but rather their own journalists' safety. According to the Code of Practice for the Safe Conduct of Journalism issued by the International Federation of Journalists these professional media organizations have multiple responsibilities.³³⁸

On the one hand, there must be a proper remuneration for the journalist. It is not acceptable that competition between professional media organizations leads to war journalists risking their lives for substandard wages.

On the other hand, there is a responsibility for the employer to provide practical assistance offered. This assistance should cover the three phases of journalists' safety.

In a first phase there is the preparation of the journalist for situations of armed conflict. This includes a necessity of participating in safety trainings, attending informative sessions and reading guiding materials. For example, safety training might be provided for by the army and paid for by the employer. These measures evidently lead to a more educated and prepared journalist. The employer must ensure that the journalist commits to these preparatory

³³⁵ J.-M. HENCKAERTS and L. DOSWARLD-BECK, *Customary International Humanitarian Law* (Vol. 2), Cambridge, Cambridge University Press, 2005, p. 661-662.

³³⁶ I. BAECK, F. CASIER, M. DANAU, J. FRANSEN, C. GILLIS, E. LABYE, M. LEFEBVRE, R. NEYRINCK, and C. REMY, "Study Conference: The status of journalists during operations" (22 October 2012), the Study Center for Military and War Law, Brussels, available from <http://www.ismllw-be.org/session/archives.htm>.

³³⁷ Royal Military Academy of Belgium, "Study Guide 2013-2014", available from [http://www.rma.ac.be/nl/rma-mil-programmes\(nl\).html](http://www.rma.ac.be/nl/rma-mil-programmes(nl).html).

³³⁸ P. MCINTYRE, *Live News: A Survival Guide for Journalists*, Brussels, International Federation of Journalists, 2003, p. 134-135, available from http://www.ifj.org/fileadmin/images/Live_News_versions/Live_News_EN.pdf.

exercises and sessions on the dangers of an armed conflict. A good example of such comprehensive guiding is the series of documents, which the Flemish Television Company provides for its staff traveling to (potential) areas of armed conflict, which can be found in the appendix.

In a second phase journalists need both adequate financial insurances and physical assurances. The necessary special insurance for war journalists is expensive and usually paid for by the employer. Sometimes, however, for freelance journalists employers tend to try to avoid this cost. As described above this is not desirable for promoting journalists' safety. An example of a physical assurance would be a bulletproof vest and medical aid. These form the necessary equipment for a war journalist covering the front line or dangerous and violent situations.

In a third phase there should be a thorough follow-up of the war journalists. This will mainly consist of a mental and medical check-up because of possible war traumas and possible injuries. Another necessary component is a thorough debriefing, for this might benefit colleagues and future missions to armed conflict zones.

Section 5. War journalists themselves

The war journalist will have a large responsibility and burden to carry in keeping himself/herself safe. With help of his/her employer and multiple organizations an attempt is made at creating the best knowledge about how to do so, but a lot will depend on the character and knowledge of the war journalist as well. In an interview Peter Verlinden explained how important and decisive this factor is. He shares the opinion that war journalists ideally have travelled to the armed conflict zone before in times of peace. This is not only beneficial for more objective and investigative reporting, but also provides them with more knowledge of how the population is and what the customs are.³³⁹ Of course, war journalists remain protected from violence at all times regardless of their experience.

Reporters Without Borders have created a charter of eight principles on war reporting, which establish a responsibility for all parties.³⁴⁰ Principles of relevance to the war journalist as described in the previous paragraph, are the principle of "free will" and the principle of "experience". They respectively focus on the possibility of the war journalist to leave the armed conflict zone and on the fact that inexperienced war journalists should receive special attention and additional support.

Important as well is the journalist's education. Media schools should emphasize how journalists should act in dangerous situations, in which war journalists might end up. People behave differently in armed conflicts. They are distrustful and on edge. It is the duty of a war journalist to know how he/she should interact with both the civilians and the combatants. Not only in view of qualitative and objective war reporting, but also with the aim of avoiding unnecessarily heated temper and outbursts of violence. It is the responsibility of media schools to prepare war journalists for these behaviours and other typical problems.

Section 6. Civil society

Civil society plays a key role in assuring continuous attention to journalists' safety, because of their local presence and their ability to question the government more directly. Civil society is able to monitor a state's contributions to reports on the fulfilment of their

³³⁹ Peter Verlinden illustrated this importance with his experience in Rwanda, where it was known that trouble was coming if the prostitutes were not walking on the main street of the city. Interview with Peter Verlinden, a Belgian television journalist, on January 28th, 2014.

³⁴⁰ Reporters Without Borders, *Charter for the Safety of Journalists Working in War Zones or Dangerous Areas*, 2002, 2 p., http://www.rsf.org/IMG/pdf/charter_en.pdf.

international legal duties. The importance of civil society is cited by the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns.³⁴¹ He, however, also mentions that the capability of civil society of pushing for impact litigation is not being used to its fullest potential.³⁴²

Title 4. Evaluation of the available practical assistance

The current situation of available practical assistance is characterised by originating from a very diverse group of donors and by a variety of different types of assistance at different phases of war journalism, in the course of the preparation, during the actual presence in armed conflict and with the after-treatment. It is useful that every stakeholder is able to provide help in his own best interests and in his best possible way. It is not certain that institutionalizing the available practical assistance would benefit the current situation. The methods through which war journalists receive help are diverse. This flexibility is beneficial for a maximal reach. There also seem to be no large gaps in the available practical assistance, which would benefit from an institutionalization. The minimal advantages such a venture would have, do not outweigh the costs and newly created additional problems that accompany new institutions and new responsibilities.

Not unlike other areas of international funding, more money is always welcomed to be able to do even more for a vulnerable group of people. The resources do not seem to be the problem here. Clearly, funds are important and higher funds would still have a positive impact on war journalists' safety. For example, an adequate training for war journalists with the army in exercises resembling armed conflict situations is costly and more funds would ensure an adequate preparation of the war journalist. There is a large group of stakeholders asking for this vital aspect of more donations. A solution to keep financial competition between professional media organizations from compromising war journalists' safety, however, remains desirable. For this purpose an international professional agreement to offer a minimal insurance package could be negotiated between professional media organizations. Journalists' safety organizations could promote such initiatives.

It is important to note that the knowledge among war journalists of the existence of a hotline does not necessarily make it more accessible and more used in practice. The danger is often so immediate and unforeseeable that interim or precautionary measures are out of the question. Also, it is so common for war journalists to receive threats against their physical integrity or their family that it is impossible to request measures for each and every one of them. Being more cautious than the majority of them already are, would often result in quitting their profession all together.

Another big challenge of practical assistance is that it does not directly fix the underlying problems or root causes of the attacks against war journalists. The capabilities of practical assistance are limited and mostly focused on prevention. In a similar way the current legal framework is mainly preventive and, therefore, its protection limited.

³⁴¹ Paragraphs 80, 114, 137 until 139 and 141 of the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns (10 April 2012), *UN Doc. A/HRC/20/22* (2012).

³⁴² Paragraph 140 of the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns (10 April 2012), *UN Doc. A/HRC/20/22* (2012).

Impact litigation can be described as *“the strategy of selecting and pursuing lawsuits as a tool to achieve broad and lasting effects, beyond the particular case involved, on both public policy and legislation”*. This can be done both at the national and the international level. American University Washington College of Law, “About the Impact Litigation Project”, available from www.wcl.american.edu/ilp/.

Chapter 5 – CONCLUSION AND RECOMMENDATIONS

The main conclusion to make about the protection of journalists in armed conflict is that the legal status provided for in international law is sufficient, but the implementation by national, regional and international measures not satisfying. A legal framework without compliance cannot do much. International law is in place to guarantee rights and freedoms, but relies on national commitment and enforcement. Whereas all three levels focus on the problem of the implementation of international human rights and humanitarian law, there is still a lot of room for improvement. The national good practices need to be stimulated more and the bad initiatives need to be addressed by international and regional courts.

The future of the safety of journalists in armed conflict should definitely include a continuation in the current direction of the combination of raising awareness for less impunity and practical assistance. Additionally, there are various recommendations, which are directed at all stakeholders and two key recommendations can be summarized as follows.³⁴³ A first is that more guidance and more ‘appropriate structures’ at the national level are desired. Cooperation in this regard between all partners relevant to the implementation of the legal framework is necessary, because both preventive and repressive measures should be mutually supportive and because good practices should be exchanged.³⁴⁴ A second recommendation is upholding continuous struggle to lift the problem as high as possible both from the local to the national and from the national to the international level. This is necessary, because there is more accountability and less corruption at higher levels.

The supplementary practical initiatives, which are numerous, are very helpful for war journalists, but this practical assistance and support does not change the root causes of the problem. It also does it help the fight against impunity, except for the attempts at a mentality change, which is the goal of all the lobbying and of some initiatives of sensitizing the military, law enforcement and non-state armed groups.

The perpetrators of violence against war journalists have already realized the importance of war journalists for an informed and open society. It is the task of all others to act upon the perpetrators’ own perilous conviction of this truth and to guarantee journalists in armed conflict, as well as journalists in other situations, their human right to freedom of expression. To attain the national and international goal of an open and informed society, we need to keep addressing this issue. War journalists remain the object of targeted killings and the fight against impunity for the perpetrators should remain on everyone’s (legal) agenda.

³⁴³ Paragraphs 79, 80, 125 and 137 until 141 of the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns (10 April 2012), *UN Doc. A/HRC/20/22* (2012).

³⁴⁴ UNESCO, “Good Practices on Safety of Journalists”, available from <http://www.unesco.org/new/en/communication-and-information/freedom-of-expression/safety-of-journalists/good-practices/>.

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Chapter 7 – APPENDIX

PBW/RV/03/76/521 – 27.05.2011

Televisie- en Radionieuwsdienst

WERKEN IN RISICOGEBIEDEN

Met risicogebieden bedoelen we (potentieel) oorlogsgebied en gebieden waar gewapende conflicten zijn.

Deze tekst bevat zowel verplichtingen als aanbevelingen die tot doel hebben op een soepele dynamische wijze de risico's te beheersen in gebieden waar gevaren voor de veiligheid en de gezondheid van het VRT-personeel aanwezig zijn (oorlog, opstanden, ziektes, rampen, enz.).

Bepaalde gedeeltes van de tekst (ENG-ploegen) zijn enkel van toepassing op TV-ploegen. Maar in principe geldt de tekst voor zowel voor Radio en TV.

ENG staat in voor beheer en onderhoud van de beschermingsmiddelen van zowel radio als televisie. De voorgestelde maatregelen en de bijkomende risicoanalyses vormen een specifieke bijlage van het Globaal Preventieplan van de VRT (GPP).

ALGEMENE MAATREGELEN

Advies

- Diensten die geen ervaring hebben met opdrachten in risicogebieden kunnen te rade gaan bij de Nieuwsredactie, de dienst Preventie en de Medische Dienst. Kandidaat-reizigers die geen of weinig ervaring hebben kunnen zich het best uitgebreid informeren bij collega's die wel over de nodige ervaring beschikken en die een soort peterschap kunnen vervullen.

Beschermingsmiddelen

- ENG staat in voor de beschermingsmiddelen zoals gasmaskers, gaspakken, ontsmettingshandschoenen als onderdeel van de NBC-pakken, kogelwerende vesten, steekvesten, helmen, stootvaste petten of gelijk welke uitrusting voor gebruik in een gevaarlijke omgeving. Ze worden aangeschaft, op punt gesteld en onderhouden in overleg met producers Nieuws. Deze aankoop gebeurt in overleg met de dienst Preventie. Van alle middelen worden schriftelijke instructies over het correcte gebruik en over de beperkingen beschikbaar gehouden. Die instructies worden samen met de middelen bewaard in het magazijn BESCHERMINGSMIDDELEN RISICOGEBIEDEN van de dienst ENG. Een minimale instructie bij elk item is verplicht. Nazicht, reiniging, vervaldata, enz. worden gecoördineerd door de magazijnbeheerder, in samenspraak met de chef ENG, de producers Nieuws en Preventie. Een overzicht van de beschikbare beschermingsmiddelen is beschikbaar op de ENG-tx map met een link naar de V-schijf\Productie\Nieuws\Veiligheid en naar Insite\Werkplek Preventie\Adviezen. Deze lijst wordt ook beschikbaar gemaakt voor op smartphones.

ENG brengt een pocketboek uit met alle handleidingen en overzicht van de beschermingsmaatregelen, inclusief PBM (persoonlijke beschermingsmaatregelen).

- Niet alleen persoonlijke beschermingsmiddelen, maar ook ander veiligheidsmateriaal moet in overweging genomen worden naargelang de te verwachten situaties: communicatiemiddelen i.f.v. de gebieden, GPS-toestellen, verschillende types waterfilter, voedselpakketten met verwarmingselement, stralingsdosimeter, chemische meetstrippen, enz. Zo nodig wordt ook de huur van een gepantserde wagen overwogen. De lijst met het beschikbare materiaal wordt bijgehouden door ENG en wordt opgehangen in het magazijn. Deze lijst wordt centraal opgeslagen op de V-schijf\Productie\Nieuws\Veiligheid. Het uitlenen van materiaal gebeurt in overleg met deze dienst.
- Er worden stickers meegenomen met de identificatie BELGIAN TV & RADIO NEWS of elke vermelding die in de gegeven situatie het meest opportuun wordt geacht. Afneembare stickers (velcro) laten toe in te spelen op wijzigende omstandigheden.
- Voor de kogelvrije vesten worden velcro-identificatielabels besteld met het opschrift "Pers" in 3 talen (Engels, Frans en Arabisch). Deze velcrolabels kunnen op de vesten aangebracht of verwijderd naargelang de noodzaak.

Opleidingen

- De redactie organiseert in samenspraak met de opleidingscel Televisie op regelmatige basis de nodige opleidingen over de beschermingsmiddelen en EHBO en houdt bij wie op de hoogte is.
- Kandidaat-reizigers volgen i.f.v. de te verwachten risico's een HEST-opleiding. Zij noteren daar de voor hun collega's nuttige recente informatie en bezorgen die aan de opleidingsverantwoordelijke of de eventuele projectleider, die de producers Nieuws, de ENG en Preventie op de hoogte brengt. Een opleiding van het Belgisch leger kan complementair zijn aan de HEST-opleiding. De nieuwsdienst bekijkt dan ook met het Belgisch leger of dergelijke opleiding kan georganiseerd worden op regelmatige basis.

Medische aspecten

- Kandidaat-reizigers krijgen allen (redactieleden en ENG-ploeg) een minimale EHBO-cursus van 2 à 3 uren. Medewerkers die risico-opdrachten uitvoeren krijgen een ruimere EHBO-opleiding, met een jaarlijkse oprisingscursus (reanimatie, wondverzorging, gebruik combo-pen, inhoud EHBO-koffer). Deze EHBO-cursus wordt of gegeven door een VRT-medewerker die beëdigd lesgever is (Rudi Clincke via O&O) of door een medewerker van het Rode Kruis.
- Er wordt naar gestreefd dat op z'n minst één lid van de ploeg een meer uitgebreid EHBO-brevet bezit (nijverheidshelper, 3 dagen, tiental deelnemers, intern gegeven, externe lesgever). Dit moet zeker het geval zijn in gebieden waar geen georganiseerde snelle hulpverlening te verwachten is.
- In principe zijn alle medewerkers van de nieuwsredactie en ENG die in aanmerking komen voor reizen in risicogebieden volledig in orde met de vereiste vaccinaties. De medische dienst houdt bij wanneer vaccinaties opnieuw moeten gebeuren en nodigt de betrokken medewerkers uiterlijk 1 maand voor de vervaldatum

uit voor herhalingsvaccinaties.

Wie weigert om bepaalde vaccinaties te krijgen komt in principe niet in aanmerking voor dergelijke risico-opdrachten. De bedrijfsarts licht in dat geval de betrokken diensthoofden in.

Als iemand nog niet alle vereiste vaccinaties gehad heeft toch op dienststopdracht zou moeten vertrekken, overlegt ENG of de redactie met de bedrijfsarts of dit opportuun is. De hiërarchische chef en de VRT zijn immers in elk geval aansprakelijk. In sommige landen kan de toegang geweigerd worden als bepaalde vaccinatiebewijzen ontbreken.

- De EVN-PK reserveert indien mogelijk een week op voorhand een aangepaste EHBO-koffer met bijhorende opleidingen of instructies, en geeft hierbij telkens het land van bestemming door aan de Medische Dienst die voor de samenstelling van de EHBO-koffer zorgt.
- Van alle kandidaat-reizigers wordt door de arbeidsgeneesheer een medische steekkaart opgemaakt, met ondermeer informatie over bloedgroep, resusfactor, allergieën, epilepsie, diabetes, medicatie, bloedverdunners, enz. Alle medewerkers die in aanmerking komen voor risico-opdrachten krijgen ook een harde plastic kaart mee (type bankkaart) met daarop de persoonlijke informatie over bloedgroep, allergieën en eventuele chronische medicatie. Op de andere kant van die plastic kaart worden de belangrijkste telefoonnummers genoteerd. Elk lid van de ploeg houdt steeds deze plastic kaart bij zich.
- Medewerkers die risico-opdrachten doen moeten fysiek in orde zijn. Bij twijfel wordt het advies van de bedrijfsarts ingewonnen. Mensen die een rijgeschiktheidsonderzoek ondergaan (bv. de ENG-medewerkers) krijgen van de Medische Dienst sowieso regelmatig een hart- en bloedvatenonderzoek.
- De bedrijfsarts is via het VRT-noodplan te bereiken in geval van nood.

Bijstandsverzekering buitenland

- De VRT heeft een polis bij AIG-Europe, die naast terugbetaling van bepaalde verliezen of kosten, ook recht geeft op bijstand en dienstverlening. Zo kan bij ontvoering, gijzeling of onrechtmatige aanhouding het gespecialiseerde bureau Kroll Associates ingeschakeld worden om de vrijlating te bespoedigen.
- Bijstand kan ook bekomen worden voor vervoer naar een medisch centrum, repatriëring, juridische bijstand bij verkeersongeval, ter plaatse sturen van geneesheer of geneesmiddelen of familielid, borgstelling, e.d. Er is een enig oproepnummer voor bijstand: +32-3-253 69 16 (verzekeringsmaatschappij Chartis: polis Assistance voor VRT-personeelsleden met polisnr. 960.084.421.000. Voor niet VRT-personeelsleden is er ook een verzekering afgesloten bij Chartis met polisnummer 2.004.739). De dienst Reizen heeft een boekje beschikbaar met nog andere schadeposten, waarvoor facturen kunnen ingediend worden en met de uitsluitingen.

VLAK VOOR HET VERTREK

Risicobeoordeling

- Voor de missie is er overleg en wordt de risicoanalyse gemaakt door de hoofdredacteur Nieuws, de chef buitenland bij VRT Nieuws, de producer Nieuws en de EVN-PK, de ENG-verantwoordelijke en de betrokken journalist(en) en ENG-technici.
- De risicoanalyse bevat volgende elementen:
 1. doel van de opdracht: waarom gaan we naar risicogebied en wat gaan we er doen
 2. risicoanalyse: inschatten van de mogelijke risico's die de medewerkers ter plekke lopen door verschillende bronnen te raadplegen (website Buitenlandse Zaken, berichten van nieuwsagentschappen en andere media en input van de eigen medewerkers)
 3. beslissing om af te reizen en wie betrokken was bij het overleg
 4. risicopreventie: de maatregelen die genomen worden om het risico van de ploeg zoveel mogelijk te beperken, met informatie over HEST-training gevolgd of niet, welke veiligheidsuitrusting wordt meegenomen (standaard is dat de volledige veiligheidsuitrusting), welke opname-, transmissie- en communicatieapparatuur meegenomen wordt, wijze van samenwerking wanneer meerdere ploegen gestuurd worden, werken we met lokale fixer of niet, afspraken over communicatie met de redactie.
- De EVN-PK of producer Nieuws informeert Buitenlandse Zaken en de Belgische ambassade ter plaatse over de missie.
- De risicoanalyse wordt opgemaakt door de producer nieuws, ondertekend door de hoofdredacteur Nieuws en bezorgd aan de preventieambtenaar en het college van hoofdredacteurs.
- De samenstelling van de ploeg wordt vastgelegd tussen de redactiehiërarchie en ENG-hiërarchie in onderling overleg en in overleg met de betrokken vrijwillige medewerkers. Een TV-reportageploeg bestaat in principe uit 3 mensen (journalist + cameraploeg), een radioploeg in principe uit 2 mensen (journalist en radiotechnicus).

Vrijwilligers

- Naar risicogebieden vertrekken uitsluitend vrijwilligers en coherente teams die goed op de hoogte zijn van de mogelijke gevaren.

Documentatie

- De ploeg die naar een risicogebied vertrekt, documenteert zich vooraf goed over de plaatselijke gewoonten, gebruiken, achtergronden van het conflict, enz. Enkele eenvoudige uitdrukkingen in de lokale taal worden het best aangeleerd. Dit kan heel wat goodwill tweebrengen.
- Schaf de nodige land- en stadskarten aan. Bestudeer deze kaarten op voorhand.
- De EVN-PK zorgt ervoor dat elk lid van de vertrekkende ploeg beschikt over een kaartje met de nodige telefoonnummers in geval van noodsituatie.

Er moet ook een 'enig nummer' meegegeven worden voor zeer zware problemen: wanneer een lid van de ploeg slechts 1 telefoonoproep mag of kan doen, moet hij de hoofdredacteur Nieuws (als lid van de crisisstaf, zie Noodplan) opbellen.

- Er worden voor alle ploegleden next-of-kin-kaarten (NOK) opgesteld, die door de EVN-PK worden beheerd en bijgehouden. De medewerkers die in aanmerking komen voor risico-opdrachten zorgen er voor dat de next-of-kin gegevens (GSM-nummer, telefoonnummer thuis en op werk, thuisadres en werkadres van aangeduide NOK-persoon) steeds up-to-date zijn en melden eventuele wijzigingen aan de EVN-PK. De next-of-kin gegevens worden opgeslagen in een map met beperkte leesrechten onder **V:\Uitwisseling\uitwisseling_nieuws\next_of_kin**. De hoofdredacteur Nieuws verwittigt onmiddellijk de aangeduide perso(o)n(en) op de next-of-kin fiches, in geval van een ernstig incident. Eventueel wordt hierbij ook beroep gedaan op Slachtofferhulp (via de Sociale Dienst).
- Van belangrijke papieren (identiteitsbewijzen, internationaal rijbewijs, accreditaties, enz.) worden enkele fotokopieën meegenomen.
- Neem geen bezwarende documenten mee vanuit België. Dit vergt uiteraard een analyse van de gevoeligheden van diegenen waarmee een confrontatie kan voorzien worden. Let ook op bepaald visa in het paspoort. Een visum voor Koeweit kan in Irak een bezwarend document zijn.

Betaalmiddelen

- Er wordt extra zorg voor gedragen om voldoende cash geld te voorzien en de nodige mechanismen in werking te zetten om zo nodig bijkomende middelen later op te sturen. Er worden voldoende kleine coupures meegenomen.

TER PLAATSE

Neutraliteit

- De ploeg verzorgt een neutrale berichtgeving en zal nooit deelnemen aan het conflict, zodat steeds de civiele rechten van het 1^e Protocol van de Conventie van Genève kunnen ingeroepen worden.
- Check mogelijk aanstootgevende of bezwarende documenten i.f.v. de plaatselijke toestand.

Kaartlezen

- Zorg er voor dat je de nodige kaarten hebt. Bestudeer de stadskaart telkens op voorhand. Overzichtskaarten van steden kunnen erg nuttig zijn. Wees in gespannen situaties geen doelwit door op pleinen en in straten de kaart te bestuderen.

Discretie

- Er wordt in gespannen situaties vermeden nota's te nemen in het openbaar. Het noteren of schetsen van militaire posten en dergelijke is nagenoeg overal verboden. Wees discreet en besef dat het tonen van interesse voor bepaalde installaties, gebouwen, personen, enz. tot problemen kan leiden.
- Draag onopvallende kledij, die niet met militaire kledij kan verward worden vanop afstand. Zonodig wordt de vermelding 'PRESS' of 'BELGIAN TV NEWS, TELEVISION BELGE' aangebracht op de kleding en grote voorwerpen. Let erop dat dit in sommige omstandigheden ook nadelig kan zijn. Er wordt ook geen uitrusting gebruikt die verward kan worden met militaire instrumenten of die op militaire betrokkenheid kunnen wijzen, zoals een nachtkijker, een legervoertuig, enz.

Communicatie

- De ploeg vergewist zich telkens van de communicatiemogelijkheden met het thuisfront: werking van GSM, satelliettelefoon of andere.
Er wordt op geregelde tijdstippen contact opgenomen met de redactie van VRT Nieuws zodat die eventueel alarm kan slaan als de ploeg zich niet op het afgesproken moment meldt. Per reis wordt afgesproken wie de vaste contactpersoon is (in principe de chef buitenland), hoe vaak er contact wordt opgenomen, wat het contactnummer in Brussel is, hoe er contact opgenomen wordt (bv. per sms).
De ploeg in risicogebied houdt de contactpersoon op het thuisfront op de hoogte van de verplaatsingen die ze maken, de verwachte duurtijd ervan en verwittigt de contactpersoon opnieuw wanneer ze aangekomen zijn op de bestemming.
- De ploeg in risicogebied informeert de contactpersoon op de redactie over wijzigingen in de gemaakte afspraken, wijzigingen i.v.m. het beschikbare veiligheidsmateriaal en opname- en transmissiemateriaal, en – indien nodig – over wat hen overkomen is.
- ENG voorziet 10 operationele iPhones met tracking die meegenomen worden bij dergelijke risico-opdrachten.
- Verplaatsingen op de weg vormen dikwijls een zeer hoog risico (gevaarlijk verkeer in gebieden zonder degelijke hulpverlening). Een GPS is in sommige gevallen een onmisbaar instrument om je positie te kennen zodat je deze kunt doorgeven aan hulpdiensten. Iridium en Thurayatelefoon zijn in bepaalde omstandigheden (maar niet overal) interessante communicatiesystemen (met GPS-positiemelding). De kleine openklapbare satelliettelefoon is nagenoeg overal inzetbaar.

Gidsen

- Er wordt indien nodig beroep gedaan op plaatselijke gidsen, die de situatie, de taal en de problemen kennen. De keuze van de gids kan een risico betekenen voor de ploeg. Tot welke partij behoort de gids?

Betaalmiddelen

- Draag het geld dat je bij hebt op verschillende plaatsen. Stop indien nodig een deel bij je bagage of in het voertuig. Zorg dat je voor fooien en kleine betalingen steeds voldoende kleine coupures bij je hebt, die zeer vlot bereikbaar zijn. Toon je geld niet in het openbaar en blijf nooit dralen met tellen. In sommige landen of gebieden betekent het niet bij hebben van geld een risico op vermoord worden (Rio). In geval van bedreiging of afpersing telt het principe: geld is geen mensenleven waard. Situatie te evalueren door ploeg ter plaatse.

Verplaatsingen

- Verplaatsingen in gevaarlijk gebied gebeuren bij voorkeur in colonne met andere ploegen. Ga nooit alleen op stap. In risicogebieden is het het best om ter plaatse en op de redactie iemand te hebben die weet welke verplaatsingen gemaakt zullen worden en volgens welk tijdschema. Het is aangeraden om zich bij zeer gevaarlijke tochten de aankomst te melden bij de redactie, los van speciaal afgesproken belmomenten.
- Radio- en TV-ploegen reizen gegroepeerd in twee voertuigen voor de meest cruciale verplaatsingen of de meest cruciale onderdelen van de opdracht.

Hotel

- Heb niet het volste vertrouwen in de hoteldiensten. Wees steeds op je hoede, vooral na lange dagtaken als je vermoeid bent. Vermijd propvolle restaurants en bars.

Besmette zones

- De ploeg zorgt er voor dat men zich niet begeeft in mogelijk besmette zones of gebieden. Als men zich toch in een besmette zone bevindt, dan zoekt men eerst advies vooraleer de zone of streek te verlaten. Als men door de omstandigheden toch verplicht is een mogelijk besmette zone te betreden, dan wint men eerst zo uitgebreid mogelijk advies in.

Contact met VRT

- Naast het nummer van de afgesproken vaste contactpersoon, hebben alle medewerkers die een risico-opdracht uitvoeren een individueel stevig plastic kaartje met daarop het 'enige nummer', dat is het telefoonnummer van de hoofdredacteur Nieuws en van een tweede persoon (Chef Buitenland), om te bellen in noodsituaties.
Op dit plastic kaartje staat ook het telefoonnummer van de EVN-PK en van de bijstandscentrale.
- Naast de contactpersoon op de redactie en naast het 'enig nummer' is bij het opduiken van bijkomende veiligheidsproblemen de chef Buitenland op de redactie het eerste aanspreekpunt voor een ploeg in het buitenland.
In ieder geval moet het voor de ploeg in het buitenland volstaan om contact op te nemen met de redactie, die dan alle verdere stappen zet in geval van een veiligheidsprobleem (bvb. contact opnemen met Belgische officiële vertegenwoordiging, bijstandscentrale enz.). Uiteraard kan de ploeg in het

buitenland ook rechtstreeks ter plaatse de nodige contacten leggen.

- Bij wijziging van de veiligheidssituatie overlegt de ploeg ter plaatse met de hiërarchie op de redactie over een eventuele terugtrekking. Elk lid van de ploeg heeft het recht om zich bij een wijzigende veiligheidssituatie terug te trekken, na overleg met de hiërarchie en zonder dat de veiligheid van de andere teamleden in gevaar komt.

Confrontaties

- Bij beschietingen zoek je altijd beschutting tegen muren en/of op de vloer en richt je je nooit te snel terug op. Niet bewegen kan je leven redden. Lege straten zijn zeer gevaarlijk.
- Opletten in mensenmassa's, omgeving in het oog houden (Video: Watch Your Back).
- Bij confrontaties met gewapende personen gedraag je je altijd beleefd en gehoorzaam, zo nodig onderdanig. Bij inbeslagname van papieren of voorwerpen vraag je altijd beleefd een ontvangstbewijs. Het best bewaar je de originelen op een veilige plaats (hotel, kluis, enz.) en geef je kopies af. Laat bij een wegcontrole de handen zien, houd niets vast, tenzij identiteitspapieren, die klaarliggen op het dashboard. Laat bij een controle niet teveel papieren zien, om niet als interessant beschouwd te worden.

Mijnenvelden

- In oorlogsgebied is bijzondere waakzaamheid geboden voor landmijnen. Ga - tenzij het echt niet anders kan - niet van de weg af, betreed geen zones die zijn afgebakend als mijnenveld (soms door bepaalde tekens op bomen e.d.), vermijd verlaten wegen of wijken.

Dragen veiligheidskledij

- De beoordeling over het al dan niet dragen van de veiligheidskledij ligt bij de ploeg op het terrein, in overleg met de redactie. In zones waar beschietingen aan de gang zijn moet de kogelwerende vest altijd worden gedragen. Te zwaar of te warm kan geen argument zijn om van deze regel af te wijken. Bij een chemische aanval wordt de beschermende kledij aangetrokken en probeert de ploeg de gevarezone zo snel mogelijk te verlaten.

Ernstige voorvallen

- Als iemand van de ploeg iets ernstigs overkomt (ernstige kwetsuur, hospitalisering, ontvoering, enz.) wordt altijd in elk geval onmiddellijk contact opgenomen met het unieke noodnummer, nl. met de hoofdredacteur Nieuws. Hij neemt dan meteen contact op met de familie, de reisbijstandsverzekering, enz. In overleg met de arbeidsgeneesheer of de sociale dienst wordt door het VRT-thuisfront voor professionele psychologische en indien nodig organisatorische hulp gezorgd.

ACHTERAF

Medisch onderzoek

- In geval van twijfel voor besmetting of infecties overlegt men zo vlug mogelijk met de arbeidsgeneesheer, om indien nodig een medisch onderzoek te organiseren.
- De redactie organiseert wanneer nodig een medisch onderzoek, intern of in een gespecialiseerd centrum (bv. bij werken in nucleair besmet gebied). Dergelijke medische onderzoeken zijn verplicht voor alle deelnemers aan de missie. In dergelijke situaties wordt ook het materiaal dat de ploegen mee hadden gecontroleerd.

Debriefing

- Een debriefing gebeurt in de eerste plaats (informeel) getrapt via de leidinggevende.
- Bij grote (potentiële) risicovolle opdrachten wordt door de chef buitenland tussen de twee en vijf dagen na de terugkomst een gezamenlijke debriefing gehouden (op te nemen in de planning). Daarbij informeert men naar het verloop, meegemaakte moeilijkheden, schierongevallen en incidenten waaruit men kan leren, de persoonlijke ervaringen van de ploeg en naar mogelijke voorstellen voor de toekomst. Waar nodig tracht men er zich van te vergewissen dat leden van de ploeg geen psychologische trauma's opgelopen hebben waarvoor professionele begeleiding aangewezen is. Daarvoor zijn individuele debriefings beter geschikt. Zo nodig wordt het gemeld aan de sociale dienst. Die biedt de mogelijkheid voor opvolging door een getraind bijstandsteam. In bepaalde omstandigheden kan men ook een beroep doen op een psycholoog of psycho-traumatoloog. Betrokken medewerkers kunnen ook zelf psychologische bijstand aanvragen.
- Specialisten merken op dat er dikwijls te weinig onderscheid gemaakt wordt tussen situaties waarbij er een identificatieproces met slachtoffers gebeurt (aanblik van wrede gebeurtenissen) en die waarbij angstreacties mogelijk zijn na confrontatie met een levensbedreigende gebeurtenis (gevaar voor eigen leven).
 - In het eerste geval kan je die mensen ineens opvangen en laten praten over de gevoelens van onmacht, verdriet en ontredding. Peer support (steun die gevormde collega's aan eigen collega's kunnen bieden) of re-exposure (vb. het terug blootstellen van slachtoffers aan hun herinneringen door hen erover te laten praten) kunnen een positieve invloed hebben.
 - In het tweede geval is een groepsgesprek of psychologische debriefing geen (voldoende) oplossing. Ze moeten apart benaderd worden via gespecialiseerde hulp. *"Je kan niet verwachten dat je via peer support, een eenmalige bijeenkomst of in groepscontext, de diepe impact van een levensbedreigend gebeuren bij mensen gaat wegvagen. Hier is van in het begin een professionele benadering noodzakelijk"* (E. De Soir – Supervisor van het Fire Stress Team en voorzitter van de Europese Vereniging van Brandweer- en Reddingspsychologen, KLUWER NIEUWSBRIEF ARBEIDSVEILIGHEID nr. 4 (2006) – beschikbaar bij de dienst PBW).