

JOURNALISTS AND THE RULE OF LAW IN EXCEPTIONAL PERIODS: A RELATIVITY OF PROTECTION

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ABSTRACT

The incessant proliferation of different types challenges plaguing journalists and media professionals in general and journalists and media professionals of war and during armed conflicts in particular in the world over have led to deteriorating and devastating effects to the journalism profession, the quality of information and to fundamental rights to life of journalists as most of them meet their waterloo during intense active hostilities in such a way that if nothing is done to obviate it, it will only lead to egregious anomalies and why not heinous as well as wanton violation of the rights of journalists. Freedom of speech, of expression and of thoughts in the contemporary world, which are supposed to be promoted and protected so as to ensure and enhance development of information and communication albeit in worrisome periods such as armed conflict, are instead the kick-starters of the numerous nightmares and vicious atrocities on journalists and their profession. These challenges are multi-dimensional and spring from the belligerent parties on both ends on the one hand and interested third parties on the other hand. The matter is worsened when some of the journalists themselves gang-up with unscrupulous sponsors to embark on armed conflict zones as spies in the name journalists leaving us in a state of unembellished elation to ponder whether they still fall under the very norms and canons of the journalism profession. In this same strand of reflection however, several international legal instruments aimed at arriving at a solution have been envisaged but it is rather unfortunate that, the so many legal instruments arrived at are not apt enough to curb and curtail the ordeal faced by journalists during armed conflicts. If nothing is done to this present status quo, no long lasting solution will ever be attained. This paper focuses on challenges faced in the implementation of laws protecting journalists in general and journalists of war in particular as well as the relativity of protection of journalists of war. To attain this

objective, the secondary method of data collection and the qualitative method of data analysis were employed.

INTRODUCTION

The civilization of man and the society from antiquity till present has been in evolution up to the extent where one can affirm that for the society to reach its zenith of civilization today, human rights must be well harnessed, propagated, promoted and protected. Human rights therefore are those rights inherent to every human being regardless of their sex, language, colour, race, culture, nationality and nowadays they are those rights encompassed in the Universal Declaration of Human rights 1948, the Twin legislation of 1966 as well as other international and regional human rights instruments such as the African Charter on Human and Peoples' Rights and the European convention of Human rights. Amongst these numerous human rights and freedoms, is the "freedom of speech and expression" whose exercise from inception till present portrays blizzard scenarios of violence, active hostility, mental war and incessant violations, thereby warranting a proper definition of its content, context, and criteria as well as scope of implementation.

Freedom of speech and expression is a fundamental right enshrined in the Universal Declaration of Human rights 1948, the African Charter on Human and Peoples Rights, the European Convention of Human rights and the American convention of human Rights. In the wordings of article 13(1) of the American convention of human rights, 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.

However, before going in to the intricacies of freedom of speech and expression, a little walk in to the memory lane of armed conflict is worthwhile. An Armed conflict, be it international or internal is a state of unrest characterized by any condition of active hostility. It is international when it occurs between two or more states where we talk of inter-state war and internal when it occurs within a state where we talk of intra-state war.ⁱ There are several different types of armed conflict that proliferate, giving rise to superfluous damage or injury and unwanted and/or unnecessary suffering to human kind.ⁱⁱ

The effects and consequences of inter-state armed conflicts are the same as those of internal armed conflicts.ⁱⁱⁱ For, the same pain, suffering, injury and prejudice suffered by individuals as well as the same war Crimes, crimes against humanity and genocides albeit the core crimes that obtains in international armed conflict hold true for internal armed conflicts. This is to say that it becomes very difficult to differentiate one from the other in terms of the evaluation of the aftermath of the war except for the fact that the former may involve a larger quantity of deaths.

It has become increasingly and crystal clear in recent conflicts that journalists and other media professionals are more often at risk of being directly targeted, in violation of international human rights and humanitarian law. Journalists and other media professionals working in war zones encounter many dangers and by the very nature of their work, they are inevitably exposed to the dangers inherent in military operations. Instead of fleeing combat, they go for it in their constant quest to gather information. Nevertheless, the greatest danger they face is that of deliberate acts of violence against them.

It is a recognized afforisation that truth is the first casualty of war and it becomes imperative to journalists in the exercise of their duties to seek for this truth. As such, accurate and impartial media reports conveyed from conflict zones serve a fundamental public interest as well as have a decisive impact on the outcome of armed conflicts. Consequentially, the obstruction of journalistic tasks in times of armed conflict is alarmingly frequent with a wider spectrum of interference which ranges from access denial, censorship and harassment to arbitrary detention and direct attacks against media professionals.

It is important that the laws of armed conflict be it international or internal be implemented and respected in order to guarantee world peace and security. But it becomes discouraging when the laws of armed conflict even though apt enough to tackle these conflicts are unimplemented or implemented, only to a lesser extent albeit on the part of journalists in the exercise of their rights of freedom of thought, speech and expression owing to the fact that there exist several encumbrances, challenges and difficulties in the implementation of these laws especially during armed conflicts. The difficulties in the implementation of these laws have only led to a series of nightmares to journalists in the areas plagued by these conflicts thereby warranting rapid and long lasting solutions in order to remedy the problems. The situation is worsened when during the said armed conflicts journalists are attacked, brutalized, imprisoned and even killed in guise to hide the heinous and egregious anomalies undertaken during armed conflicts.^{iv}

Furthermore, the issue is exacerbated coupled with the fact that in practice, some of those basic human rights such as freedom of speech and expression that ought to be protected, promoted and respected are instead the kick-starters of the incessant violation of the rights of journalists albeit during armed conflicts.^v

Superficially, one could get the impression that international humanitarian law does not provide a whole lot of protection for journalists, given that the Geneva Conventions and their Additional Protocols contain only two explicit references to media personnel.^{vi} However, a succinct perusal of these provisions in conjunction with other humanitarian law rules, it is clear that the protection under existing law is quite comprehensive. Most importantly, Article 79 of Additional Protocol I provides that journalists are entitled to all rights and protections granted to civilians in international armed conflicts. The same holds true in non-international armed conflicts by virtue of customary international law.

The query of immense practical importance that runs immediately in the minds of many is that of understanding and knowing whether the prohibited means^{vii} and methods^{viii} of warfare employed during armed conflict can be officially divulged and published by journalists practicing their qualities and skills of information diffusion and/or whether the international legal instruments employed during armed conflict sufficiently protect or guarantee journalists in the exercise of their duties. If this is the case, why is it that the effectiveness of the so numerous international legal instruments and the laws of war are not yielding much felt impact on the protection of journalists in the exercise of their duties? If this is not the case, what should be done in order to identify the heinous problems facing journalists of war in the exercise of their rights?

It is in response to the foregoing questions that this write-up shall be envisaging the scope of protection of journalist (I) and the relativity in the protection of journalists (II).

1. THE SCOPE OF PROTECTION OF JOURNALISTS DURING ARMED CONFLICT

To ensure and guarantee the protection of journalists in general and especially during armed conflicts, it will be expedient to envisage the legal and institutional framework of protection of these journalists and media professionals.

THE LEGAL FRAMEWORK OF PROTECTION

Here, we shall be scrutinizing how the various legal instruments in their different domains of competence actually grant protection or protection mechanisms to the journalist faced with worrisome situations during armed conflicts. And in this regard, we shall be looking at protection arising from international human rights law, international humanitarian law and the legal modes of protection.

INTERNATIONAL HUMANITARIAN LAW AND THE PROTECTION OF JOURNALISTS

International humanitarian law is the set of rules applicable to^{ix}, at^x and after^{xi} situations of armed conflict.^{xii} Additionally, international humanitarian law creates obligations before^{xiii}, during and after the armed conflict^{xiv} as well as regulates the conduct of hostilities and the people whom one can legitimately fight against.^{xv} Journalists of war by the very nature of their profession find themselves in violent situations and vulnerable positions. Besides this evidence and rather natural danger, however, journalists have become subject to targeted attacks by warring parties. As per international humanitarian law, journalists of war are not to be considered combatants and as such have the same guarantees to safety as civilians but if they take part in active hostilities, then they become objects of all kinds of attack as reminiscent to those of actual combatants.^{xvi} To elucidate on the fact that journalists of war enjoy this protection, we shall envisage the specific rules that have emerged in conventional international humanitarian law and customary international humanitarian law.

PROTECTION FROM CONVENTIONAL INTERNATIONAL HUMANITARIAN LAW

The Geneva Conventions are somewhat silent as no specific provisions on journalists of war or other journalists are mentioned, except the aspect of war correspondent receiving the status of prisoner of war upon capture in the Third Geneva Convention. It is only with the adoption of the Additional Protocol I to the Geneva Conventions in 1977 that the journalist of war received explicit protection from targeting.^{xvii}

Given that the status of journalists of war under conventional international humanitarian law is resonant to that of civilians, the protection civilians receive in an armed conflict as described in the Fourth Geneva Convention, and in the Additional Protocols I and II to the Geneva Conventions, applies *mutatis mutandis* to the journalists of war respectively in international and non-international armed conflicts.

INTERNATIONAL ARMED CONFLICT

The applicable legal framework for an international armed conflict makes a clear distinction between the legal status of a journalist of war, who accompanies the armed forces and the legal status of an independent journalist of war that does not. The protection accorded to these two sets of journalists is not the same as the former has more specialized rights than the latter.^{xviii}

Particular attention is paid by International humanitarian law on the protection of ‘unilateral journalists’ also called “freelance journalists”^{xix} who do not follow the armed forces and only find themselves in armed conflicts because of their profession.^{xx} This term should be used with caution, because it must not be confused with independent journalists.^{xxi} Since the freelance journalist is employed, receives a wage and is not completely independent.^{xxii}

CUSTOMARY INTERNATIONAL HUMANITARIAN LAW

Journalists of war are particularly mentioned in the collation^{xxiii} that certain rules of the International Committee of the Red Cross have become customary international humanitarian law based on ‘a general practice accepted as law’.^{xxiv} According to Rule 34 of this collation “journalists of war are engaged in professional missions in areas of armed conflict must be protected, respected and promoted in as much as they are not taking part in active hostilities.”^{xxv} Their protection is not different from those of civilians as the prerequisite condition of not taking active part in the hostilities is respected.

2. SOFT LAW AND THE PROTECTION OF JOURNALISTS

Soft Laws are rules which do not fully enjoy the magnitude of legal aptitude or that are not resolutely imperative or firmly compulsory. Soft law ultimately comprises of standards, codes

of conduct, policy statements that in quintessence establishes standards of conduct, within the framework of international law. As regards the evolution of international law and of international relations, soft law instruments have provided a significant and an increasing position. For example the groundwork to treaty negotiations, in practice, is often from non-binding standards. This can also fuel State practice that can lead to the introduction of Customary International Law.^{xxvi}

Furthermore, soft law instruments are valuable when it comes to dealing with firsthand matters of standards that necessitates rule making with regards to non-State actors.^{xxvii} It should also be noted that soft law provides interminable changeability as many works of international organizations provide a bulk of non-binding standards. Although the Security Council in most cases does not have the authority to implement binding actions, Article 25 of the United Nations Charter makes it one of the few international bodies that can confer the power to bind states and demand compliance with the measures it adopts.^{xxviii}

INTERNATIONAL SOFT LAW

The United Nations Security Council Resolution 1738 adopted in 2006 is by far the most important soft law on the safety of journalists in armed conflict.^{xxix} The Security Council condemned all intentional attacks against journalists in armed conflict and reemphasized on their civilian status as well as the protection of media infrastructure. The firm stance of the United Nations Security Council on the protected status of journalists of war has been confirmed in its resolutions concerning Syria and Somalia in 2012 and 2013.^{xxx} 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'.^{xxxi} 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,^{xxxii} 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 and to develop support for local capacity building in safety and protection of journalists".^{xxxiii}

More so, the Resolution on the safety of journalists of the United Nations Human Rights Council is very explicit in stating that, the council condemns all attacks.^{xxxiv} In addition, the

resolution underlines the variety of tasks that states need to fulfill: 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.

REGIONAL SOFT LAW

At the regional level, soft law has emerged with Europe having made declarations and resolutions on the safety of journalists. The Declaration on the protection of journalists in situations of armed conflict and tension has pushed the Committee of Ministers of the Council of Europe to insist on the protection of journalists and committed itself to investigating how undertaking action to protect journalists could be ameliorated within the Council of Europe.^{xxxv} 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 about which information originates from entrenched journalists. The resolution also enjoins the military to limiting freedom of expression only if the war reporting of the embedded correspondent would jeopardize ongoing military operations.

3. THE INSTITUTIONAL FRAMEWORK OF PROTECTION

World-class institutions, including the United Nations, Non-Governmental Agencies and Regional Organizations have addressed the issues of protection of journalists of war. These organizations have acknowledged the supplementation of legal and political protection of journalists so as to counteract the growing duty of affording protection to journalists reporting from armed conflict arrears.

PROTECTION OF JOURNALISTS UNDER THE UNITED NATIONS

The United Nations has implemented a number of resolutions with the aim of enhancing the legal framework and enforcement methods intended towards protecting journalists and to fight impunity against offences committed against journalists.

Security Council Resolutions

Chapter VII of the UN Charter (1945)^{xxxvi} authorized the UN Security Council to take all measures necessary to ensure international peace and security.^{xxxvii} This includes ensuring the needs of those who are susceptible and defenseless to abuse, including refugees, women, children, journalists, and those who have been ousted outside their borders.^{xxxviii} Pursuance to addressing the issue regarding the safety of journalists during armed conflicts, the Security Council has passed some resolutions.

The UN Security Council has adopted several resolutions to address the issue of the protection of civilians during armed conflicts. Resolutions 1265 (1999),^{xxxix} 1674 (2006) and 1894 (2009) acknowledged the Geneva Conventions^{xl} principles on the prohibition against deliberately targeting civilian populations in conflict zones. The Security Council conveyed profound worry at the erosion of International Humanitarian Law and Human Rights Law as well as Refugee Law during armed conflicts and the increase in deliberate acts of violence against all those protected under such law. It observed that that the denial of safe and unimpeded access to people in need was unconscionable.^{xli}

Further, the Security Council stressed the obligation incumbent upon States to end impunity and to prosecute those responsible for genocide, crimes against humanity and serious violations of International Humanitarian Law.^{xlii} Resolution 1738 (2006) was the first resolution adopted by the UN Security Council with regard to the safety of journalists operating in conflict zones. The resolution reiterated on past resolutions, including Resolutions 1265 (1999), 1296 (2006) and 1674 (2009) as well as Geneva Conventions, which talked about the protection of civilians.^{xliii} The Security Council stated clearly that journalists, media professionals and associated personnel engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians and shall be respected and protected as such, provided that they do not take part in active hostilities.

UN General Assembly

A number of resolutions on the protection of journalists practicing their profession in armed conflict zones have been approved by the UN General Assembly. To this effect, Resolution 2673 (1970), establishes a mechanism for the protection of journalists practicing their profession in armed conflict zones. The importance of developing further international

humanitarian conventions and to have other suitable legal means for the protection of journalists operating in conflict zones is encouraged.^{xliv}

Another resolution, approved in 2014 by the UN General Assembly gave recognition to the practice of journalism as a profession characterized by a higher risk of violence, harassment and threats.^{xlv} The General Assembly enjoined Member States “to do their utmost to prevent violence against journalists and media professionals, to ensure accountability, speedy and effective investigations into all alleged violence against journalists and media workers falling within their jurisdiction and to bring the perpetrators of such crimes to justice with victims having access to appropriate remedies.” Furthermore, States should grant a safe and enabling environment for journalists to perform their task independently and without undue interference.”^{xlvi}

Human Rights Council

Freedom of expression and the right to freedom of opinion are the canons under which the Human Rights Council has addressed the issue of safety and protection of journalists. The Human Rights Council invited States in 2012 to ensure a safe and facilitating environment in which journalists can practice their profession independently and without unnecessary interference.^{xlvii} And in 2014 it adopted a new resolution on the safety and protection of journalists. The resolution laid emphasis on the importance of the need to thoroughly investigate and prosecute the many cases on journalists murdered from armed conflict zones. It imposes on States to design and apply the necessary tools for ending impunity for violent attacks on journalists covering armed conflict.^{xlviii} The Resolution also recommends the creation of special national investigative units or independent commissions as well as a specialized prosecutor for crimes against journalists covering armed conflicts. It also encouraged States to offer training to prosecutors and the judiciary regarding the safety of journalists. Moreover, it advised States to establish an early warning and rapid response mechanism to give journalists, when threatened, immediate access to the authorities and protective measures.

4. NON-GOVERNMENTAL ORGANIZATIONS (NGO) AND THE PROTECTION OF JOURNALISTS IN CONFLICT ZONES

There is a spillover effect for the protection of journalists covering armed conflict that has dripped into NGOs' interest. Their work records any instances of violence that comes to light, as well as any intimidation of journalists. They seek to establish a better knowledge and understanding of the risk and threats journalists reporting armed conflict face. Furthermore, these NGOs seek dialogue with States on the matter of impunity, methods that should be taken into account to ensure that journalists are safe, and training on legislative requirements for protection of journalists covering armed conflict.^{xlix}

The International Programme for the Development of Communication (IPDC)

The IPDC performs an important part in pursuing to ensure the safety and protection of journalists as well as in fighting impunity. To attain this aim, the collaboration of organizations recognized by the UN such as the OHCHR, UNESCO and other NGOs is worthwhile.

In March 2010, IPDC arrived at some stands regarding the safety and protection of journalists as well as emphasized on the importance of having a process where several agencies combine their efforts to tackle the problems around the safety of journalists armed conflict. More so, the decision insisted on engagement between international organizations and regional organizations to predominantly concentrate on the safety of journalists during armed conflicts.¹

The International Committee of the Red Cross (ICRC)

The ICRC also seeks to reduce suffering during periods of war by promoting and strengthening humanitarian law. The ICRC has specific guidelines regarding the actions it takes with respect to the support and protection granted to journalists arrested, injured or kidnapped. These guidelines are useful for both employers and relatives of journalists whose whereabouts are worrisome so as to enable them locate or map out whether any journalist is missing or is conducting medical withdrawals-in case of injured journalists. The ICRC also train and teach Journalists about International Humanitarian Law, take part in first-aid courses, and offering aid for Red Cross organizations.^{li}

Enormous practical interventions for the protection journalists covering armed conflict are offered by the ICRC than the UN Security Council or the UN General Assembly do, with a handful of impotent and hollow Resolutions and Declarations that have yielded little or no fruits whereas journalists reporting armed conflict have continued to suffer.

Reporters Without Borders (RWB)

RWB was formed to improve the safety and protection of journalists in general and journalists of war in particular in the exercise of their profession in zones of active hostilities. It engages against national laws that undermine press freedom and encourage impunity. Its quintessence is to help journalists who are suffering the very of effects of armed conflicts as do combatants. A report is published every year by the RWB wherein the number of journalists being attacked, molested, kidnapped and killed. In the States of Syria and Yemen for example, there is a considerable increase in the number of foreign journalists that have been killed in 2015 only.^{lii}

However, despite the so-many institutions and legal instruments couched for the protection of journalists during armed conflict and particularly in the zone of active hostilities, there are several egregious anomalies, wanton incongruities and incessant violation of the rights of journalists of war thereby warranting a meticulous scrutiny of the hurdles in the implementation of these laws and mechanisms.

5. THE RELATIVITY IN THE PROTECTION OF JOURNALISTS DURING ARMED CONFLICTS

The relativity in the protection of journalists during armed conflict is double pronged. The protection shall be contextualized by envisaging the challenges faced by journalists of war (A) and the challenges faced by stakeholders (B).

The Challenges faced by Journalists of War

Despite the so many legal instruments couched and implemented as well as institutions created both at the national and the international levels to curb the dangers faced by journalists in the

exercise of their duties, there are still several instances of deliberate attacks on journalists, general vulnerability in moments of intense hostility as well as forced imprisonment.

Methodical Targets

During war, objects of attack are certainly military objects but when journalists become the obvious objects of deliberate attack, the aim without doubt is that of discouraging war journalists to exercise their profession and to some extent create a situation lack and/or asymmetry of information. Journalists of war are not always a fancied witness and most often than not face threats or attacks against themselves or their relatives.^{liii} 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.^{liv} Again, the material possessions of journalists such as tapes and cameras are confiscated or destroyed as a measure of wiping out information.

More so, some consequential problems journalists of war encounter that are not given enough attention is the fact so many journalists are forced to flee or go in to hiding. This is definitely a bigger problem for local journalists since foreign war journalists are able to return to their home countries after carrying out their mission to report on an armed conflict.^{lv}

Consequentially, the psychological aftermath of being a deliberate target is somewhat problematic and worrisome to the journalist in person.^{lvi} After leaving the armed conflict zone, most journalists of war have been the object of attack, which ranges from killings, kidnappings, sequestration and the asking of ransoms. The importance therefore is to prevent permanent psychological damage and to grant them the opportunity to continue to exercise their profession. Journalists covering war are reminiscent to those covering the mob or organized crime, and 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 with general crimes violence is one modus operandi whereas with armed conflict situations violence is the predominant modus operandi and as such the propensity of being targeted are much higher.

Intense Active Hostilities

An Armed conflict, be it international or internal is a state of unrest characterized by any condition of active hostility. It is international when it occurs between two or more states where we talk of inter-state war and internal when it occurs within a state where we talk of intra-state war.^{lvii} Talking therefore of internal armed conflict there are several different types that proliferate, giving rise to superfluous damage or injury and unwanted and/or unnecessary suffering to human kind and to journalists in particular.^{lviii} These different types of internal armed conflict may vary according to their intended goal or objective, site or geographical location and include inter-tribal conflicts, internal insurgency-conflicts between a group and the state or non-international conflicts, religious conflicts, sectoral conflicts-conflicts between two groups within a state, internationalized non-international armed conflict and conflicts by non-state actors.^{lix} It is obvious from the foregoing types of armed conflicts that the intensity and the use of sophisticated weaponry are certainly during international armed conflicts and as a result they by-pass jus in bello^{lx} and several journalists meet their Waterloo.^{lxi}

The general violence journalists of war face during intense active hostility is very obvious and diverse and can manifest themselves via all manner of violent outcomes that take place during armed conflict, but are definitely not related to the professional activity of the journalist.

Stray bullets or random explosions are very good examples of the ordeal of war journalists when caught in the crossfire. Even though war journalists try as much as possible not to be hit or to become a war casualty, they still find themselves in their own pool of blood despite the so many precautions taken to prevent such. 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.

Foreigner journalists are several times the victims of the war, just for the purpose of getting attention from or to provoke the international community. In that case the nationality and the journalistic profession of the journalist is the decisive factor in triggering offenses and attacks on journalists.

Therefore it is without doubt that the intensity of the armed conflict be it in armory or in intelligence has a wanton impact on casualties in general and on journalists in particular since

intense active hostility may by its very nature by-pass all the human right and international humanitarian laws governing armed conflict to the peril of journalists.

Forced Imprisonment

The trail of imprisoned journalists is kept by the Committee for the Protection of journalists and after the high record of 2012, wherein 232 journalists were held in prison, a high number of imprisonments of journalists were also recorded in 2013.^{lxii} In 2013 the Committee for the Protection of Journalists has noted 211 journalists held in prison in the world over.^{lxiii} Detained journalists illustrate the larger picture of a problematic freedom of expression and these are signs of the root causes that led to increasing violence against journalists of war and journalists at large. It is however, most likely that a segment of these imprisonments is related to situations of armed conflict, since 59 per cent of the imprisonments in 2013 were based on anti-state concerns, such as counterterrorism, subversion or other national security reasons.^{lxiv} In 21 per cent of the imprisonments, no accusations were disclosed by the state.^{lxv} Because journalists of war 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.

An assessment 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 enormity of the problem: 66 journalists were killed, 71 were abducted, 1044 were arrested and 1959 were assaulted or threatened in 2011.^{lxvi} Also the Committee for the Protection of Journalists keeps trails of the missing journalists.^{lxvii}

The Challenges faced by Stakeholders

Stakeholders be they national or international bodies, do face some challenges in the protection and promotion of human rights in general and of the protection of journalists in particular. These challenges are expressed in terms of impunity perpetrators enjoy, lack of political will on the part of authorities, and the non-domestication of international laws in to national text.

Impunity

According to the Committee for the Protection of Journalists an estimated 90% of attacks on journalists are not legally prosecuted and do not result in compensation. Again, there is complete impunity in 88% of the cases, 8% of which there is partial justice and in 5% there is complete justice. The Committee for the Protection of Journalists has an annual Impunity Index that shows which countries know the most deadliest, unpunished violence against journalists.^{lxviii} 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 immense want of justice and consequences for the perpetrators creates an atmosphere of impunity, which is very discouraging and dreadful for journalists. As an already vulnerable group of professionals, they become more and more vulnerable if perpetrators are not held accountable and the legal system fails to restore justice. Many journalists will be scared to do their job and will instead try to stay under the radar, while others will even renounce journalism and abandon their countries for reasons of self-protection.^{lxix} An impunity free environment is not healthy for the boosting freedom of speech and expression and as such the country will become more destabilized. Impunity is therefore a tool of encouragement for future perpetrators to release upon war journalists their rage without fear of prosecution.

The causes of impunity for attacks against journalists of war are diverse as the main issue is found in corrupt national legal system. Investigation by the Committee for the Protection of Journalists shows that in countries where a lot of journalists are the objects of attack, there is a generally high impunity rate.^{lxx} The problems lie on corruption of governmental officials and prosecutors who do not have enough independent and safety guarantees to work.

This is worsened by the fact that the perpetrators of the attacks are often governmental officials themselves and as such they cannot easily be countered, since any attempts made either by the civil society or the international community to curtail the problems by providing more resources, will be ricocheted towards other goals and not on the course to render justice to journalists. When governmental officials, such as the military or law enforcement officials, have abused the rights of war journalists during armed conflict, states will be so lax in prosecuting them or may not even do so since it is their core of sovereignty that seems under

attack.

Lack of Political Will

One of the major problems worth mentioning is the lack of political will, which can also stand as a pivotal to most if not, all the other foregoing problems faced by journalists. Not all states have consented with media freedom and even when some states do, they also have installed restrictive media laws to that effect. It becomes a great challenge in these states to motivate the judicial or political power and to convince them of the importance of no impunity for violence against war journalists.

The lack of political will has been and is still a major blow to the human rights and humanitarian law quest albeit on the part of journalists, thereby calling to mind the necessity of an international crime against journalists of war wherein the perpetrators shall be punished individually and will not enjoy the luxury of hiding behind the veil of the state to commit terrible atrocities just was the case with war crimes, crimes against humanity and genocide which after the Rome Statute of 1998 became individual and as such enabling the arrest of individuals who hide behind the fictive being-the state to commit all kinds of forfeitures.

Moreover, the Committee for the Protection of Journalists of war has established that, local journalists are more vulnerable to injustice than foreign journalists. Only 6% of the unsolved cases regard foreign journalists, while 12% of the journalists who are killed over the years, are foreign journalists.^{lxxi} This appraisal of the percentages makes it clear that foreign journalists have a better chance of receiving partial and/or full justice as against local journalist who may not receive justice at all. This is elucidated by the international pressure and by the higher efforts states will exhibit to investigate the attacks within their jurisdiction and to compensate those foreign journalists for their losses so as to avoid diplomatic squabbles and tension to the detriment of local journalists especially during internal armed conflicts.

The non-domestication of the laws of armed conflict in to national laws

Domestication is the process by which supranational laws are customized or adapted in the national legal system of a state. Domestication in other words means the putting in to force of international treaties or conventions that have been acceded to or signed by a state party to the treaty or convention.^{lxxii} It is clearly seen that states which do not implement the laws of armed

conflict adopted by international legal instruments to which it is a party, do nothing but encourage the violation international laws in general and the rights of journalists in particular especially during active hostilities.^{lxxiii}

Article 3 common to the Geneva Conventions

It is notorious that article 2(4) of the UN Charter, drafted in response to the Second World War was addressed to inter-state conflicts and little or nothing was apportioned to intra-state conflicts. It postulates that, ‘All member states shall refrain in their international relations from the threat or use of force.’ This portrays that internal armed conflicts were seen upon as a domestic matter except in so far as it might constitute a threat to international peace and security under chapter 7 of the UN Charter.^{lxxiv} Does this mean that journalists are affected only during international armed conflicts? The answer is in the negation as the same or even worse things do occur to journalists covering internal armed conflicts as opposed to those of international armed conflict.

The first attempt to define the characteristics of a civil war came with the institution of the recognition of belligerency.^{lxxv} The recognition of belligerency was a discretionary and purely subjective recognition by a state of the factual existence of a war providing certain specific conditions were fulfilled, thereby endangering and putting the rights to journalists in peril since the classification and recognition of belligerency is wanton task circumvented by several conditions.

The modest regulation Contained in Article 3 is certainly a weakness. A further weakness is the difficulty in its application. It contains no definition of “**conflict not of an international character**”, the lack of definition, however, has allowed many states to simply deny that the Article applies to their conflict. They may argue that Article 3 does not apply because the conflict has not reached the level of being considered an “**armed conflict**”.^{lxxvi}

Furthermore, it is difficult to ascertain, especially in the light of modern conflict, what, conflicts ‘**not of an international character**’ actually mean. When does a revolt or insurgency within a state become a non-international armed conflict? At what point will a state’s support for separatists in a neighboring state turn a conflict into an ‘international’ conflict? Interestingly, whether or not a situation is an ‘armed conflict’ will depend largely on whether it is considered international or non-international. For instance, even a minor use of force between sovereign

states may be considered an armed conflict: ‘the magnitude of the use of force is irrelevant; international humanitarian law, and thus the law of war crimes, is applicable even to minor skirmishes.’^{lxxvii} However, in the case of internal conflict there is a higher threshold, whereby a situation must reach a certain level of intensity before it becomes an armed conflict. The different juxtapositions in the legal stands only portray the cacophonies in terms of implementation and protection of journalist during armed conflict. If the laws themselves are ambiguous, what more of the implementation of such ambiguous laws?

It is regrettable that the 1949 Geneva conventions and its protocols of 1977 abrogated the rules to war be international or non-international^{lxxviii} and laid much emphasis on the rules governing the conduct of hostilities.^{lxxix} In all, all these complexities in the implementation phase of laws governing the use of force does leave out the protection of journalists, who return tend to suffer the penury of the ambiguous laws and the implementation of such ambiguity.

CONCLUSION

It must be clearly understood from the foregoing discussions that, the protection of journalist during armed conflict especially internal armed conflict is by large the most complex and delicate kind of protection ever, since journalists are neither civilians nor combatants, thereby warranting stringent measures to curb and curtail these challenges. Journalists should therefore become rigorously careful in carrying out their activities of searching, collecting, processing and diffusing information especially during armed conflict wherein all rules are extreme.

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ⁱ ‘The ‘distinction’ between international wars and internal conflicts is no longer factually tenable or compatible with the thrust of humanitarian, law, as the contemporary law of armed conflict has come to be known. One of the consequences of the nuclear stalemate is that most international conflict now takes the guise of internal conflict, much of it conducted covertly or at a level of low intensity. Paying lip service to the alleged distinction simply frustrates the humanitarian purpose of the law of war in most of the instances in which war now occurs

ⁱⁱ Schneckener U. *Fragile Statehood, Armed Non-State Actors And Security Governance, Is' ed. Lynne Rienner, 2002 P 26*; For private military and security companies, see Mandel, R., *Armies Without States: The Privatization of Security*, (Boulder:).

ⁱⁱⁱ *Malcolm E. And Phoebe O. International Law And The Use Of Force*, 2nd ed. Oxford University Press, 2004 P. 59

^{iv} See Nkam C. Elvis, *The Challenges of Applying the Laws governing the Use of force in internal Armed conflicts: the case of non-state actors*, (2013) UY2, p 2

^v For example the right to life is most often than not violated in internal armed conflict. Perpetrators in carrying out their hostilities in some categories of internal armed conflicts have changed their target, given that civilians who ought to be incidental objects of attack are now the principal objects of attacks.

^{vi} Article 4 A (4) of the Third Geneva Convention and Article 79 of Additional Protocol I

^{vii} It comprises of weapons, projectiles and materials of warfare likely to cause superfluous damage and unnecessary suffering to mankind.

^{viii} It comprises of military tactics or strategies like perfidy, starvation, denial of quarter and compulsory enlistment employed during war.

^{ix} Jus ad bellum

^x jus in bello

^{xi} jus post bellum

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

^{xiii} Examples are teaching combatants on topics of international humanitarian law and adopting national legislation and jurisdiction to enforce compliance with international humanitarian law.

^{xiv} 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. Last assessed on April 23, 2022

^{xv} *ibid* p. 79-80

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

^{xvii} 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.

^{xviii} It should be noted that of Article 4 paragraph 2 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.

^{xix} The Commentary of 1987 to Article 79 of the Additional Protocol I to the Geneva Conventions calls this category of war journalists “freelance journalists”

^{xx} 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

^{xxi} For example, Peter Verlinden is a Belgian journalist employed with the Flemish Television Company

^{xxii} 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

^{xxiii} statute on the international committee of the red-cross

^{xxiv} *ibid*, p575

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

^{xxvi} Shelton, D (ed.) (2000), *Commitment and Compliance: The Role of Non-Binding Norms in the International Legal System* (Oxford: Oxford University Press), p.15

^{xxvii} *ibid*, p 12

^{xxviii} Dinah L. Shelton, *Soft Law handbook of International LAW* (Routledge Press, 2008)

^{xxix} Resolution 1738 of the United Nations Security Council UN Doc. S/RES/1738 (2006)

^{xxx} 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

^{xxxi} Last paragraph of Resolution 1738 of the United Nations Security Council (23 December 2006), UN Doc. S/RES/1738 (2006)

^{xxxii} 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), 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.

^{xxxiii} 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

^{xxxiv} Resolution on the safety of journalists of the United Nations Human Rights Council, UN Doc. A/HRC/RES/21/12 (2012). Among which one can find crimes like “torture, extrajudicial killings, enforced disappearances and arbitrary detention, as well as intimidation and harassment”

^{xxxv} 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)

^{xxxvi} Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War 12 August 1949; Geneva Convention (III) relative to the Treatment of Prisoners of War 12 August 1949; Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977;

^{xxxvii} Article 3 UDHR; Article 6 ICCPR; Article 4 of the African Charter on Human and Peoples’ Rights; Article 4 of the American Convention on Human Rights; Article 5 of the Arab Charter on Human Rights; Article 2 ECHR
^{xxxviii} General Comment No. 6, The Right to Life, U.N. Human Rights Committee, 16th Sess., U.N. Doc. HRI/GEN/1/Rev.1, at 6 (1982); *Herrera Rubio v. Colombia*, Human Rights Committee Communication No. 161/1983, adopted 2 Nov. 1987, U.N. Human Rights Committee, at 190, U.N. Doc. A/43/40 (1988)

^{xxxix} Tarlach McGonagle “How to address current threats to journalism? The role of the council of Europe in protecting journalists and other media actors” Council of Europe 2013, p.4

^{xl} Article 19 UDHR states that “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.”

^{xli} Article 5 UDHR states that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment

^{xlii} Article 9 UDHR states that “no one shall be subjected to arbitrary arrest, detention or exile.”

^{xliii} Human Rights Committee, General Comment No 34 on Article 19 on freedom of opinion and expression, CCPR/C/GC/34, 11 September 2011, para 12,15,43-45

^{xliv} Article 5 states that “Everyone has the right to life, liberty, and security of person; these rights are protected by law”

^{xlv} Article 4 (1) states that “Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.” Furthermore, the resolution raised concerns with the risk to the protection and safety of journalists that is presented by criminals and by terrorist groups and condemned “unequivocally all attacks and violence against journalists and media workers, such as torture, extrajudicial killings, enforced disappearances and arbitrary detention, as well as intimidation and harassment in both conflict and non-conflict situations.

^{xlvi} Article 5 (1) states that “No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.”

^{xlvii} Article 17 ICCPR

^{xlviii} Human Rights Committee, General Comment No 34 on Article 19 on freedom of opinion and expression, CCPR/C/GC/34, 11 September 2011, para 2

^{xlix} see Human Rights Committee General Comment No. 6 (1982) para. 3

^l Human Rights Committee, General Comment No 34 on Article 19 on freedom of opinion and expression, CCPR/C/GC/34, 11 September 2011, para 5

^{li} See Article 3 ECHR

^{lii} Human Rights Committee, General Comment no 31 on The Nature of the General Legal Obligation Imposed on States Parties to the Covenant under Article 2, 29 March 2004, CCPR/C/21/Rev.1/Add.13. See also, Thomas Hammarberg, “Protection of Journalists from Violence”, Commissioner for Human Rights, Strasbourg 4 October 2001, p.4

^{liii} 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,

^{liv} 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/>.

^{lv} 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-23-04-2022>,

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

^{lvii} “The ‘distinction’ between international wars and internal conflicts is no longer factually tenable or compatible with the thrust of humanitarian law, as the contemporary law of armed conflict has come to be known. One of the consequences of the nuclear stalemate is that most international conflict now takes the guise of internal conflict, much of it conducted covertly or at a level of low intensity. Paying lip service to the alleged distinction simply frustrates the humanitarian purpose of the law of war in most of the instances in which war now occurs

^{lviii} See Nkam C. Elvis, (2013), “the challenges of Applying the Laws Governing the Use of Force in Internal Armed Conflicts: the Case of Non-State Actors, decanat UYII, p1

^{lix} *ibid*

^{lx} These are rules applicable during active hostility i.e. the rules and regulations governing the armed conflict

^{lxi} See Nkam C. Elvis, (2013), “the challenges of Applying the Laws Governing the Use of Force in Internal Armed Conflicts: the Case of Non-State Actors, decanat UYII, p2

^{lxii} 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>.

^{lxiii} *ibid*

^{lxiv} F. CASIER, “Study Conference: The status of journalists during operations” (April 2022), the ^[SEP]Study Center for Military and War Law, Brussels, available from [http://www.ismllw-^{\[SEP\]}be.org/session/archives.htm.^{\[SEP\]}](http://www.ismllw-^[SEP]be.org/session/archives.htm.^[SEP])

^{lxv} *ibid*

^{lxvi} Reporters Without Borders, “Exile journalists, support without borders”, available from [http://20juin.rsf.org/en/.^{\[SEP\]}](http://20juin.rsf.org/en/.^[SEP])

^{lxvii} *ibid*

^{lxviii} Committee to Protect Journalists, “Getting Away With Murder”,(2013) available from [http://www.cpj.org/reports/2022/01/impunity-index-getting-away-with-murder.php.^{\[SEP\]}](http://www.cpj.org/reports/2022/01/impunity-index-getting-away-with-murder.php.^[SEP])

^{lxix} *ibid*

^{lxx} Paragraph 32 of the Report of the Special Rapporteur on extrajudicial, summary or arbitrary ^[SEP]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/2022/01/impunity-index-getting-away-with-murder.php.^{\[SEP\]}](http://www.cpj.org/reports/2022/01/impunity-index-getting-away-with-murder.php.^[SEP])

^{lxxi} *ibid*

^{lxxii} Article 2 of the Vienna convention on the law of treaty of 1969 binds all parties that adhere to it. Then what becomes the situation of state non-parties to the treaty? Does it imply that non-parties to the treaty are not concerned with the implementation of the notion of domestication? It is now evident why some states do not implement the notion of domestication in their internal legal systems.

^{lxxiii} Before the operation enduring freedom of 2001, Afghanistan was asked by the US government to close down all schools harbouring terrorists to no avail. Thus the Afghan government even as a member of the UN failed to domesticate the provisions on the prohibition or threat to use force against the political independence and sovereignty of another state.

^{lxxiv} Malcolm E. And Phoebe O. *International Law and The Use Of Force*, 2nd Ed. Oxford University Press, 2004, P.59

^{lxxv} Eve De La Haye, *War Crimes In Internal Armed Conflicts*, Excerpt 1. Cambridge University Press, 2004 P 6.

^{lxxvi} Cullen A., ‘Key Developments Affecting The Scope Of Internal Armed Conflict In International Humanitarian Law’ *Military Law Review*, vol. 183, no. 66, 2005.

^{lxxvii} Odermatt J. *New Wars And The Intemational/Non-Intemational Armed Conflict Dichotomy*; Werle, G., *Principles Of International Criminal Law*, Tmc Asser Press, The Hague, 2005, P. 287.

^{lxxviii} Since the conventions together with common article 3 apply to armed conflicts regardless of the recognition of a state of war, in other words they apply whether or not the rules to war-jus ad bellum, are respected.

^{lxxix} It is first and foremost regrettable that the Geneva conventions of 1949, together with its additional Protocols have abrogated the rules to war. That is to say they seldom concern with whether or not the jus ad bellum are respected; they are concerned only when the active hostilities begin and whether the jus in Bello are respected.

