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Legal Protection For Journalists in Armed Conflicts

Lahrech Fodil cherif^{*}

University of djelfa, (algeria)

fodilcherif2019@gmail.com

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^{*}Corresponding author

Abstract :

The rules of international humanitarian law are based on the important principle of non-discrimination between protected groups, whereby parties to a conflict are obligated to provide protection without any discrimination based on gender, color, religion, belief, or any similar criterion, but this principle does not prevent special treatment of groups. Certain because they are considered the weakest in times of armed conflict, such as women and children, or due to the nature of the tasks they carry out; Which requires entry into areas of hostile operations, which are dangerous activities that expose them to the effects of these operations, such as journalists and people assigned to rescue and ambulance.

The violations committed against journalists and media institutions are considered war crimes according to international law. The law has established a number of methods and procedures through which those who committed these crimes and violations are legally

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Introduction

Since its inception, international law has been concerned with international armed conflicts and has created many rules that prevent the use of force or the threat of its use in international relations, and has provided a wide range of legal rules that regulate international armed conflicts if they occur, prevent attacks on civilians and non-combatants and discrimination between them, and ensure International oversight in the application of these rules.

Armed conflicts have received the attention of those working in public international law, as they are characterized by a tragic nature as a result of the spread of violence and weapons and serious violations of the basic principles of international humanitarian law.

However, the latter came with an organization that guarantees the necessary international legal protection and humanitarian assistance to the victims of this type of conflict, especially if we look at the international organization for international armed conflicts.

Among these groups that enjoy legal protection, we find journalists who bear the responsibility of monitoring and documenting violations and crimes that may occur during wars. This is because the process of monitoring and documenting with audio and video makes it the focus of the world's follow-up of the course of these conflicts and wars, which may be incriminating evidence for some parties, Therefore, we find that there are those who try to prevent, obstruct, or stop the work of journalists, by depriving them of visiting places that witness violations Or detain them and threaten them with death and direct targeting.

From there we pose the following question:

What are the controls on armed conflicts and the position of international humanitarian law on them? To what extent is the necessary international legal protection available to journalists in the event of armed conflicts?

1- International Armed Conflict and The Rules Binding On Its Parties

1.1 International Armed Conflict And Its Forms

A - Definition of armed conflict:

Jurisprudence differs in defining international armed conflict according to the differences in the analytical tools it used in this regard, but it can be expressed as an international or internal position that arises from the sharp contradiction in interests and values between parties that are aware and aware of this contradiction, with the desire of each of them to acquire A position that does not agree - and may even clash with the desires of other parties. It is clear from this that there cannot be an armed conflict in its legal sense if there is no premeditated intention on the part of the parties to the conflict to replace the state of peace with the state of armed conflict However, these hostile operations may not begin except after prior, explicit and clear notification in the form of a declaration of war stating its cause or in the form of a final warning stating that the failure of the other party to comply with the requests of the state sending the warning will result in the armed conflict being considered¹ .

International jurisprudence went on to say that armed conflict is the intervention of the armed force of one state against another state, regardless of whether this armed attack is legitimate or unlawful, while others argued that there is no internationally specific definition of armed conflict, given that the circumstances that may constitute Or it does not constitute any armed conflict, many and somewhat different To evaluate this, one must refer to the facts of the case, which usually indicate whether the event constitutes

B: Forms Of International Armed Conflict

International armed conflict takes three legal forms:

- Either it is aggression, which is prohibited by positive international law
- Either it is individual or collective self-defense (Article 51 of the United Nations Charter)
- In application of the concept of collective security stated in the United Nations Charter in its seventh chapter.

However, although these classifications do not change the course of combat operations, they are extremely important for international legitimacy, which considers aggression one of the most important international crimes, except for

¹ Dr. Dabash, and Marbouk Malshunshi, (2019), International Protection of Journalists and Media in Public International Law, Journal of Communication and Journalism.

individual and collective self-defense, which is considered a legal and legitimate matter, and the Brian Kellogg Charter was the first international document that prohibited resorting to War was considered an illegal means, and this prohibition was interpreted as pertaining to aggression This is because no country objected to the declaration subm.

1.2: Controls Imposed On Parties To International Armed Conflict Under International Law

Traditional jurisprudence was interested in the issue of war, so it devoted itself to studying it and formulating legal theories to establish it. This was natural in light of the philosophy of traditional international law and its ideas and principles, which were based on the idea of absolute sovereignty of the state, as it granted it the right to resort to war Traditional law required a set of conditions to declare the establishment of a state of war, as the beginning of an international armed conflict was the declaration of war, given that the outbreak of war is followed by changes in the relations of the warring countries, and results in new international rights and obligations, and the fact that the declaration of war is a moral principle that requires states to One of them does not take the other by surprise without prior notification or announcement, which leads to the actual beginning of the state of war in its legal sense .

For example, the Third Hague Convention signed on October 18, 1907 adopted in its first article the concept of a declaration of war, defining it as "a prior and indubitable warning, which can either be in the form of a reasoned declaration of war, or a warning with a declaration of conventional war".²

This is the same as what was previously included in Article Two of the Second Hague Convention of 1899, which related to the laws and customs of war applied in the event of the outbreak of war, unlike the Fourth Hague Convention of 1907, which did not include that reference because it was established as a basis for application in times of war, and it is known that many wars preceded The 1907 agreement and even the one that broke out after it It was without a declaration of war or prior warning, and international practice tended to recognize that development and deal with it, as it is not reasonable, in fact, for the absence of

²Adel Mestari, International Criminal Tribunal for Rwanda (TPIR), Al-Mufakir Magazine, Issue 03,

some formal conditions to be a reason for denying the reality of war and its consequences.

which are cases in which one of the warring parties is not a party, and this condition is known as the principle of collective participation or the principle of solidarity, which It was stipulated in strange paragraphs, as commented by Professor Jean Pictet It stipulates that treaty obligations do not apply during a conflict unless all opponents have ratified or joined the agreements, and of course the conflict meant here is the international war that breaks out between two or more countries.

Military actions between the warring parties may stop with the possibility of them returning to hostilities again, and there are many forms through which countries may resort to stopping the hostilities taking place between them ; As a general rule, stopping international armed conflict takes four forms, although they agree among themselves in that each of them includes the description of obligation, but they differ in terms of the character on which it is built.

- Temporary ceasefire.

- Armistice agreements, which are essentially consensual, issued by the warring states themselves, in contrast to the cases of surrender of the defeated state.

- Ceasefire, which is characterized by its coercive nature, issued by a unilateral and exclusive will of the defeated state or based on international resolutions.

Surrender unconditionally, which is a theory that emerged after World War II, where the victorious countries had complete freedom towards the defeated countries, without any legal restriction or obligation on the part of the victor towards the defeated.

The warring parties may also resort to reconciliation agreements, which are usually concluded by neutral parties and usually conclude truce agreements and stop the actual fighting, and thus be the legal end to the existing armed conflict.³

³ Omar Saadallah, Codification of Humanitarian Law, Dar Al-Gharb Al-Islami, Beirut, 1997.

2- The Press During Conflicts And The Protection Prescribed For It Under International Law:

2.1 -Conceptual Framework Of Journalism:

Based on the aforementioned legal system, international texts related to international humanitarian law did not provide an accurate definition of who is considered a journalist in their concept, and in many cases they contented themselves with directly addressing the legal status of this group and the protection assigned to it in some aspects Considering the totality of these international agreements that dealt with the issue and the historical development referred to, we distinguished, as previously mentioned, two stages in the legal regulation of the status of journalists: the first stage was granting protection to journalists accredited to the armed forces and armies, or those known by the term: "war correspondents", and the second stage is The stage of granting protection to accredited and unaccredited journalists, independent "journalists" or journalists assigned to dangerous tasks in areas of armed conflict Accordingly, we find that international humanitarian law classifies two categories of journalists ⁴:

A- Military correspondent :

He is a specialized journalist present in the theater of operations with authorization and protection from the armed forces of one of the warring parties, and his mission is to inform of relevant events during the occurrence of military operations, and this description also includes the system of integrating journalists into the armed forces, or what is called integrated journalist.

The rules for protecting these groups are contained in both the Hague Conventions of 1899 and 1907, as well as the Geneva Conventions of 1929 and 1949 relating to the protection of victims of international and non-international armed conflicts.

Military correspondents who accompany the armed forces without being part of them differ from military journalists who are under the management of the armed forces and form part of it and who carry out tasks of a military nature, namely propaganda, psychological warfare, raising the morale of soldiers, ensuring the cohesion of the internal body, and marketing the army's victories .

⁴ Abdel-Ghani Abdel-Hamid, Protection of Victims of Armed Conflicts in Light of International Humanitarian Law, Publications of the International Committee of the Red Cross Mission, 3rd Edition, 2006, Cairo, Egypt.

B- Independent Journalists Who Carry Out Dangerous Tasks

In addition to war correspondents accredited to the armed forces, there is a category of journalists who also work in areas of contact and engagement, but they did not benefit from protection rules at the beginning of the codification of international humanitarian law, until this protection was approved in Article (79) of Additional Protocol I 1977 annexed to the Conventions Geneva Four 1949 relating to the protection of victims of international armed conflicts .

In fact, Article (79) also did not provide a definition of the independent journalist, although the absence of this definition can be exploited to expand the concept of journalists to include everyone who can have a role in the media field, thus giving priority to humanitarian considerations and expanding the protection afforded to journalists. However, the preparatory work at the Diplomatic Conference 1974-1977 reveals the intention of the conferees to rely on the definition contained in the draft United Nations Convention of 1973 for the Protection of Journalists Carrying out Dangerous Tasks in Areas of Armed Conflict, as stated in Article (1/2) of the draft as follows:

The word "journalist" means every reporter, informant, photographer, television cameraman and their film, radio and television technical assistants who habitually practice this activity as their primary profession.⁵

It was stated in the draft preamble to the International Convention for the Protection of Journalists in Areas of Armed Conflict, prepared by the Press Slogan Organization in 2007, that the journalist in the draft convention relates to civilians who work as photojournalists, correspondents, and their assistants in the field of print journalism, radio, cinema, television, and electronic journalism, who carry out their activities on the basis of Regular, full-time or part-time

However, as stated in Article (79), the aforementioned professional tasks must be linked to carrying out dangerous tasks in order to deserve protection, as the danger here is the presence in areas of armed conflict, especially areas of clashes and contact between the two parties to the armed conflict in which actual hostilities are taking place, which may pose a danger to Physical safety and freedom of the journalist. In fact, the distinction between war correspondents and independent journalists is not considered a double definition of journalists ; Therefore, it does not affect the unified professional definition of journalists in national laws as

5 MOHAMED Bachir Al-Shafii, Public International Law in Peace and War, Alexandria Knowledge Establishment, 2001

taught by students of media colleges, but rather it expresses, firstly, a stage in granting protection to war correspondents and then secondly to independent journalists, and the protection provisions applied by international humanitarian law differ between the two aforementioned categories, and accordingly we can say that a journalist in the concept of international humanitarian law is a war correspondent and an independent journalist who performs dangerous professional tasks according to the aforementioned definition.

2.2 -The legal Framework For The Protection Of Journalists During Armed Conflicts

Journalists who perform their work in situations of armed conflict are exposed to danger, and because of this, researchers have concluded that there are some basic principles that must be in place to protect journalists during dangerous international and internal conflicts, and an analysis of the legal provisions that protect journalists in such special and exceptional circumstances for journalists, whether their lives, health, or money, or their activities are at risk during armed conflicts.

Journalists are first exposed to the physical danger resulting from war, as they may be victims of the direct effects of adversaries, bomb raids, and shooting at them

Journalists may be victims of arbitrary operations such as arrest, ill-treatment, enforced disappearance, being taken hostage, etc. , carried out by the authorities or armed forces in particular, in which the journalist finds himself willingly or unwillingly, and to prevent such matters from happening to journalists, there must be legal protection for them from the risks that may befall them or their money alike. The legal status of journalists while covering wars and armed conflicts is determined in accordance with the six mechanisms of international law, which are as follows:

A- Protection of journalists under the Hague Convention of 1907

Article 13 of the Hague Convention of 1907 stipulates that persons who accompany the army without actually being part of it shall be treated as press correspondents and caterers who fall into the hands of the enemy, and their detention shall be declared as prisoners of war, provided that they have a permit from the military authority of the army with whom they are accompanying.

B- Protection of journalists under the Geneva Convention of 1929

Article 81 of the Geneva Convention of 1929 stipulates that persons who accompany the armed forces without being directly subordinate to them, such as reporters, press informants, contractors, or contractors who fall into the hands of the enemy and are arrested, have the right to be treated as prisoners of war, provided that they are in possession of Permission from the armed military authorities they were accompanying .

Based on these materials, journalists are considered part of a group of people who accompany the armed forces without belonging to them, and in this capacity they must be treated when arrested as prisoners of war while maintaining their civilian status, provided that they hold a permit issued by the military authorities of their country.

C- Protection of journalists under the Third Geneva Convention of 1949

It was emphasized that the legal protection for journalists is in the Third Convention of 1949 regarding the treatment of prisoners of war, as a journalist who falls into the hands of the enemy and is arrested is a prisoner of war, and has the legal status of a prisoner of war, and the journalist must receive a permit to accompany the armed forces, as The war correspondent card plays a role similar to that of a soldier's robe, as it creates a presumption In the event of any doubt about the status of a person requesting to be granted legal status as a prisoner of war, that person shall enjoy the legal protection guaranteed by the 1949 Convention until the decision of the competent court is issued.

D- Provisions of the Second Additional Protocol of 1977.

Although the protection of journalists is not referred to in Protocol II, the humane treatment stipulated in Common Article III and Protocol II and the general protection of civilians and journalists thereof contained in this Protocol provide this category of persons with a limit of guarantees, meaning that journalists benefit from the full benefits guaranteed by international law. Humanitarian assistance to the civilian population, and thus journalists have the right to receive the same protection guaranteed to the masses of people not participating in hostilities Journalists enjoy legal protection in accordance with the rules of international humanitarian law, and it is harmful to a journalist's status as a civilian to wear a military uniform, especially on the front lines of combat, because of course he will be a permissible target for attack by the enemy, so there is no doubt that this is harmful to his status as a civilian to a great extent.

Conclusion :

Finally, it must be said that although there is a clear international legal framework to protect journalists in the event of armed conflicts, there is a large discrepancy between theory and practice on the ground, which has revealed great challenges, despite the serious risks to which journalists are exposed, including physical and moral threats, as well as International protection of journalists in the event of armed conflicts depends on international cooperation and the commitment of states and armed groups to international laws and treaties. This is what some organizations, such as the International Committee of the Red Cross, Reporters Without Borders, and UNESCO, are working on by monitoring violations, calling for improved legal protection, and providing training and support to journalists.

The application of these laws faces several challenges, including:

- The failure of some countries and armed parties to comply with international laws by deliberately targeting journalists.

Impunity and difficulty in accessing justice, as in many cases journalists are targeted without holding the perpetrators accountable, as the absence of justice encourages the continuation of violations, and journalists also face difficulty in accessing justice or holding the perpetrators of violations against them accountable.

Insecurity in conflict areas, making it difficult to provide effective protection for journalists due to the chaotic nature of conflicts and the lack of sufficient control by governments or international organizations.

Non-traditional threats such as kidnapping, extortion, and exposure to sexual violence are difficult to deal with through traditional legal frameworks.

There are funding constraints and international support that international organizations that work to protect journalists through adequate funding and political support lack to carry out their tasks effectively.

Therefore, to ensure greater protection for journalists in the event of armed conflicts, there is a need for:

- Strengthening mechanisms for implementing international laws.
- Improving accountability to ensure there is no impunity.
- Increased international support for organizations working to protect journalists.
- Develop training and awareness programs for journalists on how to deal with risks in conflict zones.

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