

Legal protection of journalists in dangerous situations

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In Spring 2010 Wikileaks published a video called Collateral Murder. The video is a record of an attack of an American helicopter in Iraq that killed four employees of the Reuters news Agency. The Americans had argued that they acted in self-defence but the video shows that there was no threat and the journalists were not armed.

One year later in 2011 a group of BBC journalists covering the Libyan uprising were stopped at a checkpoint, brought to prison blindfolded and with their hand tied. They were subjected to torture and mock executions but released after 24 hours.

In February 2012, the French journalist Edith Bouvier asked the international community for help after being seriously injured in a shell attack in the city of Homs in Syria during which two well-known western war reporters, Marie Colvin and Remi Ochlin were also killed.

In 2014 ISIS fighters produced a video recording the executions of two American Journalists James Foley and Steven Sotloff.

These incidents are examples of a bigger and wider trend. According to the C/tee to Protect Journalists 713 journalists have been murdered and 213 killed in combat zones since 1992.

The risk facing journalists during war are not only murder but they also include arrest, kidnapping, threats, harassment, and restrictions on their work.

These need to be seen against some other developments concerning war reporting.

One is that of embedded journalists. Embedded journalists are those placed 'in bed' with the military: travel together, eat together, and sleep alongside with the military. This was specifically used during the 2003 operations in Iraq where 800 journalists were embedded 20% of whom were non American. In return the US army stipulated which information was releasable and which non-releasable. Releasable information included information about approximate friendly force strength, approximate friendly casualty figures, detailed figures of enemy detainees, information and location of military targets and objectives but only if describe all fo the above were described in general terms. Non-releasable information was all information which could jeopardise operations and endanger lives. The US and UK governments also applied an 'us' and 'them' policy according to which embedded media were 'us' and all the others were enemies. They frowned upon reporting behind enemy lines and labelled the BBC who reported behind enemy lines the Baghdad Broadcasting Corporation. They refused access or interviews to non friendly journalists. They targeted Al-jazeera websites and bombed its offices in Bagdad.

Another phenomenon is the rise of bloggers and citizen journalists. For example in Iraq Salam Pax, an unemployed Iraqi architect, reported on daily life in Bagdad and Riverbend, a blog by an Iraqi woman, who reported on ethnic cleansing in Bagdad. The flotilla incident and the 2008 Gaza operation were also fought on blogs, live-streams, facebook and twitter. This is particularly so in Syria since the combat environment makes reporting from Syria extremely dangerous. One such person is Rami Jarrah alias 'Alexander Page' a young Syrian who grew up in Europe and studied journalism. When his cover was blown in 2012 he fled to Egypt where he established the New Media Association to coordinate the work of citizen journalists inside Syria. Although the internet is shut in Syria, communications equipment have been smuggled in the country

with only the UK having allegedly delivered satellite equipment to the value of 5mil pounds

In sum, journalist or media people are targeted and such targeting includes their person but also their activities.

The international community has started to react to their plight as it is evident from UNESCO's UN Plan of Action for the Safety of Journalists and the issue of Impunity as well as by SC and GA resolutions on the safety of journalists. Yet many questions need further scrutiny and one such question is how does international law protect journalists or media persons in times of war?

International Humanitarian law

An Introduction to International Humanitarian Law

The legal regime that applies in situations of war or armed conflict is International Humanitarian Law (IHL) which is also known as 'the law of war' or 'the law of armed conflict'. IHL regulates the conduct of parties to an armed conflict and its rules aim to make war more humane. The rules of IHL protect those persons who take no part in hostilities including civilians, the sick and wounded, and those in detention. IHL also restricts the means and methods of warfare available to parties during hostilities, for example by regulating the types of weapons that can be used.

The rules of IHL are found in a number of international treaties including the four Geneva Conventions for the Protection of War Victims of 1949 (the Geneva Conventions) and their three Additional Protocols of 1977 (Additional Protocols). IHL is also found in

international customary law: international rules derived from the conduct of States which they consider to be legally binding.

IHL recognises two types of armed conflict: international armed conflict and non-international armed conflict. Different rules apply to each type of conflict, although there is overlap in the substance of these rules.

International armed conflict

International armed conflict describes the situation where armed force is used *between two or more States*. Sometimes States can use force against each other 'by proxy', for example, through non-State armed groups acting on their behalf. They are still international armed conflict. International armed conflict also includes situations of belligerent occupation, whether partial or total, regardless of whether such occupation meets with any armed resistance.

The war in Iraq for example as well as the subsequent occupation was an international armed conflict

Non-international armed conflict

Non-international armed conflict is a situation of protracted (intense) armed violence on the territory of a single State. It describes the situation of violence between an organised non-State armed group and a State, or between two or more organised non-State armed groups. Such violence needs to rise above internal disturbances and tensions (such as riots and sporadic acts of violence).

The war in Syria for example is a non-international armed conflict

IHL contains a number of fundamental principles which apply to everyone including journalists and media people.

(i) The principle of distinction

This principle requires parties to a conflict to distinguish between civilians (and those persons who take no part in hostilities); and those that are directly participating in hostilities. IHL also requires parties to distinguish between civilian objects (including schools, homes, and broadcast facilities) and military objectives (such as army barracks or tanks). **Only those persons taking part in hostilities, or those objects that are military objectives, can be attacked.**

Media professionals are civilians and protected by the principle of distinction as long as they do not take a direct part in hostilities.

(ii) The principle of proportionality

IHL balances the need to protect those persons taking no part in hostilities and the requirements of parties to a conflict to undertake military operations. IHL rules seek to make war more humane and ensure that military victory is not achieved at any cost.

Part of this balance between humanitarian concerns and military necessity is that IHL recognises that civilians may be injured or killed as *unintended* consequences of lawful military operations. This might occur, for example, if a media professional is caught in cross-fire between parties to a conflict or happens to be accompanying a military unit (a lawful target) when it is attacked. Although regrettable, IHL recognises that not all loss of civilian life in armed conflict is the result of illegal actions.

Nevertheless, IHL prohibits attacks, even against otherwise lawful targets (like military units) **where the expected loss of civilian life or injury to civilians from such attacks outweighs the direct military advantage anticipated** from the attack. This balance of civilian life against military advantage is called 'the principle of proportionality'. Attacks where the expected loss of civilian life is greater than the military advantage of an attack are *disproportionate* and, therefore, illegal.

Media professionals may be injured or killed as the result of a lawful attack against a military objective. Such attacks are lawful only when the expected loss of civilian life does not outweigh the direct military advantage anticipated from the attack.

(iii) Restrictions on permitted means and methods of warfare

Certain types of warfare are prohibited because they are targeted against the civilian population (for example, starvation as a tool of war) or because they do not discriminate between lawful and unlawful targets, such as 'carpet bombing'. IHL also prohibits the use of weapons that are indiscriminate (for example land mines) or cause superfluous

injury or unnecessary suffering (for example bullets that explode upon impact or chemical weapons).

Media professionals are protected from indiscriminate attacks and weapons that cause superfluous injury or unnecessary suffering.

What is not protected by IHL

Even when IHL applies, it does not address every issue that may arise for a media professional in armed conflict. IHL only regulates issues that are **related or closely connected** to an armed conflict (international or non-international).

Other areas of protection are addressed by ordinary **domestic or criminal laws** of the territory in which a media professional is employed or the territory on which they are working to cover the armed conflict. These include the following:

- Immigration rules such as those dealing with the issue and retraction of visas for the territory in which the conflict is taking place.
- Ordinary criminal conduct such as those related to murders and assaults that are not connected to the conflict; social security fraud; the rules relating to judicial proceedings etc.
- Broadcast and publication laws including ownership restrictions, anti-competition rules, the issue of permits for broadcasts or publications etc.
- Defamation and libel laws.

- Laws regarding decency and obscenity.
- Employment rules.

Some areas of protection and responsibility are addressed by **international human rights laws** (including regional human rights treaties such as the European Convention on Human Rights and international human rights treaties such as the International Covenant on Civil and Political Rights). States that are parties to these treaties are required to implement their rules into domestic law. This means that often, domestic laws will also address these issues. These include the following:

- Freedom of the press, freedom of expression and other speech based rights.
- Privacy regulations, including the privacy of media professionals and those that are the subject of media reporting.
- The right to collective action and formation of unions.

1.2 Who is a journalist

The IHL definition of Journalist

IHL use the term 'journalists' and a narrower sub-category of 'war correspondents'.

Article 79 of Additional Protocol I refers to 'journalists' and confirms the civilian status of media personnel under IHL however The term 'journalist' in Article 79 is not defined within the Protocol, although it was intended by the drafters that it be understood broadly. It includes those working as "correspondent, reporter, photographer, and their technical film, radio and television assistants". This definition is broad enough to include the vast majority of the media working in and reporting from armed conflict. The definition is limited, however, to those media professionals who work in the media on a full time basis. This means that many fixers, stringers, and bloggers are not covered by the definition of 'journalist.'

There is no mention of journalists or media persons in the treaty law applicable to non-international armed conflict. Nevertheless, they are still protected as civilians, as long as they do not participate in hostilities.

'War correspondents'

'War correspondent' is a legal term with a specific meaning under IHL. It refers to a narrower sub-category of journalist who is specifically authorised to accompany a State's armed force. This category only exists in international armed conflict.

A journalist is a war correspondent if she is authorised by a State's armed forces to accompany them during an international armed conflict. War correspondents are to be provided with an identity card that operates as evidence of this authorisation (accreditation). The rights of war correspondents are not dependant on the identity card but on authorisation which is evidenced by possession of the identity card – it is not possession of the card itself that gives rise to these rights.

Even though a war correspondent accompanies an armed force they remain a civilian and retain their legal protection under IHL from deliberate attack by the enemy. Armed forces, however, are a legitimate military target in warfare and, despite a war correspondent's civilian status, a lawful attack directed at the military personnel or convoy in which they are travelling may result in their incidental death or injury. The lawfulness of such attacks - against military objectives but causing incidental civilian injury or damage - are subject to the application of the principle of proportionality.

Embedding and accreditation

The term 'embedding' refers to the increasingly common practice of placing journalists within a military unit for the duration of a military operation.

IHL does not specifically refer to the practice of 'embedding'. being 'embedded' with an armed force does not necessarily mean that a journalist is entitled to protection as a war correspondent. They need specific authorisation. All journalists, whether authorised war correspondents or not, embedded within a military unit retain their civilian status (unless they are actual members of the armed forces of a state).

The *Green Book* contains the policy of the British Military regarding media professionals. According to the *Green Book* the British Military will provide some accreditation to all media professionals on assignments with the UK forces. However, **not all forms of accreditation provided by the British Military amount to the 'authorisation' necessary to attain 'war correspondent' status.** The British Military will usually provide 'war correspondent' authorisation to those media professionals that are accompanying a single unit for a protracted period of time.

It becomes apparent from the above that there is a broad definition of journalist therefore we can speak of 'media professionals'. A simple definition is of 'media professional' includes any member of the news media who investigates, gathers, and reports news and information from an armed conflict, regardless of their nationality or accreditation. The reporting of news and information from an armed conflict might be done through any medium including film, television, photography, radio, printed word, or electronically (including blogs).

This definition includes (but is not limited to):

- The legal categories of 'Journalist' and 'War Correspondent' set out in IHL

- Reporters and photographers whether or not they are employed full-time or part-time by a publisher or broadcaster; freelance or self-employed; or make no income from their news reporting work.
- Full-time, part-time, and temporary support staff including technical film, television and radio assistants; translators; stingers; and fixers.

This definition does not include:

- Members of the armed forces of a party to the conflict (regardless of whether they might work closely with the media or have similar functions).
- Confidential sources or other witnesses to events.
- Other employees of publishers or broadcasters (such as editors) who are not working in the territory of an armed conflict but who, nevertheless, may provide support or assistance to media professionals.

Identification of Media Professionals

Identity Cards

Where a media professional on dangerous missions in an international armed conflict meets the definition of 'journalist' under Article 79 of Additional Protocol I they are entitled to obtain an identity card. A copy of this card can be found at in the annex to Additional Protocol I. This card may be issued by the government of their State of nationality or employment and identifies them as a journalist. It is to be used to confirm

the civilian status of a member of the media and does not afford the bearer any additional rights.

Those media professionals that are accredited war correspondents are also entitled to an identity card demonstrating their authorisation. This card is proof of their entitlement to war correspondent status, but **it is not a condition of this status**.

Press Emblem

Media professionals do not benefit from special protection under IHL and there is no universally recognised protective symbol for them to use in armed conflict.

A number of unofficial identifying symbols have been used by media personnel in armed conflict, but these do not create any special protection under IHL.

Fundamental Humanitarian Guarantees

I will now list the most fundamental humanitarian law guarantees to the experience of media professionals in armed conflict.

These guarantees apply at all times in both international and non-international armed conflict including internment or detention; and even if they take a direct part in hostilities or violate a rule of IHL or international criminal law.

Protection from violence to life, health, and the physical or mental well being

Protection from violence to life

Murder is illegal in armed conflict. This protection is, however, qualified by the circumstances of conflict. In certain circumstances IHL permits the killing and injuring of civilians including media professionals for example when they directly participate in hostilities or as collateral death.

Protection from torture

All media professionals are protected from torture in all circumstances. IHL expressly prohibits the use of torture at all times. This prohibition forms part of customary international law and is also prohibited by the key human rights instruments as well as the *Convention Against Torture*. Generally, torture is defined as any act that

- Causes severe pain or suffering, whether physical or mental; and
- Is intentionally inflicted by a person acting in an official or public capacity for the purposes of obtaining information or a confession; for punishment; intimidation; or for a discriminatory reason.

Other forms of prohibited ill treatment, including humiliating, inhuman and degrading treatment, are generally defined as acts which do not amount to torture.

Protection from sexual assault and rape

Media professionals are protected from the use of sexual violence in armed conflict. The use of sexual violence is prohibited by numerous provisions of IHL that apply in both international and non-international armed conflict. This prohibition forms part of the customary international law. The prohibition of sexual violence is non-discriminatory and applies equally to men, women, boys and girls.

The prohibition on sexual violence includes rape, indecent assault, forced prostitution, sexual slavery, forced pregnancy, and enforced sterilization.

Protection from being taken as a hostage

IHL prohibits the taking of hostages in both international and non-international armed conflict. International law defines hostage taking as seizing, detaining, threatening with violence a person (hostage) “in order to compel a third party... to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage”

Protection from abuse of process

Media professionals as civilians should be afforded fair trial rights

Protection of Media Professionals from Attack

Media professionals as all civilians are protected from attacks. This is part of the principle of distinction. It translates into the **prohibition of deliberate attack on civilians** and civilian objects; and the **general prohibition of indiscriminate attacks**. Media professionals can sometimes behave differently to civilians in conflict zones as a result of their professional mission. For example, they will often head towards hostilities rather than away; they will actively seek out participants in and parties to a conflict to interview them or follow a story; they also bear witness to the events of war, some of which may be violations of IHL, and bring these events to the attention of the public. The special role of the media during conflicts can make them targets of violence by parties to a conflict – violence intended to silence and censor media professionals. For this reason, media professionals are deeply vulnerable to deliberate and direct attacks in armed conflict.

DPH

Media professionals lose their protection as civilians and can be directly targeted if they directly participate in hostilities.

The ICRC considers that for an act to be a direct participation in hostilities it must meet three, cumulative, criteria:

1. **Threshold of harm:** this is the requirement that the actions of a media professional are likely to cause harm and that this harm reaches a certain threshold. Harm that reaches this threshold includes causing death or serious

injury, destruction of an object, or adversely affects the military capacity or operations of a party.

2. **Direct Causation:** this means that there has to be a direct causal link between the conduct of a media professional and the harm that is likely to result from it. If military operations of a party are affected *indirectly* by the conduct then it is not 'direct' participation in hostilities.
3. **Belligerent Nexus:** means that the conduct in question must be so *closely related* to hostilities that it forms an integral part of them. In other words, in order to meet this requirement for direct participation in hostilities the conduct of a media professional must be "specifically designed to inflict harm in support of a party to an armed conflict and to the detriment of another."

Media professionals directly participating in hostilities lose their protection:

- For the duration of the specific hostile act;
- While they are engaged in preparation for the specific hostile act; and
- While they are being deployed to, or returning from, the location of the specific hostile act.

A number of common activities of media professionals are **unlikely** to be direct participation in hostilities:

- Reporting and publishing news and information about a conflict;

- Participating in war sustaining activities;
- Publishing propaganda; and
- Refusal to assist a party to a conflict.

However, some conduct that may seem similar to, or be mistaken for, the work of media professionals is likely to be considered direct participation in hostilities, including:

- Passing on tactical information to a party gathered while reporting on a conflict;
- Espionage/Spying.

Each will be considered in turn.

Reporting on a conflict

The work of the media from conflict zones results in publication of information and news about the conflict, including death tolls resulting from particular attacks, conditions of victims of war, and, potentially, information that can identify the location of particular parties to the conflict. It is possible that, in some circumstances, this published information might be helpful to parties' military operations and may provide military advantage to one side.

The ordinary reporting on or from a conflict by the media does not meet the three cumulative criteria of 'direct participation in hostilities' – threshold of harm, direct causation, and belligerent nexus. This means that such conduct does not constitute direct participation in hostilities and does not expose a media professional to lawful deliberate direct targeting.

However, it is possible that reporting on a particular content including the logistical capabilities, location, and capacity of a party might be used by another party to their military advantage. If reporting on particular elements of a conflict is likely to result in harm of a military nature or have an impact on the military operations or capacity of a party then it may meet the 'threshold of harm' requirement for direct participation in hostilities.

In order to constitute direct participation in hostilities the conduct of a media professional must satisfy all three criteria. Even if reporting on a conflict could meet the 'threshold of harm' requirement, it is unlikely to meet the requirements of 'direct causation' and 'belligerent nexus'. Even if parties use the information published by a media professional to assist them in their military operations, the collection and reporting of this information is, at best, indirectly assisting a party and cannot, therefore, meet the 'direct causation' requirement. Similarly, the ordinary professional activities of the media – designed to collect news and information about a conflict and communicate this to the public – are not usually designed to support one party to the detriment of another. Merely reporting on a conflict is not sufficiently closely related to hostilities to fulfil the 'belligerent nexus' requirement for direct participation.

General Support of the War Effort/Propaganda

Sometimes the media may publish material with the aim of arousing sentiment in support of one party to the conflict to the detriment of another. This may include the

publication of propaganda that boosts morale among the population of a State party, seeks to discredit the reasons for the conflict or a party's conduct, or attempts to generate popular support for a particular conflict or a particular party to a conflict. This may also include not publishing particular facts or information about a particular conflict in order to maintain public support for a party's involvement.

Supporting the general war effort through publication, including through publication and dissemination of propaganda, is not, by itself, direct participation in hostilities and does not cause media professionals to lose their civilian protection from direct and deliberate attack. Many war sustaining activities, including those undertaken by the media, may result in a level of harm that meets the 'threshold of harm' requirement, and often, the nature of these activities – specifically designed to cause harm in support of one party to a conflict to the detriment of another – may also satisfy the 'belligerent nexus' requirement. Crucially, however, war sustaining activities are too indirect to amount to 'direct participation in hostilities' and fail to meet the 'direct causation' requirement. Merely publishing information (or failing to publish information) that supports one side of a conflict against another does not expose media professionals to lawful attack.

Incitement to violence

A clear distinction exists between activities that support the general war effort that are designed to arouse sentiment in support of a conflict (including dissemination of general propaganda), and those activities which are specifically intended to cause direct harm to civilians or a party to a conflict, and are likely to result in harm.

For example, a broadcast or publication that takes place during an armed conflict, specifically calling for attacks on a particular group involved in the conflict, and transmitting information including the location of members of that group in order to facilitate an attack on them is highly likely to meet the three criteria for direct participation in hostilities. Such activities are likely to cause harm to that group (threshold of harm), is directly causative of that harm (direct causation), and is sufficiently connected to the conflict (belligerent nexus). Engaging in this type of conduct – which incites violence in an armed conflict – may expose a media professional to lawful attack for the duration of the activity.

Refusal to assist a party to a conflict

Media professionals in conflict zones are often well placed to assist parties to a conflict: they have access to information about the conflict through their own investigations or as witnesses to events; they may obtain access to people or locations that have sensitive knowledge; and they may have access to resources, such as communication technology and transport that might be helpful to parties to a conflict. Because of this, it is not unheard of for a party to a conflict to request the assistance of a media professional in a conflict zone even requesting assistance that is directly related to military activity such as passing on tactical information. Such activities may constitute direct participation in hostilities.

Media professionals who refuse to provide assistance to, or collaborate with, a party to a conflict are not directly participating in hostilities – even if the reason for such refusal is to assist the other party. Refusing to actively help a party to a conflict does not meet the required ‘threshold of harm’ for direct participation. Media professionals who refuse to assist or collaborate with a party to the conflict are not directly participating in hostilities and do not lose their civilian protection from direct and deliberate attack.

Passing on tactical information to a party to a conflict

media professionals in conflict zones are often well placed to provide assistance to parties to a conflict by gathering and passing on tactical information about one party to another. This conduct is highly likely to be direct participation in hostilities and to, therefore, expose media professionals engaged in such activities to lawful direct attack for the duration of each specific act of participation.

The transmission of tactical and targeting information by a media professional about one party to its enemy is likely to cause military harm of the kind that would satisfy the ‘threshold of harm requirement’ for conduct to amount to direct participation in hostilities. Similarly, where such action is undertaken with the objective intention of assisting one party to the detriment of another, it also meets the requirement of ‘belligerent nexus’. In other words, it is so closely connected to hostilities that it constitutes participation in them.

In contrast to the mere reporting on a conflict, the deliberate passing on of specific tactical information such as location of military targets, enemy forces, or other logistical information relevant to military operations is likely to meet the requirement of 'direct causation'. Where this information is an "integral part of a concrete and co-ordinated tactical operation" that directly causes harm it constitutes direct participation in hostilities. The ICRC's Guidance on the Concept of Direct Participation in Hostilities lists the following examples of conduct that meets the 'direct causation' requirement: identification and marking of targets; and analysis and transmission of tactical information to attacking forces.

Media professionals who engage in the transmission or communication of tactical information about an enemy to a party to the conflict where such information is an integral part of a military operation likely to cause harm are directly participating in hostilities. This exposes those media professionals to lawful and deliberate attack by parties to a conflict.

Espionage/Spying

The transmission of information forming part of military operations is not only likely to constitute direct participation in hostilities, it is also likely to expose a media professional to allegations of espionage or spying.

The professional work of the media can often be very similar to that of spies: the collecting of information and the communication of this to others. However, the work of media professionals in reporting news and information from conflict is not, without

more, espionage or spying. Espionage is defined in IHL as “gathering or attempting to gather information in territory controlled by an adverse party through an act undertaken on false pretences or deliberately in a clandestine manner.” This definition clearly does not include the ordinary professional activities of the media.

A media professional who engages in espionage or spying loses their protection under IHL from deliberate attack as such conduct is a direct participation in hostilities. A civilian, including a media professional, who is arrested or detained on suspicion of being a spy is nevertheless entitled to protection under IHL.

The Rules relating to the Deprivation of Liberty of Media Professionals

Civilian media professionals can only be lawfully interned for imperative security reasons or on criminal grounds.

Security Grounds: International Armed Conflict

Parties to an international armed conflict have the right to intern civilians (including media professionals) for safety and security reasons. Internment is the non-punitive detention of civilians and it deprives persons of their liberty without criminal processes.

However, the internment of civilians and media professionals that are nationals of the State interning them or nationals of a co-belligerent (friendly) State is not dealt with by IHL – except for those rules that form part of the fundamental guarantees of humane

treatment. Instead, the legality of their situation is dealt with under international human rights law and national laws of the detaining State

The following rules apply to protect foreign media professionals being interned by an 'enemy' State in an international armed conflict.

First, parties to an international armed conflict, and occupying powers, may, intern a foreign media professional on security grounds if they have a "good reason" to think that the media professional is a "real threat to its present or future security". This must be more than just the fact that the media professional is an enemy national or of the age of military service. Rather, it refers to more serious situations where a media professional has carried out "subversive activities" on the territory of a party to a conflict; or undertaken actions "which are of direct assistance to an enemy Power".

Foreign media professionals cannot be interned by an enemy's forces unless it is "absolutely necessary" to do so for security reasons. This means that detention on security grounds is a last resort and only permitted by IHL where no other, less severe, measures are possible.

Unfortunately, the concepts of "State security" and "absolute necessity" are vague and those provisions of the Geneva Conventions that permit interment of civilians leave the assessment of whether a person is a security risk up to the State seeking to intern that person.

Second, the decision to intern a media professional is subject to procedural safeguards. In order to protect against disappearance while in internment, the detaining party must provide an interned media professional's details to their State of nationality, which has the right to communicate with and visit the internee. Similarly, the detaining power must notify the family of the internee and the ICRC.

Interned media professionals must be released as soon as the reason for their detention no longer exists or as soon as possible after the cessation of hostilities.

Media professionals that are **accredited war correspondents** in international armed conflict are entitled to POW status upon capture by an enemy even though they are not members of the armed forces.

There are significantly fewer procedural rules relating to the decision to detain POWs than there are ordinary civilians. They can be placed in camps and guarded against escape until the end of hostilities. Unlike media professionals that are civilian internees, who must be released as soon as the reason for their detention no longer exists, war correspondents can be held as POWs for a much longer time – potentially until the conflict is over – thus preventing them from completing their professional mission. At the end of hostilities, POWs must be released and repatriated (with consent) without delay.

Unlike civilian internment, capture and detention of POWs is not a measure of last resort.

Security Grounds: Non-International Armed Conflict

International human rights law, and domestic laws mainly regulate the circumstances and conditions of detention in NIAC. Detention of a media professional on security grounds is not expressly permitted or prohibited by IHL. They should be interned for security grounds and procedural safeguards need to be satisfied. Media Professionals must be released as soon as the reasons for their interment no longer exist.

Spying

A party to a conflict that captures a media professional suspected of spying may decide not to try them on criminal grounds and rather, may choose to detain them on security grounds, in accordance with the procedure relating to civilian internment. However, civilian internment is not a substitute for punishment and should a party wish to punish a media professional for spying, they must first be subject to criminal proceedings and trial. In international armed conflict those persons caught and suspected of spying are not entitled to POW status (even if they are a war correspondent). The law of non-international armed conflict does not make special provision for spies. However, all persons in interment or detention are entitled to the fundamental guarantees. This means that those persons accused of spying are entitled to a fair criminal trial (if they are to be subject to punishment for spying) and humane treatment at all times.

Conclusion

IHL does not directly address the role of media professionals in its rules. It does not, for example, contain any rules relating to rights to speech or access to information; the right to enter a territory; or the protection of a reporter/source relationship. Rules addressing these issues are found in international human rights law and national laws which can apply concurrently with the laws of war.

Confirmation of the civilian status of media professionals, and war correspondents, means that the common activities of the media in an armed conflict are also to be 'civilian' in nature. This means that they do not amount to a direct participation in hostilities and do not expose a media professional to lawful deliberate and direct attack. This is confirmed by the application of rules relating to 'direct participation in hostilities' to reporting on and from a conflict, gathering information for publication, and maintaining independence by refusing to assist a party to the conflict. This protection extends to the broadcast or publication of propaganda in general support of the war effort, and not designed to incite the commission of a crime.

In the fog of war, however, many activities of the media may appear to be, or may actually become, direct participation in hostilities. In such cases a media professional loses their civilian protection from attack. Collecting and passing on information to a party to a conflict may amount to both direct participation in hostilities and also espionage. Exactly when the professional activities of a media professional cross the line into direct participation in hostilities is not always clear. For this reason, media professionals, and their professional mission, may be protected by the letter of IHL but not always in practice.

The IHL rules relating to detention and internment in international armed conflict provide some protection to the work of foreign media professionals (including war correspondents). These rules only allow for the internment of non-accredited media professionals when it is imperative for security reasons. However, these rules can be subject to abuse as they place responsibility for assessment of these reasons on the detaining state. In addition, those media professionals that are war correspondents (and entitled to POW status upon capture) are protected by fewer rules. Those media professionals detained in non-international armed conflict are entitled to even less protection under IHL from arbitrary deprivation of liberty.