

The protection of journalists engaged in dangerous professional missions

Law applicable in periods of armed conflict

by Hans-Peter Gasser

“Death of four journalists in El Salvador”, “Six journalists reported missing”, “Release of three journalists detained on spying charges”—these are just some of the headlines of recent dispatches calling to mind the problem which we will be dealing with in this article¹: journalists who do their job in situations of armed conflict run risks. What provisions does public international law make to protect them and to facilitate the exercise of their professional activity?

The question touches on other, more basic, problems. What is the task of the press, the radio and television? What sort of institutional frame must there be for the media to be able to fulfil their tasks? Is there such a thing as a right of access to information even in war? Basic problems, such as freedom of expression, the right to information, etc., are involved. It is not, however, the intention of this article to go into these questions. Others have carefully studied these multiple problems and have searched for the replies.²

For the purposes of our study it seems useful to formulate some basic principles.

1. There is an undeniable interest on the part of the public in the progress of international and national conflicts. Numerous accounts,

¹ A paper read to the Eighth Round Table and Red Cross Symposium organized by the San Remo Institute of International Humanitarian Law in September 1982.

² See, for example, the UNESCO report “Voix multiples, un seul monde” drawn up by the International Commission for the Study of Communication Problems, under the chairmanship of Mr. Sean MacBride.

whether in written, pictorial, musical or other form, have attested to the great interest which people have always had in the phenomenon of war.

2. Journalists, writers, artists, etc., are free to look for information and to communicate it to the public, within, of course, the limits permitted by national law. These limits are justified on grounds of State interest (security considerations in particular) and of individual interests, which might be harmed if made public. It is not our purpose to explore these limits.

3. Journalists have obligations to the public and the State as to the quality of what they write.

The aim of this study is to elucidate the special conditions created by armed conflicts and situations of internal unrest and tension and to analyse the legal provisions which can protect journalists in these special circumstances.

The headlines of the above-mentioned dispatches draw our attention to two situations which constitute risks for journalists or which can jeopardize their activities.

First of all, journalists are exposed to the physical danger of war; they can be the victims of the direct effects of hostilities (a bomb raid, a shot fired at him or a stray bullet, etc.). These are risks which are run in military operation zones.

Secondly, journalists can be the victims of arbitrary acts (arrest, ill-treatment, disappearance, etc.) by the authorities, in particular the armed forces or the police in the country in which he finds himself of his own accord or against his will.

These two situations pose different problems and require therefore separate analyses. We are dealing, however, in both situations, only with problems caused by the physical protection of journalists engaged in dangerous professional missions. ³

First attempts to protect journalists

The law of armed conflicts has for a long time shown concern for the special situation of journalists on dangerous missions.

In point of fact, the Regulations respecting the Laws and Customs of War, appended to the The Hague Conventions of 1899 and 1907

³ In this article the word "journalist" covers any reporter for the press, radio or television.

(Article 13) and the Geneva Convention of 27 July 1929 relative to the Treatment of Prisoners of War already mentioned "newspaper correspondents". Article 81 of the 1929 Convention stipulates that "persons who follow the armed forces without directly belonging thereto, such as correspondents, newspaper reporters, sutlers or contractors, who fall into the hands of the enemy, and whom the latter think fit to detain, shall be entitled to be treated as prisoners of war, provided that they are in possession of an authorisation from the military authorities of the armed forces which they were following."

Here we have it then: as far as these texts are concerned, journalists are part of an ill-defined category of people who follow the armed forces without belonging to them. As such, they must be treated as prisoners of war when captured, while at the same time keeping the status of a civilian on one essential condition: they must carry on them the authorization issued by the military authorities of their country.

During the extensive revision of international humanitarian law which resulted in the Geneva Conventions of 12 August 1949, that provision was repeated in the Third Convention Relative to the Treatment of Prisoners of War with the affirmation that a journalist who has fallen into the power of, and is detained by, the enemy is, and has the status of, a prisoner of war (Third Convention, Article 4, A, (4)). Journalists, or "war correspondents", as they are called in the above quoted text, are included in a somewhat different category of persons from that of 1929: what they have in common is that they are all in some way associated with the war effort without however being integrated into the armed forces.

Although, under the 1929 Convention, the possession of an identity card issued by the competent authorities was a condition of the right to the status of prisoner of war, the legislators in 1949 relaxed this requirement in view of the fact (which occurred during the Second World War) that the bearer could lose it during the events.

A journalist must, however, in all circumstances, have received authorization to follow the armed forces: the identity card will quite simply be proof of this authorization, proof that the enemy can demand before deciding on his status. The war correspondent card plays a similar role to that of a soldier's uniform: it creates a presumption. If there is any doubt about the status of a person who demands prisoner of war status, that person remains under the protection of the 1949 Convention pending the decision of a competent tribunal, according to the procedure laid down in the second paragraph of Article 5 of the Third Convention.

If a captured journalist is treated as a prisoner of war, why does this provision not cover present requirements? There are various reasons for this. Protection is limited to situations of international armed conflicts; the protection granted to journalists only applies to the period of detention, i.e. to the period following capture; only journalists accredited to armed forces are protected.

Over the last twenty years there has been discussion, at various levels and on several occasions, concerning better protection of journalists on dangerous missions. It was a matter of great concern to press associations. At the United Nations General Assembly in 1970, the French Minister for Foreign Affairs at the time, Mr. Maurice Schumann, suggested that the United Nations should take the initiative in this area.⁴ The United Nations General Assembly passed a resolution, No. 2673 (XXV), on 9 December 1970, in which it directed the Economic and Social Council and, through it, the Human Rights Commission, to draft a convention providing for the protection of journalists on dangerous missions. The idea of a convention was thus formulated. At the beginning of 1971, in an article signed by one of its directors, the ICRC set out some guidelines which it thought would contribute to a solution to the problem.⁵

It was in 1971 that the Human Rights Commission was entrusted with this task. That same year it drew up an initial draft which was submitted to the United Nations General Assembly and to its member States. The General Assembly took note of this, felt it necessary to adopt a convention on this subject, and invited ECOSOC and the Human Rights Commission to re-examine the question. More important, it asked the Commission to communicate its report to the Conference of government experts on the reaffirmation and development of international humanitarian law applicable in armed conflicts, which had been convened by the ICRC to meet for a second session in 1972. The ICRC was asked to submit to the United Nations the observations made at this meeting.⁶

⁴ See, inter alia, the UN Secretary General's reports entitled "Human Rights in Armed Conflicts: Protection of Journalists on Dangerous Missions in Zones of Armed Conflict": A/9073, 9 July 1973; A/9643, 22 July 1974; A/10147, 1 Aug. 1975; and also resolutions 2673 (XXV), 9 Dec. 1970; 2854 (XXVI), 20 Dec. 1971; 3058 (XXVIII), 2 Nov. 1973; 3245 (XXIX), 29 Nov. 1974; 3500 (XXX), 15 Dec. 1975.

⁵ See C. Pilloud, "Protection of Journalists on Dangerous Missions in Armed Conflict Zones" in *International Review of the Red Cross*, Jan. 1971.

⁶ UN General Assembly resolution 2854 (XXVI), 20 Dec. 1971.

In the meantime, the process of revising international humanitarian law was already under way and, on 8 June 1977, resulted in the adoption of the two Protocols additional to the Geneva Conventions.

It is not our aim here to describe all the vicissitudes of the UN draft convention; suffice it to say that in the beginning the work was continued in the United Nations. At the invitation of the General Assembly, the first and second sessions of the Conference of government experts convened by the ICRC examined the subsequent drafts for a special convention and sent their remarks to the United Nations General Assembly.⁷ Later, when the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts was convened (in 1974), the General Assembly invited the Conference to give its opinion on the subject.⁸ This the diplomats meeting in Geneva did at the second session of the Conference but in a rather unexpected fashion: instead of simply commenting on the United Nations draft, an *ad hoc* working group of Commission I decided that the problem should be dealt with by the International Humanitarian Law Conference itself and drafted in an article⁹ to be inserted in Protocol I. This initiative was very well received: the draft proposed by the working group was accepted in the Commission¹⁰ and at the plenary.¹¹ It thus became Article 79 of Protocol I as adopted by the Diplomatic Conference on 8 June 1977. The United Nations General Assembly took note "with satisfaction" of the decision reached by the Diplomatic Conference.¹²

The final result of the efforts to afford better protection for journalists against the dangers of war is therefore a special provision in Protocol I relating to international armed conflicts: namely, Article 79 on "Measures of protection for journalists".

This provision can be summed up as follows:

⁷ See ICRC Report on the work of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, 1971, par. 507-515 and second session, 1972, par. 3.72-3.93.

⁸ Resolutions 3058 (XXVIII) and 3245 (XXXIX).

⁹ See report of the working group in *Final Act* of the Diplomatic Conference, Vol. X, p. 75, CDDH/I/237; for all Diplomatic Conference texts referring to Article 79, see H. S. Levie, *Protection of War Victims: Protocol I to the 1949 Geneva Conventions*, Volume 4, 1981, pp. 119-143.

¹⁰ *Final Act*, vol. X, p. 19, CDDH/219/Rev. 1.

¹¹ *Final Act*, vol. VI, p. 243, CDDH/SR 43.

¹² Resolution 3500 (XXX).

- A journalist who is engaged in a professional mission in areas of armed conflict has a right, as a civilian, to all the protection granted by international humanitarian law to civilians;
- A war correspondent accredited to the armed forces shall retain the special status provided for in Article 4, A (4) of the Third Convention;
- An identity card similar to the model in Annex II of Protocol I will attest that its bearer is a journalist.

This solution clearly differs from the approach chosen by the draft convention of the Human Rights Commission, that is to say, the proposal to create a special status for journalists.

We know little of the discussions which preceded the drawing up of this text since the main work was done in an *ad hoc* working group which only put out a short report with some information as a matter of form and the draft text.¹³ There are no minutes of the discussions of the working group. In Commission I of the Diplomatic Conference the draft was given a favourable reception but there was one point which gave rise to discussion: the Venezuelan delegation proposed an amendment to the effect that journalists wishing to benefit from the protection granted by Article 79 would have to wear a protective sign clearly visible from a distance.¹⁴ Most of the few government representatives who took the floor were opposed to this. They pointed out that such a sign could make journalists' work even more dangerous. In addition, by attracting the attention of the adversary, they would be likely to endanger the surrounding civilian population.¹⁵

The wording of the identity card gave rise to controversy. Should the religion of the journalist be indicated? What language should it be written in? Was it advisable to consider fingerprints as a means of identification?

Finally, all criticisms of the draft negotiated in the working group were put aside and the text accepted in plenary *by consensus* and in the form proposed by the working group.¹⁶

¹³ *Final Act*, vol. X, p. 75, CDDH/I/237.

¹⁴ *Final Act*, vol. III, p. 303, CDDH/I/242.

¹⁵ See, *inter alia*, statements by the representatives of Canada and the USA in *Final Act*, vol. VIII, p. 367, CDDH/I/SR 35.

¹⁶ *Final Act*, vol. VI, p. 243, CDDH/SR 43.

Should journalists have a special status ?

The authors of the United Nations draft convention ¹⁷ had attempted to improve the situation of journalists on dangerous professional missions by the creation of a special status. The questions raised by this proposal warrant an explanation although it already belongs to the archives.

As laid down in the draft (Article 2 a), a journalist is a person who is considered as such by virtue of national legislation or practice. In order to have the benefit of special protection, journalists must be in possession of a card issued by the national authorities. On the back of the card there must be a statement (Article 5 (2)) to the effect that the bearer undertakes, during his mission, to behave in a way consistent with the highest professional standards of integrity, not to interfere in the internal affairs of States to which he travels and not to participate in any political or military activity or in any activity which could imply direct or indirect participation in the conduct of hostilities in areas where the dangerous mission is being carried out.

Moreover, the authorities would be responsible for communicating the names of the journalists with a card to an international professional committee set up under the Convention.

Journalists would therefore have been able to identify themselves on a mission by means of this card. In addition, they would each have been obliged to wear an arm-band bearing a distinctive emblem, a large black P on a golden disk, in such a way as to be clearly visible at a distance (Article 9).

What special protection would have been granted by the proposed Convention? According to Article 10, parties to a conflict should do everything in their power to protect journalists, and in particular, (a) to grant journalists a reasonable amount of protection against the dangers inherent in the conflict; (b) to warn journalists to keep away from dangerous zones; (c) in case of internment, to grant identical treatment to that provided for by the Fourth Geneva Convention, Articles 75 to 135; (d) to provide information in cases of death, disappearance, imprisonment, etc.

To round off this short analysis of the draft convention, it should be added that a State in conflict would have maintained the right to grant or to refuse access to dangerous places in the same conditions as

¹⁷ The latest version may be found in the UN Secretary General's note A/10147 of 1 Aug. 1975.

those which apply to its own journalists (Article 13, par. 2). In this way any discriminating treatment would have been precluded.

What is our position on this approach?

The idea of creating a special status for journalists is consistent with a well-known technique in humanitarian law. The 1949 Conventions and the 1977 Protocols confer a special status on the following categories of people: medical, religious and civil defense staff and (implicitly) the delegates of the protecting powers and of the ICRC. All these categories of persons have a special legal status and all of them must be identifiable if they are to be protected.

The list could be extended to other categories. However, there would be the risk that, as the list grew, protection would diminish. The multiplication of signs and emblems in fact tends to weaken their protective value.

The various staffs mentioned above include all those responsible for assisting the victims of a conflict. It is not in the interest of the international community, however, to weaken the protection of these persons (reinforced in fact by the two 1977 Protocols) by extending it to a group which is not directly working on behalf of war victims. It seems therefore justifiable from a political and practical point of view to drop the idea of creating a special status for journalists.

It has been said, probably quite rightly, that the presence of journalists who are identifiable by their arm-bands, could expose the local civilian population to the risk of being attacked by the adversary. In other words, the arm-band with a large P could well draw fire rather than avert it. This could well be the case if one considers why journalists go to battlefields: to search for news, where the action is, that is to say, wherever military operations are under way. The interests of journalists who expose themselves to danger in order to carry out their mission will thus be diametrically opposed to the wishes of civilians to be sheltered from war. The risk of compromising in this way the security of the civilian population is, however, not perceived in the same way by all of the experts.¹⁸ What is certain is that the protection granted to the civilian population must not be weakened. In point of fact, journalists also enjoy this protection. Incidentally, an arm-band gives scanty protection since it is scarcely identifiable at a distance.

It should also be pointed out that the degree of special protection granted to journalists by the draft seems somewhat weak when compared

¹⁸ See discussion at the second session of the Conference of Government Experts, par. 3.76-3.80.

to what proved feasible *without* resorting to the granting of special status. Furthermore, the text speaks of restrictions that the authorities can impose on the freedom of movement of journalists. Naturally, the authorities have this power on their own territory.

Finally, any special status and the privileges that go with it require strict control in order to prevent misuse and punish possible violations. The control must be strict for two reasons: one being that an abuse might compromise the protective value of the signs during the whole duration of the conflict and even afterwards, with easily imaginable consequences for the victims; the other being that a serious misuse of the sign can be a war crime.¹⁹

The proposal by the authors of the UN draft convention to create an international professional committee attempts to solve the problem of control. Despite the lack of any power of decision (it is the national authorities who are supposed to issue or withdraw the card), the committee would have been empowered to lay down the conditions for issue, renewal or withdrawal of a card (Draft, Article 4, par. 2). It would also have kept a register of journalists holding this card (Article 5, par. 7).

The establishment of such an international body does not seem to have been accepted unanimously by the profession. Furthermore, we have seen that strict control is indispensable if special provisions and privileges are to be granted. Jurists must always insist on this, not for the pleasure of laying down rules but rather in order to prevent protection being undermined by abuses committed under the cover of a special status. The victims would not only be journalists but, far more serious, civilians affected by war.

It is interesting to note that the commissions instituted by UNESCO to study communication problems also came to the same conclusions. According to the chapter on the protection of journalists in the UNESCO report, there are many members of the profession who consider that special protection measures could lead to journalists' being subjected to the supervision of representatives of the authority in such a way that their activities, far from being facilitated, would be seriously hindered. In particular, protection could depend on a system of accreditation which would allow the authorities to decide who is and who is not a journalist. This would impinge on the principle that journalists have a professional identity by the very fact of their employment or, in certain

¹⁹ The perfidious use of the protective emblems recognized in the Geneva Conventions and Protocols — see Art. 85, par. 3 (f) of Protocol I.

countries, by the fact that they belong to a trade union or to a professional association. The system of accreditation would be likely to lead to a set of rules restricting the activities of journalists. In fact, protection would only be granted to those journalists enjoying official recognition. Although the problems relating to the profession of journalists seem very real to us and are causing us growing concern, we share the fear engendered by accreditation which we consider can seriously hamper freedom of information.²⁰

Journalists faced with the direct danger of hostilities

Let us now examine the situation of journalists on dangerous professional missions from the point of view of existing law, that is to say, the Geneva Conventions of 1949 and the two Protocols of 1977.

We shall start with the problems posed by the presence of journalists on the battlefield and shall then go on, in the following section, to the situation of journalists in the power of a party to the conflict. No mention will be made of military press personnel since they are part of the armed forces. Their status is the same as that of other members of the armed forces and they do not enjoy any special immunity.

It should be pointed out straight away that the instruments of international humanitarian law make no statements on the justification or legality of journalistic activities in times of war. Neither partisans nor opponents of the journalists' freedom of action will find their arguments in the Geneva Conventions or their additional Protocols; they say nothing on this subject. It is therefore erroneous to see these instruments as the application and adaptation of human rights to the critical situation known as war. The scope of the Geneva law is more limited, namely to diminish the effects of war on people. In other words, humanitarian law does not protect the journalists' function but protects men engaged in this activity.

A journalist on a dangerous professional assignment in an operational zone is a civilian; he is entitled to all rights granted civilians *per se*. Article 79 clarifies this situation, thereby reaffirms the law in force. Thus, journalists engaged in professional activities during a conflict whose belligerents are not party to Protocol I will always be entitled to the protection granted civilians on the basis of the law in force before 1977.

²⁰ See UNESCO report mentioned in note 2, p. 295.

As was pointed out at the Diplomatic Conference itself,²¹ the wording of the first paragraph of Article 79 is not entirely satisfactory. A journalist is not only *considered* to be a civilian, he *is* a civilian, as defined in Article 50, par. 1 of Protocol I. There can therefore be no doubt on this subject.²²

Provided that he does not undertake any action which could jeopardise his civilian status, a journalist is protected by the Conventions and the Protocol in the same way as all other civilians. Article 79 can thus be considered as a cross-reference to the articles which deal with the protection of the civilian population in general. It should be mentioned, however, that the protection granted to civilians is not linked to the nationality of the person concerned. In this respect, any journalist, be he a national of a State involved in the conflict or a national of a neutral State, is protected.

Now, a civilian must under no circumstances be the object of an attack (Article 51, par. 2 of Protocol I), and civilians are entitled to the respect of their possessions provided these are not of a military nature (Article 52). These rules, and many others besides, are therefore equally applicable to journalists on dangerous missions. Moreover, a deliberate attack causing the death or injury of a journalist would constitute a serious breach of the Protocol, that is to say, a war crime (Article 85, par. 3 (e) of Protocol I).²³

It is fitting to point out that war correspondents accredited by military authorities, as laid down in the Third Geneva Convention, are protected in like manner to non-accredited journalists: they maintain their civilian status despite the special authorization received from military sources. Likewise, journalists must be respected whether or not they are in possession of an identity card for journalists engaged in dangerous missions. The card attests to their capacity as journalists; it does not create a civilian status. A journalist may however lose, not his right to protection as a civilian, but *de facto* protection if he stays too close to a military unit. He can no longer avail himself of the protection due to his profession since that unit is a lawful target of enemy attack (unless the proportionality rule prohibits the attack—Article 51, par. 5 (b)). He thus acts at his own risk. The same applies to journalists

²¹ See statement by the Netherlands representative during the Commission, in *Final Act*, vol. VIII, p. 313, CDDH/I/SR 31, par. 12.

²² See also (and in general for the interpretation of Art. 79) Bothe, Partsch, Solf: *New Rules for Victims of Armed Conflicts, Commentary on the Two Additional Protocols to the Geneva Conventions of 1949*, 1982, re Art. 79, par. 2.4.

²³ See Art. 50, par. 1, Protocol I, which includes the personnel mentioned in Art. 4, A (4) of the Third Geneva Convention in the definition of civilian persons.

who approach military targets; in doing so they forfeit *de facto* the protection to which they are entitled.

Moreover, journalists are, of course, deprived of their immunity as civilians if, and for as long as, they take an active part in hostilities (Article 51, par. 3). The application of this provision to their daily work may give rise to difficulties. In theory at least, a journalist's usual activities are covered by the immunity due to members of the press. By accepting journalists as civilians, States agreed to let them do their job, i.e. take photographs, shoot films, record information or take notes. The basic presumption is this: journalists on dangerous missions remain within the limits imposed upon them, unless proved otherwise. When overstepping these limits, they run the risk of being accused of spying.

The above rules all form part of the legislation applicable in international armed conflicts. What protection may journalists expect when on dangerous missions during non-international armed conflicts? The law applicable in internal conflicts, namely Article 3 common to the four Geneva Conventions and Protocol II, does not cover members of the press. This is no reason why journalists carrying out dangerous missions and who abstain from committing acts of hostility should not be granted the same protection as civilians. Although different approaches may be adopted according to the category of armed conflict, it is preferable to use identical concepts as far as possible.

Article 13 of Protocol II clarifies the situation of the civilian population as such and of individual civilians, who benefit from total protection. They cannot be the object of attack. This basic rule of the law of all armed conflicts is the expression of a general legal principle.²⁴ It is a binding rule independent of Protocol II.

I shall end this brief analysis by re-emphasizing that journalists benefit from the full protection granted by law to civilians, in both international and non-international armed conflicts. Journalists are thus entitled to the same protection as the mass of people not taking part in hostilities, in other words the civilian population.

Situation of journalists in enemy hands

The purpose of this chapter is to examine what protection international law provides for journalists who fall in the power of a party to the conflict, whether by capture or arrest.

²⁴ See Partsch, *Armed Conflicts, Fundamental Rules*, in Bernhardt (ed.) *Encyclopedia of Public International Law*, 3 (1981), p. 28; Kalshoven, *Applicability of Customary International Law in Non-International Armed Conflicts*, in Cassese (ed.) *Current Problems of International Law* (1975), p. 267.

The armed forces certainly have the right to arrest and detain any person, even a civilian, whom they find in an area of military operations, if only to ensure that person's safety. How an arrested journalist is treated will depend on a number of factors, including origin and nationality.

Journalists arrested by their own authorities are subject to the law of their country. They are detained if internal legislation permits. The authorities are naturally bound to respect the guarantees and rules relative to detention laid down in their own legislation and in any international human rights provisions to which their State is party. It can be argued that the fundamental guarantees of Article 75 of Protocol I apply to journalists arrested during an armed conflict, if their national legislation is less favourable to them.²⁵

Journalists who are nationals of one party to the conflict and who fall in the hands of the other party must be divided into two categories, namely accredited war correspondents, who become prisoners of war,²⁶ and free-lance journalists. Free-lances arrested in their own country, that is to say in territory occupied by the enemy, must be detained in that occupied territory and not transferred to the territory of the occupying power.²⁷ The detaining power may institute a penal inquiry against detainees or intern them "for imperative reasons of security".²⁸ If the charges held against a journalist are not serious enough either to sentence or intern him, he must be released.

A journalist taken in enemy territory may be prosecuted if he has committed an offence, or interned if necessary for the security of the detaining power.²⁹ If not, he must be released.

Journalists who are nationals of a third, non-belligerent State and are captured by a party to the conflict benefit from normal peacetime legislation. They may be interned if the detaining power has sufficient charges against them. If not, they must be released.

In any event, the detaining power is bound by very precise rules ensuring that detainees are treated humanely and given full legal guarantees in case they are tried. Journalists in enemy hands may be visited by representatives of the protecting power or of the ICRC, who check on their conditions of internment. Like other detainees, they have the right

²⁵ See Bothe, Partsch, Solf, re Art. 75, par. 2.6.

²⁶ Art. 4, A (4) of the Third Geneva Convention.

²⁷ Art. 76 of the Fourth Geneva Convention.

²⁸ Art. 78 of the Fourth Geneva Convention.

²⁹ Art. 42 of the Fourth Geneva Convention.

to communicate with their relatives. Journalists who are nationals of a third, non-belligerent State receive support from their country's diplomatic and consular representative, or, if diplomatic relations are severed, from the representative of a third country defending the interests of that State in the detaining country.

The last point I wish to emphasize under this heading is that the detaining power may decide not to intern a journalist and release him as soon as possible, on condition that his personal safety is not at risk.

The law of non-international armed conflicts is far less explicit on this subject. It merely states that detainees must be treated humanely, without any adverse distinction. Protocol II develops this fundamental provision of Article 3 common to the four Geneva Conventions. International law applicable in internal armed conflicts does not, however, offer much recourse against unjustified or excessive detention. A government dealing with insurgents applies its own law, unless it judges it preferable to expel a journalist from a third State whose presence is considered undesirable. Insurgents will do the same. Both parties are bound at all times to respect the rules of procedure in force and at least the minimum standard of treatment of detainees required by humanitarian considerations. The taking of hostages is prohibited in all circumstances.

Supervision of the application of these provisions is still not guaranteed in a satisfactory manner. The ICRC normally offers its services to both parties, which, however, are free to reject them.

Special problems in situations of internal disturbance or tension

Situations of collective violence that do not reach the scale of an armed conflict are not covered by international humanitarian law, but by national legislation, which may, however, be tempered by universal or regional provisions of human rights.

All texts relative to the protection of human rights guarantee freedom of expression or information in one way or another.⁸⁰ One of the characteristics of these texts is that many of the guarantees need not be applied in times of internal crisis, under certain specific conditions. A number of basic rights safeguarding human dignity nevertheless remain in force whatever the circumstances: they are the essence of

⁸⁰ Universal Declaration of Human Rights, Art. 19; International Covenant on Civil and Political Rights, Art. 19; European Convention on Human Rights, Art. 10; Inter-American Convention on Human Rights, Art. 10.

human rights. Despite differences between the various texts, it is possible to draw the following general conclusions:

1. no legal instrument guarantees freedom of expression or the right to information in time of crisis: national legislation may therefore restrict such freedom;
2. provisions concerning the prohibition of arbitrary arrest, the right to fair trial and suitable conditions of detention remain in force, according to the above instruments, even under exceptional circumstances such as a state of emergency.

These rules also apply to journalists and their activities.

Conclusions

The protection international humanitarian law affords journalists is still precarious. Humanitarian law has nevertheless progressed considerably in re-affirming that journalists on mission in a zone of military operations are civilians and thus entitled to the protection granted to civilian persons at all times. The rules protecting the civilian population and individual civilians firmly state that civilians enjoy absolute immunity for as long as they do not take a direct part in hostilities. Is it not appropriate therefore that journalists should enjoy the same protection as those for whom they work, namely civilians? ³¹

The work of the press during international or internal armed conflicts will always involve risks, which journalists often choose to take. The law cannot always protect them from the consequences of their own free decisions or from the dangers they themselves seek to run. In any event, there can be no question at present of modifying the legal provisions examined above.

All things considered, it seems that journalists who fall in the power of one of the parties to a conflict while discharging their professional activities receive adequate protection.

In conclusion to this survey of the rules relative to the protection of journalists, the question remains whether they are in fact respected, for instance in the heat of action or in an interrogation centre behind the front. The answer is, Yes, humanitarian rules are indeed observed, as evidenced by the sometimes extraordinary accounts given to us on television or in the papers. Nevertheless, violations are not infrequent.

³¹ See UNESCO report, Final Conclusions, Recommendation 50, p. 329.

The question finally comes down to this. What can be done to ensure greater compliance with the law in international or civil war? One possible solution might be for journalists themselves to contribute towards creating the conditions likely to compel authorities to respect the rules of international humanitarian law, for fear of intolerable pressure by world opinion.

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