LEGAL PROTECTION OF JOURNALISTS UNDER INTERNATIONAL HUMANITARIAN LAW

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Abstract - Media professionals are in risk today, especially those in the middle of the war zone. In Palestine for instance, the journalists are targeted even if it says "press" in big blue letter on their back. In order to promote a better protection for journalists, this paper will investigate the provided legal protection in wartimes under international humanitarian law. The paper examines whether the international treaties providing a sufficient legal protection for journalist and the validity of these instruments. The findings of this research are: that there is no sufficient legal protection for journalists in war zones, not all types of journalists are included under the legal protection. The researcher recommends ratify a comprehensive new treaty govern protection over all the journalists' types and develop the IHL provisions to include the journalists with the protection under the non international armed conflict (NIAC).

Keywords - International Humanitarian law, Prisoner of war, War Correspondent.

I. INTRODUCTION

The ongoing war in the Middle East is a perfect illustration of the growing risk faced by journalists in the armed conflict zones. A 740 violation have been reported by the Palestinian Journalists Syndicate (PJS) in 2017 committed by Israel forces in Gaza strip and West bank (Israel, 2018). The legal protection of journalists in peace time different from the armed conflicts times, and the protection under the IAC situations vary from the NIAC ones. A brief history will be given about the protection of journalists during warfare. Analyze the legal instruments which stipulates on the journalists' protection during armed conflicts "Geneva Conventions, Hague Regulations". Define the journalists under IHL and the types of the media workers in the armed conflicts zones. Discuss the legal status of the journalists and the type of protection they benefit from by determine the armed conflict type, whether its International Armed Conflict or Non International Armed Conflict.

II. GENEVA CONVENTIONS

The Geneva law provided the necessary legal protection for the variety individuals involved in an armed conflict including of the media workers. The Geneva conventions protect the journalists in different positions through the conventions. The third Geneva Convention provides the war correspondent in Article 4.A (4) under the POW, in line with complement this Article to meet the requirement of the time, the participants gathered in 1947-1977 in the diplomatic conference in Geneva to come with a special provisions includes the measures of protecting journalists which are exists in the AP I under Article 79 (GALLOIS, 2004). The most important IHL Article explicitly referring to the protection of journalists in IACs is Article 79 under AP I. where it built-in as a specific provision relating to journalists in the body of the IHL (Dusterhoft, 2013).

The first attempt to protect journalists was Geneva Convention of 27 July 1929, regarding to the Treatment of Prisoners of War where "newspaper correspondents" mentioned. Under Article 81 of the 1929 Convention which states that "persons who follow the armed forces without directly belonging thereto, such as correspondents, newspaper reporters 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 authorization from the military authorities of the armed forces which they were following." (Gasser, 1983)

a. The legal protection under Article 79 AP I

The Article 79 of the AP I titled of "*Measures of protection for journalists*" states that; "*1. Journalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians within the meaning of Article 50, paragraph 1. 2. They shall be protected as such under the Conventions and this Protocol, provided that they take no action adversely affecting their status as civilians, and without prejudice to the right of war correspondents accredited to the armed forces to the status provided for in Article 4 A 4) of the Third Convention. 3. They may obtain an identity card similar to the model in Annex II of this Protocol. This card, which shall be issued by the government of the State of which the journalist is a national or in whose territory he resides or in which the news medium employing him is located, shall attest to his status as a journalist.*"

Apparently, the Article 79 recognize that journalists working within dangerous professional missions in an armed conflict areas are civilians; within the meaning of Article 50 (1) AP I, therefore they enjoy the legal protection offered to civilians granted by

International Humanitarian Law in general. Thus, the journalists are enjoying the legal protection throughout all the military operation and they are included with the impunity against arbitrary conduct on the part of a party to the conflict if they are captured or arrested by it.

Article 79 does not make a special status for the journalists indeed, but simply being in possession of that card is so not a requirement for the entitlement of the civilian status. In addition, notwithstanding that the journalists are being protected with a formal protection in the IAC situations as stipulated in the AP I, they also advantage from the protection approved to civilians in NIACs.

The independent journalists that do not accompany armed forces in war zones, though their full entitlement for the civilians' protection, set ones face against utmost hazard to the safety of their physicals; it warns by the Committee of Protecting Journalists that 'fatalities are more common among journalists reporting unilaterally'. Other than that who are apart of those mentioned above; the narrow group classified as war correspondents, here is no mention of reporters in the 1949 Geneva Conventions. However, the Article 79 of AP I refer to the media professionals who are working in dangerous missions, noting that they are at least entitled to the protections offered to civilians and can obtain an identity card from the government authorities. Notwithstanding of the explicit expression of the Article that journalists are facing a greater risk than civilians, even they are entitled to the similar protection as civilians(Foster, 2015).

It can be seen because of the journalists engaged in dangerous missions entitled to the civilians protection, they also protected under Articles 51 and 57 of AP I and GC IV which mainly focused on the civilians' protection(Rathnayake, 2017).

Based on the above, the journalists remain such a neutral persons and impartial individuals, as long as they are not contributing in the conduct of hostilities. As long as they are so, they enjoying the protection under the mentioned provisions, and once they took any stand indicates that they are participating in the hostilities; they lose their protection directly under the IHL. However, it can be acknowledged that neither Geneva Conventions (GCs) nor Additional Protocols (APs) provide a definition for "journalist".

b. The journalist concept

The definition of the journalist has not been addressed in that all conventions which have stated on the journalists' protection. The Regulations and customs which annexed to the two Hague Regulations (1899, 1907) did not define the media professionals who are working under the armed forces where mentioned under Article (13). Article (81) of the Geneva Convention 1929 mentioned for the concept of the "war correspondent" without giving any definition for it. It should be mentioned also to the AP I which states on the protection of the journalists and did not give any definition for them(Abdulkader B. Hobah, 2012).

Some organization of journalists such International Press Institute (IPI) tried to define the concept of journalist. IPI defined journalists as people who reporting the news or comment on public affairs through any media including the printed media or on radio, on television, and online' and it still campaigns today on behalf of 'staff journalists, freelancers, stringers, bloggers, and citizen journalists' around the world.

The word of the 'journalist' means every correspondent, reporter, photographer and the technical assistant of the journal as well as radio or the television, and all those who are practicing their work as a principle occupation(McLaughlin, 2016).

The journalist's concept appears in the IHL conventions in two different positions; firstly, in the third Geneva Convention where covers the war correspondent with the protection, Secondly, in the Geneva Conventions Additional Protocol I 1977, Which provide in particular manner the legal status of the journalists who are performing their duties during armed conflict situations. It should be mentioned that both of the two treaties functional on the international armed conflict(Walaa Faiz El-Hindi, 2012).

III. HAGUE REGULATION

In the initial attempts in order to protect journalists; the Regulations respecting the laws and customs of war annexed to The Hague Regulations of 1899 and 1907 mentioned to the news reporter under Article 13(GALLOIS, 2004).

Article 13 of the Hague Regulation IV 1907 -laws and customs of war- stipulates that "*Individuals who follow an army without directly belonging to it, such as newspaper correspondents and reporters and contractors, who fall into the enemy's hands and whom the latter thinks expedient to detain, are entitled to be treated as prisoners of war, provided they are in possession of a certificate from the military authorities of the army which they were accompanying*". Under this Article, the newspaper correspondent has the right to practice his profession, subjected to have the military authorization in order to do his work. In case of he captured to the other armed party, he should be treated as prisoners of war (POW). The Journalists are a part of non defined group of people who are following the armed forces with not being belonging to them. If they caught, they should be treated as civilians POW(Keith D Suter, 2008). This Article actually regulates the status of the journalists within the armed forces but the legally they are considering as civilians following the army without being a part of it(Moammer Naimi and Shawqi Tamam, 2014).

Overall, it is clearly that the Hague Regulation do not make reference to journalists but if they arrested, and

the captured journalist should be authorized by the army they complying with(elshmily, 2013).

a. War correspondent

The war correspondent job is defined by the dangers and risks involved with getting many stories; whether story of death, injury, kidnap, harassment and imprisonment in the middle of intensity cruel wars(McLaughlin, 2016). The War correspondents has been defined 'specialized journalist who present, with the authorization and under the protection of the armed forces of a belligerent, on the theatre of operations and whose mission is to provide information on events relating to ongoing hostilities'. This definition is similar to that adopted in the United Nations Security Council's ('UNSC') Resolution 1738 and also mentioned in the Green Book of the British Armed Forces, specifically emphasizing the need for accreditation. This distinguishes them from independent journalists who are not officially authorized by their government and accredited by the military. A distinct type of war correspondents are those that are 'embedded' with the military, a term that has gained popularity since the beginning of the Iraq war in 2003 but that was already used during World War I. Embedded reporting is defined as 'living, eating, moving in combat with the units that the journalist is attached to' by the Director of the embedding program in the United States, Victoria Clarke (Dusterhoft, 2013).

Those are representative of the media, who are legally authorized and combining the armed forces in the armed conflict situations, without being a part of it. That is the great part of the journalists who always included in the army units after getting their acceptance upon number of the fields' rules. These rules lay on them such an obligation of company the army unit and never be a part of it in order to protect them and keep them safe (Walaa Faiz El-Hindi, 2012). The journalists' company with the army unit gives him the rights of the war correspondent, besides equal him with the latter as it mentioned on the Geneva Convention III accordingly. Despite of the journalists' identity as civilians, they have the right of having a war prisoner treatment if they got caught by the other party of the belligerent. Other than that from journalists such the freelancer journalists or others from those who are working for media organizations in the armed conflicts, they have the civilians status "position" and rights, they own what the civilians had of the rights and other than that behaviour rules(Walaa Faiz El-Hindi, 2012). So, as long as the IHL does not specified other than the war correspondent with the impunity, thus the rest of journalists whether those who are not classified under the army units or the freelancer ones, the rest of non stated 'mentioned' journalists would be have the civilians' treatment implicitly. Therefore, the word of civilians it can be replaced with journalists respectively(Walaa Faiz El-Hindi, 2012).

The International Humanitarian Law provides the impunity for journalists as civilians generally, and as an impunity category under the concept of "war correspondent", not only according the law but also their behaviour is considerable as well. So the journalists are included within protection whether specifically or in general, unless they became a part of the hostilities such contributing with any act refers to support any conflict party. Thus that protection subjected to these four rules: They must not doing any act refers with any manner that they are participating on the warfare, that's during their whole work according to Article 51(3) from that protocol, or even wearing the army suite(Walaa Faiz El-Hindi, 2012).

b. Protection of 'embedded' journalists

Today, there is hesitation about the status of what it known with the "embedded" journalists, e.g. the active persons during armed conflicts reporting around the war zones. The embedded journalists were existed in the past, nonetheless not as much as today's' wars such as 2003 conflict in Iraq. In the Iraq conflict, journalists were mostly like the war correspondent, as they introduced to the British and American units' military. Journalists were consent on a rules that imposed by the militants require them to follow the army and staying with the unit to maintain their lives and keeping themselves protected. Apparently, they seem to be paralleled with the war correspondents in the meaning of the GC III. So, they have the POW status in case they caught by another party, as the British Ministry of Defence conferring the embedded journalist's that. Though, illegal sources say the opposite and the granted position for them if they captured is not as POW but as civilian's status, same as what Article 79 of AP I provided. Hence the granted legal status to the war correspondent as a POW has a practical consequences of that this term of the Embedded journalists must be included and interpreted by the law, remarkably in terms of questioning and personnel belongings' confiscation (Articles 17 and 18 of GC III) (GALLOIS, 2004).

IV. THE LEGAL STATUS OF JOURNALIST IN THE ARMED CONFLICTS

It was reported that in the past ten years that about more than 700 journalists and mass media team was killed. Local journalists, in particular, are the targets of threats ranging from intimidation and harassment to arbitrary detention(Nohrstedt, 2016). Under this section it will be explain the legal status of the journalist international armed conflict as well as the non-international armed conflict; legal protection under each law, war correspondent and freelance journalist status in details.

LEGAL STATUS IN THE IAC

Press work basically is a civil work which does not relate to the military operations even in such one way. The existence of the media workers in the war zones where the conducting hostilities, is mainly targeting to get the information and spread the truth. All international laws parties and the international treaties participants are agreed on the regulation of the military operations among the conflict parties as well as the four Geneva Conventions stipulating in the protection of the civilians for the journalists, and it should be distinguish them of other military objectives, and the mere violence towards them should be considered as a war crime and the responsible of committing that crime is an international criminal deserves the sanction(Ali, 2010). The applicable legal framework for an international armed conflict makes a distinction between the legal status of a war journalist or what it called "war correspondent", who accompanies the armed forces, or the legal status of a war journalist that doesn't and travels independently. Both are protected indeed, but the first group has more specialized rights than the second group(Fournier, 2014).

Freelance journalists

IHL protects the journalists who are practicing their jobs within the armed conflicts and granted them the POW status if they captured. The freelance journalist is a type of journalists who is not within the army or even following it. It called also 'unilateral journalist'. The commentary on the APs of June 1977 to the GCs called this type of journalists 'freelance'(Pilloud, Sandoz, Swinarski, & Zimmermann, 1987). That term should be used carefully so that it does not confuse with the independent journalist. The independent journalist, by contrast with the freelance one, does not work under company and employee within that company which is same as the freelance journalist. By contrast with the war correspondent who is accompanied with the army as it mentioned before. For instance, Nabel Eyad Darabeh is a Palestinian news reporter employed with Alquads media network, he is practicing his work in the Palestinian territory with his crew in an armed conflict zone where the Palestinian Israeli conflict, he qualifies as a freelance journalist in the meaning of the Commentary as it just mentioned. Yet, he is employed, receives a salary and is not totally independent. The category of the 'freelance journalist' is much broader than the category of the independent journalist.

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So, the legal protection of the journalist is same as the legal impunity for the civilians during armed conflicts because the civilians are not military objectives essentially. The journalists who are working in dangerous missions in an armed conflict zones are enjoying the legal protection as civilians where stipulates under Article 50, , 51, 57 as well as GC IV which focus on civilians in especial manner(Rathnayake, 2017).

It should be mentioned that the journalists' identity card mentioned in paragraph 3 of the Article 79 does not give a special legal status for the journalists but it introduces him to the armed conflicts states.

LEGAL STATUS IN THE NIAC

In the case of the NIAC, there is no specific mention for the war journalist under the conventional IHL. The critical question rises; if the journalists considered as a civilians in NIAC. While journalists are not specifically mentioned in any treaty applicable to non-international armed conflicts, they are considered to be civilians(Dörmann, 2007). The conventional IHL does not give a clear answer of this question; the customary International Humanitarian Law clears this uncertainty by answering this question later on. Basically, the applicable law of the non international armed conflicts situations can be founded in the Common Article 3 of the Geneva Conventions, where are the stipulating of the minimum norms, and in Additional Protocol II to the Geneva Conventions(Fournier, 2014). Protocol II, contains no specific reference to the journalists, thus there is no corresponding of Article 79(Keith D Suter, 2008). The AP II with Common Article 3 which are basically applied to NIACs doesn't fulfilment journalists protection in NIAC situations. Thus it can be said, as AP I covers the IACs under Article 79, Journalists are not adequately protected in the NIAC(Rathnayake, 2017).

CONCLUSION

To summarize up, the journalists have a specific slight legal protection stipulates under the IHL. The IHL protects the journalists explicitly in the IAC. However, it does not provide the legal protection for the journalists who are working in the NIAC zones, but protecting them as civilians. Indeed, more effort should be done on this area of NIACs, and promote

the legal protection under IACs on the other side. In addition, the legal protection of the IHL should be comprehensive to include all the journalists' types and media workers the warfare, the organizations of media should work on ensuring the understanding of the journalists about the nature of their work under the modern warfare(Keith D Suter, 2008).

REFRENCES

[1] Abdulkader B. Hobah. (2012). Protection Of Journalists And Media During Armed Conflicts (First Edition ed.). Amman: Dar AL-Thaqafa for publishing ans distributing.

[2] Ali, A. (2010). Protection of journalists: internnational humantarian law prespective. [خلال الصحافيين حماية الإنساني الدولي القانون قواعد ضوء على المسلحة المنازعات].

[3] Dörmann, K. (2007). International Humanitarian Law and the protection of media professionals working in armed conflicts.

[4] Dusterhoft, I. (2013). The Protection of Journalists in Armed Conflicts: How Can They Be Better Safeguarded. Merkourios-Utrecht J. Int'l & Eur. L., 29, 4.

[5] elshmily, A. m. A. R. (2013). protection of the civilian populationduring armed conflicts: Dalil company.

[6] Foster, F. (2015). The Price of News from the Front Line: Rethinking the Protection of Media Personnel under International Humanitarian Law. Journal of Conflict and Security Law, 20(3), 451-480.

[7] Fournier, L. M. (2014). The Protection of Journalists in Armed Conflict. Master Thesis Of The Law, Faculty Of Law Ghent University.

[8] Gallo, A. B. (2004). protect journalists and the media in times of armed conflicts.

[9] GALLOIS, A. B.-. (2004). the protection of journalists and news media personnel in armed conflict. 86(853), 37-67.

[10] Gasser, H.-P. (1983). The protection of journalists engaged in dangerous professional missions. International Review of the Red Cross Archive, 23(232), 3-18.

[11] Israel, T. C. P. o. (2018). Report for 2017: 909 Violations against Palestinian Journalists. 2018

[12] Keith D Suter. (2008). The protection of journalists in armed conflicts. The RUSI Journal, 76-78. doi: 10.1080/03071849708446193

[13] McLaughlin, G. (2016). The War Correspondent.

[14] Moammer Naimi and Shawqi Tamam. (2014). protection of the journalists during armed conflicts. Mohamed Khider Biskra, university of

[15] Nohrstedt, S. A. (2016). 'Mediatization'of War and 'Martialization'of Journalism. in Transition, 155.

[16] Pilloud, C., Sandoz, Y., Swinarski, C., & Zimmermann, B. (1987). Commentary on the additional protocols: of 8 June 1977 to the Geneva Conventions of 12 August 1949: Martinus Nijhoff Publishers.

[17] Rathnayake, R. (2017). Protection of Journalists in Armed Conflicts: An International Law Perspective. OUSL Journal, 12(2), 63-73.

[18] Walaa Faiz El-Hindi. (2012). Media and international law. Oman- Jordan: Dar Osama

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