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**DREPT INTERNAȚIONAL UMANITAR
INTERNATIONAL HUMANITARIAN LAW
МЕЖДУНАРОДНОЕ ГУМАНИТАРНОЕ ПРАВО**

**INTERNATIONAL HUMANITARIAN LAW AND
THE INTERNATIONAL LEGAL STATUS OF JOURNALISTS**

**МЕЖДУНАРОДНОЕ ГУМАНИТАРНОЕ ПРАВО И
МЕЖДУНАРОДНО-ПРАВОВОЙ СТАТУС ЖУРНАЛИСТОВ**

**DREPTUL INTERNAȚIONAL UMANITAR ȘI STATUTUL
JURIDIC INTERNAȚIONAL AL JURNALIȘTILOR**

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ABSTRACT:

**INTERNATIONAL HUMANITARIAN LAW AND THE
INTERNATIONAL LEGAL STATUS OF JOURNALISTS**

This article analyses international instruments in the sphere of international humanitarian law, in particular, devoted to ensuring the protection of journalists during an armed conflict. The absence of clear legal criteria of non-international conflict, incomplete guarantees of rights of mass media employees may give grounds for manipulation or ignoring their legal protection. The author gives the concept of the system of protection of rights and freedoms of journalists covering military conflicts, legal status during an armed conflict, conclusions and proposals to fill the gaps in international humanitarian law.

Keywords: *international humanitarian law, armed conflict, protection of rights and freedoms, journalist, war correspondent, non-combatant.*

JEL Classification: F50, K33

Universal Decimal Classification: 341.24

РЕЗЮМЕ:

**МЕЖДУНАРОДНОЕ ГУМАНИТАРНОЕ ПРАВО И
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В статье анализируются международные документы в сфере международного гуманитарного права, в частности, посвященные обеспечению защиты журналистов во время вооруженного конфликта. Отсутствие четких правовых критериев немеждународного конфликта, неполные гарантии прав сотрудников средств массовой информации могут дать основания для манипуляции или игнорирования их правовой защиты. В статье автором даётся определение понятия «система защиты прав и свобод журналистов», освещающих военные

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конфликты, правовой статус во время вооруженного конфликта, выводы и предложения по восполнению пробелов в международном гуманитарном праве.

Ключевые слова: международное гуманитарное право, вооруженный конфликт, защита прав и свобод, журналист, военный корреспондент, некомбатант.

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REZUMAT:

DREPTUL INTERNAȚIONAL UMANITAR ȘI STATUTUL JURIDIC INTERNAȚIONAL AL JURNALIȘTILOR

Acest articol analizează instrumentele internaționale din sfera dreptului internațional umanitar, în special cele dedicate asigurării protecției jurnaliștilor în timpul unui conflict armat. Absența unor criterii juridice clare de conflict non-internațional, garanțiile incomplete ale drepturilor angajaților din mass-media pot oferi motive pentru manipularea sau ignorarea protecției juridice a acestora. Autorul prezintă conceptul sistemului de protecție a drepturilor și libertăților jurnaliștilor care acoperă conflictele militare, statutul juridic în timpul unui conflict armat, concluzii și propuneri pentru a umple lacunele din dreptul internațional umanitar.

Cuvinte-cheie: drept internațional umanitar, conflict armat, protecția drepturilor și libertăților, jurnalist, corespondent de război, non-combatant.

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In the last decades of the 20th century, the world has entered a new era of widespread military conflicts and local wars that are breaking out all over the globe. The importance of the media in the modern world is extremely significant. Thus, speaking of the 21st century, it should be noted that this is the century not only of armed conflicts but also of information wars.

The journalism of contemporary armed conflicts is one of the most crucial areas of journalism. With the task of informing the public about various sides and aspects of hostilities and including publications of an informative, analytical and journalistic nature, it often approaches the term “armed conflict”¹ in different ways.

The problem of the role and place of journalists in military conflicts is of great importance for society. Above all, it is due to the fact that society takes a keen interest in what happens at the centre of an armed conflict, as well as the ability of the mass media to attract international public opinion to its side. Thus, journalism is an essential tool capable of influencing the outcome not only of individual battles but also of wars in general.

The role of military journalism and the personality of a military journalist are growing immeasurably today, given the complex international situation. Journalists and press workers risk their lives on a daily basis, which is why, when covering events in war zones and other conflicts where journalists are at risk, they need to have professional safety skills and be guided by a complex set of ethical considerations specific to war reporting.

For members of the press, 2022 proved to be a fatal year. According to the Committee to Protect Journalists, at least 67 journalists and media workers were killed during the year, the highest number since 2018 and a nearly 50 percent increase from 2021. This increase was driven by the high number of deaths of journalists covering the war in Ukraine and a sharp rise in murders in Latin America. Of the 67 murders, more than half were recorded in three countries: Ukraine (15), Mexico (13) and Haiti (7), the highest annual rate CPJ has ever

¹ M. D. Kirby, L. J. Jackson. International humanitarian law and the protection of media personnel // UNSW law Journal. Volume 9. № 1. Sydney, 2016. P. 5–16.

recorded in each of those countries. In Mexico and Haiti, journalists were victims of brutal killings in retaliation for their work, and in the vast majority of cases, the perpetrators were not brought to justice. Mexico continues to appear on CPJ's Global Impunity Index, which highlights countries where killers of journalists get away with murder¹.

The conditions in which journalists covering conflicts find themselves are often the cause of death or injury. The history of war journalism dates back to the events of the Crimean War. The relationship between the authorities and the press during the war was ambiguous. Readers of central newspapers had almost no reliable, even belated, information about the fighting as it was cut off by censorship. The authors of many correspondences were officers of active units. For the first time, representatives of the periodical press appeared in large numbers during the Russian-Turkish war of 1877–1878. The concept of allowing correspondents into the area of combat operations appeared.

During the Russo-Japanese War, the situation was different: censors made grave mistakes by, for example, allowing the publication of reports in the central press about the departure for war of certain officers. As a result, the Japanese rate, which had at its disposal openly published lists of officers of the General Staff, could easily ascertain which units would arrive on the battlefield soon².

New changes appeared after the Bolsheviks came to power, who already in the summer of 1918 placed censorship, including military censorship, under the strict control of the Cheka and forbade the publication of information about the actual course of operations until their completion and data on anti-Bolshevik uprisings until their suppression. Foreign correspondents were out of the question, and Soviet correspondents were not allowed beyond division headquarters. The situation was similar during the Great Patriotic War. Of course, Soviet and even foreign correspondents were allowed, but their reports were often far from reality.

Generally, a specific feature of war journalism was the fact that coverage of war events with direct on-site coverage was usually done by active-duty military journalists. The mass participation of civilian journalists, representing a huge variety of media outlets, in covering the events of military conflicts is a key feature of the second half of the 20th century.

The problem of journalist safety in armed conflict is being addressed by specialists in various countries around the world. Many Western companies – CNN, NBC, and BBC – are taking journalism school. These companies now do not let their journalists go to “hot spots” without completing a “special course”³.

There are two factors for surviving and continuing journalistic activity in an extreme situation in a military conflict zone: the ability to behave correctly in such a situation and direct preparation (possession of emergency medical care skills, availability of a first aid kit, etc.). Legal aspects are also significant for a journalist. Although individual reporters do not resolve the main tasks, the heads of the media and relevant government agencies do. At one time, leading international broadcasters and news agencies united around the issue of ensuring the safety of journalists covering “dangerous topics.” The Associated Press, British Broadcasting Corporation, CNN, ITN Network, and Reuters have jointly adopted rules requiring special self-defence and safety training for staff and non-staff in armed conflict. These rules offer compulsory training and provide for compulsory insurance and the provision of “protective equipment” to journalists. The rules call on news agencies to combine their efforts when covering dangerous regions, as well as to organise voluntary consultations with psychologists for journalists returning from assignments. When covering an armed conflict, it is ideal for the media to reflect the positions of both sides of the conflict. The same principle should apply to

¹ Jennifer Dunham. Deadly year for journalists: Murders soar in 2022. [Electronic source]. URL: <http://surl.li/mvvhkm> (Visited on: 22.05.2023).

² Balguy-Gallois A. The protection of journalists and news media personnel in armed conflict // ICRC Magazine 2014. № 853–855. P. 5–42.

³ Labush N. S., Puyu A. S. International Humanitarian Law: Journalism and Human Rights. Study guide. St. Petersburg: Rose of the World, 2021. 232 p.

information. There are many vivid examples of non-compliance with this principle. International humanitarian law, which was created to regulate and “humanize” wars and conflicts, is currently advisory rather than mandatory. Nevertheless, it seems logical to us to study international humanitarian law at journalism faculties. This is necessary in order to grasp the hidden dynamics of the conflict while objectively covering interethnic and interstate contradictions. In other words, a journalist must understand the rules and laws of war.

If a journalist has legal knowledge in this area, it is easier for them to control and cover such processes. Consequently, a situation arises when the parties to a conflict are forced to comply with the standards of international humanitarian law under pressure from the press. This was the case in Vietnam, this was the case in Afghanistan, and this was also the case during the military events in South Ossetia, Ukraine, and Israel. That is why, when we talk about international or national security, the media are one of the defining subjects of such discussions¹.

The last trend is the so-called “mediatisation” of interstate conflicts, i.e., the intensive influence of the mass media on the development of ethnic, religious, and socio-political contradictions. However, of course, such influence can be both positive and negative. Therefore, when we talk about the “humanization” of interstate conflicts, the term „mediation” is more appropriate. It is the situation when the media, international public organisations, and international political institutions mediate in interstate and interethnic disputes that can be identified with the implementation of the norms of international humanitarian law, in other words, the “humanization” of disagreements and disputes. Such a process can develop along three lines: The media as a mechanism of peace-making; the media as mediators; the media as a subject of conflict, objectively reporting on the development and causes of contradictions.

However, regardless of the role played by the media, they are undoubtedly one of the determining factors in the structure of both international and national security.

It would be appropriate, from our point of view, to introduce the term “civil security” in order to distinguish between the spheres of state security and the security of an individual citizen. In this case, international humanitarian law, being a guarantor of the protection of civilians in conflict, can simultaneously be an institution of civil security.

Journalists, whose professional duty is to be present where armed confrontation is taking place and to participate directly in reporting on these events, are considered by the norms of international humanitarian law as civilians and persons who find themselves in the territory of armed conflict. The norms of international humanitarian law state that civilians may lose the right to protection if they join armed groups, if they take up arms, or even if they are in the vicinity of various military installations, since in that case no one can guarantee their lives since military installations will be the first to be attacked².

There are several types of protection granted by the IHL to journalists. Article 79 of Additional Protocol No. 1 regulates the protection afforded to journalists. Attention should be paid to the first and second paragraphs of this article, which refer to the protection afforded to journalists as civilians. After the Second World War, the UN, for its part, proposed to establish certain provisions for the protection of journalists. In particular, the UN proposed to make special identification marks for journalists, to introduce certain records of journalists, to create a database, and to create an international organisation that could regulate the deployment of journalists to various “hot spots”³.

However, journalists themselves and international journalistic organisations opposed the UN initiatives. One of the reasons why journalists were against such protection was the fear that such protection would be a certain instrument of pressure on journalists and would hinder their professional activities in the zone of armed conflicts. A large number of examples at the

¹ Ragionieri R. System structure and conflict dynamics. London, Oxford, 2022. P. 205

² Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II). Geneva, June 8, 1977. [Electronic source]. URL: <https://www.icrc.org/rus/resources/documents/misc/6lkb3l.htm> (Visited on: 22.05.2023).

³ Henckaerts J.-M. and Doswald-Beck L. Customary International Humanitarian Law. Norms. ICRC, 2006. 775 p.

international level confirm that attempts have been made to prevent journalists from covering certain issues related to armed conflict. For the leaders of the armed groups involved in the conflict, the main goal is to prevent journalists from entering places where combat operations are taking place. Journalists can see what the military would not want to show to the world community, namely the indiscriminate nature of the conduct of military operations, violation of IHL norms, destruction of civilians, and many other actions for which, in principle, legal responsibility should be borne. That is why every politician and every military commander who is involved in an armed conflict makes it their task to prevent journalists from going there.

International standards, as well as jurisprudence, show that governments have a negative obligation not to interfere with the transmission of information to the media or those who wish to speak out, as any restriction should limit freedom of expression as little as possible.

The International Covenant on Civil and Political Rights (ICCPR) enshrines cooperation in the establishment of fundamental human rights and freedoms, builds on the provisions contained in the Universal Declaration of Human Rights, and has been ratified by 166 states worldwide. Article 19 of the ICCPR protects the right of everyone to seek, receive, and impart information of all kinds. This article introduces new elements, in greater detail than the Universal Declaration of Human Rights, setting out the limits of freedom, which were created because some states began to accuse others of not allowing their citizens to freely receive and impart information. Consequently, states are obliged to respect and ensure the right of access to information for everyone within their jurisdiction, without distinction of any kind, and to take all necessary measures, legislative or otherwise, to realise human rights within their national systems¹.

In addition, Article 19 of the ICCPR, while preserving the general right of everyone to hold opinions without interference and to seek, receive, and impart information and ideas of all kinds in any form, has been supplemented by the provision that the exercise of these rights carries with it special duties and responsibilities. This responsibility means that the use of the right to freedom of information may be restricted.

The ICCPR sets out a three-part test for determining the legality of restrictions on freedom of expression: any restriction must be provided for by law, as vague or broadly defined restrictions do not fulfil this requirement; it must serve one of the legitimate aims expressly enumerated by the ICCPR; it must be necessary in a democratic society. Article 20(1) of the ICCPR requires States Parties to prohibit by their laws any form of propaganda for war, as well as incitement to national, racial, or religious hatred, if it constitutes incitement to discrimination, hostility, or violence against persons².

Under the influence of international journalists' organisations, provisions for special protection for journalists were not adopted. Journalists also felt that the special identification signs proposed by the UN would, on the contrary, attract the attention of snipers.

The only thing that today really provides protection for journalists in the zone of armed conflict is the norms of international humanitarian law, which say that a journalist is protected like any civilian. Thus, a journalist is subject to those norms of international law that would apply to every civilian. That is, if a journalist is captured, he must necessarily be provided with protection, judicial guarantees, that at the first opportunity he must be extradited to the state to which he belongs, and many other provisions.

Journalists sometimes forget another provision of international humanitarian law, which states that a journalist loses the right to protection as a civilian if he or she becomes a combatant, i.e., takes part in armed hostilities, or is near military installations. Sometimes military commanders offer assistance to journalists. In such a case, the other side will not care whether the journalist is a journalist or a soldier. The journalist will be eliminated along with the other combatants. The same can be attributed to the desire of journalists to use military

¹ Human Rights Committee. One hundred and second session, Geneva, 11–29 July 2011. General Comment No. 34. Article 19: Freedom of opinion and expression. [Electronic resource]. URL: <http://surl.li/insfa> (Visited on: 22.05.2023).

² International Covenant on Civil and Political Rights. Adopted by General Assembly resolution 2200 A (XXI) of December 16, 1966. [Electronic source]. URL: <http://www.un.org> (Visited on: 22.05.2023).

uniforms and camouflage, as mentioned above. From the point of view of international law, this gives an extra reason to mistake a journalist for an ordinary serviceman, with all the consequences that this fact entails.

In any case, a journalist is not allowed to take up arms. International humanitarian law in such a situation qualifies him no longer as a journalist but as a soldier, who in this case is not engaged in his direct duty but becomes a member of an armed formation.

The next issue, which is also highly relevant today, is the freedom of movement of a journalist in a zone of armed conflict. This also introduces certain difficulties in the functioning of a journalist in a conflict zone and in the application of the provisions of international humanitarian law on the protection of journalists as civilians. Many armed groups, for example, require journalists to undergo an accreditation procedure, i.e., to be accredited to one or another headquarters, political group, or army, in order to control the journalist. Lastly, there is the problem of accusing journalists of espionage.

Article 79, “Measures for the Protection of Journalists”, states: “A journalist on dangerous assignment in an area of armed conflict shall, as a civilian, enjoy the full protection afforded by international humanitarian law to civilians”¹. There is the so-called “Certificate of Journalist on a Dangerous Professional Mission”. This certificate is considered to be a universally recognised international document and allows for the identification of a journalist in a zone of armed conflict. International humanitarian organisations recommend that journalists obtain this card before travelling to an armed conflict zone. It can be obtained from various journalists’ organisations or international humanitarian organisations to make it easier to understand that the journalist is a journalist and not a spy or intelligence agent².

An important issue that needs to be addressed in connection with international humanitarian law is the question of the use of modern technology for the collection and transmission of information. There is hardly any doubt that we have long been living in the era of information and psychological warfare. There are plenty of examples when a message resulted in huge casualties or created an atmosphere of panic. The same can be achieved with more sophisticated means of gathering and transmitting information, which can have a higher impact than, say, the direct use of conventional weapons. This problem may lead to the Geneva Conventions and the Hague Conventions being soon revised and supplemented by special provisions regulating, specifically, the use of information and psychological means of warfare.

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¹ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II). Geneva, June 8th, 1977. [Electronic source]. URL: <https://www.icrc.org/ru/doc/resources/documents/misc/6lkb31.htm> (Visited on: 22.05.2023).

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