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Submission date: 31-Aug-2022 03:32PM (UTC+0700)

Submission ID: 1738736049

File name: r_the_International_Humanitarian_Law_Russia_and_Ukraine_War.docx (53.14K)

Word count: 4048

Character count: 23065

Journalist Protection on the Battlefield Under the International Humanitarian Law: Russia-Ukraine War

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Abstract

The work of journalists on the battlefield is a tough duty with all the consequences and the threat of death that can occur at any time. This also happen to the journalist in the war between Russia and Ukraine. The case of two journalist of Fox News who were killed outside the capital city Kiev because the vehicle they were traveling in was shot in the city of Horenka. The purpose of this study is to find out whether the rights of journalists on the battlefield, especially in the conflict between Russia and Ukraine, can be protected by the existence of International Humanitarian Law (IHL). The method used is doctrinal and hermeneutic with data collection techniques, namely document studies and "analyze" or "interpret" prescription texts and legal constructions on the secondary data. The results of this study prove that there are still many violations of the existence of IHL, especially in the 1949 Geneva Conventions in terms of legal protection for journalists on the battlefield.

Keyword: *International Humanitarian Law, Journalist, Protection, Russia and Ukraine.*

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A. INTRODUCTION

Two Fox News journalists were slain on March 14, 2022, in the middle of the armed conflict between Russia and Ukraine. Suzanne Scott, the chief executive officer of Fox News Media, reported on March 15, 2022, that they were murdered after their car was struck by gunfire near Horenka, Ukraine, outside of Kyiv. In addition, a number of journalists were slain in the fighting, with 18 journalists dead and 13 journalists injured, as reported by the Ukrainian Ministry of Culture and Information Policy on April 5, 2022.¹ According to the UN team of 55 monitors in Ukraine, most of the deaths were caused by the use of explosive weapons.² This occurrence sparked a discussion among the international community since the presence of journalists in conflict zones posed a great danger to their lives and even resulted in human rights abuses. It is evident that journalists who do their tasks in combat zones require security. Awareness of the significance of protecting the existence of journalists in conflict zones is not a new issue, as evidenced by the formation of a variety of international agreements containing journalist protections. This has become a global issue since the protection of journalists outlined in the Law of War or what is widely known as International Humanitarian Law is not being effectively applied.³

In providing the latest factual news regarding the conflict between Russia and Ukraine, journalists play an important role in providing news regarding the development of the conflict to the entire world community.⁴ The Human Rights Committee at the United Nations, in the General Comment No. 34 of 2011 on Article 19 of the International Covenant on Civil and Political Rights, defines journalism as "a reporting activity carried out by reporters and analysts, as well as by bloggers and other workers who

¹ Fergi Nadira, April 6th, 2022, "18 Jurnalis Tewas Selama Perang Rusia-Ukraina," Available on Website: <https://www.Republika.co.id/berita/r9wcbz335/18-jurnalis-tewas-selama-perang-rusiaukraina>. Accessed on July 31st, 2022.

² Shelbi Asrianti, May 11st, 2022, "PBB: Jumlah Warga Sipil Ukraina yang Tewas Jauh Lebih Banyak dari yang Dipublikasikan," Available on Website: <https://www.republika.co.id/berita/rbocs8414/pbb-jumlah-warga-sipil-ukraina-yang-tewas-jauh-lebih-banyak-dari-yang-dipublikasikan>. Accessed on August 6th, 2022

³ Desia R. Banjarani, Sri Sulastri, and Kisti Artiasha, Perlindungan Terhadap Wartawan Perang di Daerah Konflik Bersenjata Menurut Hukum Internasional (Studi Kasus Daerah Konflik Irak dan Suriah), *Cepalo*, Vol. 3 No. 1, 2019, p. 19.

⁴ Simon Levett, Protecting Sources of Embedded Journalists, *Griffith Journal & Human Dignity*, Vol. 7 No. 2, 2019, p. 107.

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publish independently through print, internet, and other media". The existence of these journalists plays an important role in fulfilling the rights of people affected by the hot conflict between Russia and Ukraine. In addition, it is also a fulfillment of the rights of national and international communities in reaching and knowing information that has occurred and is currently happening in conflict locations. However, the safety of journalists who cover the battlefield is of great concern. Protection for journalists on the battlefield has actually been regulated in an international treaty known as International Humanitarian Law.⁵

International Humanitarian Law is a rule made by the international community to provide procedures for war and as an effort to protect human rights against certain groups who are in conflict.⁶ In vulnerable situations (vulnerable group) often raises complex problems. This complexity is mainly related to the context of the situation, the institutional framework as well as the legal framework (legal frameworks) that are relevant in protecting those who fall into the vulnerable group category.⁷ In International Humanitarian Law it has been explained that journalists on the battlefield are included as civilians who are classified as vulnerable groups, and in accordance with Article 79 of Additional Protocol I, describes the protection of civilians and military and humanitarian officers in the midst of war.⁸ This has also been explained in the 1949 Geneva Conventions, in the Fourth Convention. The 1949 Geneva Conventions are part of International Humanitarian Law which aims as one of the standard benchmarks in treating victims on the battlefield.⁹

Although the existence of International Humanitarian Law has spread, there are still many violations of the law. In the case that occurred during the conflict between Russia and Ukraine, due to ignoring the law in the war, several journalists died when they wanted to cover conditions related to the war area. According to the Anadolu Agency website, Russia has committed approximately 148 crimes against journalists and media in Ukraine during

⁵ Pukar Dahal, Protection of Journalist in Armed Conflict: An Insight from the Perspective of International Humanitarian Law, *Social Science and Humanities Research*, Vol. 4 No. 6, 2019, p. 21-30.

⁶ Amanda Alexander, A Short History of International Humanitarian Law, *The European Journal of International Law*, Vol. 26 No. 1, 2015.

⁷ Sigit Riyanto, Kajian Tentang Pertautan Hukum Humaniter Internasional dengan Hukum Pengungsi, *Jurnal Media Hukum*, Vol. 20 No. 1, 2013.

⁸ Vitus M. Udegbulem, An Appraisal of International Humanitarian Law, *International Review of Law, and Jurisprudence (IRLJ)*, Vol. 2 No. 3, 2020, p. 113.

⁹ Gary D. Solis, *The Law of Armed Conflict: International Humanitarian Law in War*, Cambridge University Press, 2022, Cambridge, United Kingdom; New York, p. 19.

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the first month of the war.¹⁰ The lack of implementation of this law has a major impact on the protection of journalists. Many studies discuss the protection of journalists on the battlefield, but not all of these studies are the same, and there are definitely differences. For example, the journal published by Hengky Ho discusses the application of International Humanitarian Law in the armed conflict between Palestine and Israel, where they specifically discuss how International Humanitarian Law is applied in armed conflict and how human rights violations in the conflict between Israel and Palestine are handled according to with International Humanitarian Law¹¹, while the research we write will discuss specifically International Humanitarian Law and the role of the law in protecting journalists on the battlefield as stated in the 1949 Geneva Conventions. This paper aims to analyze the relationship between International Humanitarian Law and the protection of journalists on the battlefield during the Russian and Ukrainian wars.

B. RESEARCH METHODS

This research uses doctrinal law research methods and hermeneutic approach. Doctrinal legal research is research by looking for legal prescriptions contained in International Humanitarian Law or the underlying doctrines on the protection of journalists on the battlefield and the use of a hermeneutic approach is a theory of understanding in interpreting the text. The data used is secondary data consisting of primary legal materials and secondary legal materials. The approach used is by analyzing the framework of International Humanitarian Law on the protection of journalists on the battlefield, as well as relevant books and journals, especially on the protection of journalists in the conflict between Russia and Ukraine.

C. RESULT AND DISCUSSION

1. The Protection of Journalists in Battlefield

a. The Essence of the Substance of International Humanitarian Law on the Journalists' Protection

The application of humanitarian law in a hot war that occurred between two or more countries focuses on two main points that

¹⁰ Fergi Nadira, *Op. Cit.*, https://www.Republika.co.id/berita/r9wcbz335/18_jurnalists-tewas-selama-perang-rusiaukraina

¹¹ Hengky Ho, Penerapan Hukum Humaniter Internasional dalam Konflik Bersenjata antara Palestina dan Israel, *Lex Et Societatis*, Vol. 7 No. 2, 2019, p. 180.

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existed before the first International Humanitarian Law existed, namely the First Geneva Convention of 1864. These points are (i) mutual agreement on the importance of having rules or regulations at war; (ii) the emergence of intuition that under any circumstances, humans, 'friends' or 'foes' must receive protection.¹² These two points were then developed and regulated in a regulation known as IHL, which contains guidelines on how to fight and defend the victims. In armed conflict, International Humanitarian Law is applied.¹³ Article 79 of Additional Protocol I, which is a special provision regarding journalists in International Humanitarian Law, is an article that specifically mentions the protection of journalists in international armed conflicts.¹⁴ Article 50 (1) of Additional Protocol I stipulates those journalists sent on risky missions in areas of armed conflict, whether they are independent journalists or war correspondents, must be treated as civilians. As a result, International Humanitarian Law strictly prohibits attacks on journalists.¹⁵

International Humanitarian Law applies the distinction principle and therefore protects combatants and civilians differently. Journalists recognized as civilians in armed conflicts are also included in the protection of International Humanitarian Law.¹⁶ In International Humanitarian Law, there is a fundamental difference between war correspondents and independent journalists.¹⁷ Protection of War Correspondents "War correspondents" are defined as, i.e., "Persons who join the armed forces without actually being members".¹⁸

The War Correspondents have civilian status and therefore receive proper protection even if they are not members of the

¹² Mr. Antonie A. Bouvier, *International Humanitarian Law and the Law of Armed Conflict*, Peace Training Institute, 2020, Williamsburg, p. 12-13.

¹³ Ghada H. Talhami, On Humanitarian Law and the U.S. Double Standard, *Pluto Journals*, Vol. 44 No. 1, 2022, p. 23.

¹⁴ ICRC, June 1st, 2017, "The Additional Protocols at 40," Available on Website: <https://www.icrc.org/en/document/the-additional-protocols-at-40>, Accessed on August 29th, 2022.

¹⁵ R. M. T. S. K. Rathnayake, Protection of Journalists in Armed Conflicts: An International Law Perspective, *OUSL Journal*, Vol. 12 No. 2, 2017, p. 65-66.

¹⁶ Pukar Dahal, *Op. Cit.*, 23

¹⁷ Hilde Farthofer, Journalist in Armed Conflicts: Neutral Observers and Their Rights in International Humanitarian Law, *International Relation and Diplomacy*, Vol. 2 No. 3, 2014, p. 227-229.

¹⁸ Pukar Dahal, *Op. Cit.*, 22,
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armed forces. Additionally, in one way related to the war effort, they benefit from Prisoner of War status if they are captured by the enemy, provided they have been authorized to accompany military forces. In addition, war correspondents benefit from prisoner-of-war status if they are captured by the enemy, provided they have been authorized to accompany military forces. The same is true of military aircraft crews, supply contractors, and members of workers serving in armed warfare equipment.

Geneva Convention III of 1949 aimed at granting Prisoner of War (POW) status. Geneva Convention III stipulates that the detaining state is responsible for the treatment accorded to its prisoners.¹⁹ The prisoners in question are prisoners of the enemy country, namely individuals who are combatants of the enemy country. In this case, the combatants of the enemy countries who are prisoners have legal protection and still get their rights.²⁰ A journalist can be called a war correspondent when they have an identity card to prove their credibility. According to Article 79 of Additional Protocol 1 (1977), "independent" journalists are treated as civilians in armed conflict and are entitled to all the rights and privileges afforded to the civilian population by International Humanitarian Law. Therefore, whether they are imprisoned or captured by it, they are protected from the effects of hatred and the arbitrary actions of the parties to the conflict.

Herein lies the difference between a "war correspondent" and a "journalist," according to Article 4A (4) of the Third Geneva Convention (Article 79 of Additional Protocol I 1977). Although both were recognized as civilians, only war reporters were eligible for prisoner-of-war status. In this case, war correspondents are legally permitted to cover armed units.²¹ Thus, attacks on journalists and media are illegal because they are subjects protected by International Humanitarian Law unless they support military operations.

b. The Essence Value of Protection Journalists as Civilians under International Humanitarian Law

¹⁹ Geneva Conventions III 1949.

²⁰ Himanshu Arora, Geneva Convention III – Prisoners of War (POW), Available at SSRN: <https://ssrn.com/abstract=3680424> or <http://dx.doi.org/10.2139/ssrn.3680424>, Accessed on August 6th, 2022.

²¹ Roderic Alley, The Culture of Impunity: What Journalists Need to Know about International Humanitarian Law, *Pacific Journalism Review*, Vol. 16 No. 1, 2010, p. 91–92. Jurnal Pembaharuan

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Journalists are an important and integral part of any armed conflict; This is due to the role of journalists in news updates that are broadcast worldwide minute by minute about events in war zones.²² Journalists who cover conflicts occasionally assist courts in obtaining crucial evidence needed to prosecute war crimes. Therefore, their work can provide evidence of crimes, support the protection of human rights, foster accountability, and foster global unity.²³ In addition, the media, whether electronic, online, in print, are seen as a source of intelligence and other 'war aid' for the parties to the conflict. Due to job responsibilities, journalists are exposed to the dangers inherent in military operations. Instead of saving and escaping from the battle, journalists came and looked for information on the battlefield. This makes journalists a popular target. Not infrequently, journalists or the media are viewed critically from several perspectives, especially by those who feel threatened by journalistic activities. This makes the task of journalists on the battlefield so stressful, with all the consequences and threats they can feel at any time.²⁴

The public's participation in journalism has significantly changed, as has the role of the journalist, which has evolved from that of a spectator to that of an actual "member" of the conflict. This is made better by the fact that, in modern warfare, information (dis)information and its control are used in addition to traditional weapons of war.²⁵ The conflict between Russia and Ukraine has also invited many journalists to spread the news through the mass media. The roar of Russia's aggression against Ukraine has become the main attraction in the world's mass media in recent days. All media are competing to present the most up-to-date writings and photos.

²² Kashmir Khan, Bakht Zaman, and Rahman Ullah, Emphasizing Journalistic Safety while Reporting in a Conflict Zone: A Case Study of Tribal Areas of Pakistan, *The Journal of Humanities and Social Sciences*, Vol. XXVII No. 1, 2019, p. 67.

²³ Council of Europe Commissioner for Human Rights, May 2nd, 2022, *Not a Target - The Need to Reinforce the Safety of Journalists Covering Conflict*, Available on Website: <https://www.coe.int/en/web/kyiv/-/not-a-target-the-need-to-reinforce-the-safety-of-journalists-covering-conflicts>. Accessed on August 30th, 2022.

²⁴ Sampson Shaba, A Critical Examination of the Disparate Protection Regimes for War Journalist Under International Law, *Law and Social Justice Review (LASJURE)*, Vol. 2 No. 2, 2021, p. 139-146.

²⁵ Isabel Düsterhöft, The Protection of Journalists in Armed Conflicts: How Can They be Better Safeguarded?, *Utrecht Journal of International and European Law*, Vol. 29 No. 76, 2013, p. 09.

Missile explosions and babies born in the bunkers of the city of Kyiv became the impressions that often played on television stations.

With regard to threats to journalists in armed conflict, arrest and possible detention in armed conflict, it is important to note that Human Rights can complement and strengthen IHL. All types of journalists should be treated as civilians. In the Geneva Convention IV 1949 through Additional Protocol I 1977, Article 50 paragraph I states that a journalist who is on a professional mission to cover an armed conflict in a dangerous area is considered a civilian who is free from military attack as long as he does not commit an act that endangers his status. civilians seem to be actively participating in the battle.²⁶

Journalists who are arrested by the authorities of other belligerent countries, in addition to the general application of human rights, also enjoy the fundamental guarantees provided by Article 75 of Additional Protocol I, including, among other things, the prohibition of violence against life, health or physical and/or mental well-being, barbarism against personal dignity, hostage-taking, collective punishment, threats and detention and a fair and humane trial. Overall, neither independent nor accredited journalists are granted special status. While independent journalists are considered civilians and are granted protection under Article 75 of Additional Protocol I, General Articles of Geneva Conventions III and Geneva Conventions IV, war correspondents are specifically named in Geneva Conventions III and protected by POW status as persons joining the military. This distinction is based on the status attached to the roles of independent journalists and war correspondents. Independent journalists who often do not have the means to reach the front lines due to restricted access and lack of support are seen as less exposed to direct threats.²⁷

2. The Deaths of Two Fox News Journalists in Ukraine and Russia

a. Overview of the Armed Conflict in Ukraine-Russia

Initial relations between Russia and Ukraine were positive. However, that relationship has changed as a result of the new Ukrainian leader's desire to join NATO and closer ties to the West. Contrarily, during the Cold War, the Soviet Union a powerful

²⁶ Geneva Conventions IV 1949.

²⁷ Jean Bernard Myson, Abdul Rahman, and Jelly Leviza, Perlindungan Terhadap Pers di Negara yang Sedang Berkonflik Menurut Hukum Internasional, *Sumatra Journal of International Law*, Vol. 2 No. 1, 2014).

communist state at the time was formed when the Russians and Ukrainians joined forces. Both the Soviet Union's dissolution and Ukraine's referendum vote for independence from the Soviet Union occurred in 1991. Boris Yeltsin, the Russian president, concurred that year. Russia, Ukraine, and Belarus later came together to form the Commonwealth of Independent States (CIS). However, the division developed because Ukraine believed that Russia was using the CIS as a tool to exert control over the nations ruled by the Russian Empire and the Soviet Union. In addressing this issue in May 1997, Russia and Ukraine signed a friendship treaty.

Since 2014, ties between Russia and Ukraine have been improving. There was a revolt at the time against Russian dominance. Viktor Yanukovich, the previous president of Ukraine and a pro-Russian, was successfully overthrown by anti-government protestors. Even before the Minsk accord in 2015 brought about peace, there were riots. The revolution also paved the way for Ukraine to want to join NATO and the EU. Putin was upset by the idea of a NATO base being built close to his border. This is also backed by the growing affinities that a number of Eastern European nations, including Poland and the Baltic States, have with NATO. After Yanukovich was overthrown, Russia seized the opportunity to take Crimea in 2014. Russia also supported the separatists in eastern Ukraine, namely Donetsk and Luhansk, against the Ukrainian government.

Putin had the opportunity to make specific security demands on the West before the actual war started. One of his points is that NATO cease all military operations in Ukraine and Eastern Europe. Ukraine and other former Soviet states were requested by Russia to never be admitted as members of the alliance. Since November 2021, the problem of Russia's invasion on Ukraine has been developing. A new Russian army buildup on the Ukrainian border is visible in a satellite photograph. Moscow is reportedly assembling 100,000 troops as well as tanks and other military equipment, according to the West. Russian intelligence predicts an attack on Ukraine. It is disputed by Russia. Although commonly believed, Putin's nation will launch an assault on February 16, 2022. Large-scale military drills are also being conducted, notably in the ocean and Belarus' neighbor. Despite the fact that the first prognosis did not come true, NATO countries in Eastern Europe received warnings from Estonian intelligence. Utilizing militia organizations in Donbass, Eastern Ukraine, that rebelled against the government and received help

from Russia, culminating on February 21, 2022, the attacks may be carried out in a restricted way. The Donetsk People's Republic (DPR), the Republic of Indonesia, and the Donbas militia's independence were all declared independent by Putin. Citizens of Luhansk (LPR). A edict authorizing the dispatch of troops under the pretense of "maintaining security" was also adopted at that time. The day after Putin's proposed army mobilization received approval from the Russian parliament. Putin abruptly declared "military actions" that were conducted in a number of cities on February 24, 2022, and explosions were audible throughout Ukraine on that day.²⁸

b. International Humanitarian Law Application on the Protection of Journalists in the Conflict between Russia and Ukraine

International Humanitarian Law must be obeyed by all countries, especially the right of journalists to be protected. However, the conflict between Russia and Ukraine seems to have put aside protection for journalists, and this can be seen in the 18 journalists killed and 13 journalists injured since the start of the Russia-Ukraine war. Russia also committed approximately 148 crimes against Ukrainian journalists and media in the first month of the war.²⁹ One of the most popular cases of violence and murder perpetrated by Russian soldiers was the shooting attack on two journalists working for Fox News which resulted in killing of both journalists. The two journalists, the 55 years old cameraman Pierre Zak Rzewski and a 24 years old producer Oleksandr Kurashina, died when their vehicle was hit by gunfire in Horoeka, outside the Ukrainian capital. Over the past few years, journalists have become more and more in danger worldwide.³⁰

The case is very unfortunate because the provisions related to the protection of journalists have been regulated comprehensively and in detail in general in article 79 of AP I as follows: Journalists are protected in such a way under the Conventions and this Protocol, provided they do not take actions that adversely affect their status as citizens, civilians, and without prejudice to the rights of accredited war correspondents for the armed forces to the status specified in

²⁸ Sef, March 6th, 2022, "Kronologi dan Latar Belakang Persng Rusia vs Ukraina," Available on Website: <https://www.cnbcindonesia.com/news/20220304133929-4-320041/kronologi-dan-latar-belakang-perang-rusia-vs-ukraina>. Accessed on August 30th, 2022,

²⁹ Fergi Nadira, *Op. Cit.*, <https://www.Repub.lik.co.id/berita/r9wcbz335/18-jurnalis-tewas-selama-perang-rusiaukraina>

³⁰ John V. Pavlik, The Russian War in Ukraine and the Implication for the News Media, *Athens Journal of Mass Media and Communication*, Vol. 8, 2022, p. 10-11.

Article 4A 4) of the third Convention. Article 79 is also included 'as a special provision relating to journalists in International Humanitarian Law entities', which obliges parties to international armed conflicts to provide special protection to journalists in relation to the dangers and risks they face on the battlefield. This fact illustrates the inability of the Russian military to implement the rules of International Humanitarian Law as an instrument for the protection of journalists when serving in professional missions in areas of armed conflict where journalists should not be detained for their work, or harassed or assaulted by law enforcement because journalists are civilians and are entitled to protection. On the contrary, the State is obliged to protect them when they become victims acts of violence by third parties and also their equipment and materials are confiscated or destroyed.³¹

D. Conclusion

As a chart of rules that through its instruments provide procedures and regulations in war and the protection of war victims, International Humanitarian Law has an important and deep essence for the implementation. Geneva Convention IV 1949 provides categories of protection for the civilian population, namely general protection and special protection. Journalists, independents and war correspondents kept in conflict areas are among those granted civilian status in the special protection category. The armed conflict between Russia and Ukraine that has occurred since February 24, 2022, recorded 18 journalists killed and 13 journalists injured since the start of the Russia-Ukraine war, and one of the news that shocked the world was the death of two Fox News journalists who were running. Government instability and domestic political turmoil have resulted in 100% impunity. So, another way of dealing with this problem is to remind the supporting countries behind every combatant that flows aid of the importance of implementing or applying International Humanitarian Law during conflict.

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