

Field Guide

Media professionals and armed conflict

**PROTECTION AND RESPONSIBILITIES UNDER
INTERNATIONAL HUMANITARIAN LAW**



In partnership with



**British Institute of
International and
Comparative Law**

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The Handbook and Field Guide reflect the law as at July 2017.

Key messages

- > Media professionals are protected as civilians under international humanitarian law.
- > Parties to an armed conflict are prohibited from directly and deliberately attacking them.
- > Media professionals are required to respect the law and have particular responsibilities related to their professional and operational activities.
- > The ordinary work of media professionals – gathering information and reporting to the public from armed conflict – is civilian in nature and must be respected as such.
- > Media professionals may only be detained on security or criminal grounds and should be released as soon as the reason for their detention no longer exists.
- > As civilians they are entitled to humane treatment and access to basic sanitation and medical care during detention.
- > Hostage taking and kidnapping for financial or political reasons are unlawful under international law.
- > Torture and sexual violence are strictly prohibited by IHL and must never be used against media professionals.

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Introduction

What is this field guide?

This Field Guide summarises the legal protection and responsibilities of media professionals operating in armed conflicts. It focuses on international humanitarian law (IHL) – also known as the ‘law of armed conflict’ – and sets out some aspects of international and UK criminal law. It is important for media professionals reporting from armed conflict to be familiar with the rules of IHL.

The Field Guide is a summary version of a Handbook for media professionals on IHL also produced by the British Red Cross, and can be read in conjunction with it. The Handbook contains a more detailed discussion of the legal provisions set out in the Field Guide, using a similar structure.

Who is this field guide for?

The Field Guide is primarily for media professionals, in particular those based in the United Kingdom, who undertake assignments in areas of armed conflict, or who are otherwise interested in the rules affecting them in such situations. The Field Guide and the Handbook will also be useful for editors and supervisors, government officials and members of the armed forces, as well as all those interested in the legal position of media professionals in armed conflict.

What is the role of the British Red Cross in IHL?

The British Red Cross, like all National Red Cross and Red Crescent Societies, is an auxiliary to its public authorities in the humanitarian field. It also has a responsibility to help the authorities to promote and to disseminate knowledge of IHL to relevant groups in the United Kingdom, including to media professionals.

Quick reference by topic

ACQUISITION OF ASSETS

- > responsibilities connected to, see: 3.3

ATTACKS AGAINST MEDIA PROFESSIONALS

- > direct attacks against media professionals, see: 2.1
- > indirect attacks affecting media professionals, see: 2.2
- > loss of protection from attack, see: 2.3

DETENTION/INTERMENT

- > hostage taking/kidnapping, see: 2.4
- > grounds for detention/internment, see: 2.4
- > treatment while in detention/internment, see: 2.5
- > correspondence while in detention/internment, see: 2.5
- > publication of information about detained/interned persons, see: 3.2

DIRECT AND PUBLIC INCITEMENT TO GENOCIDE

- > liability for crime, see: 3.4

EMBEDDING

- > effect on civilian status, see: 1.2
- > relationship to 'war correspondent' status, see: 1.2
- > restrictions on publications by embedded media professionals, see: 3.2

ENFORCEMENT OF IHL

- > in domestic law, see: 2.6; 3.1
- > in international law, see: 2.6; 3.1
- > informal mechanisms of enforcement, see: 2.6

ESPIONAGE/SPYING

- > loss of protection, see: 2.3
- > detention on suspicion of spying, see: 2.4
- > treatment while in detention, see: 2.5
- > espionage and professional investigations, see: 3.2

INTERNATIONAL COURTS AND TRIBUNALS

- > role of, see: 2.6
- > giving evidence at, see: 2.6
- > contempt of, see: 2.6
- > reporting on international criminal proceedings, see: 3.4

INTERNATIONAL CRIMINAL LAW

- > protection provided by, see: 2.6
- > responsibility for violations of, see: 3.1
- > relationship with IHL, see: 1.4; 2.6; 3.1
- > crimes against humanity, see: 3.1; 3.4
- > genocide, see: 3.1; 3.4
- > crimes relevant to the work of media professionals, see: 3.4

INTERNATIONAL RED CROSS AND RED CRESCENT MOVEMENT

- > assistance provided to media professionals, see: 1.5
- > use of and reporting on the distinctive emblems, see: 1.2; 3.2
- > access while in detention or internment, see: 1.5; 2.5

INTERVIEWS

- > taking interviews and asking questions, see: 3.2
- > using information from interviews, see: 3.2

PHOTOGRAPHS/IMAGES

- > taking and using images, see: 3.2

PUBLICATIONS

- > publications as part of international crimes, see: 3.4
- > publications on prisoners of war (POWs)/ civilian internees, see: 3.2
- > restrictions on publications by embedded media professionals, see: 3.2
- > slander, see: 3.2
- > torture and cruel, inhuman and degrading treatment, see: 3.2
- > detainees/internees, see: 3.2
- > constituting an international crime, see: 3.4
- > liability of editors and supervisors, see: 3.4

PROPAGANDA, DISSEMINATION OF

- > loss of protection, see: 2.3

SECURITY GUARDS

- > use for defensive purposes, see: 3.3
- > responsibility for, see: 3.3

SELF-DEFENCE

- > relationship with direct participation in hostilities, see: 2.3
- > use of force, see: 3.3

SEXUAL VIOLENCE

- > prohibition of, see: 2.1
- > in detention, see: 2.5

TORTURE AND OTHER ILL TREATMENT

- > prohibition of, see: 2.1; 3.2
- > in detention, see: 2.5

WAR CRIMES

- > definition of, see: 1.4, 2.6; 3.1
- > witnessing, see: 3.2
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- > committed against media professionals, see: 2.6
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- > meaning of, see: 1.2
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1.

**MEDIA PROFESSIONALS
AND INTERNATIONAL
HUMANITARIAN LAW**



1. Media professionals and international humanitarian law

The rules set out in this Field Guide are only relevant to those situations to which IHL applies – **situations of armed conflict**. IHL does not apply during peacetime or during circumstances involving internal tensions or disturbances, such as riots.

1.1 International humanitarian law (IHL): The Basics

IHL is also known as ‘the law of armed conflict’ or ‘the law of war’. It is the body of international law that protects certain persons and objects during armed conflict and regulates the conduct of hostilities. In doing so, IHL seeks to **balance the legitimate military objectives of parties to a conflict with the needs of humanity**.

WHERE IS IHL FOUND?

IHL consists of both international treaties and customary international law (unwritten rules of international law derived from State practice). The treaties that contain the core rules of IHL are:

- > The four **Geneva Conventions of 1949**, and
- > Their two **Additional Protocols of 1977**.

The Fourth Geneva Convention and the Additional Protocols set out the core rules protecting civilians during armed conflict. The text of these treaties can be found on the website of the International Committee of the Red Cross at icrc.org/ihl.

WHAT ARE THE MAIN RULES OF IHL?

Two fundamental rules of IHL, which will be referred to often in this Field Guide, are:

- > The **principle of distinction** – parties to a conflict must distinguish between civilians and combatants and must not target civilians. Media professionals are civilians under IHL.
- > The **principle of proportionality** – prohibits attacks where the expected loss of civilian life or injury to civilians is excessive to the direct military advantage anticipated.

WHICH ISSUES ARE COVERED BY IHL?

In armed conflicts, IHL only regulates **conduct connected to the hostilities**. It does not address all situations that may be relevant to media professionals.

IHL regulates:

- > The types of weapons parties may use in hostilities
- > Who may and may not be attacked
- > Which objects are safe from attack at all times and which may be attacked if doing so offers military advantage
- > The treatment of persons in detention or internment
- > Special protection and rules for particular groups who help war victims, including some medical and religious personnel.

IHL does not regulate:

- > immigration and visas
- > Ordinary criminal matters not connected to hostilities
- > Defamation rules
- > Ownership and activities of media organisations
- > Free speech and associated human rights issues.

IHL **does not regulate the legality of an armed conflict** (i.e. whether it is lawful for one party to wage war against another). Its focus is on regulating the actions of parties during an armed conflict.

1.2 Media professionals and IHL

Media professionals are civilians under IHL and are entitled to protection as such in all situations of armed conflict. This means that parties to a conflict must not deliberately target media professionals – unless the media professionals take action that causes them to lose this protection. This is discussed in Part 2.

Unlike, for example, certain medical or religious personnel, media professionals are **not entitled to special protection, over and above their civilian status**. They may not use the **red cross emblem (or any of the distinctive emblems)** as a symbol of protection.

WHO IS A 'MEDIA PROFESSIONAL'?

For the purposes of this field guide, media professionals are:

- > Any person who investigates, gathers, and/or reports news and information from an armed conflict, regardless of their nationality, accreditation, or medium. The reporting of news and information from an armed conflict might be done through any medium including film, television, photography, radio, printed word, or digitally (including blogs).

ARE THERE SPECIFIC TYPES OF MEDIA PROFESSIONALS UNDER IHL?

The definition of media professional used in this field guide includes the IHL categories of **'journalist'** and **'war correspondent'**:

- > Article 79 of Additional Protocol I confirms the civilian status of **'journalists'**. This term is otherwise left undefined, but is understood to include all reporters, photographers, and technical assistants who earn their principal income from journalism. This definition is narrower than that of 'media professional', as used in this guide. However, since 'journalists' do not have special protection under IHL and are considered part of the general category of 'civilians', the different definition has little practical relevance. One difference is that, under IHL, 'journalists' are entitled to an ID card issued by their State. However, there is nothing to prevent either a State or an employer issuing any media professional with a similar card.
- > In contrast, **the term 'war correspondent' has a particular legal meaning under IHL.** It refers to those media professionals (including journalists) who are **specifically authorised to accompany a State's armed forces and who benefit from prisoner of war (POW) status if captured.** This means that, while war correspondents are still civilians even if they accompany the armed forces, **they are entitled to different protection from ordinary civilians on capture.** They are also entitled to an identity card showing their status as war correspondents. Not every media professional who accompanies the UK armed forces is automatically considered a 'war correspondent' – special accreditation and documentation is required to receive this status.

WHAT IS THE STATUS OF EMBEDDED MEDIA PROFESSIONALS?

Embedded media professionals are civilians, even if they are working closely with the armed forces. Embedded media professionals are not necessarily the same as ‘war correspondents’ under IHL. War correspondent status requires specific authorisation – generally over and above what is required to be embedded formally with a military unit. Consequently not all media professionals embedded in UK military units are war correspondents as understood by IHL, although they can be, if they are specifically accredited as such.

1.3 The application of IHL

IHL applies during armed conflicts, but it may not always be clear when an armed conflict is taking place. This section sets out when, where, and to whom IHL applies.

WHEN DOES IHL APPLY?

IHL applies to situations of **international and non-international armed conflict**, as well as to situations of belligerent occupation (where the armed forces of a State have taken effective control over part or all of the territory of another State, regardless of whether force is used). It does not apply to situations falling below this threshold, such as riots, internal disturbances and tensions. IHL applies from the start of an armed conflict until peace is restored or a peaceful settlement has been reached.

There are two types of armed conflict, with different rules applying in each:

- > **International armed conflict:** where armed force is used between two or more States. Examples include the First and Second World Wars, and the First and Second Gulf Wars. The rules of international armed conflict also apply to situations of occupation. Examples include the occupation of Iraq following the 2003 Second Gulf War and Israel’s occupation of Palestinian territory.

The **Geneva Conventions (except for Common Article 3)** and **Additional Protocol I** apply to international armed conflict.

> **A non-international armed conflict** is a situation of intense armed violence either between a State and an organised non-State armed group or between organised non-State armed groups. Non-international armed conflicts occur within the territory of a single State; there is also some recognition that such conflicts may cross State borders. An example of a non-international armed conflict between a State and one or more non-State armed groups is the conflict in Syria that eventually developed following protests in March 2011.

Far fewer IHL treaty rules apply to non-international armed conflict than to international armed conflict. Parties to a non-international armed conflict are required, at a minimum, to respect the fundamental guarantees set out in **Common Article 3 of the Geneva Conventions**. This Article includes provisions requiring parties to a conflict to protect the physical and mental well-being of those persons not taking a direct part in hostilities (including media professionals). **Additional Protocol II** also applies to non-international armed conflicts, but only where certain additional criteria (as set out in that Protocol) are met.

IHL applicable in each type of armed conflict

International Armed Conflict	Non-international Armed Conflict
<p>↓</p> <ul style="list-style-type: none"> > The Four Geneva Conventions (less Common Article 3) > Additional Protocol I > Customary International Law 	<p>↓</p> <ul style="list-style-type: none"> > Common Article 3 of the Geneva Conventions > Additional Protocol II (where certain conditions are met) > Customary International Law

WHERE DOES IHL APPLY?

In an international armed conflict IHL applies **throughout the entire territory of the parties to the conflict, whether or not actual combat is taking place there**. In a non-international armed conflict IHL applies to the **whole territory under the control of a party to the conflict**.

It also applies to particular groups connected to hostilities wherever they are located, for example, those in detention even outside the territory of a party. IHL applies **only to those situations that are connected to an armed conflict** and not to other situations (such as ordinary crimes), even though they may occur in an area of conflict.

TO WHOM DOES IHL APPLY?

IHL regulates the conduct of **States, non-State armed groups and individuals** involved in an armed conflict.

1.4 IHL and other areas of law

IHL is not the only body of law that applies during armed conflict. Other bodies of international law also apply concurrently with IHL: including international human rights law and international criminal law.

WHAT IS INTERNATIONAL HUMAN RIGHTS LAW?

International human rights law is a body of international legal rights that are inherent to all persons wherever they live. It sets out the protection that individuals can expect from States.

These rules are found in international instruments such as the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966). They are also found in regional human rights treaties, such as the European Convention on Human Rights, to which the UK is a State party.

Human rights law applies at all times, including during armed conflict and peacetime, throughout the jurisdiction (including the territory) of a State which is a party to a human rights treaty. However, sometimes, in limited situations which may include armed conflict, States are permitted to derogate (depart) temporarily from some aspects of human rights (though not, for example, the prohibition on torture). In contrast, **States are unable to derogate from IHL rules.**

In armed conflict, rules of IHL and human rights law are generally complementary to one another. Where there is a divergence between the two bodies of law, the rules of IHL are considered to take precedence, though human rights law still applies as far as possible. This is because IHL has been developed to deal specifically with the unique circumstances of armed conflict.

WHAT IS INTERNATIONAL CRIMINAL LAW (ICL)?

ICL is the body of law that seeks to hold individuals, including media professionals, accountable for serious violations of international law, including IHL. **States are primarily responsible for prosecuting individuals accused of committing international crimes in domestic courts.** However, a number of international courts and tribunals have also been established, including the permanent International Criminal Court (ICC).

The rules of ICL are found in the statutes and case law of international criminal courts and tribunals, including the Rome Statute of the International Criminal Court.

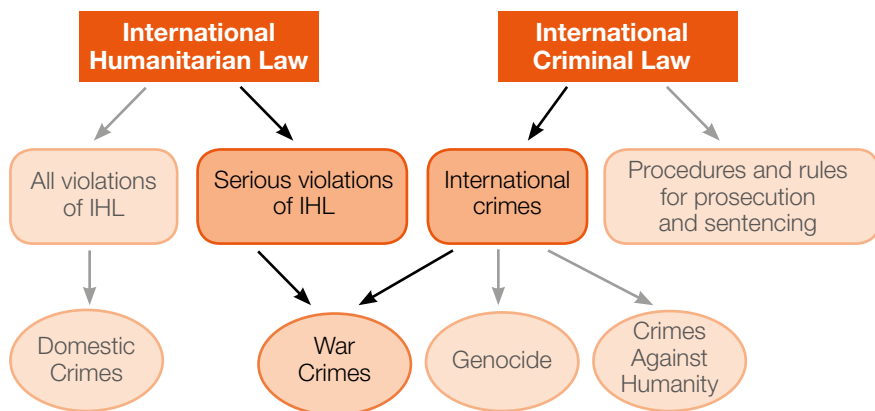
International crimes include **war crimes, genocide, and crimes against humanity. War crimes are serious violations of IHL: they can only be committed during an armed conflict.** In contrast, both genocide and crimes against humanity can be committed at any time, although they may occur during armed conflicts.

ICL applies to **all individuals who commit an international crime.** Crimes can be committed in a number of ways, including by assisting or encouraging another to commit a crime.

ICL also sets out the **procedures and mechanisms** necessary for their investigation and prosecution. A person can only be held to account for an international crime where a court (either international or domestic) has 'jurisdiction' to bring them to trial and sentence them. **International courts have different jurisdiction depending on the treaty (often called a 'statute') that created them.** For example, in most cases, the ICC has jurisdiction over relevant crimes committed in the territory of, or by a national of, a State that is a party to its statute (the Rome Statute).

Situations may be referred to it by (1) States who are party to the Rome Statute; (2) the UN Security Council (regardless of whether the State in question is a party to the Rome Statute); or (3) the Prosecutor of the ICC, subject to certain requirements. The ICC may not take up a case if it is to be dealt with by a State's own courts (known as the 'principle of complementarity').

IHL and ICL



1.5 International Red Cross and Red Crescent Movement

The International Red Cross and Red Crescent Movement includes the following organisations: The International Committee of the Red Cross (ICRC), National Red Cross and Red Crescent Societies in almost every country and the International Federation of Red Cross and Red Crescent Societies (IFRC). The ICRC has a special role in safeguarding IHL and supporting its development, and National Red Cross and Red Crescent Societies promote and disseminate knowledge of IHL in their territories.

The ICRC and National Societies also undertake practical activities in situations of armed conflict. Some of these are set out on the following pages. The ICRC also operates a 24-hour assistance hotline for media professionals reporting from armed conflict and other areas of violence.

ICRC HOTLINE NUMBER: +41 79 217 32 85 (24 hours)

ICRC HOTLINE EMAIL: press@icrc.org

Assistance can also be obtained by getting in touch with a local ICRC delegation/office or through a National Red Cross or Red Crescent Society.

This hotline enables the ICRC to act rapidly to provide information and assistance, whenever possible, when media professionals are arrested, captured, detained, reported missing, wounded, or killed. **The hotline can be contacted by a media professional, their editor/supervisor, their family, or a national or international press association.** Any assistance provided by the hotline is confidential. It is expected that those benefiting from assistance will also treat any information given to them in the same way.

The **ICRC may be able to assist** a media professional by:

- > Seeking confirmation of a reported arrest of a media professional and accessing them in detention (accompanied by a doctor if necessary)
- > Working with detaining authorities to improve detention conditions
- > Providing humanitarian assistance to detained media professionals
- > Passing on information about a detained media professional to their family, employers or another professional association
- > Assisting the family of a detained media professional to make contact with them
- > Evacuating wounded media professionals from conflict zones
- > Repatriating media professionals released from detention (where no other service is available)
- > Where necessary, assisting in the recovery or transport of deceased media professionals.

The ICRC is **not able to assist** with:

- > Life or other insurance
- > Representation or advice in legal proceedings
- > Advocacy in relation to freedom of speech and expression issues or participation in press campaigns
- > Payment of ransom for hostages
- > Demanding the release of a detained media professional
- > Public denunciations of particular attacks against media professionals.

More information about the ICRC hotline and associated services can be found on the ICRC website:
icrc.org/eng/resources/documents/publication/p0394.htm.

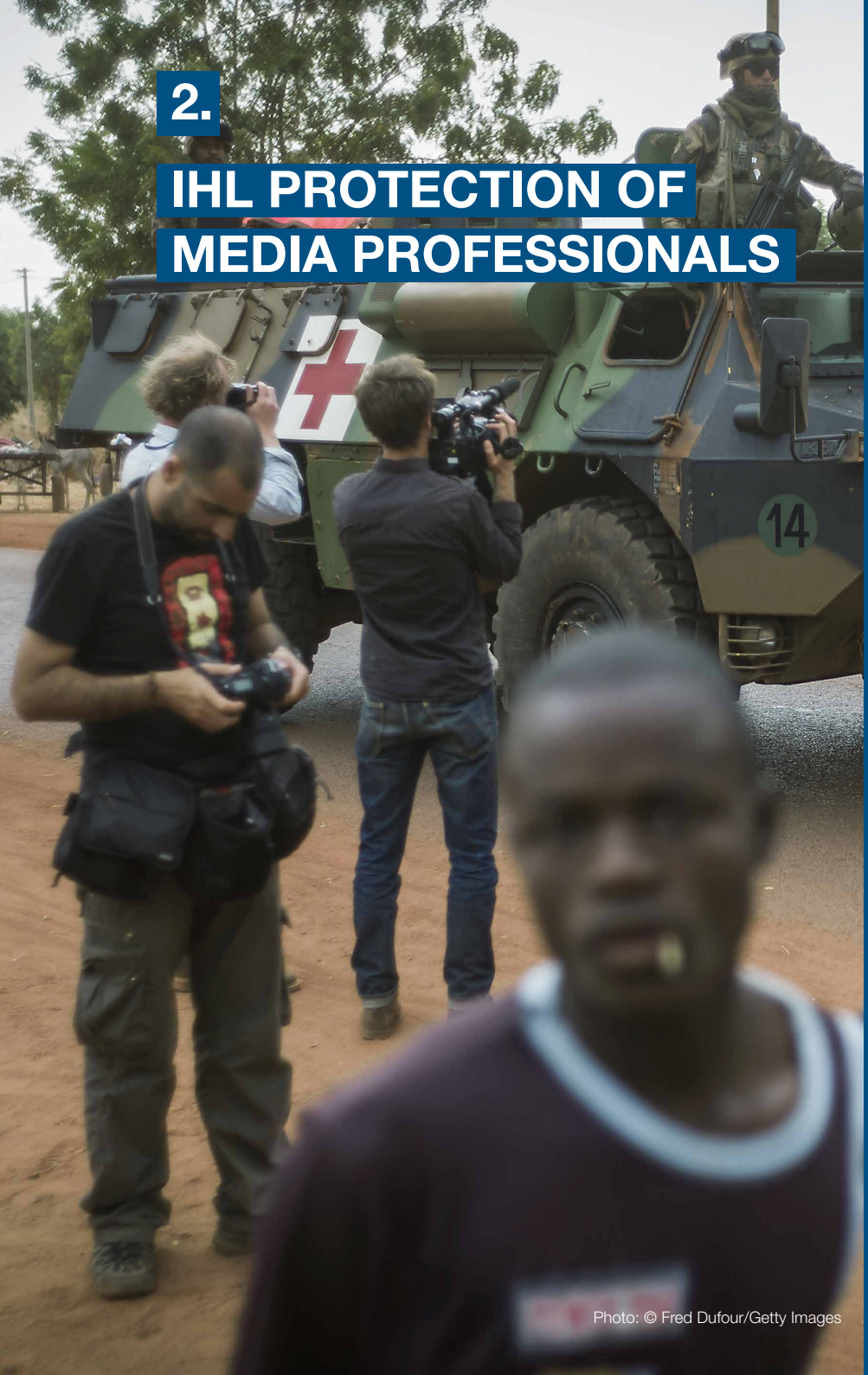
The National Red Cross or Red Crescent Society of the country may also be able to offer media professionals the following services, subject to its activities and capacity:

- > Assisting with family contact and tracing enquiries, in co-operation with the ICRC and other National Societies
- > Providing humanitarian assistance and/or first aid.

A directory of National Red Cross and Red Crescent Societies is located at: ifrc.org/en/what-we-do/where-we-work/. More information about their particular services may normally be found on their respective websites (accessible from the directory pages).

2.

IHL PROTECTION OF MEDIA PROFESSIONALS



2. IHL protection of Media Professionals

This part sets out the main rules of IHL that protect media professionals during armed conflict. IHL protects media professionals as civilians and requires parties to refrain from attacking them (except in accordance with the rules of IHL outlined here). IHL also provides protection during detention and internment. This part also addresses how the rules that protect media professionals are enforced on a domestic and international level.

IHL does not deal with aspects of the work of the media during conflict. For example, IHL does not address the ability of a media professional to access a particular area, to obtain information, or to publish and transmit news from conflict zones. These issues are addressed by international human rights law and domestic laws.

2.1 Protection from direct and deliberate attack

Media professionals are protected as civilians under the Geneva Conventions and Additional Protocols in both international and non-international armed conflicts.

HOW ARE MEDIA PROFESSIONALS PROTECTED FROM DIRECT AND DELIBERATE ATTACK?

It is prohibited to murder a media professional in armed conflict.

Murder refers to the deliberate unlawful killing of a person, including the killing of a media professional, contrary to the rules of International humanitarian law (IHL).

IHL protects media professionals, as civilians, from deliberate and direct attack through the **principle of distinction**. The principle of distinction requires parties to a conflict **to distinguish between:**

- > **Civilians** and
- > **Combatants.**

Parties are prohibited from deliberately attacking civilians and civilian objects and must only direct attacks against lawful targets.

Lawful targets include, for example, combatants and objects with a military purpose, such as army barracks and munitions factories.

However, civilians who take a direct part in hostilities may be attacked (see discussion below at 2.3).

ARE SOME FORMS OF VIOLENCE ALWAYS PROHIBITED?

IHL prohibits particular types of violence in all circumstances. For example, the use of **sexual violence** is strictly prohibited under IHL and must never be used against media professionals. Similarly, the use of **torture** is never permitted under international law.

Parties to a conflict are also prohibited from undertaking attacks **solely designed to spread terror among the civilian population**. This prohibition can include, for example, attacking media professionals for the sole purpose of intimidating them into silence.

DO SOME GROUPS OF MEDIA PROFESSIONALS RECEIVE ADDITIONAL PROTECTION?

Some groups of civilians benefit from additional, special protection under IHL. Women, including female media professionals, are subject to special protection and respect. Civilians, including media professionals, who fall ill or are wounded during a conflict, are entitled to special protection and respect, including the right to receive medical treatment and assistance, without discrimination, by any party.

2.2 Indirect attacks

The dangers of armed conflict are not limited to direct and deliberate attacks: media professionals may also suffer injury and even death as a result of their closeness to an attack on a legitimate military target. **Not all civilian deaths in armed conflict are prohibited by IHL**. This section sets out the rules regulating those attacks that may result in incidental civilian deaths.

WHAT ABOUT WHEN MEDIA PROFESSIONALS ARE NOT THE OBJECT OF AN ATTACK?

IHL permits parties to a conflict, in some circumstances, to cause incidental damage (including death) to civilians where it results from a lawful attack against a military target (such as an army barracks or a munitions factory). However, the presence of civilians, including media professionals, in and around an otherwise legitimate military target, must be taken into account by parties before launching an attack. The legality of such an attack is assessed in accordance with two rules of IHL: the **principle of proportionality** and the **prohibition on indiscriminate attacks**.

WHEN IS AN ATTACK PROPORTIONATE?

An attack on a legitimate military objective that causes injury to or the death of civilians, including media professionals, is lawful under IHL where it is proportionate: i.e. **where the expected loss of civilian life does not outweigh the direct and concrete military advantage anticipated from the attack**. Attacks that are disproportionate (in that they cause more civilian injury and death than the military benefit gained) are unlawful.

There is **no exact formula** for working out whether an attack is proportionate or not. Assessments are to be made according to the information available at the time of the attack. Sometimes this rule may be exploited by parties to a conflict who use the presence of civilians as **human shields** from attack. While this practice is unlawful under IHL, an attack against a 'shielded' target may still be lawful if it is proportionate.

WHAT IS AN INDISCRIMINATE ATTACK?

IHL prohibits attacks that are indiscriminate: i.e. attacks that do not distinguish between lawful and unlawful targets. An example of this is treating a number of separate military objectives that are located in an area also including civilians as a single target, or the use of particular tactics, such as 'carpet bombing', which are imprecise.

ARE THERE RESTRICTIONS ON THE USE OF PARTICULAR WEAPONS BY PARTIES?

Parties to a conflict should not use weapons that are **indiscriminate**, that do not distinguish between lawful and unlawful targets and which have a particularly negative effect on the civilian population. Examples of weapons that may be used indiscriminately are anti-personnel mines and cluster munitions.

In addition, parties must never use weapons that cause **superfluous injury or unnecessary suffering**: this means that a weapon does more damage than is 'necessary' to stop a person from fighting. This includes bullets that expand or explode in the body, as well as chemical and biological weapons.

WHAT PRECAUTIONS MUST PARTIES TAKE WHEN LAUNCHING AN ATTACK?

There are a number of rules that require parties to a conflict to take precautions before and during an attack to minimise the accidental targeting of civilians. These precautions include:

- > The exercise of **constant care** to spare civilians during an attack
- > **Verification** that the intended objects of the attack are not civilian
- > **Cancellation or suspension** of an attack if it becomes clear that the attack is against a civilian or civilian object or is disproportionate, and
- > The issue of an **advance warning** of an attack, where circumstances permit.

2.3 Direct participation in hostilities

As noted above, media professionals, as civilians, are protected from direct and deliberate attack unless, and for the period that, they take a direct part in hostilities.

WHAT IS 'DIRECT PARTICIPATION IN HOSTILITIES'?

There is no clear definition of 'direct participation in hostilities'. Whether the conduct of a civilian, including a media professional, amounts to direct participation in hostilities is normally to be assessed on a factual, case-by-case basis. It will generally include the following three elements:

Threshold of harm: the conduct is likely to cause military harm or death and serious injury.

+

Direct causation: there is a direct causal link between the conduct and harm.

+

Belligerent nexus: the conduct is so closely related to hostilities that it forms an integral part of them.

For example, joining in the fighting against an adversary is a direct participation in hostilities and would expose a media professional to lawful attack by a party. However, not every situation is as clear-cut as this example.

DO THE ORDINARY PROFESSIONAL TASKS OF THE MEDIA CONSTITUTE DIRECT PARTICIPATION IN HOSTILITIES?

The ordinary professional work of media professionals will not generally amount to direct participation in hostilities. IHL prohibits the targeting of media professionals for undertaking their ordinary work in armed conflict.

The following activities connected to the work of media professionals **are unlikely to be a direct participation in hostilities:**

- > Using force in **self-defence** and carrying small weapons (such as a handgun) for defensive use against an unlawful attack, such as rape, murder or abduction.
- > **Reporting on and publishing news and information** from or about a conflict. Even if this results in some military harm to a party it would normally be too indirect to amount to a 'direct' participation in hostilities.

- > **Refusing to assist** a party to a conflict to undertake tasks of a military nature.
- > Providing or receiving **medical assistance**, including first aid, to or from a member of a party to a conflict **is not a direct participation in hostilities**.
- > Participating in **war-sustaining activities**, including publication of **propaganda** (that is not an incitement to violence). This is normally too indirect to constitute a direct participation in hostilities, even though it may be a vital part of a party's military capability.

WHICH ACTIVITIES ARE LIKELY TO BE A DIRECT PARTICIPATION IN HOSTILITIES?

The following activities **are likely to be a direct participation in hostilities** and may cause a media professional to lose their protection from attack **for the duration of each specific act:**

- > Acts of war, including **taking up arms** or using violence against a party to a conflict, that is not in self-defence.
- > Engaging in a broadcast or publication that specifically **incites and facilitates violence against civilians or a party to a conflict** (as opposed to general propaganda in support of one side). An example of such conduct would be specifically calling for attacks against a particular group involved in a conflict and publically transmitting information including the location of a member of that group to facilitate such attacks.
- > **Passing on tactical information** to a party to a conflict, such as the location of military targets. Where such conduct forms part of a military operation, it is likely to cause military harm to a party to a conflict.
- > Engaging in **espionage/spying** may constitute direct participation in hostilities. The collection and transmission of tactical information about a party to a conflict to another is likely to constitute spying and also a direct participation in hostilities. The collection of similar information for transmission to the public (and not to pass on to a party) is not an act of espionage, although it may be unlawful on other grounds.

2.4 Detention and internment

Throughout this field guide, for ease of reference, the word **‘internment’** is used specifically to describe civilian internment for security reasons in international armed conflict. The word **‘detention’** is used for all other incidents of deprivation of liberty.

This section will examine the International humanitarian law (IHL) rules relating to the capture, internment and detention of media professionals in armed conflict. Generally, parties are permitted to intern and detain civilians, including media professionals, for security reasons in armed conflict, as well as for criminal offences related to the armed conflict. Media professionals may also be interned or detained on suspicion of espionage.

The IHL rules protecting civilians from unlawful detention are substantially different in international and non-international armed conflict, with fewer treaty rules applying in non-international armed conflict. For this reason, both types of conflicts will be considered separately.

Some fundamental rules, however, apply across both international and non-international armed conflicts. These are set out below.

WHAT ARE THE FUNDAMENTAL HUMANITARIAN GUARANTEES PROTECTING AGAINST ARBITRARY DETENTION?

All media professionals in internment or detention (regardless of nationality or the type of conflict they are in) are protected by two fundamental humanitarian guarantees:

- > The **prohibition on hostage taking**: prohibits hostage taking and kidnapping including for financial or political reasons.
- > **Protection from abuse of process**: including where a media professional has been detained for criminal reasons, the right to a fair trial, the right to information about the charges against them, and the right to the presumption of innocence unless proven guilty.

WHEN CAN A MEDIA PROFESSIONAL BE INTERNED OR DETAINED IN AN INTERNATIONAL ARMED CONFLICT?

The IHL rules regulating the internment of media professionals on security grounds *only* apply to those media professionals who are interned by the forces of an adversary, or of an occupying power. IHL does not cover the internment of media professionals by their own State (this is regulated by domestic laws and human rights law).

A party to an international armed conflict **can lawfully intern foreign media professionals on ‘security grounds’**. Internment is an exceptional measure, normally only to be carried out where an individual represents a real threat to a State’s present or future security (this could be, for example, because they have carried out subversive activities which are of direct assistance to an enemy power).

In addition, a party to a conflict **can lawfully detain authorised war correspondents (who accompany the armed forces of an adversary and are entitled to POW status), upon capture.**

Internment of foreign media professionals in international armed conflict

Parties to an international armed conflict, and occupying powers, may intern a foreign media professional on security grounds **if they have a good reason to think that the media professional is a real threat to their present or future security**. The following rules regulate internment on security grounds:

- > Foreign media professionals cannot be interned by an adversary’s forces unless it is **‘absolutely necessary’** to do so for security reasons. In occupied territory internment can only be imposed for **‘imperative reasons of security’**.
- > Interned media professionals have the **right to receive prompt information about the reasons for their internment** and they also have the right to **immediate and periodic review** of their internment by an impartial and independent body.
- > Interning authorities must inform the **State of nationality** of an interned media professional, **their family**, and the **International Committee of the Red Cross** of the internment.

- > As soon as the reasons for the internment no longer exist, or the hostilities have ceased (whichever is the earlier), **a media professional must be released.**

War correspondents who are captured (entitled to POW protection)

Under IHL parties to an international armed conflict have the right to capture and detain members of the adversary's armed forces. This includes authorised war correspondents who accompany the armed forces (although they are not considered to be members of the armed forces). War correspondents, like the military personnel they accompany, are entitled to prisoner of war (POW) status on capture. **POWs can be placed in camps and guarded against escape until the end of hostilities.**

As set out above, not all 'embedded' journalists are war correspondents for IHL purposes.

Some of the rules relating to POWs, including captured war correspondents, are as follows:

- > At the end of hostilities, POWs must be **released and repatriated** (with consent) without delay.
- > The decision to detain a person entitled to POW status (including a war correspondent) is **not reviewable by an independent body**. However, if the POW status of a media professional is in doubt, they are assumed to be entitled to POW status until this is determined by a competent tribunal.
- > War correspondents, as POWs, are **only required to give the detaining power their name, rank, date of birth, and serial number** (as relevant).
- > War correspondents may mail a 'capture card' to their family from detention. Detaining authorities must also inform the **State of the war correspondent's nationality** and the **ICRC** of the detention.

WHAT ABOUT MEDIA PROFESSIONALS WHO ARE SUSPECTED OF ESPIONAGE IN AN INTERNATIONAL ARMED CONFLICT?

Parties may detain media professionals suspected of espionage. They may be **held in civilian detention** (they are not entitled to POW status) or **tried under criminal law for their participation in hostilities.**

If they are tried for espionage they are entitled to **protection from abuse of process, including a fair trial**. No punishment can be administered without a fair trial.

WHEN CAN A MEDIA PROFESSIONAL BE DETAINED IN A NON-INTERNATIONAL ARMED CONFLICT?

There are **significantly fewer IHL rules** protecting media professionals from unlawful detention in non-international armed conflict than in international armed conflict. Similarly, rules of IHL applicable in non-international armed conflict do not recognise ‘war correspondent’ or POW status. Therefore, all media professionals, regardless of whether or not they are authorised to accompany an armed force, are entitled to the same IHL protection in detention.

It is currently unclear whether IHL contains a legal basis on which to detain civilians. However, IHL does not prohibit the detention of civilians, including media professionals, on security grounds. Both international human rights law and the domestic laws of States contain provisions dealing with detention.

There are arguments that, under IHL, parties to a non-international armed conflict have **an implied power to detain persons** (including media professionals) **on imperative security grounds** under IHL. However, this argument is not universally accepted. It is also not clear how far this purported power extends in non-international armed conflicts. However, the following rules do apply:

- > Detention outside imperative security grounds (or in the absence of a suspected criminal offence) is likely to be **hostage taking**, which is illegal under IHL. This includes where detention on security grounds is extended for illegitimate reasons, such as for financial or political purposes.
- > Detained media professionals should be provided with at least basic **information** about the reasons for their detention and the likely consequences (including duration) of the detention.
- > Detaining authorities in non-international armed conflict must **maintain records** of those in detention; however, they are not required to register the detention of a media professional with an international body or to

inform the family of those in detention. The ICRC can offer to facilitate such contact but parties are not obliged to accept this assistance.

- > Each decision to detain a media professional must be based on their individual circumstances and risk and not the result of a 'blanket determination' to detain all media professionals in an area.
- > Media professionals must be released as soon as the reason for their detention no longer exists.
- > Customary international humanitarian law may also prohibit the 'arbitrary detention' of media professionals. This prohibits detention without a lawful ground or where legal processes have not been followed. It also prohibits indefinite detention and detention without review.

WHAT ABOUT MEDIA PROFESSIONALS WHO ARE SUSPECTED OF ESPIONAGE IN A NON-INTERNATIONAL ARMED CONFLICT?

The law of non-international armed conflict does not make special provision for spies. All persons in detention, including media professionals suspected of espionage, are **entitled to certain fundamental guarantees, including a fair criminal trial** if they are to be subject to punishment for espionage.

2.5 Treatment while interned or detained

The rules applying to non-international armed conflict are similar, but not identical, to the rules that protect media professionals in internment and detention in international armed conflict. Therefore, the rules applicable to each type of conflict are addressed here together. One important difference is that the prisoner of war (POW) status of war correspondents does not apply in non-international armed conflict.

WHAT ARE THE FUNDAMENTAL HUMANITARIAN GUARANTEES APPLICABLE TO ALL SITUATIONS OF INTERNMENT OR DETENTION?

All media professionals are **protected from torture and other forms of ill treatment** and must be treated humanely during internment and detention in both international and non-international armed conflict. This protection

applies regardless of whether a media professional is detained for legitimate or illegitimate reasons.

The use of sexual violence is always prohibited. Rape and other forms of sexual violence can, depending upon the context, constitute crimes against humanity, war crimes, torture and genocide.

WHAT BASIC NECESSITIES MUST BE PROVIDED TO MEDIA PROFESSIONALS?

Media professionals in detention and internment are entitled to **basic necessities and conditions**. These include:

- > Hygienic accommodation and access to sanitation facilities
- > Sufficient food and clothing
- > Medical attention
- > Access to religious, educational and recreational facilities
- > The receipt of relief consignments
- > Separate accommodation (or sanitation facilities) for females
- > Respect for their person and honour.

WHAT ABOUT PERSONAL PROPERTY?

Media professionals in **international armed conflict** may be entitled to **keep items of personal property** with them in internment or detention, including typewriters and laptops (if it is able to be shown that these are for personal use). However, many professional items, such as cameras and currency, can be removed from media professionals and returned at the end of the internment or detention.

The **personal property** of media professionals in detention in **non-international armed conflict** is protected from pillage (theft or plunder) by detaining authorities. This means that if it is removed it must be returned upon release.

ARE MEDIA PROFESSIONALS ALLOWED TO CORRESPOND WHILE IN DETENTION OR INTERNMENT?

Media professionals in **international armed conflict** have a **right to contact with the outside world**, including correspondence with their families and employers. However, any correspondence is likely to be subject to censorship by detaining authorities.

Detained media professionals in **non-international armed conflict** are allowed to **send and receive correspondence**, subject to the capacity of the detaining authority to facilitate such activities. Such correspondence is likely to be subject to censorship by the detaining authorities.

Media professionals detained or interned in **international armed conflict** have the right to **personal and confidential communication with the International Committee of the Red Cross (ICRC)**, including the receipt of visits by an ICRC delegate. In non-international armed conflict there is no **absolute right for the ICRC to visit**, or correspond with, a detained media professional, although they may offer their services to the detaining authority.

WHAT PROTECTION IS THERE FOR MEDIA PROFESSIONALS DETAINED ON SUSPICION OF ESPIONAGE?

In **international armed conflict** the detaining power may deny a person detained on suspicion of espionage **certain rights that are prejudicial to the security of the State**. This includes the right to communication and correspondence.

The law of **non-international armed conflict** does not address the case of espionage specifically. It is highly likely that suspicion of espionage qualifies as a legitimate reason to limit the **correspondence** of a detained media professional.

Media professionals detained on suspicion of espionage are, however, protected by the fundamental protection from torture and other forms of ill treatment.

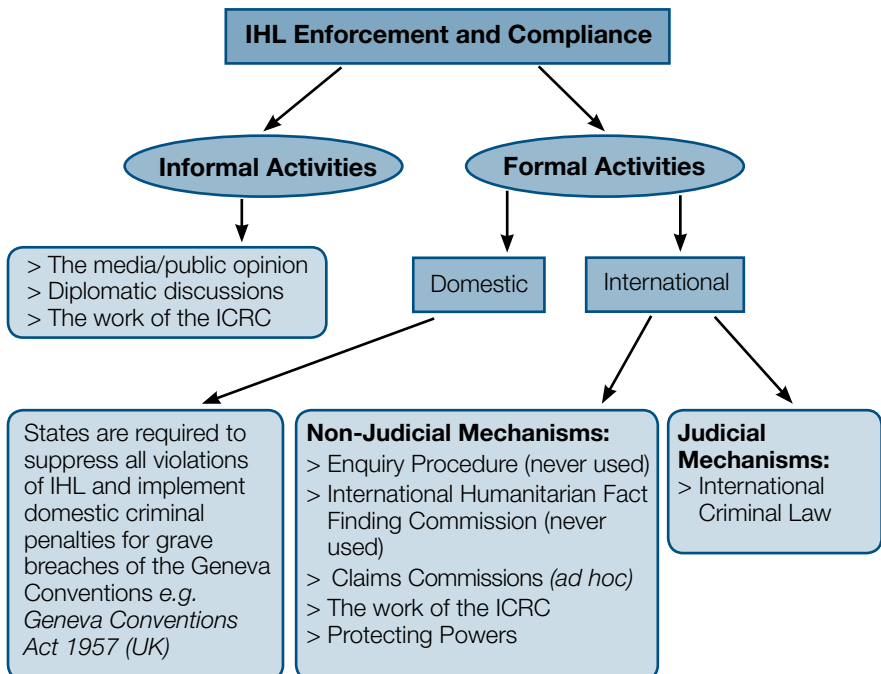
2.6 Enforcing rules of IHL

It is regrettable that rules of IHL that protect civilians, including media professionals, are not always complied with, and that those responsible for violations may not always be held to account. This is sometimes referred to as 'impunity'. It is important, therefore, to consider how IHL rules are enforced.

Informal activities that can help to encourage compliance with IHL include: the work of the media in helping to draw attention to violations of IHL and the effect this has on public opinion; diplomatic discussions between States; and dialogue with non-State armed groups. The organisations of the International Red Cross and Red Crescent Movement are formally mandated to promote and to encourage implementation of IHL rules: this involves working with parties to a conflict to encourage compliance with IHL.

Formal enforcement mechanisms exist in both domestic and international law.

Summary of IHL Enforcement Mechanisms



HOW IS IHL ENFORCED IN DOMESTIC LAW?

The rules of IHL require States to introduce appropriate domestic measures to suppress all violations of IHL. They also specifically oblige States to investigate, and implement domestic criminal penalties for so-called ‘grave breaches’ (the most serious violations) of the Geneva Conventions and Additional Protocol I. Grave breaches are set out in the texts of these treaties and only apply to international armed conflict.

The UK has a number of different domestic laws addressing violations of IHL, both by the military and by civilians. For example, the UK has criminalised grave breaches of the Geneva Conventions and Additional Protocol I under the Geneva Conventions Act (1957). Further, it is an offence under UK law for a person to commit a war crime, genocide, or a crime against humanity under the International Criminal Court Act (2001) (in Scotland, the International Criminal Court (Scotland) Act 2001). Domestic courts have jurisdiction over these offences if they are committed in the UK, and if committed outside the UK by a UK national, UK resident or anyone subject to UK service jurisdiction. Violations of IHL by members of the armed forces may also be dealt with under relevant service discipline rules.

HOW IS IHL ENFORCED IN INTERNATIONAL LAW?

IHL establishes several mechanisms to encourage compliance with its rules. These include an international enquiry procedure, a ‘Protecting Power’ function and an International Humanitarian Fact Finding Commission (ihffc.org/). However, these mechanisms have rarely been used.

Serious breaches of IHL committed by individuals (whether civilian or military) can be investigated and punished under the rules and mechanisms of international criminal law (ICL), which generally operates in a complementary way to domestic criminal law. ‘War crimes’ under ICL include both the ‘grave breaches’ identified under the Geneva Conventions and Additional Protocol I and other serious violations of IHL. Individuals who have committed war crimes (including those committed in both international and non-international armed conflicts) can be investigated and punished by international courts and tribunals set up for this purpose, including the permanent International Criminal Court.

HOW DOES ICL ADDRESS VIOLATIONS OF IHL COMMITTED AGAINST MEDIA PROFESSIONALS?

ICL prohibits serious violations of IHL, including those committed against protected persons, such as media professionals. Article 8 of the Rome Statute of the International Criminal Court (setting out war crimes) prohibits:

- > **Murder/wilful killing**
- > **Launching of direct and intentional attacks** against civilians who are not taking a direct part in hostilities
- > The **launching of disproportionate attacks**
- > Taking of **hostages**
- > **Torture**
- > **Other forms of inhumane treatment**, and
- > **Sexual violence or rape.**

To date there has been no international prosecution for an attack against a media professional during armed conflict.

HOW DOES ICL PROTECT THE WORK OF MEDIA PROFESSIONALS?

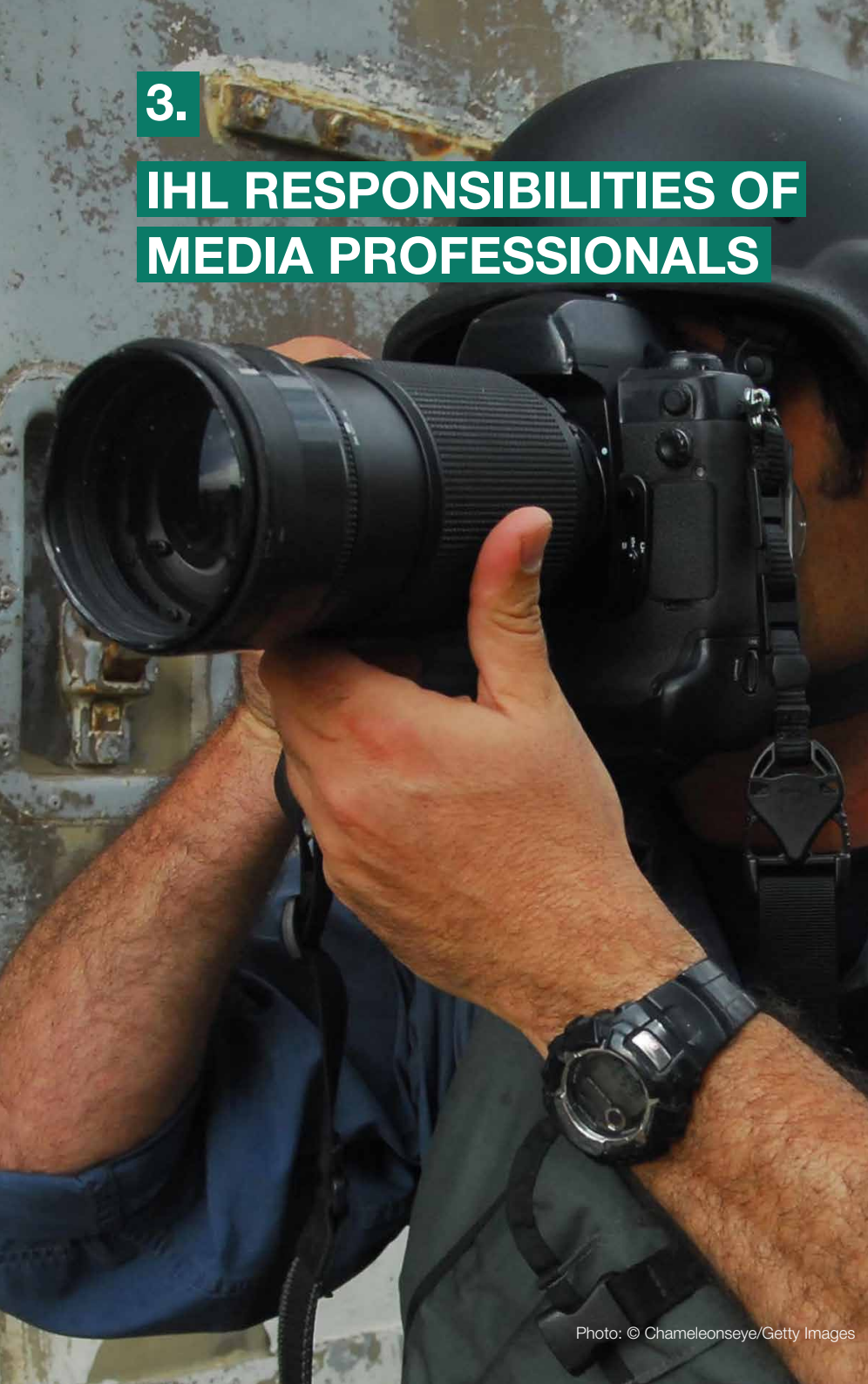
Some procedural rules of ICL relate to aspects of the work of media professionals. **Media professionals can be called to give evidence before international courts and tribunals.** A media professional may be in **contempt of court** (see part 3) for failing to give evidence unless the rules of an international criminal court or tribunal create an exception. Such an exception is called a **‘privilege.’**

- > The **International Criminal Tribunal for the Former Yugoslavia (ICTY)** is the first and only international court to recognise a privilege for media professionals. In proceedings before the ICTY **media professionals do not have to give evidence unless it can be shown that:**
 - > **the evidence sought from the media professional is of ‘direct and important value’ to a core issue in a case before the court, and**
 - > **that the evidence sought from the media professional cannot be obtained elsewhere.**

- > **Other international courts and tribunals** have rules protecting confidential information and sources. These rules might be applicable to protect the **identity of confidential sources or other confidential information** provided by media professionals. However, these rules have **not yet been tested** in relation to media professionals.

3.

IHL RESPONSIBILITIES OF MEDIA PROFESSIONALS



3. IHL responsibilities of media professionals

Under international law media professionals not only benefit from protection, but also have obligations and responsibilities. This is especially true under IHL: **the rules and obligations of IHL apply to any person or party to a conflict who is in a position to violate them.** IHL recognises that both parties to a conflict and individuals can breach its rules and it attaches individual criminal responsibility for many of these breaches.

3.1 Mechanisms of responsibility

This section will set out the ways in which media professionals are responsible under IHL and also under domestic and international criminal law. It is important to understand these ‘mechanisms’ of responsibility before the substance of any responsibilities is discussed.

	International law	Domestic law (UK)
Individual responsibility for violations of international law committed during armed conflict.	Individuals can be responsible under International Criminal Law (e.g. Rome Statute) for international crimes including: > Grave and serious breaches of Geneva Conventions (war crimes) > Genocide > Crimes against humanity.	Individuals can be responsible under UK law for international crimes, including: > grave breaches of the Geneva Conventions (<i>Geneva Conventions Act 1957</i>) > serious breaches of IHL (war crimes), genocide and crimes against humanity (<i>International Criminal Court Act 2001</i>).
Individual responsibility for violations of domestic law committed during armed conflict.	N/A	Individuals can be responsible for violations of UK criminal law committed abroad, during armed conflict where: > they are ‘subject to service discipline’ under the <i>Armed Forces Act 2006</i> ; or > they are UK citizens and have committed a serious crime, such as murder.

HOW ARE MEDIA PROFESSIONALS HELD RESPONSIBLE FOR VIOLATIONS OF IHL?

All media professionals operating in armed conflict have a responsibility to comply with the rules of IHL. All entities whose activities are associated with an armed conflict, including States,

non-State actors, and individuals, must respect IHL. This obligation exists under both domestic law and international law.

Responsibility under domestic law

Parties to the Geneva Conventions and Additional Protocol I have an obligation to suppress through their domestic legal systems **violations of those treaties**. Similarly, States must investigate and prosecute individuals who commit grave breaches of the Geneva Conventions and Additional Protocol I. **Media professionals who violate the rules of IHL may be the subject of investigation and prosecution under the domestic laws of a State.**

In the UK, the Geneva Conventions Act 1957 makes it a crime under UK law to commit a grave breach of the Geneva Conventions. Under this Act, any person, including a media professional, regardless of their nationality or where the crime was committed, can be prosecuted under UK law in the UK court system for such violations of IHL. This is known as ‘universal jurisdiction’.

Responsibility under international law

In addition, any person (including media professionals) may have individual criminal responsibility under international criminal law for any serious violations of IHL (or any other international crime) they commit in international or non-international armed conflict, regardless of their status as civilians.

HOW ARE MEDIA PROFESSIONALS HELD RESPONSIBLE FOR VIOLATIONS OF ICL?

As with IHL, the rules of ICL (including those prohibiting serious violations of IHL) are enforceable through both domestic and international law.

Responsibility under domestic law

In the UK, the International Criminal Court Act 2001 (in Scotland, the International Criminal Court (Scotland) Act 2001) makes it a crime under UK law to commit war crimes (serious violations of IHL), genocide, and crimes against humanity, as set out in the Rome Statute of the International Criminal Court.

Any person, regardless of nationality, can be prosecuted for such an international crime if it was committed in the territory of the UK. Similarly, a UK national or resident, or persons subject to service jurisdiction (including the armed forces), may be prosecuted in UK courts for committing such a crime abroad (including in a situation of armed conflict). As civilians, media professionals accompanying the UK armed forces may be 'persons subject to service jurisdiction' if they have been formally designated as such a person by the Ministry of Defence.

Responsibility under international law

Under international law, an individual, including a media professional, may be prosecuted for violations of ICL where an international court or tribunal has jurisdiction to do so. The jurisdiction of courts and tribunals is set out in their respective statutes, for example, the Rome Statute of the International Criminal Court. This is discussed in part 1.

IS IT AN INTERNATIONAL CRIME TO VIOLATE IHL?

Any grave breach of the Geneva Conventions or Additional Protocol I (as identified in the texts of those treaties) in an international armed conflict is a war crime under international criminal law. Other violations of IHL in an international or non-international armed conflict are also war crimes where they are set out in the statutes and rules of international criminal courts and tribunals or in customary international law, including Article 8 of the Rome Statute of the International Criminal Court. **Any media professional who commits a war crime can be held individually criminally responsible for that crime.**

ARE THERE OTHER INTERNATIONAL CRIMES?

Crimes against humanity (serious and systemic breaches of human rights) and **genocide** (acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group) are also crimes under international criminal law. Unlike war crimes, these crimes do not need to be committed in connection with an armed conflict. **Media professionals can be held liable for the commission of these crimes, both within and outside situations of armed conflict.**

WHAT TYPES OF RESPONSIBILITY EXIST UNDER ICL?

Media professionals are directly responsible under international law for any international crimes that they **commit, aid or abet, induce, encourage, solicit or incite**. They can also be held liable for **attempting** to commit a crime or **ordering** someone else to commit a crime.

CAN EDITORS AND SUPERVISORS BE HELD RESPONSIBLE UNDER ICL?

It is not just individual media professionals that may have responsibilities under IHL or ICL: their **editors and supervisors** (including those based at media organisations in their home State) have responsibilities. These can constitute **direct responsibilities** arising from their operational activities in an armed conflict. Editors/supervisors may also be **indirectly responsible** for the conduct of a media professional under the doctrine of **'superior responsibility'**.

Superior responsibility for criminal violations of IHL (or other international crimes) may be found where:

- > There is a superior-subordinate **relationship between a media professional and a superior which is determined by the superior having 'effective control'** over the subordinate. It is possible for an editor and media professional to have such a relationship. An example of this can be found in the *Media Case*: a case before the International Criminal Tribunal of Rwanda that found editors and owners of radio stations criminally responsible for broadcasts made by reporters that were direct and public incitement to genocide.
- > The **superior knew or was 'wilfully blind'** to the fact that a subordinate was committing, had committed, or intended to commit a war crime, and
- > The **superior failed to take steps within their power** to prevent, report, investigate or punish such a crime.

CAN MEDIA PROFESSIONALS BE HELD RESPONSIBLE FOR VIOLATIONS OF IHL UNDER UK LAW COMMITTED OUTSIDE THE UK?

Media professionals who are accompanying the UK armed forces abroad, and are ‘subject to service discipline’ under the Armed Forces Act 2006, can be prosecuted in UK courts for conduct that is a violation of UK domestic criminal law. In other words, the criminal law of the UK applies to some media professionals even when they are reporting from an armed conflict abroad. A media professional accompanying the UK armed forces may be a ‘person subject to service jurisdiction’ if they have been formally designated as such a person by the Ministry of Defence. Media professionals may also request this status from the UK armed forces.

3.2 Responsibilities connected to the media’s professional activities

This section considers the IHL responsibilities of media professionals in relation to the gathering of information in an armed conflict; the publication and broadcast of information from and about an armed conflict; and the use and depiction of distinctive emblems, including the red cross, red crescent and red crystal emblems, by media professionals.

WHAT ARE A MEDIA PROFESSIONAL’S RESPONSIBILITIES WHEN GATHERING INFORMATION DURING AN ARMED CONFLICT?

Media professionals have responsibilities under IHL when gathering information in an armed conflict. In particular, they have responsibilities which apply to them when they **undertake investigations and witness events**; when they **interview people**; and when they **photograph or film people**, especially when those people are in detention or internment.

Investigating and witnessing events (including war crimes)

Media professionals have a **responsibility not to participate directly in hostilities** (see 2.3 above). If a media professional gathers particular information for a party to a conflict and passes it on to that party they may be

accused of **engaging in espionage** and directly participating in the hostilities. Similarly, media professionals **must not provide direct assistance to parties to a conflict**. This includes allowing parties to use their communications equipment for military purposes and passing on messages between members of a party.

Media professionals who **witness war crimes** are under **no IHL obligation to report the crime**, however, they may wish to for a number of reasons. Should they wish to report a crime they may do so to:

- > A military commander
- > Local police or those of the media professional's State
- > Investigators of a relevant international court or tribunal, or
- > Representatives of the International Committee of the Red Cross (ICRC) (who may be able to assist victims of that crime but will not be able to investigate or prosecute it), or another relevant assisting organisation.

If a media professional is **called before a court to give evidence of a crime they have witnessed**, and fails to attend or answer questions, they may be guilty of **contempt of court**. The rules that provide an exception to this are discussed below.

Media professionals have a **responsibility not to aid and abet the commission of an international crime**. This means they must not provide the person who committed a crime with assistance or support before, during or after the crime is committed.

Interviewing and photographing/filming people

Media professionals have a responsibility to ensure that their interviewing or photographing or filming of particular persons, especially those in internment or detention, **is not part of the torture or other ill-treatment of those people**.

Media professionals must ensure that interviewing or photographing or filming a person **respects the dignity and honour** of that person. These concepts are discussed in further detail on the following pages.

WHAT ARE A MEDIA PROFESSIONAL'S RESPONSIBILITIES (AND THOSE OF MEDIA ORGANISATIONS) CONNECTED TO THE PUBLICATION AND BROADCAST OF INFORMATION?

Media professionals (and media organisations) have responsibilities when publishing or broadcasting material from or about an armed conflict.

IHL protects persons in the hands of an adversary from, among other things:

- > activities which **do not respect their honour and their person**
- > conduct which **exposes them to insults and public curiosity.**

The UK Government and the British Red Cross have agreed a joint position on the practical interpretation of these general rules of IHL. This position promotes the view that media professionals (and their employers) have a responsibility **normally not to publish images or report stories** about prisoners of war (POWs) or civilian internees (as well as any person in detention in a non-international armed conflict) that:

- > **Individually identify them** (either in name or by recognisable image)
- > Show a person (even if they are not individually identified) being subject to **humiliating or degrading treatment** (including torture)
- > Constitute **slander or adversely affects a person's reputation.**

In **limited and exceptional cases** in the **public interest**, images identifying a person or demonstrating them being the subject of humiliating and degrading treatment may be published or broadcast. These could include, for example, where it is necessary to demonstrate that a particular high profile person has been captured; or to bring public attention to the fact that there has been a serious breach of IHL.

Specific restrictions on publication and broadcast of particular material apply to those media professionals accredited to, and embedded with, the UK forces. These are set out in the *Green Book* (see 'further resources').

ARE A MEDIA PROFESSIONAL'S RESPONSIBILITIES REGARDING THE USE AND DEPICTION OF THE DISTINCTIVE EMBLEMS?

The **distinctive emblems** recognised under IHL are the emblems of the red cross, the red crescent and the red crystal, each depicted on a white background. The primary purpose of the emblems is to act as **a visual indication of certain protected objects and persons** during international and non-international armed conflicts (primarily the Medical Service of a country's armed forces). They may also be used to **indicate membership** of an organisation of the International Red Cross and Red Crescent Movement (who carry out certain activities in armed conflicts, as well as in peacetime). Use of the distinctive emblems is regulated by IHL, and also by national laws in many countries.



The red cross, red crescent and red crystal emblems

A media professional **may** use or depict the emblems:

- > In publication or broadcast of images of persons and objects permitted to use the emblem, when doing so in a factually correct manner. In the UK, the British Red Cross is able to provide advice on the correct depiction of the emblems in such circumstances.
- > Where a media professional is also a member of an organisation authorised to use the emblems (for example, a first aid volunteer for a National Red Cross or Red Crescent Society), and is not engaged in the work of a media professional at the time of use.

Media professionals may **not** otherwise:

- > Use or wear a similar symbol to the emblems (**imitation**)
- > Use the emblems as a sign of protection
- > Use the emblems in a publication or broadcast in a way that undermines their special meaning or purpose
- > Use the emblems to help to disguise military objectives such as troops, weapons, or military vehicles (**perfidy**).

3.3 Responsibilities connected to the media's operational activities

IHL responsibilities are not limited to the professional activities of the media in conflict. Media professionals and media organisations are also subject to a number of IHL responsibilities that arise from the operational (and logistical) aspects of the work of the media in conflict zones.

WHAT RESPONSIBILITIES MAY ARISE FROM THE USE OF FORCE?

IHL permits media professionals to use force in **self-defence** against unlawful attacks against them or their property. However, any use of force in conflict carries the risk that media professionals may get drawn into the conflict i.e. unintentionally engaging with parties to a conflict or using more force than is required for defensive purposes. In the event that this occurs media professionals:

- > may be **prosecuted for such involvement**; and
- > must also comply with IHL rules relating to the use of force including refraining from attacking civilians who are not participating in hostilities.

Certain weapons that are indiscriminate or cause superfluous injury or unnecessary suffering (for example expanding or exploding bullets) are prohibited by IHL whether or not they are used lawfully in self-defence or unlawfully as part of the conflict.

WHAT RESPONSIBILITIES MAY ARISE FROM THE ACQUISITION OF ASSETS IN CONFLICT ZONES?

Media professionals and organisations acquiring assets in conflict zones (including transport and facilities) must be **careful to avoid engaging in pillage** (theft and plunder), which is prohibited by IHL. Pillage comprises not only the theft of property (movable goods and real property) but also entering into contracts for sale of property made under threat or pressure resulting from the armed conflict, and can also include knowingly receiving property obtained through pillage.

WHAT RESPONSIBILITIES MAY ARISE FROM THE USE OF PRIVATE SECURITY GUARDS?

Media professionals and organisations operating in armed conflict often employ security personnel to protect their staff and their assets. The use of security services in an armed conflict may sometimes be necessary for protection.

IHL is silent on the engagement and use of private security guards by media professionals and organisations for protection. However, security guards, as civilians, are bound by the same rules relating to the use of force and pillage as media professionals.

In the event that a security guard violates a rule of IHL, **media professionals are ordinarily not held individually responsible for such a breach.**

However, media professionals **may be held individually criminally responsible** for a violation of IHL:

- > if they **aid or abet; induce, encourage, solicit or incite**, a security guard to commit a crime
- > through the **doctrine of ‘superior responsibility’**, where they have a relationship of ‘effective control’ over the security guard. This is set out above.

Media professionals and organisations are **unlikely** to be held responsible under the doctrine of ‘superior responsibility’ for crimes committed by security guards who are **provided by a third party** – such as a security firm or a party to an armed conflict. However, using **security services provided by a party to an armed conflict** (even if civilian) may increase the chances of getting caught in cross-fire during a conflict and also of being mistaken for directly participating in hostilities.

3.4 Responsibilities under international criminal law

Media professionals in armed conflict can be held individually criminally responsible for any international crimes they commit. Crimes can be committed through actions or words (speech) including publications and broadcasts.

WHAT TYPES OF INTERNATIONAL CRIMES ARE PARTICULARLY RELEVANT TO THE WORK OF MEDIA PROFESSIONALS?

Media professionals may be vulnerable to accusations of crimes based on speech. It is, therefore, important for any media professional working in an armed conflict to understand when speech (including a publication or broadcast) might result in individual criminal responsibility.

Hate speech (speech that is discriminatory or vilifies a particular group of persons based on their race, ethnicity, religion, gender or a similar ground) is not, itself, an international crime (although it is a domestic crime in a number of countries, including in the UK). However, where hate speech forms part of a systemic campaign of persecution of a group, characterized by acts of violence and destruction of property, it may constitute **a crime against humanity**.

Direct and public incitement to genocide (i.e. the destruction, in whole or in part, of a national, ethnic, racial or religious group) is a specific crime under international law that can also be committed through particular broadcasts or publications. The *Media Case* in the International Criminal Tribunal of Rwanda (regarding the Rwandan genocide in 1994) is an example of three media professionals being found guilty of this crime. That case established the following guidelines about when a publication or broadcast might be criminal:

- > A media professional may be held individually responsible for direct and public incitement to genocide where they directly and publicly **prompt or** provoke another to commit **genocide**. Hate speech is not enough.
- > An incitement to genocide is **public** where it is made to a number of individuals in a public place or to members of the general public at large by such means as mass media, for example radio, television, newspapers and speeches.
- > An incitement is **direct** where it actually *calls* for others to commit genocide – it must be more than a vague or indirect suggestion. This can be hard to determine and should be assessed in relation to the particular cultural and linguistic context prevailing at the time. How a message might be understood by the relevant audience is a relevant consideration.

Publications and broadcasts may also form parts of other international crimes where they are:

- > a form of **aiding and abetting** another to commit a crime
- > a means of **inducing, soliciting, inciting, or instigating** another person to commit a crime.

The *Media Case* demonstrates that **media executives, owners and editors can be held criminally liable for publications and broadcasts issued by media professionals**, under their effective control through the doctrine of superior responsibility, outlined above.

WHAT ARE A MEDIA PROFESSIONAL'S RESPONSIBILITIES WHEN REPORTING ON INTERNATIONAL CRIMINAL PROCEEDINGS?

Media professionals and organisations have the responsibility not to interfere with the proceedings of international courts and tribunals, and to comply with any orders issued by judges that affect them. This includes non-publication orders relating to the identity or evidence of a particular witness.

Any media professional or organisation who interferes with proceedings or breaches a rule set out by a judge can be prosecuted for **contempt of court**. A charge of contempt of court can result in a fine and/or imprisonment.

FURTHER ONLINE RESOURCES FOR MEDIA PROFESSIONALS IN ARMED CONFLICT

This section provides information about online resources available to assist media professionals in armed conflict. This information has been gathered from online material and the British Red Cross, while taking great care in compiling this list, cannot make any assurance as to the accuracy of the information contained here. Resources are listed in alphabetical order.

EMERGENCY RESOURCES AND ASSISTANCE

Emergency hotlines

The following organisations operate 24-hour hotlines for media professionals who need urgent assistance in armed conflict and other dangerous situations:

- > ICRC Hotline:
+41 79 217 32 85 (24 hours) email: press@icrc.org
- > Reporters Without Borders: SOS press hotline:
+33 1 4777 7414 (24 hours)

Emergency funds

The following organisations may provide emergency funds to media professionals in danger or their families. Please contact the relevant organisation directly to find out more information.

- > Doha Centre for Media Freedom Emergency Assistance:
dc4mf.org/en/content/urgent-assistance-journalists-need
- > Free Press Unlimited: Reporters Respond emergency funding for the media:
freepressunlimited.org/en/projects/reporters-respond-emergency-funding-for-the-media
- > International Federation of Journalists International Safety Fund:
ifj-safety.org/en/contents/ifj-international-safety-fund
- > International Media Support Safety Fund:
mediasupport.org/about/safety-fund/
- > Reporters Without Borders:
en.rsf.org/reporters-without-borders-provides-13-07-2009,27495.html

- > Rory Peck Trust Freelance Assistance Programme – Assistance Grants:
rorypecktrust.org/freelance-assistance/Assistance-Grants

PRE-DEPLOYMENT PRACTICAL ASSISTANCE

Practical guides

Many media organisations publish practical guides and online resources for media professionals in armed conflict, including tips on how to stay safe and what to do in case of an attack or hostage situation:

- > Committee to Protect Journalists:
 - > Journalists Security Guide
cpj.org/reports/2012/04/journalist-security-guide.php
- > International Federation of Journalists:
 - > Live News: A Survival Guide for Journalists
ifj-safety.org/en/contents/live-news-a-survival-guide-for-journalists
- > International News Safety Institute
 - > Online safety advice for media professionals:
newssafety.org/safety/advice/
- > Reporters Without Borders:
 - > Handbook for Journalists and other publications:
en.rsf.org/handbooks,1047.html
- > Rory Peck Trust:
 - > Online resources for freelancers:
orypecktrust.org/resources

Insurance for freelance media professionals

- > International News Safety Institute: a list of useful resources for media professionals including insurance providers:
newssafety.org/safety/advice/insurance/
- > Reporters Without Borders: Insurance for Freelance Journalists
en.rsf.org/insurance-for-freelance-17-04-2007,21746.html
- > Rory Peck Trust: List of insurance providers for freelance media professionals: **rorypecktrust.org/resources/insurance**

Safety equipment and training

- > International News Safety Institute:
 - > Provides free basic safety training to media professionals in locations around the world: **newssafety.org/safety/training/**
 - > A database of organisations that can provide dangerous situation training to media professionals: **newssafety.org/resources/training/**
 - > A database of organisations that offer safety equipment to media professionals: **newssafety.org/resources/equipment/**
 - > A database of organisations that offer other practical support to media professionals: **newssafety.org/resources/support/**
- > Reporters Without Borders
 - > Loan of free safety equipment including bullet-proof vests and personal distress beacons:
en.rsf.org/loan-of-bulletproof-jackets-17-04-2007,21747.html
 - > Safety training for media professionals:
en.rsf.org/training-for-journalists-on-17-04-2007,21750.html
- > Rory Peck Trust Freelance Assistance Programme:
 - > Training bursaries and a list of some training providers: **rorypecktrust.org/freelance-assistance/Rory-Peck-Training-Fund**
- > British Red Cross:
 - > First aid training: **redcross.org.uk/What-we-do/First-aid-training**

Sexual violence resources

- > Committee to Protect Journalists:
cpj.org/reports/2011/06/security-guide-addendum-sexual-aggression.php
- > The DART Center for Journalism and Trauma:
dartcenter.org/topic/sexual-violence

Post-mission trauma resources

Many organisations will provide information and assistance to media professionals returning from dangerous missions who have suffered or are suffering psychological trauma:

- > The DART Center for Journalism and Trauma (Europe):
dartcenter.org/europe
- > Reporters Without Borders:
en.rsf.org/invisible-injuries-that-threaten-10-06-2009,33366.html

IHL RESOURCES

Useful texts and legal materials

- > The full text of the Geneva Conventions and their Additional Protocols can be found on the ICRC website: **[icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/index.jsp](https://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/index.jsp)**
- > Ministry of Defence Green Book – the Ministry of Defence’s working arrangements with media organisations:
[gov.uk/government/publications/the-green-book](https://www.gov.uk/government/publications/the-green-book)
- > British Red Cross: What is IHL?:
[redcross.org.uk/ifrc](https://www.redcross.org.uk/ifrc)
- > ICRC War and Law: a key online IHL resource:
[icrc.org/eng/war-and-law/index.jsp](https://www.icrc.org/eng/war-and-law/index.jsp)
- > Crimes of War – an A-Z guide to common legal terms and issues in IHL and international criminal law: **[crimesofwar.org](https://www.crimesofwar.org)**

Reporting on IHL violations

- > International Center for Journalists Disaster and Crisis Coverage – tips on how to work with victims of violence in an ethical and sensitive way
[icfj.org/resources/disaster-and-crisis-coverage-english](https://www.icfj.org/resources/disaster-and-crisis-coverage-english)
- > Institute for War and Peace Reporting – Reporting Justice: A Handbook on Covering War Crimes Courts: **[iwpr.net/printed-materials/reporting-justice-handbook-covering-war-crimes-courts](https://www.iwpr.net/printed-materials/reporting-justice-handbook-covering-war-crimes-courts)**
- > University of Essex Reporting Killings as Human Rights Violations – a practical guide on how to document and report potential human rights violations to international legal bodies: **[essex.ac.uk/reportingkillingshandbook/index.htm](https://www.essex.ac.uk/reportingkillingshandbook/index.htm)**

FIRST AID TIPS

The British Red Cross knows that everyone can learn a few simple first aid skills that could help someone if things suddenly went wrong.

> **Stand out from the crowd** – Many people think that someone else will help or know what to do. In fact, the more people there are at the scene of an accident, the less likely the person is to get the help they need.

> **Stop and check** – It might not be immediately obvious that the person needs first aid. If you're unsure, always go and check.

> **Take action** – Don't be afraid to step forward and help. If someone is in trouble, your intervention is unlikely to make the situation any worse but it could definitely make things better.



Key skill	Action
Broken bones	<ul style="list-style-type: none"> > Try to support the injury with a cushion or items of clothing to prevent unnecessary movement. > As soon as possible, get emergency help or get someone else to do it. > For upper-arm injuries, encourage the person to support the limb with their hand.
Heavy bleeding	<ul style="list-style-type: none"> > Put pressure on the wound with whatever is available to stop or slow down the flow of blood. > As soon as possible, get emergency help or get someone else to do it. Keep pressure on the wound until help arrives. <p>For a nosebleed:</p> <ul style="list-style-type: none"> > Lean forward with the soft part of the nose pinched.
Hypothermia	<ul style="list-style-type: none"> > Warm the person. > Give them warm drinks and high-energy foods such as chocolate. > Get emergency help.
Choking	<ul style="list-style-type: none"> > Hit them firmly on their back to dislodge the object.



Key skill	Action
Unconscious and breathing	<ul style="list-style-type: none">> Check breathing by tipping their head back and looking and feeling for breaths.> Move the person onto their side and tilt their head back.> Get emergency help.
Unconscious and not breathing	<ul style="list-style-type: none">> Check breathing by tipping their head back and looking and feeling for breaths.> Get emergency help.> Push firmly in the middle of the person's chest so it goes inwards and then release. Push at a regular rate until help arrives.
Burn or scald	<ul style="list-style-type: none">> Put the affected area under cold running water (or any cold liquid) for at least ten minutes.> Cover the burn or scald with cling film or a clean plastic bag.> Seek medical advice if necessary.
Heatstroke	<ul style="list-style-type: none">> Cool the person down by moving them to a cool place and removing their outer clothing.> Get emergency help.> Wrap the person in a cold, wet sheet or clothes.> Best advice for surviving hot weather: keep hydrated, wear loose and light coloured clothes and avoid long exposure to the sun.

THE BRITISH RED CROSS FIRST AID APP

This free app features simple, easy-to-follow advice on 18 everyday first aid scenarios, as well as tips on how to prepare for emergencies, from severe winter weather to road traffic accidents.

The information you need is all hosted on the app itself, meaning no internet connection is needed, making it fast and easy to access.



To download the app, visit the **Apple App Store** or the **Google Play Store**.

Media professionals are civilians under international humanitarian law. In armed conflicts they are protected from direct attack and must be treated humanely at all times.

Los profesionales de los medios de comunicación son civiles con arreglo al derecho internacional humanitario. En conflictos armados, ellos gozan de protección contra ataques directos y deben ser tratados con humanidad en todas las circunstancias.

Les professionnels des médias sont des civils en vertu du droit international humanitaire. En situation de conflit armé, ils sont protégés contre les attaques directes et doivent, en toutes circonstances, être traités avec humanité.

الصحفيون مدنيون بموجب القانون الدولي الإنساني. في النزاعات المسلحة، يتم حمايتهم من الهجوم المباشر ويجب معاملتهم بشكل إنساني في جميع الأوقات.

ICRC HOTLINE NUMBER: +41 79 217 32 85 (24 hours)

ICRC HOTLINE EMAIL: press@icrc.org

Assistance can also be obtained by getting in touch with a local International Committee of the Red Cross (ICRC) delegation/office or through a National Red Cross or Red Crescent Society.